

**SHB 2524 - H AMD 665**

By Representative Kirby

WITHDRAWN 02/17/2014

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 46.70.045 and 1997 c 432 s 2 are each amended to read  
4 as follows:

5 The director may deny a license under this chapter when the  
6 application is a subterfuge that conceals the real person in interest  
7 whose license has been denied, suspended, or revoked for cause under  
8 this chapter and the terms have not been fulfilled or a civil penalty  
9 has not been paid, ((~~or~~)) the director finds that the application was  
10 not filed in good faith, or the issuance of a new license or subagency  
11 would cause a manufacturer, distributor, factory branch, or factory  
12 representative, or an agent, officer, parent company, wholly or  
13 partially owned subsidiary, affiliated entity, or other person  
14 controlled by or under common control with a manufacturer, distributor,  
15 factory branch, or factory representative, to be in violation of  
16 chapter 46.96 RCW. This section does not preclude the department from  
17 taking an action against a current licensee.

18 **Sec. 2.** RCW 46.96.020 and 2003 c 21 s 1 are each amended to read  
19 as follows:

20 In addition to the definitions contained in RCW 46.70.011, which  
21 are incorporated by reference into this chapter, the definitions set  
22 forth in this section apply only for the purposes of this chapter.

23 (1) A "new motor vehicle" is a vehicle that has not been titled by  
24 a state and ownership of which may be transferred on a manufacturer's  
25 statement of origin (MSO).

26 (2) "New motor vehicle dealer" means a motor vehicle dealer engaged  
27 in the business of buying, selling, exchanging, or otherwise dealing in  
28 new motor vehicles or new and used motor vehicles at an established  
29 place of business, under a franchise, sales and service agreement, or

1 contract with the manufacturer of the new motor vehicles. However,  
2 (~~the term~~) "new motor vehicle dealer" does not include a  
3 miscellaneous vehicle dealer as defined in RCW 46.70.011(~~(+3)~~) (17)(c)  
4 or a motorcycle dealer as defined in chapter 46.94 RCW.

5 (3) "Franchise" means one or more agreements, whether oral or  
6 written, between a manufacturer and a new motor vehicle dealer, under  
7 which the new motor vehicle dealer is authorized to sell, service, and  
8 repair new motor vehicles, parts, and accessories under a common name,  
9 trade name, trademark, or service mark of the manufacturer.

10 "Franchise" includes an oral or written contract and includes a  
11 dealer agreement, either expressed or implied, between a manufacturer  
12 and a new motor vehicle dealer that purports to fix the legal rights  
13 and liabilities between the parties and under which (a) the dealer is  
14 granted the right to purchase and resell motor vehicles manufactured,  
15 distributed, or imported by the manufacturer; (b) the dealer's business  
16 is associated with the trademark, trade name, commercial symbol, or  
17 advertisement designating the franchisor or the products distributed by  
18 the manufacturer; and (c) the dealer's business relies on the  
19 manufacturer for a continued supply of motor vehicles, parts, and  
20 accessories.

21 (4) "Good faith" means honesty in fact and fair dealing in the  
22 trade as defined and interpreted in RCW 62A.2-103.

23 (5) "Designated successor" means:

24 (a) The spouse, biological or adopted child, stepchild, grandchild,  
25 parent, brother, or sister of the owner of a new motor vehicle  
26 dealership who, in the case of the owner's death, is entitled to  
27 inherit the ownership interest in the new motor vehicle dealership  
28 under the terms of the owner's will or similar document, and if there  
29 is no such will or similar document, then under applicable intestate  
30 laws;

31 (b) A qualified person experienced in the business of a new motor  
32 vehicle dealer who has been nominated by the owner of a new motor  
33 vehicle dealership as the successor in a written, notarized, and  
34 witnessed instrument submitted to the manufacturer; or

35 (c) In the case of an incapacitated owner of a new motor vehicle  
36 dealership, the person who has been appointed by a court as the legal  
37 representative of the incapacitated owner's property.

1 (6) "Owner" means a person holding an ownership interest in the  
2 business entity operating as a new motor vehicle dealer and who is the  
3 designated dealer in the new motor vehicle franchise agreement.

4 (7) "Person" means every natural person, partnership, corporation,  
5 association, trust, estate, or any other legal entity.

6 (8) "Completed vehicle" means a vehicle that requires no further  
7 manufacturing operations to perform its intended function.

8 (9) "Dealer management computer system" means a computer hardware  
9 and software system that is owned or leased by a new motor vehicle  
10 dealer, including the dealer's use of internet applications, software,  
11 or hardware, whether located at an existing dealership facility or  
12 provided at a remote location, that provides access to customer records  
13 and transactions by a motor vehicle dealer located in this state, and  
14 that allows the new motor vehicle dealer timely information in order to  
15 sell vehicles, parts, or services through the existing dealership  
16 facility.

