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ENGROSSED SUBSTITUTE HOUSE BILL 2524

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State of Washington

63rd Legislature

2014 Regular Session

By House Business & Financial Services (originally sponsored by Representatives Kirby, Vick, Ryu, Chandler, Blake, Santos, Stanford, Zeiger, Hurst, Fagan, Takko, Habib, Harris, Sullivan, Kretz, MacEwen, Wylie, Moeller, Morrell, Haigh, Freeman, Springer, and Stonier)

READ FIRST TIME 02/04/14.

1 AN ACT Relating to manufacturer and new motor vehicle dealer  
2 franchise agreements; amending RCW 46.70.045, 46.96.020, 46.96.060,  
3 46.96.080, 46.96.090, 46.96.105, and 46.96.185; adding a new section to  
4 chapter 46.96 RCW; and creating a new section.

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

6 **Sec. 1.** RCW 46.70.045 and 1997 c 432 s 2 are each amended to read  
7 as follows:

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

1 chapter 46.96 RCW. This section does not preclude the department from  
2 taking an action against a current licensee.

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

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

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

11 (2) "New motor vehicle dealer" means a motor vehicle dealer engaged  
12 in the business of buying, selling, exchanging, or otherwise dealing in  
13 new motor vehicles or new and used motor vehicles at an established  
14 place of business, under a franchise, sales and service agreement, or  
15 contract with the manufacturer of the new motor vehicles. However,  
16 (~~the term~~) "new motor vehicle dealer" does not include a  
17 miscellaneous vehicle dealer as defined in RCW 46.70.011(~~(+3)~~) (17)(c)  
18 or a motorcycle dealer as defined in chapter 46.94 RCW.

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

24 "Franchise" includes an oral or written contract and includes a  
25 dealer agreement, either expressed or implied, between a manufacturer  
26 and a new motor vehicle dealer that purports to fix the legal rights  
27 and liabilities between the parties and under which (a) the dealer is  
28 granted the right to purchase and resell motor vehicles manufactured,  
29 distributed, or imported by the manufacturer; (b) the dealer's business  
30 is associated with the trademark, trade name, commercial symbol, or  
31 advertisement designating the franchisor or the products distributed by  
32 the manufacturer; and (c) the dealer's business relies on the  
33 manufacturer for a continued supply of motor vehicles, parts, and  
34 accessories.

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

37 (5) "Designated successor" means:

1 (a) The spouse, biological or adopted child, stepchild, grandchild,  
2 parent, brother, or sister of the owner of a new motor vehicle  
3 dealership who, in the case of the owner's death, is entitled to  
4 inherit the ownership interest in the new motor vehicle dealership  
5 under the terms of the owner's will or similar document, and if there  
6 is no such will or similar document, then under applicable intestate  
7 laws;

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

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

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

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

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

22 (9) "Dealer management computer system" means a computer hardware  
23 and software system that is owned or leased by a new motor vehicle  
24 dealer, including the dealer's use of internet applications, software,  
25 or hardware, whether located at an existing dealership facility or  
26 provided at a remote location, that provides access to customer records  
27 and transactions by a motor vehicle dealer located in this state, and  
28 that allows the new motor vehicle dealer timely information in order to  
29 sell vehicles, parts, or services through the existing dealership  
30 facility.

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

34 (11) "Final-stage manufacturer" means a person who purchases an  
35 incomplete vehicle from a licensed motor vehicle dealer and performs  
36 such manufacturing operations that the incomplete vehicle becomes a  
37 completed vehicle.

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

6       (13) "Security breach" means an incident of unauthorized access to  
7 and acquisition of records or data containing new motor vehicle dealer  
8 or dealer customer information where unauthorized use of the dealer's  
9 customer or dealer information has occurred or is reasonably likely to  
10 occur or that creates a material risk of harm to the dealer or dealer's  
11 customer. Any incident of unauthorized access to and acquisition of  
12 records or data containing dealer or dealer customer information, or  
13 any incident of disclosure of dealer customer information to one or  
14 more third parties that has not been specifically authorized by the  
15 dealer or dealer's customer, constitutes a security breach.

