
HOUSE BILL 3256

State of Washington

59th Legislature

2006 Regular Session

By Representatives Upthegrove, B. Sullivan, Wood, Takko, Simpson, Murray, Flannigan, Hudgins and Chase

Read first time 01/30/2006. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to internet vehicle sales; amending RCW 46.96.185;
2 adding a new section to chapter 46.70 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that there is a
5 shortage of hybrid vehicles to meet consumer demand, creating long
6 vehicle waiting lists and allowing some dealers to gouge consumers.

7 The legislature also finds that the federal trade commission, the
8 consumer federation of America, and numerous empirical studies have
9 concluded that reducing anticompetitive restrictions on the sale of new
10 motor vehicles could reduce the costs to consumers by as much as nine
11 to sixteen percent (about two thousand five hundred dollars) on the
12 average purchase.

13 The legislature further finds that it is an unlawful practice under
14 current state law for anyone, except a dealer licensed by the
15 department of licensing, to sell a new motor vehicle on the internet.

16 The legislature further finds that internet technology is
17 increasing competition and revolutionizing the retail sale of thousands
18 of consumer products.

1 It is therefore the intent of the legislature to reduce air
2 pollution and dependence on foreign oil and to combat global warming,
3 by enacting an innovative project in new car sales competition. This
4 act removes anticompetitive car dealer restrictions on the sale of new
5 hybrid and hydrogen vehicles by allowing automobile manufacturers,
6 internet retailers, and other businesses to engage in the sale of new
7 hybrid and hydrogen vehicles as long as those entities comply with
8 relevant state tax, environmental, and consumer protection laws.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.70 RCW
10 to read as follows:

11 (1) The department may issue an internet hybrid vehicle sales
12 license limited to authorizing internet sales or leases of hybrid and
13 hydrogen vehicles.

14 (2) Except as expressly provided by law, an applicant applying for
15 a license described in subsection (1) of this section is subject to all
16 of the provisions of this chapter that apply to the issuance of a
17 vehicle dealer license.

18 (3) Except as expressly provided by law, all provisions of law that
19 apply to a licensed vehicle dealer apply to a licensee described in
20 subsection (1) of this section.

21 (4)(a) Notwithstanding RCW 46.70.023, a licensee described in this
22 section is only required to maintain an office in this state where the
23 books and records pertinent to transactions involving the sales of new
24 vehicles that are delivered to an address in this state are maintained.

25 (b) The address and telephone number of the office described in (a)
26 of this subsection shall be kept on file by the department.

27 (5) A person or business licensed under this section is subject to
28 all of the consumer protection laws that apply to the sale or lease of
29 a motor vehicle by a dealer.

30 **Sec. 3.** RCW 46.96.185 and 2003 c 21 s 3 are each amended to read
31 as follows:

32 (1) Notwithstanding the terms of a franchise agreement, a
33 manufacturer, distributor, factory branch, or factory representative,
34 or an agent, officer, parent company, wholly or partially owned
35 subsidiary, affiliated entity, or other person controlled by or under

1 common control with a manufacturer, distributor, factory branch, or
2 factory representative, shall not:

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

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

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

14 (d) Discriminate between new motor vehicle dealers by adopting a
15 method, or changing an existing method, for the allocation, scheduling,
16 or delivery of new motor vehicles, parts, or accessories to its dealers
17 that is not fair, reasonable, and equitable. Upon the request of a
18 dealer, a manufacturer, distributor, factory branch, or factory
19 representative shall disclose in writing to the dealer the method by
20 which new motor vehicles, parts, and accessories are allocated,
21 scheduled, or delivered to its dealers handling the same line or make
22 of vehicles;

23 (e) Give preferential treatment to some new motor vehicle dealers
24 over others by refusing or failing to deliver, in reasonable quantities
25 and within a reasonable time after receipt of an order, to a dealer
26 holding a franchise for a line or make of motor vehicles sold or
27 distributed by the manufacturer, distributor, factory branch, or
28 factory representative, a new vehicle, parts, or accessories, if the
29 vehicle, parts, or accessories are being delivered to other dealers, or
30 require a dealer to purchase unreasonable advertising displays or other
31 materials, or unreasonably require a dealer to remodel or renovate
32 existing facilities as a prerequisite to receiving a model or series of
33 vehicles;