17 (10) "Dealer management computer system vendor" means a seller or  
18 reseller of dealer management computer systems, to the extent that the  
19 seller or reseller is engaged in such activities.

20 (11) "Final-stage manufacturer" means a person who purchases an  
21 incomplete vehicle from a licensed motor vehicle dealer and performs  
22 such manufacturing operations that the incomplete vehicle becomes a  
23 completed vehicle.

24 (12) "Incomplete vehicle" means an assemblage consisting of, at a  
25 minimum, chassis (including the frame) structure, power train, steering  
26 system, suspension system, and braking system, in the state that those  
27 systems are to be part of the completed vehicle, but requires further  
28 manufacturing operations to become a completed vehicle.

29 (13) "Security breach" means an incident of unauthorized access to  
30 and acquisition of records or data containing new motor vehicle dealer  
31 or dealer customer information where unauthorized use of the dealer or  
32 dealer's customer information has occurred or is reasonably likely to  
33 occur or that creates a material risk of harm to the dealer or dealer's  
34 customer. Any incident of unauthorized access to and acquisition of  
35 records or data containing dealer or dealer customer information, or  
36 any incident of disclosure of dealer customer information to one or  
37 more third parties that has not been specifically authorized by the  
38 dealer or dealer's customer, constitutes a security breach.

1           **Sec. 3.** RCW 46.96.060 and 1989 c 415 s 6 are each amended to read  
2 as follows:

3           (1) Notwithstanding the terms of a franchise or the terms of a  
4 waiver, and except as otherwise provided in RCW 46.96.070(2) (a)  
5 through (d), good cause exists for termination, cancellation, or  
6 nonrenewal when there is a failure by the new motor vehicle dealer to  
7 comply with a provision of the franchise that is both reasonable and of  
8 material significance to the franchise relationship, if the new motor  
9 vehicle dealer was notified of the failure within one hundred eighty  
10 days after the manufacturer first acquired knowledge of the failure and  
11 the new motor vehicle dealer did not correct the failure after being  
12 requested to do so.

13           If, however, the failure of the new motor vehicle dealer relates to  
14 the performance of the new motor vehicle dealer in sales, service, or  
15 level of customer satisfaction, good cause is the failure of the new  
16 motor vehicle dealer to comply with reasonable performance standards  
17 determined by the manufacturer in accordance with uniformly applied  
18 criteria, and:

19           (a) The new motor vehicle dealer was advised, in writing, by the  
20 manufacturer of the failure;

21           (b) The notice under this subsection stated that notice was  
22 provided of a failure of performance under this section;

23           (c) The manufacturer provided the new motor vehicle dealer with  
24 specific, reasonable goals or reasonable performance standards with  
25 which the dealer must comply, together with a suggested timetable or  
26 program for attaining those goals or standards, and the new motor  
27 vehicle dealer was given a reasonable opportunity, for a period not  
28 less than one hundred eighty days, to comply with the goals or  
29 standards; and

30           (d) The new motor vehicle dealer did not substantially comply with  
31 the manufacturer's performance standards during that period and the  
32 failure to demonstrate substantial compliance was not due to market or  
33 economic factors within the new motor vehicle dealer's relevant market  
34 area that were beyond the control of the dealer.

35           (2) A manufacturer does not have good cause for termination,  
36 cancellation, or nonrenewal, unless:

37           (a) The manufacturer or distributor allocated sufficient inventory  
38 in the new motor vehicle dealer's primary allocation, both in quantity

1 and product mix, for the dealers' assigned market area. The inventory  
2 must have been delivered in a manner that allowed the dealer to  
3 reasonably meet the manufacturer's performance standards;

4 (b) None of the new motor vehicle dealer's primary allocations of  
5 any vehicle during the period was more than one hundred twenty percent  
6 of any other primary allocation of that vehicle during another period  
7 established by the manufacturer or distributor; and

8 (c) The manufacturer provides to the new motor vehicle dealer, upon  
9 the dealers' request, documentation sufficient to develop a market  
10 analysis. This documentation must include, but is not limited to, the  
11 allocation of inventory to the dealer and other dealers in the same  
12 zone during the period established by the manufacturer.

13 (3) The manufacturer has the burden of proof of establishing good  
14 cause and good faith for the termination, cancellation, or nonrenewal  
15 of the franchise under this section.