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

18       (1) Notwithstanding the terms of a franchise or the terms of a  
19 waiver, and except as otherwise provided in RCW 46.96.070(2) (a)  
20 through (d), good cause exists for termination, cancellation, or  
21 nonrenewal when there is a failure by the new motor vehicle dealer to  
22 comply with a provision of the franchise that is both reasonable and of  
23 material significance to the franchise relationship, if the new motor  
24 vehicle dealer was notified of the failure within one hundred eighty  
25 days after the manufacturer first acquired knowledge of the failure and  
26 the new motor vehicle dealer did not correct the failure after being  
27 requested to do so.

28       If, however, the failure of the new motor vehicle dealer relates to  
29 the performance of the new motor vehicle dealer in sales, service, or  
30 level of customer satisfaction, good cause is the failure of the new  
31 motor vehicle dealer to comply with reasonable performance standards  
32 determined by the manufacturer in accordance with uniformly applied  
33 criteria, and:

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

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

1 (c) The manufacturer provided the new motor vehicle dealer with  
2 specific, reasonable goals or reasonable performance standards with  
3 which the dealer must comply, together with a suggested timetable or  
4 program for attaining those goals or standards, and the new motor  
5 vehicle dealer was given a reasonable opportunity, for a period not  
6 less than one hundred eighty days, to comply with the goals or  
7 standards; and

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

13 (2) If the new motor vehicle dealer claims insufficient allocation,  
14 a manufacturer does not have good cause for termination, cancellation,  
15 or nonrenewal, unless:

16 (a) The manufacturer or distributor allocated sufficient inventory  
17 in the new motor vehicle dealer's primary allocation, both in quantity  
18 and product mix, for the dealers' assigned market area. The inventory  
19 must have been delivered in a manner that allowed the dealer to  
20 reasonably meet the manufacturer's performance standards; and

21 (b) The manufacturer provides to the new motor vehicle dealer, upon  
22 the dealers' request, documentation sufficient to develop a market  
23 analysis. This documentation must include, but is not limited to, the  
24 allocation of inventory to the dealer and other dealers in the same  
25 zone during the period established by the manufacturer, and must not be  
26 shared by the dealer with any party not involved in preparing a market  
27 analysis or otherwise engaged in the termination proceeding.

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

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

33 (1) Upon the termination, cancellation, or nonrenewal of a  
34 franchise, the manufacturer shall pay the new motor vehicle dealer, at  
35 a minimum:

36 (a) Dealer cost plus any charges by the manufacturer for  
37 distribution, delivery, and taxes, less all allowances paid or credited

1 to the dealer by the manufacturer, of unused, undamaged, and unsold new  
2 motor vehicles in the new motor vehicle dealer's inventory that were  
3 acquired from the manufacturer or another new motor vehicle dealer of  
4 the same line make in the ordinary course of business within the  
5 previous twelve months;

6 (b) Dealer cost for all unused, undamaged, and unsold supplies,  
7 parts, and accessories in original packaging, except that in the case  
8 of sheet metal, a comparable substitute for original packaging may be  
9 used, if the supply, part, or accessory was acquired from the  
10 manufacturer or from another new motor vehicle dealer ceasing  
11 operations as a part of the new motor vehicle dealer's initial  
12 inventory as long as the supplies, parts, and accessories appear in the  
13 manufacturer's current parts catalog, list, or current offering;

14 (c) Dealer cost for all unused, undamaged, and unsold inventory,  
15 whether vehicles, parts, or accessories, the purchase of which was  
16 required by the manufacturer;

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

23 (e) The fair market value of all equipment, furnishings, and  
24 special tools owned or leased by the new motor vehicle dealer that were  
25 acquired from the manufacturer or sources approved by the manufacturer  
26 and that were recommended or required by the manufacturer and are in  
27 good and usable condition, less reasonable wear and tear. However, if  
28 the equipment, furnishings, or tools are leased by the new motor  
29 vehicle dealer, the manufacturer shall pay the new motor vehicle dealer  
30 such amounts that are required by the lessor to terminate the lease  
31 under the terms of the lease agreement; and

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

36 To the extent the franchise agreement provides for payment or  
37 reimbursement to the new motor vehicle dealer in excess of that

1 specified in this section, the provisions of the franchise agreement  
2 shall control.

