

2 By Representative Clements

3 **ESSB 6220** - H COMM AMD **ADOPTED 2-29-00**
4 By Committee on Commerce & Labor

5
6 Strike everything after the enacting clause and insert the
7 following:

8 "NEW SECTION. **Sec. 1.** A new section is added to chapter 46.96 RCW
9 to read as follows:

10 (1) Notwithstanding the terms of a franchise agreement, a
11 manufacturer, distributor, factory branch, or factory representative,
12 or an agent, officer, parent company, wholly or partially owned
13 subsidiary, affiliated entity, or other person controlled by or under
14 common control with a manufacturer, distributor, factory branch, or
15 factory representative, shall not:

16 (a) Discriminate between new motor vehicle dealers by selling or
17 offering to sell a like vehicle to one dealer at a lower actual price
18 than the actual price offered to another dealer for the same model
19 similarly equipped;

20 (b) Discriminate between new motor vehicle dealers by selling or
21 offering to sell parts or accessories to one dealer at a lower actual
22 price than the actual price offered to another dealer;

23 (c) Discriminate between new motor vehicle dealers by using a
24 promotion plan, marketing plan, or other similar device that results in
25 a lower actual price on vehicles, parts, or accessories being charged
26 to one dealer over another dealer;

27 (d) Discriminate between new motor vehicle dealers by adopting a
28 method, or changing an existing method, for the allocation, scheduling,
29 or delivery of new motor vehicles, parts, or accessories to its dealers
30 that is not fair, reasonable, and equitable. Upon the request of a
31 dealer, a manufacturer, distributor, factory branch, or factory
32 representative shall disclose in writing to the dealer the method by
33 which new motor vehicles, parts, and accessories are allocated,
34 scheduled, or delivered to its dealers handling the same line or make
35 of vehicles;

36 (e) Give preferential treatment to some new motor vehicle dealers
37 over others by refusing or failing to deliver, in reasonable quantities

1 and within a reasonable time after receipt of an order, to a dealer
2 holding a franchise for a line or make of motor vehicles sold or
3 distributed by the manufacturer, distributor, factory branch, or
4 factory representative, a new vehicle, parts, or accessories, if the
5 vehicle, parts, or accessories are being delivered to other dealers, or
6 require a dealer to purchase unreasonable advertising displays or other
7 materials, or unreasonably require a dealer to remodel or renovate
8 existing facilities as a prerequisite to receiving a model or series of
9 vehicles;

10 (f) Compete with a new motor vehicle dealer by acting in the
11 capacity of a new motor vehicle dealer, or by owning, operating, or
12 controlling, whether directly or indirectly, a motor vehicle dealership
13 in this state. It is not, however, a violation of this subsection for:

14 (i) A manufacturer, distributor, factory branch, or factory
15 representative to own or operate a dealership for a temporary period,
16 not to exceed two years, during the transition from one owner of the
17 dealership to another where the dealership was previously owned by a
18 franchised dealer and is currently for sale to any qualified
19 independent person at a fair and reasonable price. The temporary
20 operation may be extended for one twelve-month period on petition of
21 the temporary operator to the department. The matter will be handled
22 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is
23 a franchisee of the petitioning manufacturer or distributor may
24 intervene and participate in a proceeding under this subsection
25 (1)(f)(i). The temporary operator has the burden of proof to show
26 justification for the extension and a good faith effort to sell the
27 dealership to an independent person at a fair and reasonable price;

28 (ii) A manufacturer, distributor, factory branch, or factory
29 representative to own or operate a dealership in conjunction with an
30 independent person in a bona fide business relationship for the purpose
31 of broadening the diversity of its dealer body and enhancing
32 opportunities for qualified persons who are part of a group who have
33 historically been underrepresented in its dealer body, or other
34 qualified persons who lack the resources to purchase a dealership
35 outright, and where the independent person: (A) Has made a
36 significant, bona fide capital investment in the dealership that is
37 subject to loss; (B) has an ownership interest in the dealership; and
38 (C) operates the dealership under a bona fide written agreement with
39 the manufacturer, distributor, factory branch, or factory

1 representative under which he or she will acquire all of the ownership
2 interest in the dealership within a reasonable period of time and under
3 reasonable terms and conditions. The manufacturer, distributor,
4 factory branch, or factory representative has the burden of proof of
5 establishing that the acquisition of the dealership by the independent
6 person was made within a reasonable period of time and under reasonable
7 terms and conditions;

8 (iii) A manufacturer, distributor, factory branch, or factory
9 representative to own or operate a dealership in conjunction with an
10 independent person in a bona fide business relationship where the
11 independent person: (A) Has made a significant, bona fide capital
12 investment in the dealership that is subject to loss; (B) has an
13 ownership interest in the dealership; and (C) operates the dealership
14 under a bona fide written agreement with the manufacturer, distributor,
15 factory branch, or factory representative under which he or she will
16 acquire all of the ownership interest in the dealership within a
17 reasonable period of time and under reasonable terms and conditions.
18 The manufacturer, distributor, factory branch, or factory
19 representative has the burden of proof of establishing that the
20 acquisition of the dealership by the independent person was made within
21 a reasonable period of time and under reasonable terms and conditions.
22 The number of dealerships operated under this subsection (1)(f)(iii)
23 may not exceed four percent rounded up to the nearest whole number of
24 a manufacturer's total of new motor vehicle dealer franchises in this
25 state;