16 **Sec. 4.** RCW 46.96.080 and 2009 c 12 s 1 are each amended to read  
17 as follows:

18 (1) Upon the termination, cancellation, or nonrenewal of a  
19 franchise, the manufacturer shall pay the new motor vehicle dealer, at  
20 a minimum:

21 (a) Dealer cost plus any charges by the manufacturer for  
22 distribution, delivery, and taxes, less all allowances paid or credited  
23 to the dealer by the manufacturer, of unused, undamaged, and unsold new  
24 motor vehicles in the new motor vehicle dealer's inventory that were  
25 acquired from the manufacturer or another new motor vehicle dealer of  
26 the same line make in the ordinary course of business within the  
27 previous twelve months;

28 (b) Dealer cost for all unused, undamaged, and unsold supplies,  
29 parts, and accessories in original packaging, except that in the case  
30 of sheet metal, a comparable substitute for original packaging may be  
31 used, if the supply, part, or accessory was acquired from the  
32 manufacturer or from another new motor vehicle dealer ceasing  
33 operations as a part of the new motor vehicle dealer's initial  
34 inventory as long as the supplies, parts, and accessories appear in the  
35 manufacturer's current parts catalog, list, or current offering;

36 (c) Dealer cost for all unused, undamaged, and unsold inventory,

1 whether vehicles, parts, or accessories, the purchase of which was  
2 required by the manufacturer;

3 (d) The fair market value of each undamaged sign owned by the new  
4 motor vehicle dealer that bears a common name, trade name, or trademark  
5 of the manufacturer, if acquisition of the sign was recommended or  
6 required by the manufacturer and the sign is in good and usable  
7 condition less reasonable wear and tear, and has not been depreciated  
8 by the dealer more than fifty percent of the value of the sign;

9 (e) The fair market value of all equipment, furnishings, and  
10 special tools owned or leased by the new motor vehicle dealer that were  
11 acquired from the manufacturer or sources approved by the manufacturer  
12 and that were recommended or required by the manufacturer and are in  
13 good and usable condition, less reasonable wear and tear. However, if  
14 the equipment, furnishings, or tools are leased by the new motor  
15 vehicle dealer, the manufacturer shall pay the new motor vehicle dealer  
16 such amounts that are required by the lessor to terminate the lease  
17 under the terms of the lease agreement; and

18 (f) The cost of transporting, handling, packing, and loading of new  
19 motor vehicles, supplies, parts, accessories, signs, special tools,  
20 equipment, and furnishings purchased from the manufacturer or  
21 manufacturer-approved vendor.

22 To the extent the franchise agreement provides for payment or  
23 reimbursement to the new motor vehicle dealer in excess of that  
24 specified in this section, the provisions of the franchise agreement  
25 shall control.

26 (2)(a) For the nonrenewal or termination of a franchise that is  
27 implemented as a result of the sale of assets or stock of the motor  
28 vehicle dealer, the party purchasing the assets or stock of the motor  
29 vehicle dealer may negotiate for the purchase or other transfer of some  
30 or all unused, undamaged, and unsold new motor vehicles in the selling  
31 new motor vehicle dealer's inventory that were acquired from the  
32 manufacturer or another new motor vehicle dealer of the same line make  
33 in the ordinary course of business within the previous twelve months.

34 (b) For the nonrenewal or termination of a franchise that is  
35 implemented as a result of the sale of assets or stock of the motor  
36 vehicle dealer, this section does not prohibit a manufacturer from  
37 negotiating with the purchasing party for the purchase or other  
38 transfer of some or all unused, undamaged, and unsold new motor

1 vehicles in the selling new motor vehicle dealer's inventory that were  
2 acquired from the manufacturer or another new motor vehicle dealer of  
3 the same line make in the ordinary course of business within the  
4 previous twelve months.

5 (c) A manufacturer's obligation under (a) of this subsection  
6 extends only to vehicles not purchased or otherwise transferred to the  
7 party purchasing the assets or stock of the motor vehicle dealer.

8 (3) The manufacturer shall pay the new motor vehicle dealer the  
9 sums specified in subsection (1) of this section (a) within ninety days  
10 after the termination, cancellation, or nonrenewal of the franchise, if  
11 the new motor vehicle dealer has clear title to the property or can  
12 provide clear title to the property upon payment by the manufacturer  
13 and is in a position to convey that title to the manufacturer, or (b)  
14 on the date of delivery of the assets to the manufacturer, whichever is  
15 earlier.

16 (4) In the case of motor homes, this section applies only to  
17 manufacturer-initiated termination, cancellation, or nonrenewal of a  
18 franchise.