3 (2)(a) For the nonrenewal or termination of a franchise that is  
4 implemented as a result of the sale of assets or stock of the motor  
5 vehicle dealer, the party purchasing the assets or stock of the motor  
6 vehicle dealer may negotiate for the purchase or other transfer of some  
7 or all unused, undamaged, and unsold new motor vehicles in the selling  
8 new motor vehicle dealer's inventory that were acquired from the  
9 manufacturer or another new motor vehicle dealer of the same line make  
10 in the ordinary course of business within the previous twelve months.

11 (b) For the nonrenewal or termination of a franchise that is  
12 implemented as a result of the sale of assets or stock of the motor  
13 vehicle dealer, this section does not prohibit a manufacturer from  
14 negotiating with the purchasing party for the purchase or other  
15 transfer of some or all unused, undamaged, and unsold new motor  
16 vehicles in the selling new motor vehicle dealer's inventory that were  
17 acquired from the manufacturer or another new motor vehicle dealer of  
18 the same line make in the ordinary course of business within the  
19 previous twelve months.

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

23 (3) The manufacturer shall pay the new motor vehicle dealer the  
24 sums specified in subsection (1) of this section (a) within ninety days  
25 after the termination, cancellation, or nonrenewal of the franchise, if  
26 the new motor vehicle dealer has clear title to the property or can  
27 provide clear title to the property upon payment by the manufacturer  
28 and is in a position to convey that title to the manufacturer, or (b)  
29 on the date of delivery of the assets to the manufacturer, whichever is  
30 earlier.

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

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

36 (1) In the event of a termination, cancellation, or nonrenewal  
37 under this chapter, except for termination, cancellation, or nonrenewal

1 under RCW 46.96.070(2) or a voluntary termination, cancellation, or  
2 nonrenewal initiated by the dealer, the manufacturer shall, at the  
3 request and option of the new motor vehicle dealer, also pay to the new  
4 motor vehicle dealer the dealer costs for any relocation, substantial  
5 alteration, or remodeling of a dealer's facilities required by a  
6 manufacturer for the granting of a franchise or the continuance or  
7 renewal of a franchise agreement completed within three years of the  
8 termination, cancellation, or nonrenewal and:

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

14 (b) A sum equivalent to the reasonable rental value of the new  
15 motor vehicle dealership facilities for one year or until the  
16 facilities are leased or sold, whichever is less, if the new motor  
17 vehicle dealer owns the new motor vehicle dealership facilities.

18 (2) The rental payment required under subsection (1) of this  
19 section is only required to the extent that the facilities were used  
20 for activities under the franchise and only to the extent the  
21 facilities were not leased for unrelated purposes. If the rental  
22 payment under subsection (1) of this section is made, the manufacturer  
23 is entitled to possession and use of the new motor vehicle dealership  
24 facilities for the period rent is paid.

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

27 (1) Each manufacturer shall specify in its franchise agreement, or  
28 in a separate written agreement, with each of its dealers licensed in  
29 this state, the dealer's obligation to perform warranty work or service  
30 on the manufacturer's products. Each manufacturer shall provide each  
31 of its dealers with a schedule of compensation to be paid to the dealer  
32 for any warranty work or service, including parts, labor, and  
33 diagnostic work, required of the dealer by the manufacturer in  
34 connection with the manufacturer's products. The schedule of  
35 compensation must not be less than the rates charged by the dealer for  
36 similar service to retail customers for nonwarranty service and



1 repairs, and must not be less than the schedule of compensation for an  
2 existing dealer as of June 10, 2010.