26 (iv) A truck manufacturer to own, operate, or control a new motor
27 vehicle dealership that sells only trucks of that manufacturer's line
28 make with a gross vehicle weight rating of 12,500 pounds or more, and
29 the truck manufacturer has been continuously engaged in the retail sale
30 of the trucks at least since January 1, 1993; or

31 (v) A manufacturer to own, operate, or control a new motor vehicle
32 dealership trading exclusively in a single line make of the
33 manufacturer if (A) the manufacturer does not own, directly or
34 indirectly, in the aggregate, in excess of forty-five percent of the
35 total ownership interest in the dealership, (B) at the time the
36 manufacturer first acquires ownership or assumes operation or control
37 of any such dealership, the distance between any dealership thus owned,
38 operated, or controlled and the nearest new motor vehicle dealership
39 trading in the same line make of vehicle and in which the manufacturer

1 has no ownership or control is not less than fifteen miles and complies
2 with the applicable provisions in the relevant market area sections of
3 this chapter, (C) all of the manufacturer's franchise agreements confer
4 rights on the dealer of that line make to develop and operate within a
5 defined geographic territory or area, as many dealership facilities as
6 the dealer and the manufacturer agree are appropriate, and (D) as of
7 January 1, 2000, the manufacturer had no more than four new motor
8 vehicle dealers of that manufacturer's line make in this state, and at
9 least half of those dealers owned and operated two or more dealership
10 facilities in the geographic territory or area covered by their
11 franchise agreements with the manufacturer;

12 (g) Compete with a new motor vehicle dealer by owning, operating,
13 or controlling, whether directly or indirectly, a service facility in
14 this state for the repair or maintenance of motor vehicles under the
15 manufacturer's new car warranty and extended warranty. Nothing in this
16 subsection (1)(g), however, prohibits a manufacturer, distributor,
17 factory branch, or factory representative from owning or operating a
18 service facility for the purpose of providing or performing
19 maintenance, repair, or service work on motor vehicles that are owned
20 by the manufacturer, distributor, factory branch, or factory
21 representative;

22 (h) Use confidential or proprietary information obtained from a new
23 motor vehicle dealer to unfairly compete with the dealer. For purposes
24 of this subsection (1)(h), "confidential or proprietary information"
25 means trade secrets as defined in RCW 19.108.010, business plans,
26 marketing plans or strategies, customer lists, contracts, sales data,
27 revenues, or other financial information.

28 (2) Subsection (1)(a), (b), and (c) of this section do not apply to
29 sales to a motor vehicle dealer: (a) For resale to a federal, state,
30 or local government agency; (b) where the vehicles will be sold or
31 donated for use in a program of driver's education; (c) where the sale
32 is made under a manufacturer's bona fide promotional program offering
33 sales incentives or rebates; (d) where the sale of parts or accessories
34 is under a manufacturer's bona fide quantity discount program; or (e)
35 where the sale is made under a manufacturer's bona fide fleet vehicle
36 discount program. For purposes of this subsection, "fleet" means a
37 group of fifteen or more new motor vehicles purchased or leased by a
38 dealer at one time under a single purchase or lease agreement for use

1 as part of a fleet, and where the dealer has been assigned a fleet
2 identifier code by the department of licensing.

3 (3) The following definitions apply to this section:

4 (a) "Actual price" means the price to be paid by the dealer less
5 any incentive paid by the manufacturer, distributor, factory branch, or
6 factory representative, whether paid to the dealer or the ultimate
7 purchaser of the vehicle.

8 (b) "Control" or "controlling" means (i) the possession of, title
9 to, or control of ten percent or more of the voting equity interest in
10 a person, whether directly or indirectly through a fiduciary, agent, or
11 other intermediary, or (ii) the possession, direct or indirect, of the
12 power to direct or cause the direction of the management or policies of
13 a person, whether through the ownership of voting securities, through
14 director control, by contract, or otherwise, except as expressly
15 provided under the franchise agreement.

16 (c) "Motor vehicles" does not include trucks that are 14,001 pounds
17 gross vehicle weight and above or recreational vehicles as defined in
18 RCW 43.22.335.

19 (d) "Operate" means to manage a dealership, whether directly or
20 indirectly.

21 (e) "Own" or "ownership" means to hold the beneficial ownership of
22 one percent or more of any class of equity interest in a dealership,
23 whether the interest is that of a shareholder, partner, limited
24 liability company member, or otherwise. To hold an ownership interest
25 means to have possession of, title to, or control of the ownership
26 interest, whether directly or indirectly through a fiduciary, agent, or
27 other intermediary.

28 (4) A violation of this section is deemed to affect the public
29 interest and constitutes an unlawful and unfair practice under chapter
30 19.86 RCW. A person aggrieved by an alleged violation of this section
31 may petition the department to have the matter handled as an
32 adjudicative proceeding under chapter 34.05 RCW."

33 Correct the title.

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