19 **Sec. 5.** RCW 46.96.090 and 2010 c 178 s 3 are each amended to read  
20 as follows:

21 (1) In the event of a termination, cancellation, or nonrenewal  
22 under this chapter, except for termination, cancellation, or nonrenewal  
23 under RCW 46.96.070(2) or a voluntary termination, cancellation, or  
24 nonrenewal initiated by the dealer, the manufacturer shall, at the  
25 request and option of the new motor vehicle dealer, also pay to the new  
26 motor vehicle dealer the dealer costs for any relocation, substantial  
27 alteration, or remodeling of a dealer's facilities required by a  
28 manufacturer for the granting of a franchise or the continuance or  
29 renewal of a franchise agreement completed within three years of the  
30 termination, cancellation, or nonrenewal and:

31 (a) A sum equivalent to rent for the unexpired term of the lease or  
32 one year, whichever is less, or such longer term as provided in the  
33 franchise, if the new motor vehicle dealer is leasing the new motor  
34 vehicle dealership facilities from a lessor other than the  
35 manufacturer; or

36 (b) A sum equivalent to the reasonable rental value of the new

1 motor vehicle dealership facilities for one year or until the  
2 facilities are leased or sold, whichever is less, if the new motor  
3 vehicle dealer owns the new motor vehicle dealership facilities.

4 (2) The rental payment required under subsection (1) of this  
5 section is only required to the extent that the facilities were used  
6 for activities under the franchise and only to the extent the  
7 facilities were not leased for unrelated purposes. If the rental  
8 payment under subsection (1) of this section is made, the manufacturer  
9 is entitled to possession and use of the new motor vehicle dealership  
10 facilities for the period rent is paid.

11 **Sec. 6.** RCW 46.96.105 and 2010 c 178 s 4 are each amended to read  
12 as follows:

13 (1) Each manufacturer shall specify in its franchise agreement, or  
14 in a separate written agreement, with each of its dealers licensed in  
15 this state, the dealer's obligation to perform warranty work or service  
16 on the manufacturer's products. Each manufacturer shall provide each  
17 of its dealers with a schedule of compensation to be paid to the dealer  
18 for any warranty work or service, including parts, labor, and  
19 diagnostic work, required of the dealer by the manufacturer in  
20 connection with the manufacturer's products. The schedule of  
21 compensation must not be less than the rates charged by the dealer for  
22 similar service to retail customers for nonwarranty service and  
23 repairs, and must not be less than the schedule of compensation for an  
24 existing dealer as of June 10, 2010.

25 (a) The rates charged by the dealer for nonwarranty service or work  
26 for parts means the price paid by the dealer for those parts, including  
27 all shipping and other charges, increased by the franchisee's average  
28 percentage markup. A dealer must establish and declare the dealer's  
29 average percentage markup by submitting to the manufacturer one hundred  
30 sequential customer-paid service repair orders or ninety days of  
31 customer-paid service repair orders, whichever is less, covering  
32 repairs made no more than one hundred eighty days before the  
33 submission, and the average percentage markup must be computed by  
34 averaging the individual markup rates of each sequential invoice  
35 submitted to the manufacturer. A change in a dealer's established  
36 average percentage markup takes effect thirty days following the  
37 submission. A manufacturer may not require a dealer to establish



1 average percentage markup by another methodology. A manufacturer may  
2 not require information that the dealer believes is unduly burdensome  
3 or time consuming to provide, including, but not limited to, part-by-  
4 part or transaction-by-transaction calculations. In calculating the  
5 retail rate customarily charged by the dealer for parts and labor, the  
6 following work must not be included in the calculation:

7 (i) Repairs for manufacturer or distributor special events,  
8 specials, or promotional discounts for retail customer repairs;

9 (ii) Parts sold at wholesale or at reduced or specially negotiated  
10 rates for insurance repairs;

11 (iii) Routine maintenance not covered under warranty, such as  
12 fluids, filters, and belts not provided in the course of repairs;

13 (iv) Nuts, bolts, fasteners, and similar items that do not have an  
14 individual part number;

15 (v) Tires;

16 (vi) Batteries and light bulbs; and

17 (vii) Vehicle reconditioning.

18 (b) A manufacturer shall compensate a dealer for labor and  
19 diagnostic work at the rates charged by the dealer to its retail  
20 customers for such work and for any documentation work required by the  
21 manufacturer to authorize or verify the work including, but not limited  
22 to, photographs, paperwork, and electronic data entry. If a  
23 manufacturer can demonstrate that the rates unreasonably exceed those  
24 of all other franchised motor vehicle dealers in the same relevant  
25 market area offering the same or a competitive motor vehicle line, the  
26 manufacturer is not required to honor the rate increase proposed by the  
27 dealer. If the manufacturer is not required to honor the rate increase  
28 proposed by the dealer, the dealer is entitled to resubmit a new  
29 proposed rate for labor and diagnostic work.

30 (c) A dealer may not be granted an increase in the average  
31 percentage markup or labor and diagnostic work rate more than (~~twice~~)  
32 once in one calendar year.