3 (a) The rates charged by the dealer for nonwarranty service or work  
4 for parts means the price paid by the dealer for those parts, including  
5 all shipping and other charges, increased by the franchisee's average  
6 percentage markup. A dealer must establish and declare the dealer's  
7 average percentage markup by submitting to the manufacturer one hundred  
8 sequential customer-paid service repair orders or ninety days of  
9 customer-paid service repair orders, whichever is less, covering  
10 repairs made no more than one hundred eighty days before the  
11 submission. A change in a dealer's established average percentage  
12 markup takes effect thirty days following the submission. A  
13 manufacturer may not require a dealer to establish average percentage  
14 markup by another methodology. A manufacturer may not require  
15 information that the dealer believes is unduly burdensome or time  
16 consuming to provide, including, but not limited to, part-by-part or  
17 transaction-by-transaction calculations. In calculating the retail  
18 rate customarily charged by the dealer for parts and labor, the  
19 following work must not be included in the calculation:

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

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

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

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

28 (v) Tires;

29 (vi) Batteries and light bulbs; and

30 (vii) Vehicle reconditioning.

31 (b) A manufacturer shall compensate a dealer for labor and  
32 diagnostic work at the rates charged by the dealer to its retail  
33 customers for such work and for any documentation work required by the  
34 manufacturer to authorize or verify the work including, but not limited  
35 to, photographs, paperwork, and electronic data entry. However, a  
36 manufacturer is not required to compensate a dealer more than once for  
37 the same documentation work. If a manufacturer can demonstrate that  
38 the rates unreasonably exceed those of all other franchised motor

1 vehicle dealers in the same relevant market area offering the same or  
2 a competitive motor vehicle line, the manufacturer is not required to  
3 honor the rate increase proposed by the dealer. If the manufacturer is  
4 not required to honor the rate increase proposed by the dealer, the  
5 dealer is entitled to resubmit a new proposed rate for labor and  
6 diagnostic work.

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

10 (2) All claims for warranty work for parts and labor made by  
11 dealers under this section (~~shall~~) must be submitted to the  
12 manufacturer within (~~one year~~) ninety days of the date the work was  
13 performed. All claims submitted must be paid by the manufacturer  
14 within thirty days following receipt, provided the claim has been  
15 approved by the manufacturer. The manufacturer has the right to audit  
16 claims for warranty work and to charge the dealer for any  
17 unsubstantiated, incorrect, or false claims for a period of (~~one~~  
18 ~~year~~) nine months following payment. However, the manufacturer may  
19 audit and charge the dealer for any fraudulent claims during any period  
20 for which an action for fraud may be commenced under applicable state  
21 law.

22 (3) All claims submitted by dealers on the forms and in the manner  
23 specified by the manufacturer shall be either approved or disapproved  
24 within thirty days following their receipt. The manufacturer shall  
25 notify the dealer in writing of any disapproved claim, and shall set  
26 forth the reasons why the claim was not approved. Any claim not  
27 specifically disapproved in writing within thirty days following  
28 receipt is approved, and the manufacturer is required to pay that claim  
29 within thirty days of receipt of the claim.

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

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

36 (1) Notwithstanding the terms of a franchise agreement, a  
37 manufacturer, distributor, factory branch, or factory representative,

1 or an agent, officer, parent company, wholly or partially owned  
2 subsidiary, affiliated entity, or other person controlled by or under  
3 common control with a manufacturer, distributor, factory branch, or  
4 factory representative, shall not:

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

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

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

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

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

31 (f) Give preferential treatment to some new motor vehicle dealers  
32 over others by refusing or failing to deliver, in reasonable quantities  
33 and within a reasonable time after receipt of an order, to a dealer  
34 holding a franchise for a line or make of motor vehicles sold or  
35 distributed by the manufacturer, distributor, factory branch, or  
36 factory representative, a new vehicle, parts, or accessories, if the  
37 vehicle, parts, or accessories are being delivered to other dealers, or  
38 require a dealer to purchase unreasonable advertising displays or other

1 materials, or unreasonably require a dealer to remodel or renovate  
2 existing facilities as a prerequisite to receiving a model or series of  
3 vehicles;

4 (g) Compete with a new motor vehicle dealer of any make or line by  
5 acting in the capacity of a new motor vehicle dealer, or by owning,  
6 operating, or controlling, whether directly or indirectly, a motor  
7 vehicle dealership in this state. It is not, however, a violation of  
8 this subsection for:

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

23 (ii) A manufacturer, distributor, factory branch, or factory  
24 representative to own or operate a dealership in conjunction with an  
25 independent person in a bona fide business relationship for the purpose  
26 of broadening the diversity of its dealer body and enhancing  
27 opportunities for qualified persons who are part of a group who have  
28 historically been underrepresented in its dealer body, or other  
29 qualified persons who lack the resources to purchase a dealership  
30 outright, and where the independent person: (A) Has made, or within a  
31 period of two years from the date of commencement of operation will  
32 have made, a significant, bona fide capital investment in the  
33 dealership that is subject to loss; (B) has an ownership interest in  
34 the dealership; and (C) operates the dealership under a bona fide  
35 written agreement with the manufacturer, distributor, factory branch,  
36 or factory representative under which he or she will acquire all of the  
37 ownership interest in the dealership within a reasonable period of time  
38 and under reasonable terms and conditions. The manufacturer,

1 distributor, factory branch, or factory representative has the burden  
2 of proof of establishing that the acquisition of the dealership by the  
3 independent person was made within a reasonable period of time and  
4 under reasonable terms and conditions. Nothing in this subsection  
5 (1)(g)(ii) relieves a manufacturer, distributor, factory branch, or  
6 factory representative from complying with (a) through (f) of this  
7 subsection;

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, or within a period of two years from  
12 the date of commencement of operation will have made, a significant,  
13 bona fide capital investment in the dealership that is subject to loss;  
14 (B) has an ownership interest in the dealership; and (C) operates the  
15 dealership under a bona fide written agreement with the manufacturer,  
16 distributor, factory branch, or factory representative under which he  
17 or she will acquire all of the ownership interest in the dealership  
18 within a reasonable period of time and under reasonable terms and  
19 conditions. The manufacturer, distributor, factory branch, or factory  
20 representative has the burden of proof of establishing that the  
21 acquisition of the dealership by the independent person was made within  
22 a reasonable period of time and under reasonable terms and conditions.  
23 The number of dealerships operated under this subsection (1)(g)(iii)  
24 may not exceed four percent rounded up to the nearest whole number of  
25 a manufacturer's total of new motor vehicle dealer franchises in this  
26 state. Nothing in this subsection (1)(g)(iii) relieves a manufacturer,  
27 distributor, factory branch, or factory representative from complying  
28 with (a) through (f) of this subsection;

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

34 (v) A manufacturer to own, operate, or control a new motor vehicle  
35 dealership trading exclusively in a single line make of the  
36 manufacturer if (A) the manufacturer does not own, directly or  
37 indirectly, in the aggregate, in excess of forty-five percent of the  
38 total ownership interest in the dealership, (B) at the time the

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

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

18 (vii) A manufacturer that held a vehicle dealer license in this  
19 state on January 1, 2014, to own, operate, or control a new motor  
20 vehicle dealership that sells new vehicles that are only of that  
21 manufacturer's makes or lines and that are not sold new by a licensed  
22 independent franchise dealer, or to own, operate, or control or  
23 contract with companies that provide finance, leasing, or service for  
24 vehicles that are of that manufacturer's makes or lines;

25 (h) Compete with a new motor vehicle dealer by owning, operating,  
26 or controlling, whether directly or indirectly, a service facility in  
27 this state for the repair or maintenance of motor vehicles under the  
28 manufacturer's new car warranty and extended warranty. Nothing in this  
29 subsection (1)(h), however, prohibits a manufacturer, distributor,  
30 factory branch, or factory representative from owning or operating a  
31 service facility for the purpose of providing or performing  
32 maintenance, repair, or service work on motor vehicles that are owned  
33 by the manufacturer, distributor, factory branch, or factory  
34 representative;

35 (i) Use confidential or proprietary information obtained from a new  
36 motor vehicle dealer to unfairly compete with the dealer. For purposes  
37 of this subsection (1)(i), "confidential or proprietary information"

1 means trade secrets as defined in RCW 19.108.010, business plans,  
2 marketing plans or strategies, customer lists, contracts, sales data,  
3 revenues, or other financial information;

