
SUBSTITUTE HOUSE BILL 2208

State of Washington 61st Legislature 2009 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Hope, Kristiansen, Newhouse, and McCune)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to the return or cancellation of new motorsports
2 vehicles; amending RCW 46.93.170; and declaring an emergency.

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

4 **Sec. 1.** RCW 46.93.170 and 2003 c 354 s 17 are each amended to read
5 as follows:

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

12 (a) Discriminate between dealers by selling or offering to sell a
13 like motorsports vehicle to one dealer at a lower actual price than the
14 actual price offered to another dealer for the same model similarly
15 equipped;

16 (b) Discriminate between dealers by selling or offering to sell
17 parts or accessories to one dealer at a lower actual price than the
18 actual price offered to another dealer;

1 (c) Discriminate between dealers by using a promotion plan,
2 marketing plan, or other similar device that results in a lower actual
3 price on vehicles, parts, or accessories being charged to one dealer
4 over another dealer;

5 (d) Discriminate between dealers by adopting a method, or changing
6 an existing method, for the allocation, scheduling, or delivery of new
7 motorsports vehicles, parts, or accessories to its dealers that is not
8 fair, reasonable, and equitable. Upon the request of a dealer, a
9 manufacturer shall disclose in writing to the dealer the method by
10 which new motorsports vehicles, parts, and accessories are allocated,
11 scheduled, or delivered to its dealers handling the same line or make
12 of vehicles;

13 (e) Give preferential treatment to some dealers over others by
14 refusing or failing to deliver, in reasonable quantities and within a
15 reasonable time after receipt of an order, to a dealer holding a
16 franchise for a line or make of motorsports vehicles sold or
17 distributed by the manufacturer, a new vehicle, parts, or accessories,
18 if the vehicle, parts, or accessories are being delivered to other
19 dealers, or require a dealer to purchase unreasonable advertising
20 displays or other materials, or unreasonably require a dealer to
21 remodel or renovate existing facilities as a prerequisite to receiving
22 a model or series of vehicles;

23 (f) Compete with a dealer by acting in the capacity of a dealer, or
24 by owning, operating, or controlling, whether directly or indirectly,
25 a dealership in this state. It is not, however, a violation of this
26 subsection for:

27 (i) A manufacturer to own or operate a dealership for a temporary
28 period, not to exceed two years, during the transition from one owner
29 of the dealership to another where the dealership was previously owned
30 by a franchised dealer and is currently for sale to any qualified
31 independent person at a fair and reasonable price. The temporary
32 operation may be extended for one twelve-month period on petition of
33 the temporary operator to the department. The matter will be handled
34 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is
35 a franchisee of the petitioning manufacturer or distributor may
36 intervene and participate in a proceeding under this subsection
37 (1)(f)(i). The temporary operator has the burden of proof to show

1 justification for the extension and a good faith effort to sell the
2 dealership to an independent person at a fair and reasonable price;

3 (ii) A manufacturer to own or operate a dealership in conjunction
4 with an independent person in a bona fide business relationship for the
5 purpose of broadening the diversity of its dealer body and enhancing
6 opportunities for qualified persons who are part of a group who have
7 historically been underrepresented in its dealer body, or other
8 qualified persons who lack the resources to purchase a dealership
9 outright, and where the independent person (A) has made a significant,
10 bona fide capital investment in the dealership that is subject to loss;
11 (B) has an ownership interest in the dealership; and (C) operates the
12 dealership under a bona fide written agreement with the manufacturer,
13 distributor, factory branch, or factory representative under which he
14 or she will acquire all of the ownership interest in the dealership
15 within a reasonable period of time and under reasonable terms and
16 conditions. The manufacturer has the burden of proof of establishing
17 that the acquisition of the dealership by the independent person was
18 made within a reasonable period of time and under reasonable terms and
19 conditions;

20 (iii) A manufacturer to own or operate a dealership in conjunction
21 with an independent person in a bona fide business relationship where
22 the independent person (A) has made a significant, bona fide capital
23 investment in the dealership that is subject to loss; (B) has an
24 ownership interest in the dealership; and (C) operates the dealership
25 under a bona fide written agreement with the manufacturer under which
26 he or she will acquire all of the ownership interest in the dealership
27 within a reasonable period of time and under reasonable terms and
28 conditions. The ((~~manufacture~~—{~~manufacturer~~}) manufacturer) has the
29 burden of proof of establishing that the acquisition of the dealership
30 by the independent person was made within a reasonable period of time
31 and under reasonable terms and conditions. The number of dealerships
32 operated under this subsection (1)(f)(iii) may not exceed four percent
33 rounded up to the nearest whole number of a manufacturer's total of
34 dealer franchises in this state;

35 (iv) A manufacturer to own, operate, or control a dealership
36 trading exclusively in a single line make of the manufacturer if (A)
37 the manufacturer does not own, directly or indirectly, in the
38 aggregate, in excess of forty-five percent of the total ownership

1 interest in the dealership; (B) at the time the manufacturer first
2 acquires ownership or assumes operation or control of any such
3 dealership, the distance between any dealership thus owned, operated,
4 or controlled and the nearest dealership trading in the same line make
5 of vehicle and in which the manufacturer has no ownership or control
6 complies with the applicable provisions in the relevant market area
7 sections of this chapter; (C) all of the manufacturer's franchise
8 agreements confer rights on the dealer of that line make to develop and
9 operate within a defined geographic territory or area, as many
10 dealership facilities as the dealer and the manufacturer agree are
11 appropriate; and (D) the manufacturer had no more than four new
12 motorsports vehicle dealers of that manufacturer's line make in this
13 state, and at least half of those dealers owned and operated two or
14 more dealership facilities in the geographic territory or area covered
15 by their franchise agreements with the manufacturer;