33 (2) All claims for warranty work for parts and labor made by  
34 dealers under this section (~~shall~~) must be submitted to the  
35 manufacturer within (~~one year~~) ninety days of the date the work was  
36 performed. All claims submitted must be paid by the manufacturer  
37 within thirty days following receipt, provided the claim has been  
38 approved by the manufacturer. The manufacturer has the right to audit

1 claims for warranty work and to charge the dealer for any  
2 unsubstantiated, incorrect, or false claims for a period of (~~one~~  
3 year) nine months following payment. However, the manufacturer may  
4 audit and charge the dealer for any fraudulent claims during any period  
5 for which an action for fraud may be commenced under applicable state  
6 law.

7 (3) All claims submitted by dealers on the forms and in the manner  
8 specified by the manufacturer shall be either approved or disapproved  
9 within thirty days following their receipt. The manufacturer shall  
10 notify the dealer in writing of any disapproved claim, and shall set  
11 forth the reasons why the claim was not approved. Any claim not  
12 specifically disapproved in writing within thirty days following  
13 receipt is approved, and the manufacturer is required to pay that claim  
14 within thirty days of receipt of the claim.

15 (4) A manufacturer may not otherwise recover all or any portion of  
16 its costs for compensating its dealers licensed in this state for  
17 warranty parts and service either by reduction in the amount due to the  
18 dealer or by separate charge, surcharge, or other imposition.

19 **Sec. 7.** RCW 46.96.185 and 2010 c 178 s 6 are each amended to read  
20 as follows:

21 (1) Notwithstanding the terms of a franchise agreement, a  
22 manufacturer, distributor, factory branch, or factory representative,  
23 or an agent, officer, parent company, wholly or partially owned  
24 subsidiary, affiliated entity, or other person controlled by or under  
25 common control with a manufacturer, distributor, factory branch, or  
26 factory representative, shall not:

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

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

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

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

10 (e) Discriminate against a new motor vehicle dealer by preventing,  
11 offsetting, or otherwise impairing the dealer's right to request a  
12 documentary service fee on affinity or similar program purchases. This  
13 prohibition applies to, but is not limited to, any promotion plan,  
14 marketing plan, manufacturer or dealer employee or employee friends or  
15 family purchase programs, or similar plans or programs;

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

27 (g) Compete with a new motor vehicle dealer of any make or line by  
28 acting in the capacity of a new motor vehicle dealer, or by owning,  
29 operating, or controlling, whether directly or indirectly, a motor  
30 vehicle dealership in this state. It is not, however, a violation of  
31 this subsection for:

32 (i) A manufacturer, distributor, factory branch, or factory  
33 representative to own or operate a dealership for a temporary period,  
34 not to exceed two years, during the transition from one owner of the  
35 dealership to another where the dealership was previously owned by a  
36 franchised dealer and is currently for sale to any qualified  
37 independent person at a fair and reasonable price. The temporary  
38 operation may be extended for one twelve-month period on petition of

1 the temporary operator to the department. The matter will be handled  
2 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is  
3 a franchisee of the petitioning manufacturer or distributor may  
4 intervene and participate in a proceeding under this subsection  
5 (1)(g)(i). The temporary operator has the burden of proof to show  
6 justification for the extension and a good faith effort to sell the  
7 dealership to an independent person at a fair and reasonable price;

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

31 (iii) A manufacturer, distributor, factory branch, or factory  
32 representative to own or operate a dealership in conjunction with an  
33 independent person in a bona fide business relationship where the  
34 independent person: (A) Has made, or within a period of two years from  
35 the date of commencement of operation will have made, a significant,  
36 bona fide capital investment in the dealership that is subject to loss;  
37 (B) has an ownership interest in the dealership; and (C) operates the  
38 dealership under a bona fide written agreement with the manufacturer,

1 distributor, factory branch, or factory representative under which he  
2 or she will acquire all of the ownership interest in the dealership  
3 within a reasonable period of time and under reasonable terms and  
4 conditions. The manufacturer, distributor, factory branch, or factory  
5 representative has the burden of proof of establishing that the  
6 acquisition of the dealership by the independent person was made within  
7 a reasonable period of time and under reasonable terms and conditions.  
8 The number of dealerships operated under this subsection (1)(g)(iii)  
9 may not exceed four percent rounded up to the nearest whole number of  
10 a manufacturer's total of new motor vehicle dealer franchises in this  
11 state. Nothing in this subsection (1)(g)(iii) relieves a manufacturer,  
12 distributor, factory branch, or factory representative from complying  
13 with (a) through (f) of this subsection;