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

1 (i) A manufacturer, distributor, factory branch, or factory
2 representative to own or operate a dealership for a temporary period,
3 not to exceed two years, during the transition from one owner of the
4 dealership to another where the dealership was previously owned by a
5 franchised dealer and is currently for sale to any qualified
6 independent person at a fair and reasonable price. The temporary
7 operation may be extended for one twelve-month period on petition of
8 the temporary operator to the department. The matter will be handled
9 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is
10 a franchisee of the petitioning manufacturer or distributor may
11 intervene and participate in a proceeding under this subsection
12 (1)(f)(i). The temporary operator has the burden of proof to show
13 justification for the extension and a good faith effort to sell the
14 dealership to an independent person at a fair and reasonable price;

15 (ii) A manufacturer, distributor, factory branch, or factory
16 representative to own or operate a dealership in conjunction with an
17 independent person in a bona fide business relationship for the purpose
18 of broadening the diversity of its dealer body and enhancing
19 opportunities for qualified persons who are part of a group who have
20 historically been underrepresented in its dealer body, or other
21 qualified persons who lack the resources to purchase a dealership
22 outright, and where the independent person: (A) Has made, or within a
23 period of two years from the date of commencement of operation will
24 have made, a significant, bona fide capital investment in the
25 dealership that is subject to loss; (B) has an ownership interest in
26 the dealership; and (C) operates the dealership under a bona fide
27 written agreement with the manufacturer, distributor, factory branch,
28 or factory representative under which he or she will acquire all of the
29 ownership interest in the dealership within a reasonable period of time
30 and under reasonable terms and conditions. The manufacturer,
31 distributor, factory branch, or factory representative has the burden
32 of proof of establishing that the acquisition of the dealership by the
33 independent person was made within a reasonable period of time and
34 under reasonable terms and conditions. Nothing in this subsection
35 (1)(f)(ii) relieves a manufacturer, distributor, factory branch, or
36 factory representative from complying with RCW 46.96.185(1) (a) through
37 (e);

1 (iii) A manufacturer, distributor, factory branch, or factory
2 representative to own or operate a dealership in conjunction with an
3 independent person in a bona fide business relationship where the
4 independent person: (A) Has made, or within a period of two years from
5 the date of commencement of operation will have made, a significant,
6 bona fide capital investment in the dealership that is subject to loss;
7 (B) has an ownership interest in the dealership; and (C) operates the
8 dealership under a bona fide written agreement with the manufacturer,
9 distributor, factory branch, or factory representative under which he
10 or she will acquire all of the ownership interest in the dealership
11 within a reasonable period of time and under reasonable terms and
12 conditions. The manufacturer, distributor, factory branch, or factory
13 representative has the burden of proof of establishing that the
14 acquisition of the dealership by the independent person was made within
15 a reasonable period of time and under reasonable terms and conditions.
16 The number of dealerships operated under this subsection (1)(f)(iii)
17 may not exceed four percent rounded up to the nearest whole number of
18 a manufacturer's total of new motor vehicle dealer franchises in this
19 state. Nothing in this subsection (1)(f)(iii) relieves a manufacturer,
20 distributor, factory branch, or factory representative from complying
21 with RCW 46.96.185(1) (a) through (e);

22 (iv) A manufacturer, distributor, factory branch, or factory
23 representative, with a valid internet hybrid vehicle sales license, to
24 sell hybrid or hydrogen vehicles via the internet;