4 (j)(i) Terminate, cancel, or fail to renew a franchise with a new  
5 motor vehicle dealer based upon any of the following events, which do  
6 not constitute good cause for termination, cancellation, or nonrenewal  
7 under RCW 46.96.060: (A) The fact that the new motor vehicle dealer  
8 owns, has an investment in, participates in the management of, or holds  
9 a franchise agreement for the sale or service of another make or line  
10 of new motor vehicles; (B) the fact that the new motor vehicle dealer  
11 has established another make or line of new motor vehicles or service  
12 in the same dealership facilities as those of the manufacturer or  
13 distributor; (C) that the new motor vehicle dealer has or intends to  
14 relocate the manufacturer or distributor's make or line of new motor  
15 vehicles or service to an existing dealership facility that is within  
16 the relevant market area, as defined in RCW 46.96.140, of the make or  
17 line to be relocated, except that, in any nonemergency circumstance,  
18 the dealer must give the manufacturer or distributor at least sixty  
19 days' notice of his or her intent to relocate and the relocation must  
20 comply with RCW 46.96.140 and 46.96.150 for any same make or line  
21 facility; or (D) the failure of a franchisee to change the location of  
22 the dealership or to make substantial alterations to the use or number  
23 of franchises on the dealership premises or facilities.

24 (ii) Notwithstanding the limitations of this section, a  
25 manufacturer may, for separate consideration, enter into a written  
26 contract with a dealer to exclusively sell and service a single make or  
27 line of new motor vehicles at a specific facility for a defined period  
28 of time. The penalty for breach of the contract must not exceed the  
29 amount of consideration paid by the manufacturer plus a reasonable rate  
30 of interest;

31 (k) Coerce or attempt to coerce a motor vehicle dealer to refrain  
32 from, or prohibit or attempt to prohibit a new motor vehicle dealer  
33 from acquiring, owning, having an investment in, participating in the  
34 management of, or holding a franchise agreement for the sale or service  
35 of another make or line of new motor vehicles or related products, or  
36 establishing another make or line of new motor vehicles or service in  
37 the same dealership facilities, if the prohibition against acquiring,  
38 owning, investing, managing, or holding a franchise for such additional

1 make or line of vehicles or products, or establishing another make or  
2 line of new motor vehicles or service in the same dealership  
3 facilities, is not supported by reasonable business considerations.  
4 The burden of proving that reasonable business considerations support  
5 or justify the prohibition against the additional make or line of new  
6 motor vehicles or products or nonexclusive facilities is on the  
7 manufacturer;

8 (1) Require, by contract or otherwise, a new motor vehicle dealer  
9 to make a material alteration, expansion, or addition to any dealership  
10 facility, unless the required alteration, expansion, or addition is  
11 uniformly required of other similarly situated new motor vehicle  
12 dealers of the same make or line of vehicles and is reasonable in light  
13 of all existing circumstances, including economic conditions. In any  
14 proceeding in which a required facility alteration, expansion, or  
15 addition is an issue, the manufacturer or distributor has the burden of  
16 proof. Except for a program or any renewal or modification of a  
17 program that is in effect with one or more new motor vehicle dealers in  
18 this state on the effective date of this section, a manufacturer shall  
19 not require, coerce, or attempt to coerce any new motor vehicle dealer  
20 by program, policy, standard, or otherwise to change the location of  
21 the dealership or construct, replace, renovate, or make any substantial  
22 changes, alterations, or remodeling to a new motor vehicle dealer's  
23 sales or service facilities, except as necessary to comply with health  
24 or safety laws or to comply with technology requirements without which  
25 a dealer would be unable to service a vehicle the dealer has elected to  
26 sell, before the tenth anniversary of the date of issuance of the  
27 certificate of occupancy or the manufacturer's approval, whichever is  
28 later, from:

29 (i) The date construction of the dealership at that location was  
30 completed if the construction was in substantial compliance with  
31 standards or plans provided by a manufacturer, distributor, or  
32 representative or through a subsidiary or agent of the manufacturer,  
33 distributor, or representative; or