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

19 (v) A manufacturer to own, operate, or control a new motor vehicle  
20 dealership trading exclusively in a single line make of the  
21 manufacturer if (A) the manufacturer does not own, directly or  
22 indirectly, in the aggregate, in excess of forty-five percent of the  
23 total ownership interest in the dealership, (B) at the time the  
24 manufacturer first acquires ownership or assumes operation or control  
25 of any such dealership, the distance between any dealership thus owned,  
26 operated, or controlled and the nearest new motor vehicle dealership  
27 trading in the same line make of vehicle and in which the manufacturer  
28 has no ownership or control is not less than fifteen miles and complies  
29 with the applicable provisions in the relevant market area sections of  
30 this chapter, (C) all of the manufacturer's franchise agreements confer  
31 rights on the dealer of that line make to develop and operate within a  
32 defined geographic territory or area, as many dealership facilities as  
33 the dealer and the manufacturer agree are appropriate, and (D) as of  
34 January 1, 2000, the manufacturer had no more than four new motor  
35 vehicle dealers of that manufacturer's line make in this state, and at  
36 least half of those dealers owned and operated two or more dealership  
37 facilities in the geographic territory or area covered by their  
38 franchise agreements with the manufacturer; or

1        (vi) A final-stage manufacturer to own, operate, or control a new  
2 motor vehicle dealership;

3        (h) Compete with a new motor vehicle dealer by owning, operating,  
4 or controlling, whether directly or indirectly, a service facility in  
5 this state for the repair or maintenance of motor vehicles under the  
6 manufacturer's new car warranty and extended warranty. Nothing in this  
7 subsection (1)(h), however, prohibits a manufacturer, distributor,  
8 factory branch, or factory representative from owning or operating a  
9 service facility for the purpose of providing or performing  
10 maintenance, repair, or service work on motor vehicles that are owned  
11 by the manufacturer, distributor, factory branch, or factory  
12 representative;

13        (i) Use confidential or proprietary information obtained from a new  
14 motor vehicle dealer to unfairly compete with the dealer. For purposes  
15 of this subsection (1)(i), "confidential or proprietary information"  
16 means trade secrets as defined in RCW 19.108.010, business plans,  
17 marketing plans or strategies, customer lists, contracts, sales data,  
18 revenues, or other financial information;

19        (j)(i) Terminate, cancel, or fail to renew a franchise with a new  
20 motor vehicle dealer based upon any of the following events, which do  
21 not constitute good cause for termination, cancellation, or nonrenewal  
22 under RCW 46.96.060: (A) The fact that the new motor vehicle dealer  
23 owns, has an investment in, participates in the management of, or holds  
24 a franchise agreement for the sale or service of another make or line  
25 of new motor vehicles; (B) the fact that the new motor vehicle dealer  
26 has established another make or line of new motor vehicles or service  
27 in the same dealership facilities as those of the manufacturer or  
28 distributor; (C) that the new motor vehicle dealer has or intends to  
29 relocate the manufacturer or distributor's make or line of new motor  
30 vehicles or service to an existing dealership facility that is within  
31 the relevant market area, as defined in RCW 46.96.140, of the make or  
32 line to be relocated, except that, in any nonemergency circumstance,  
33 the dealer must give the manufacturer or distributor at least sixty  
34 days' notice of his or her intent to relocate and the relocation must  
35 comply with RCW 46.96.140 and 46.96.150 for any same make or line  
36 facility; or (D) the failure of a franchisee to change the location of  
37 the dealership or to make substantial alterations to the use or number  
38 of franchises on the dealership premises or facilities.

1 (ii) Notwithstanding the limitations of this section, a  
2 manufacturer may, for separate consideration, enter into a written  
3 contract with a dealer to exclusively sell and service a single make or  
4 line of new motor vehicles at a specific facility for a defined period  
5 of time. The penalty for breach of the contract must not exceed the  
6 amount of consideration paid by the manufacturer plus a reasonable rate  
7 of interest;

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

23 (l) Require, by contract or otherwise, a new motor vehicle dealer  
24 to make a material alteration, expansion, or addition to any dealership  
25 facility, unless the required alteration, expansion, or addition is  
26 uniformly required of other similarly situated new motor vehicle  
27 dealers of the same make or line of vehicles and is reasonable in light  
28 of all existing circumstances, including economic conditions. In any  
29 proceeding in which a required facility alteration, expansion, or  
30 addition is an issue, the manufacturer or distributor has the burden of  
31 proof. Except for a program or any renewal or modification of a  
32 program that is in effect with one or more new motor vehicle dealers in  
33 this state on the effective date of this section, a manufacturer shall  
34 not require, coerce, or attempt to coerce any new motor vehicle dealer  
35 by program, policy, standard, or otherwise to change the location of  
36 the dealership or construct, replace, renovate, or make any substantial  
37 changes, alterations, or remodeling to a new motor vehicle dealer's  
38 sales or service facilities, except as necessary to comply with health

1 or safety laws or to comply with technology requirements without which  
2 a dealer would be unable to service a vehicle the dealer has elected to  
3 sell, before the fifteenth anniversary of the date of issuance of the  
4 certificate of occupancy or the manufacturer's approval, whichever is  
5 later, from:

6 (i) The date construction of the dealership at that location was  
7 completed if the construction was in substantial compliance with  
8 standards or plans provided by a manufacturer, distributor, or  
9 representative or through a subsidiary or agent of the manufacturer,  
10 distributor, or representative; or

11 (ii) The date a prior change, alteration, or remodel of the  
12 dealership at that location was completed if the construction was in  
13 substantial compliance with standards or plans provided by a  
14 manufacturer, distributor, or representative or through a subsidiary or  
15 agent of the manufacturer, distributor, or representative;

16 (m) Prevent or attempt to prevent by contract or otherwise any new  
17 motor vehicle dealer from changing the executive management of a new  
18 motor vehicle dealer unless the manufacturer or distributor, having the  
19 burden of proof, can show that a proposed change of executive  
20 management will result in executive management by a person or persons  
21 who are not of good moral character or who do not meet reasonable,  
22 preexisting, and equitably applied standards of the manufacturer or  
23 distributor. If a manufacturer or distributor rejects a proposed  
24 change in the executive management, the manufacturer or distributor  
25 shall give written notice of its reasons to the dealer within sixty  
26 days after receiving written notice from the dealer of the proposed  
27 change and all related information reasonably requested by the  
28 manufacturer or distributor, or the change in executive management must  
29 be considered approved; ((~~or~~))

30 (n) Condition the sale, transfer, relocation, or renewal of a  
31 franchise agreement or condition manufacturer, distributor, factory  
32 branch, or factory representative sales, services, or parts incentives  
33 upon the manufacturer obtaining site control, including rights to  
34 purchase or lease the dealer's facility, or an agreement to make  
35 improvements or substantial renovations to a facility. For purposes of  
36 this section, a substantial renovation has a gross cost to the dealer  
37 in excess of five thousand dollars;



1       (o) Fail to provide to a new motor vehicle dealer purchasing or  
2 leasing signs, building materials, or other facility improvements the  
3 right to purchase or lease the signs or other franchisor image elements  
4 of like kind and quality from an alternative vendor selected by the  
5 dealer if the goods or services are to be supplied by a vendor  
6 selected, identified, or designated by the manufacturer or distributor.  
7 If the vendor selected by the manufacturer or distributor is the only  
8 available vendor of like kind and quality materials, the new motor  
9 vehicle dealer must be given the opportunity to purchase the signs or  
10 other franchisor image elements at a price substantially similar to the  
11 capitalized lease costs of the signs or elements. This subsection  
12 (1)(o) must not be construed to allow a new motor vehicle dealer or  
13 vendor to gain additional intellectual property rights they are not  
14 otherwise entitled to or to impair or eliminate the intellectual  
15 property rights of the manufacturer or distributor or to permit a new  
16 motor vehicle dealer to erect or maintain signs that do not conform to  
17 the reasonable intellectual property usage guidelines of the  
18 manufacturer or distributor;

19       (p) Take any adverse action against a new motor vehicle dealer  
20 including, but not limited to, charge backs or reducing vehicle  
21 allocations, for sales and service performance within a designated area  
22 of primary responsibility unless that area is reasonable in light of  
23 proximity to relevant census tracts to the dealership and competing  
24 dealerships, highways and road networks, state borders, any natural or  
25 man-made barriers, demographics, including economic factors, and buyer  
26 behavior information; or

27       (q) Require, coerce, or attempt to coerce any new motor vehicle  
28 dealer by program, policy, facility guide, standard, or otherwise to  
29 order or accept delivery of any service or repair appliances,  
30 equipment, parts, or accessories, or any other commodity not required  
31 by law, which the dealer has not voluntarily ordered or which the  
32 dealer does not have the right to return for a full refund within  
33 ninety days.

34       (2) Subsection (1)(a), (b), and (c) of this section do not apply to  
35 sales to a motor vehicle dealer: (a) For resale to a federal, state,  
36 or local government agency; (b) where the vehicles will be sold or  
37 donated for use in a program of driver's education; (c) where the sale  
38 is made under a manufacturer's bona fide promotional program offering

1 sales incentives or rebates; (d) where the sale of parts or accessories  
2 is under a manufacturer's bona fide quantity discount program; or (e)  
3 where the sale is made under a manufacturer's bona fide fleet vehicle  
4 discount program. For purposes of this subsection, "fleet" means a  
5 group of fifteen or more new motor vehicles purchased or leased by a  
6 dealer at one time under a single purchase or lease agreement for use  
7 as part of a fleet, and where the dealer has been assigned a fleet  
8 identifier code by the department of licensing.

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

10 (a) "Actual price" means the price to be paid by the dealer less  
11 any incentive paid by the manufacturer, distributor, factory branch, or  
12 factory representative, whether paid to the dealer or the ultimate  
13 purchaser of the vehicle.