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

30 ((+v)) (vi) A manufacturer to own, operate, or control a new motor
31 vehicle dealership trading exclusively in a single line make of the
32 manufacturer if (A) the manufacturer does not own, directly or
33 indirectly, in the aggregate, in excess of forty-five percent of the
34 total ownership interest in the dealership, (B) at the time the
35 manufacturer first acquires ownership or assumes operation or control
36 of any such dealership, the distance between any dealership thus owned,
37 operated, or controlled and the nearest new motor vehicle dealership
38 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 (i) Terminate, cancel, or fail to renew a franchise with a new
29 motor vehicle dealer based upon any of the following events, which do
30 not constitute good cause for termination, cancellation, or nonrenewal
31 under RCW 46.96.060: (A) The fact that the new motor vehicle dealer
32 owns, has an investment in, participates in the management of, or holds
33 a franchise agreement for the sale or service of another make or line
34 of new motor vehicles, or (B) the fact that the new motor vehicle
35 dealer has established another make or line of new motor vehicles or
36 service in the same dealership facilities as those of the manufacturer
37 or distributor with the prior written approval of the manufacturer or

1 distributor, if the approval was required under the terms of the new
2 motor vehicle dealer's franchise agreement; or

3 (j) Coerce or attempt to coerce a motor vehicle dealer to refrain
4 from, or prohibit or attempt to prohibit a new motor vehicle dealer
5 from acquiring, owning, having an investment in, participating in the
6 management of, or holding a franchise agreement for the sale or service
7 of another make or line of new motor vehicles or related products, or
8 establishing another make or line of new motor vehicles or service in
9 the same dealership facilities, if the prohibition against acquiring,
10 owning, investing, managing, or holding a franchise for such additional
11 make or line of vehicles or products, or establishing another make or
12 line of new motor vehicles or service in the same dealership
13 facilities, is not supported by reasonable business considerations.
14 The burden of proving that reasonable business considerations support
15 or justify the prohibition against the additional make or line of new
16 motor vehicles or products or nonexclusive facilities is on the
17 manufacturer.

18 (2) Subsection (1)(a), (b), and (c) of this section do not apply to
19 sales to a motor vehicle dealer: (a) For resale to a federal, state,
20 or local government agency; (b) where the vehicles will be sold or
21 donated for use in a program of driver's education; (c) where the sale
22 is made under a manufacturer's bona fide promotional program offering
23 sales incentives or rebates; (d) where the sale of parts or accessories
24 is under a manufacturer's bona fide quantity discount program; or (e)
25 where the sale is made under a manufacturer's bona fide fleet vehicle
26 discount program. For purposes of this subsection, "fleet" means a
27 group of fifteen or more new motor vehicles purchased or leased by a
28 dealer at one time under a single purchase or lease agreement for use
29 as part of a fleet, and where the dealer has been assigned a fleet
30 identifier code by the department of licensing.

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

32 (a) "Actual price" means the price to be paid by the dealer less
33 any incentive paid by the manufacturer, distributor, factory branch, or
34 factory representative, whether paid to the dealer or the ultimate
35 purchaser of the vehicle.

36 (b) "Control" or "controlling" means (i) the possession of, title
37 to, or control of ten percent or more of the voting equity interest in
38 a person, whether directly or indirectly through a fiduciary, agent, or

1 other intermediary, or (ii) the possession, direct or indirect, of the
2 power to direct or cause the direction of the management or policies of
3 a person, whether through the ownership of voting securities, through
4 director control, by contract, or otherwise, except as expressly
5 provided under the franchise agreement.

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

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

11 (e) "Own" or "ownership" means to hold the beneficial ownership of
12 one percent or more of any class of equity interest in a dealership,
13 whether the interest is that of a shareholder, partner, limited
14 liability company member, or otherwise. To hold an ownership interest
15 means to have possession of, title to, or control of the ownership
16 interest, whether directly or indirectly through a fiduciary, agent, or
17 other intermediary.

18 (4) A violation of this section is deemed to affect the public
19 interest and constitutes an unlawful and unfair practice under chapter
20 19.86 RCW. A person aggrieved by an alleged violation of this section
21 may petition the department to have the matter handled as an
22 adjudicative proceeding under chapter 34.05 RCW.

23 NEW SECTION. **Sec. 4.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

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