34 (ii) The date a prior change, alteration, or remodel of the  
35 dealership at that location was completed if the construction was in  
36 substantial compliance with standards or plans provided by a  
37 manufacturer, distributor, or representative or through a subsidiary or  
38 agent of the manufacturer, distributor, or representative;



1 (m) Prevent or attempt to prevent by contract or otherwise any new  
2 motor vehicle dealer from changing the executive management of a new  
3 motor vehicle dealer unless the manufacturer or distributor, having the  
4 burden of proof, can show that a proposed change of executive  
5 management will result in executive management by a person or persons  
6 who are not of good moral character or who do not meet reasonable,  
7 preexisting, and equitably applied standards of the manufacturer or  
8 distributor. If a manufacturer or distributor rejects a proposed  
9 change in the executive management, the manufacturer or distributor  
10 shall give written notice of its reasons to the dealer within sixty  
11 days after receiving written notice from the dealer of the proposed  
12 change and all related information reasonably requested by the  
13 manufacturer or distributor, or the change in executive management must  
14 be considered approved; ((~~or~~))

15 (n) Condition the sale, transfer, relocation, or renewal of a  
16 franchise agreement or condition manufacturer, distributor, factory  
17 branch, or factory representative sales, services, or parts incentives  
18 upon the manufacturer obtaining site control, including rights to  
19 purchase or lease the dealer's facility, or an agreement to make  
20 improvements or substantial renovations to a facility. For purposes of  
21 this section, a substantial renovation has a gross cost to the dealer  
22 in excess of five thousand dollars;

23 (o) Fail to provide to a new motor vehicle dealer purchasing or  
24 leasing building materials or other facility improvements the right to  
25 purchase or lease franchisor image elements of like kind and quality  
26 from an alternative vendor selected by the dealer if the goods or  
27 services are to be supplied by a vendor selected, identified, or  
28 designated by the manufacturer or distributor. If the vendor selected  
29 by the manufacturer or distributor is the only available vendor of like  
30 kind and quality materials, the new motor vehicle dealer must be given  
31 the opportunity to purchase the franchisor image elements at a price  
32 substantially similar to the capitalized lease costs of the elements.  
33 This subsection (1)(o) must not be construed to allow a new motor  
34 vehicle dealer or vendor to gain additional intellectual property  
35 rights they are not otherwise entitled to or to impair or eliminate the  
36 intellectual property rights of the manufacturer or distributor or to  
37 permit a new motor vehicle dealer to erect or maintain signs that do

1 not conform to the reasonable intellectual property usage guidelines of  
2 the manufacturer or distributor;

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

11 (q) Require, coerce, or attempt to coerce any new motor vehicle  
12 dealer by program, policy, facility guide, standard, or otherwise to  
13 order or accept delivery of any service or repair appliances,  
14 equipment, parts, or accessories, or any other commodity not required  
15 by law, which the dealer has not voluntarily ordered or which the  
16 dealer does not have the right to return unused for a full refund  
17 within ninety days or a longer period as mutually agreed upon by the  
18 dealer and manufacturer.

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

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

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

37 (b) "Control" or "controlling" means (i) the possession of, title  
38 to, or control of ten percent or more of the voting equity interest in

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

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

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

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

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

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

26 (1) Notwithstanding the terms or conditions of any consent,  
27 authorization, release, novation, franchise, or other contract or  
28 agreement, whenever any manufacturer, factory branch, distributor,  
29 distributor branch, dealer management computer system vendor, or any  
30 third party acting on behalf of or through, or approved, referred,  
31 endorsed, authorized, certified, granted preferred status, or  
32 recommended by, any manufacturer, factory branch, distributor,  
33 distributor branch, or dealer management computer system vendor,  
34 requires that a new motor vehicle dealer provide any other new motor  
35 vehicle dealer, consumer, or customer data or information through  
36 direct access to the dealer's management computer system, the new motor

1 vehicle dealer is not required to provide, and may not be required to  
2 consent to provide in any written agreement, such direct access to its  
3 management computer system.