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

24 (h) Use confidential or proprietary information obtained from a
25 dealer to unfairly compete with the dealer without the prior written
26 consent of the dealer. For purposes of this subsection (1)(h),
27 "confidential or proprietary information" means trade secrets as
28 defined in RCW 19.108.010, business plans, marketing plans or
29 strategies, customer lists, contracts, sales data, revenues, or other
30 financial information;

31 (i) Coerce, threaten, intimidate, or require, either directly or
32 indirectly, a dealer to accept, buy, or order any motorsports vehicle,
33 part, or accessory, or any other commodity or service not voluntarily
34 ordered, or requested, or to buy, order, or pay anything of value for
35 such items in order to obtain a motorsports vehicle, part, accessory,
36 or other commodity that has been voluntarily ordered or requested;

37 (j) Coerce, threaten, intimidate, or require, either directly or

1 indirectly, a dealer to enter into any agreement that violates this
2 chapter;

3 (k) Require a change in capital structure or means of financing for
4 the dealership if the dealer at all times meets the reasonable,
5 written, and uniformly applied capital standards determined by the
6 manufacturer;

7 (l) Prevent or attempt to prevent a dealer from making reasonable
8 changes in the capital structure of a dealership or the means by which
9 the dealership is financed if the dealer meets the reasonable, written,
10 and uniformly applied capital requirements determined by the
11 manufacturer;

12 (m) Unreasonably require the dealer to change the location or
13 require any substantial alterations to the place of business;

14 (n) Condition a renewal or extension of the franchise on the
15 dealer's substantial renovation of the existing place of business or on
16 the construction, purchase, acquisition, or re-lease of a new place of
17 business unless written notice is first provided one hundred eighty
18 days before the date of renewal or extension and the manufacturer
19 demonstrates the reasonableness of the requested actions. The
20 manufacturer shall agree to supply the dealer with an adequate quantity
21 of motorsports vehicles, parts, and accessories to meet the sales level
22 necessary to support the overhead resulting from substantial
23 construction, acquisition, or lease of a new place of business;

24 (o) Coerce, threaten, intimidate, or require, either directly or
25 indirectly, a dealer to order or accept delivery of a motorsports
26 vehicle with special features, accessories, or equipment not included
27 in the list price of the vehicle as advertised by the manufacturer,
28 except items that have been voluntarily requested or ordered by the
29 dealer, and except items required by law;

30 (p) Fail to hold harmless and indemnify a dealer against losses,
31 including lawsuits and court costs, arising from: (i) The manufacture
32 or performance of a motorsports vehicle, part, or accessory if the
33 lawsuit involves representations by the manufacturer on the manufacture
34 or performance of a motorsports vehicle without negligence on the part
35 of the dealer; (ii) damage to merchandise in transit where the
36 manufacturer specifies the carrier; (iii) the manufacturer's failure to
37 jointly defend product liability suits concerning the motorsports

1 vehicle, part, or accessory provided to the dealer; or (iv) any other
2 act performed by the manufacturer;

3 (q) Unfairly prevent or attempt to prevent a dealer from receiving
4 reasonable compensation for the value of a motorsports vehicle;

5 (r) Fail to pay to a dealer, within a reasonable time after receipt
6 of a valid claim, a payment agreed to be made by the manufacturer on
7 grounds that a new motorsports vehicle, or a prior year's model, is in
8 the dealer's inventory at the time of introduction of new model
9 motorsports vehicles;

10 (s) Deny a dealer the right of free association with any other
11 dealer for any lawful purpose;

12 (t) Charge increased prices without having given written notice to
13 the dealer at least fifteen days before the effective date of the price
14 increases;

15 (u) Permit factory authorized warranty service to be performed upon
16 motorsports vehicles or accessories by persons other than their
17 franchised dealers;

18 (v) Require or coerce a dealer to sell, assign, or transfer a
19 retail sales installment contract, or require the dealer to act as an
20 agent for a manufacturer, in the securing of a promissory note, a
21 security agreement given in connection with the sale of a motorsports
22 vehicle, or securing of a policy of insurance for a motorsports
23 vehicle. The manufacturer may not condition delivery of any
24 motorsports vehicle, parts, or accessories upon the dealer's
25 assignment, sale, or other transfer of sales installment contracts to
26 specific finance companies;

27 (w) Require or coerce a dealer to grant a manufacturer a right of
28 first refusal or other preference to purchase the dealer's franchise or
29 place of business, or both;

30 (x) Require a dealer to pay a fee for canceling an order for new
31 motorsports vehicles.

32 (2) Subsections (1)(a), (b), and (c) of this section do not apply
33 to sales to a dealer: (a) For resale to a federal, state, or local
34 government agency; (b) where the motorsports vehicles will be sold or
35 donated for use in a program of driver's education; (c) where the sale
36 is made under a manufacturer's bona fide promotional program offering
37 sales incentives or rebates; (d) where the sale of parts or accessories
38 is under a manufacturer's bona fide quantity discount program; or (e)

1 where the sale is made under a manufacturer's bona fide fleet vehicle
2 discount program. For purposes of this subsection, "fleet" means a
3 group of fifteen or more new motorsports vehicles purchased or leased
4 by a dealer at one time under a single purchase or lease agreement for
5 use as part of a fleet, and where the dealer has been assigned a fleet
6 identifier code by the department.

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

8 (a) "Actual price" means the price to be paid by the dealer less
9 any incentive paid by the manufacturer, whether paid to the dealer or
10 the ultimate purchaser of the motorsports vehicle.

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

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

21 (d) "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 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of the
35 state government and its existing public institutions, and takes effect

1 immediately.

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