
HOUSE BILL 2524

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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 01/20/14. Referred to Committee on Business & Financial Services.

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

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

32 (10) "Security breach" means an incident of unauthorized access to
33 and acquisition of records or data containing new motor vehicle dealer
34 or dealer customer information where unauthorized use of the dealer or
35 dealer's customer information has occurred or is reasonably likely to
36 occur or that creates a material risk of harm to the dealer or dealer's
37 customer. Any incident of unauthorized access to and acquisition of
38 records or data containing dealer or dealer customer information, or

1 any incident of disclosure of dealer customer information to one or
2 more third parties that has not been specifically authorized by the
3 dealer or dealer's customer, constitutes a security breach.

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

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

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

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

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

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

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

1 (e) The manufacturer provided the new motor vehicle dealer with
2 sufficient inventory, both in quantity and appropriate product mix, for
3 the dealer's assigned market area during any time period for the
4 performance standards established by the manufacturer or distributor.
5 Upon request, a manufacturer must provide the new motor vehicle dealer
6 with documentation supporting the allocation to the dealer and other
7 dealers in the same zone. For purposes of this section, a manufacturer
8 or distributor has not provided sufficient inventory to a new motor
9 vehicle dealer unless:

10 (i) The manufacturer or distributor allocated the inventory, in the
11 appropriate product mix, to the new motor vehicle dealer in the
12 dealer's primary allocation such that the inventory was received prior
13 to the performance period established by the manufacturer; and

14 (ii) None of the new motor vehicle dealer's primary allocations of
15 any vehicle during the period established by the manufacturer or
16 distributor was more than one hundred twenty percent of any other
17 primary allocation of that vehicle during the period established by the
18 manufacturer or distributor.

19 (2) The manufacturer has the burden of proof of establishing good
20 cause and good faith for the termination, cancellation, or nonrenewal
21 of the franchise under this section.

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

24 (1) Upon the termination, cancellation, or nonrenewal of a
25 franchise, the manufacturer shall pay the new motor vehicle dealer, at
26 a minimum:

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

34 (b) Dealer cost for all unused, undamaged, and unsold supplies,
35 parts, and accessories in original packaging, except that in the case
36 of sheet metal, a comparable substitute for original packaging may be
37 used, if the supply, part, or accessory was acquired from the

1 manufacturer or from another new motor vehicle dealer ceasing
2 operations as a part of the new motor vehicle dealer's initial
3 inventory as long as the supplies, parts, and accessories appear in the
4 manufacturer's current parts catalog, list, or current offering;

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

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

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

23 (f) The cost of transporting, handling, packing, and loading of new
24 motor vehicles, supplies, parts, accessories, signs, special tools,
25 equipment, and furnishings.

26 To the extent the franchise agreement provides for payment or
27 reimbursement to the new motor vehicle dealer in excess of that
28 specified in this section, the provisions of the franchise agreement
29 shall control.

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

1 (b) For the nonrenewal or termination of a franchise that is
2 implemented as a result of the sale of assets or stock of the motor
3 vehicle dealer, this section does not prohibit a manufacturer from
4 negotiating with the purchasing party for the purchase or other
5 transfer of some or all unused, undamaged, and unsold new motor
6 vehicles in the selling new motor vehicle dealer's inventory that were
7 acquired from the manufacturer or another new motor vehicle dealer of
8 the same line make in the ordinary course of business within the
9 previous twelve months.

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

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

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

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

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

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

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

10 (2) The rental payment required under subsection (1) of this
11 section is only required to the extent that the facilities were used
12 for activities under the franchise and only to the extent the
13 facilities were not leased for unrelated purposes. If the rental
14 payment under subsection (1) of this section is made, the manufacturer
15 is entitled to possession and use of the new motor vehicle dealership
16 facilities for the period rent is paid.

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

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

31 (a) The rates charged by the dealer for nonwarranty service or work
32 for parts means the price paid by the dealer for those parts, including
33 all shipping and other charges, increased by the franchisee's average
34 percentage markup. A dealer must establish and declare the dealer's
35 average percentage markup by submitting to the manufacturer one hundred
36 sequential customer-paid service repair orders or ninety days of
37 customer-paid service repair orders, whichever is less, covering

1 repairs made no more than one hundred eighty days before the
2 submission. A change in a dealer's established average percentage
3 markup may only be initiated by the dealer and takes effect thirty days
4 following the submission. A manufacturer may not require a dealer to
5 establish average percentage markup by another methodology. A
6 manufacturer may not require information that the dealer believes is
7 unduly burdensome or time consuming to provide, including, but not
8 limited to, part-by-part or transaction-by-transaction calculations.
9 In calculating the retail rate customarily charged by the dealer for
10 parts and labor, the following work must not be included in the
11 calculation:

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

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

16 (iii) Engine assemblies and transmission assemblies;

17 (iv) Routine maintenance not covered under warranty, such as
18 fluids, filters, and belts not provided in the course of repairs;

19 (v) Nuts, bolts, fasteners, and similar items that do not have an
20 individual part number;

21 (vi) Tires;

22 (vii) Batteries and light bulbs; and

23 (viii) Vehicle reconditioning.

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

36 (c) A dealer may not be granted an increase in the average
37 percentage markup or labor and diagnostic work rate more than twice in
38 one calendar year.