4 However, the new motor vehicle dealer may provide any other new  
5 motor vehicle dealer, consumer, or customer data or information  
6 specified by the requesting party by timely obtaining and pushing or  
7 otherwise furnishing the requested data to the requesting party in a  
8 widely accepted file format, such as comma delimited, provided that  
9 when a new motor vehicle dealer would otherwise be required to provide  
10 direct access to its management computer system under the terms of a  
11 consent, authorization, release, novation, franchise, or other contract  
12 or agreement, a new motor vehicle dealer that elects to provide data or  
13 information through other means may be charged a reasonable initial  
14 set-up fee and reasonable processing fee based on the actual  
15 incremental costs incurred by the party requesting the data for  
16 establishing and implementing the process for the dealer. Any term or  
17 provision contained in any consent, authorization, release, novation,  
18 franchise, or other contract or agreement that is inconsistent with  
19 this subsection is voidable at the option of the new motor vehicle  
20 dealer.

21 (2) Notwithstanding the terms or conditions of any consent,  
22 authorization, release, novation, franchise, or other contract or  
23 agreement, every manufacturer, factory branch, distributor, distributor  
24 branch, or any third party acting on behalf of or through any  
25 manufacturer, factory branch, distributor, or distributor branch,  
26 having electronic access to consumer or customer data or other  
27 information in a computer system utilized by a new motor vehicle  
28 dealer, or who has otherwise been provided consumer or customer data or  
29 information by the dealer, shall fully indemnify and hold harmless the  
30 dealer from whom it has acquired the consumer or customer data or other  
31 information from all damages, costs, and expenses incurred by the  
32 dealer including, but not limited to, judgments, settlements, fines,  
33 penalties, litigation costs, defense costs, court costs, costs related  
34 to the disclosure of security breaches, and attorneys' fees arising out  
35 of complaints, claims, security breaches, civil or administrative  
36 actions, and, to the fullest extent allowable under the law,  
37 governmental investigations and prosecutions to the extent caused by  
38 the manufacturer, factory branch, distributor, distributor branch, or

1 third party acting on behalf of the manufacturer, factory branch,  
2 distributor, or distributor branch's access, storage, maintenance, use,  
3 sharing, disclosure, or retention of the dealer's consumer or customer  
4 data or other information, or maintenance or services provided to any  
5 computer system utilized by the dealer by the manufacturer, factory  
6 branch, distributor, distributor branch, or third party acting on  
7 behalf of or through the manufacturer, factory branch, distributor, or  
8 distributor branch.

9 (3) Notwithstanding the terms or conditions of any consent,  
10 authorization, release, novation, franchise, or other contract or  
11 agreement, a dealer management computer system vendor or any third  
12 party acting on behalf of or through any dealer management computer  
13 system vendor, having electronic access to consumer or customer data or  
14 other information in a computer system utilized by a new motor vehicle  
15 dealer, or who has otherwise been provided consumer or customer data or  
16 information by the dealer, shall fully indemnify and hold harmless the  
17 dealer from whom it has acquired the consumer or customer data or other  
18 information from all damages, costs, and expenses incurred by the  
19 dealer including, but not limited to, judgments, settlements, fines,  
20 penalties, litigation costs, defense costs, court costs, costs related  
21 to the disclosure of security breaches, and attorneys' fees arising out  
22 of complaints, claims, security breaches, civil or administrative  
23 actions, and, to the fullest extent allowable under the law,  
24 governmental investigations and prosecutions to the extent caused by  
25 the dealer management computer system vendor or any third party acting  
26 on behalf of the dealer management computer system vendor's access,  
27 storage, maintenance, use, sharing, disclosure, or retention of the  
28 dealer's consumer or customer data or other information, or maintenance  
29 or services provided to any computer system utilized by the dealer, by  
30 the dealer management computer system vendor or third party acting on  
31 behalf of or through the dealer management computer system vendor.

32 NEW SECTION. **Sec. 9.** This act applies to all franchises and  
33 contracts between manufacturers and new motor vehicle dealers amended,  
34 renewed, or entered into after the effective date of this section. For  
35 purposes of chapter 46.96 RCW, an agreement between a manufacturer and  
36 new motor vehicle dealer entered into after the effective date of this

1 section, addressing any issues governed by chapter 46.96 RCW, is  
2 considered an amendment to an existing franchise.

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