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

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

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

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

34 (4) A violation of this section is deemed to affect the public  
35 interest and constitutes an unlawful and unfair practice under chapter  
36 19.86 RCW. A person aggrieved by an alleged violation of this section  
37 may petition the department to have the matter handled as an  
38 adjudicative proceeding under chapter 34.05 RCW.

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

3        (1) Notwithstanding the terms or conditions of any consent,  
4 authorization, release, novation, franchise, or other contract or  
5 agreement, whenever any manufacturer, factory branch, distributor,  
6 distributor branch, dealer management computer system vendor, or any  
7 third party acting on behalf of or through, or approved, referred,  
8 endorsed, authorized, certified, granted preferred status, or  
9 recommended by, any manufacturer, factory branch, distributor,  
10 distributor branch, or dealer management computer system vendor,  
11 requires that a new motor vehicle dealer provide any other new motor  
12 vehicle dealer, consumer, or customer data or information through  
13 direct access to the dealer's management computer system, the new motor  
14 vehicle dealer is not required to provide, and may not be required to  
15 consent to provide in any written agreement, such direct access to its  
16 management computer system.

17        However, the new motor vehicle dealer may provide any other new  
18 motor vehicle dealer, consumer, or customer data or information  
19 specified by the requesting party by timely obtaining and pushing or  
20 otherwise furnishing the requested data to the requesting party in a  
21 widely accepted file format, such as comma delimited, provided that  
22 when a new motor vehicle dealer would otherwise be required to provide  
23 direct access to its management computer system under the terms of a  
24 consent, authorization, release, novation, franchise, or other contract  
25 or agreement, a new motor vehicle dealer that elects to provide data or  
26 information through other means may be charged a reasonable initial  
27 set-up fee and reasonable processing fee based on the actual  
28 incremental costs incurred by the party requesting the data for  
29 establishing and implementing the process for the dealer. Any term or  
30 provision contained in any consent, authorization, release, novation,  
31 franchise, or other contract or agreement that is inconsistent with  
32 this subsection is voidable at the option of the new motor vehicle  
33 dealer.

34        (2) Notwithstanding the terms or conditions of any consent,  
35 authorization, release, novation, franchise, or other contract or  
36 agreement, every manufacturer, factory branch, distributor, distributor  
37 branch, dealer management computer system vendor, or any third party  
38 acting on behalf of or through any manufacturer, factory branch,

1 distributor, distributor branch, or dealer management computer system  
2 vendor, having electronic access to consumer or customer data or other  
3 information in a computer system utilized by a new motor vehicle  
4 dealer, or who has otherwise been provided consumer or customer data or  
5 information by the dealer, shall fully indemnify and hold harmless the  
6 dealer from whom it has acquired the consumer or customer data or other  
7 information from all damages, costs, and expenses incurred by the  
8 dealer including, but not limited to, judgments, settlements, fines,  
9 penalties, litigation costs, defense costs, court costs, costs related  
10 to the disclosure of security breaches, and attorneys' fees arising out  
11 of complaints, claims, security breaches, civil or administrative  
12 actions, and, to the fullest extent allowable under the law,  
13 governmental investigations and prosecutions to the extent caused by  
14 the access, storage, maintenance, use, sharing, disclosure, or  
15 retention of the dealer's consumer or customer data or other  
16 information, or maintenance or services provided to any computer system  
17 utilized by the dealer by the manufacturer, factory branch,  
18 distributor, distributor branch, dealer management computer system  
19 vendor, or third party acting on behalf of or through the manufacturer,  
20 factory branch, distributor, distributor branch, or dealer management  
21 computer system vendor.

22 NEW SECTION. **Sec. 9.** This act applies to all franchises and  
23 contracts between manufacturers and new motor vehicle dealers amended,  
24 renewed, or entered into after the effective date of this section. For  
25 purposes of chapter 46.96 RCW, an agreement between a manufacturer and  
26 new motor vehicle dealer entered into after the effective date of this  
27 section, addressing any issues governed by chapter 46.96 RCW, is  
28 considered an amendment to an existing franchise."

29 Correct the title.

EFFECT: (1) Removes the definition of "second stage manufacturer"  
and adds new definitions for "completed vehicle," "final-stage  
manufacturer," and "incomplete vehicle."

(2) Removes the provision that allowed a second stage manufacturer

to own, operate, or control a new motor vehicle dealership, and provides that a final-stage manufacturer may own, operate, or control a new motor vehicle dealership.

(3) Provides that the act applies to all franchises and contracts amended, renewed, or entered into after the effective date of the act, and removed the retroactive application of the act to franchises and contracts in place on the effective date of the act.

(4) Provides that any agreement between a manufacturer and new motor vehicle dealer entered into after the effective date of the act, addressing the relationship between the dealer and manufacturer, is considered an amendment to an existing franchise.

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