1 (2) All claims for warranty work for parts and labor made by
2 dealers under this section shall be submitted to the manufacturer
3 within one year of the date the work was performed. All claims
4 submitted must be paid by the manufacturer within thirty days following
5 receipt, provided the claim has been approved by the manufacturer. The
6 manufacturer has the right to audit claims for warranty work and to
7 charge the dealer for any unsubstantiated, incorrect, or false claims
8 for a period of (~~one year~~) six months following payment. However,
9 the manufacturer may audit and charge the dealer for any fraudulent
10 claims during any period for which an action for fraud may be commenced
11 under applicable state law.

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

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

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

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

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

36 (b) Discriminate between new motor vehicle dealers by selling or

1 offering to sell parts or accessories to one dealer at a lower actual
2 price than the actual price offered to another dealer;

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

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

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

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

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

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

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

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

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

27 (v) A manufacturer to own, operate, or control a new motor vehicle
28 dealership trading exclusively in a single line make of the
29 manufacturer if (A) the manufacturer does not own, directly or
30 indirectly, in the aggregate, in excess of forty-five percent of the
31 total ownership interest in the dealership, (B) at the time the
32 manufacturer first acquires ownership or assumes operation or control
33 of any such dealership, the distance between any dealership thus owned,
34 operated, or controlled and the nearest new motor vehicle dealership
35 trading in the same line make of vehicle and in which the manufacturer
36 has no ownership or control is not less than fifteen miles and complies
37 with the applicable provisions in the relevant market area sections of
38 this chapter, (C) all of the manufacturer's franchise agreements confer

1 rights on the dealer of that line make to develop and operate within a
2 defined geographic territory or area, as many dealership facilities as
3 the dealer and the manufacturer agree are appropriate, and (D) as of
4 January 1, 2000, the manufacturer had no more than four new motor
5 vehicle dealers of that manufacturer's line make in this state, and at
6 least half of those dealers owned and operated two or more dealership
7 facilities in the geographic territory or area covered by their
8 franchise agreements with the manufacturer;

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

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

25 (j)(i) Terminate, cancel, or fail to renew a franchise with a new
26 motor vehicle dealer based upon any of the following events, which do
27 not constitute good cause for termination, cancellation, or nonrenewal
28 under RCW 46.96.060: (A) The fact that the new motor vehicle dealer
29 owns, has an investment in, participates in the management of, or holds
30 a franchise agreement for the sale or service of another make or line
31 of new motor vehicles; (B) the fact that the new motor vehicle dealer
32 has established another make or line of new motor vehicles or service
33 in the same dealership facilities as those of the manufacturer or
34 distributor; (C) that the new motor vehicle dealer has or intends to
35 relocate the manufacturer or distributor's make or line of new motor
36 vehicles or service to an existing dealership facility that is within
37 the relevant market area, as defined in RCW 46.96.140, of the make or
38 line to be relocated, except that, in any nonemergency circumstance,

1 the dealer must give the manufacturer or distributor at least sixty
2 days' notice of his or her intent to relocate and the relocation must
3 comply with RCW 46.96.140 and 46.96.150 for any same make or line
4 facility; or (D) the failure of a franchisee to change the location of
5 the dealership or to make substantial alterations to the use or number
6 of franchises on the dealership premises or facilities.

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

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

29 (l) Require, by contract or otherwise, a new motor vehicle dealer
30 to make a material alteration, expansion, or addition to any dealership
31 facility, unless the required alteration, expansion, or addition is
32 uniformly required of other similarly situated new motor vehicle
33 dealers of the same make or line of vehicles and is reasonable in light
34 of all existing circumstances, including economic conditions. In any
35 proceeding in which a required facility alteration, expansion, or
36 addition is an issue, the manufacturer or distributor has the burden of
37 proof. Except for a program or any renewal or modification of a
38 program that is in effect with one or more new motor vehicle dealers in

1 this state on the effective date of this section, a manufacturer shall
2 not require, coerce, or attempt to coerce any new motor vehicle dealer
3 by program, policy, facility guide, standard, or otherwise to change
4 the location of the dealership or construct, replace, renovate, or make
5 any substantial changes, alterations, or remodeling to a new motor
6 vehicle dealer's sales or service facilities before the fifteenth
7 anniversary of the date of issuance of the certificate of occupancy or
8 the manufacturer's approval, whichever is later, from:

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

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

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

33 (n) Condition the sale, transfer, relocation, or renewal of a
34 franchise agreement or condition manufacturer, distributor, factory
35 branch, or factory representative sales, services, or parts incentives
36 upon the manufacturer obtaining site control, including rights to
37 purchase or lease the dealer's facility, or an agreement to make

1 improvements or substantial renovations to a facility. For purposes of
2 this section, a substantial renovation has a gross cost to the dealer
3 in excess of five thousand dollars;

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

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

29 (q) Require, coerce, or attempt to coerce any new motor vehicle
30 dealer by program, policy, facility guide, standard, or otherwise to
31 order or accept delivery of any service or repair appliances,
32 equipment, parts, or accessories, or any other commodity not required
33 by law, which the dealer has not voluntarily ordered.

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 in
24 existence on or after the effective date of this section. The
25 regulation of the relationship between manufacturers and new motor
26 vehicle dealers in this state is important and vital to the maintenance
27 of a high level of public health and welfare both immediate and future
28 and is hereby declared to be affected with the public interest. This
29 act is enacted in the exercise of the police power of the state for the
30 purpose of protecting the immediate and future health and welfare of
31 the people of the state.

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