
SUBSTITUTE SENATE BILL 6272

State of Washington

63rd Legislature

2014 Regular Session

By Senate Commerce & Labor (originally sponsored by Senators Hewitt, Conway, Holmquist Newbry, King, Fain, Hobbs, Hasegawa, Cleveland, Rolfes, Hill, Rivers, Dammeier, Keiser, Kohl-Welles, and Angel)

READ FIRST TIME 02/07/14.

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, and 46.96.185; adding a new section to chapter
4 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 or
9 dealer's customer 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) A manufacturer does not have good cause for termination,
14 cancellation, or nonrenewal, unless:

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

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

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

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

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

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

1 (a) Dealer cost plus any charges by the manufacturer for
2 distribution, delivery, and taxes, less all allowances paid or credited
3 to the dealer by the manufacturer, of unused, undamaged, and unsold new
4 motor vehicles in the new motor vehicle dealer's inventory that were
5 acquired from the manufacturer or another new motor vehicle dealer of
6 the same line make in the ordinary course of business within the
7 previous twelve months;

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

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

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

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

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

1 To the extent the franchise agreement provides for payment or
2 reimbursement to the new motor vehicle dealer in excess of that
3 specified in this section, the provisions of the franchise agreement
4 shall control.

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

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

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

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

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

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

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

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

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

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

27 **Sec. 6.** RCW 46.96.185 and 2010 c 178 s 6 are each amended to read
28 as follows:

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

35 (a) Discriminate between new motor vehicle dealers by selling or
36 offering to sell a like vehicle to one dealer at a lower actual price

1 than the actual price offered to another dealer for the same model
2 similarly equipped;

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

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

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

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

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

36 (g) Compete with a new motor vehicle dealer of any make or line by
37 acting in the capacity of a new motor vehicle dealer, or by owning,

1 operating, or controlling, whether directly or indirectly, a motor
2 vehicle dealership in this state. It is not, however, a violation of
3 this subsection for:

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

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

1 (1)(g)(ii) relieves a manufacturer, distributor, factory branch, or
2 factory representative from complying with (a) through (f) of this
3 subsection;

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

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

30 (v) A manufacturer to own, operate, or control a new motor vehicle
31 dealership trading exclusively in a single line make of the
32 manufacturer if (A) the manufacturer does not own, directly or
33 indirectly, in the aggregate, in excess of forty-five percent of the
34 total ownership interest in the dealership, (B) at the time the
35 manufacturer first acquires ownership or assumes operation or control
36 of any such dealership, the distance between any dealership thus owned,
37 operated, or controlled and the nearest new motor vehicle dealership
38 trading in the same line make of vehicle and in which the manufacturer

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

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

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

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

30 (j)(i) Terminate, cancel, or fail to renew a franchise with a new
31 motor vehicle dealer based upon any of the following events, which do
32 not constitute good cause for termination, cancellation, or nonrenewal
33 under RCW 46.96.060: (A) The fact that the new motor vehicle dealer
34 owns, has an investment in, participates in the management of, or holds
35 a franchise agreement for the sale or service of another make or line
36 of new motor vehicles; (B) the fact that the new motor vehicle dealer
37 has established another make or line of new motor vehicles or service
38 in the same dealership facilities as those of the manufacturer or

1 distributor; (C) that the new motor vehicle dealer has or intends to
2 relocate the manufacturer or distributor's make or line of new motor
3 vehicles or service to an existing dealership facility that is within
4 the relevant market area, as defined in RCW 46.96.140, of the make or
5 line to be relocated, except that, in any nonemergency circumstance,
6 the dealer must give the manufacturer or distributor at least sixty
7 days' notice of his or her intent to relocate and the relocation must
8 comply with RCW 46.96.140 and 46.96.150 for any same make or line
9 facility; or (D) the failure of a franchisee to change the location of
10 the dealership or to make substantial alterations to the use or number
11 of franchises on the dealership premises or facilities.

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

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

34 (l) Require, by contract or otherwise, a new motor vehicle dealer
35 to make a material alteration, expansion, or addition to any dealership
36 facility, unless the required alteration, expansion, or addition is
37 uniformly required of other similarly situated new motor vehicle
38 dealers of the same make or line of vehicles and is reasonable in light

1 of all existing circumstances, including economic conditions. In any
2 proceeding in which a required facility alteration, expansion, or
3 addition is an issue, the manufacturer or distributor has the burden of
4 proof. Except for a program or any renewal or modification of a
5 program that is in effect with one or more new motor vehicle dealers in
6 this state on the effective date of this section, a manufacturer shall
7 not require, coerce, or attempt to coerce any new motor vehicle dealer
8 by program, policy, standard, or otherwise to change the location of
9 the dealership or construct, replace, renovate, or make any substantial
10 changes, alterations, or remodeling to a new motor vehicle dealer's
11 sales or service facilities, except as necessary to comply with health
12 or safety laws or to comply with technology requirements without which
13 a dealer would be unable to service a vehicle the dealer has elected to
14 sell, before the fifteenth anniversary of the date of issuance of the
15 certificate of occupancy or the manufacturer's approval, whichever is
16 later, from:

17 (i) The date construction of the dealership at that location was
18 completed if the construction was in substantial compliance with
19 standards or plans provided by a manufacturer, distributor, or
20 representative or through a subsidiary or agent of the manufacturer,
21 distributor, or representative; or

22 (ii) The date a prior change, alteration, or remodel of the
23 dealership at that location was completed if the construction was in
24 substantial compliance with standards or plans provided by a
25 manufacturer, distributor, or representative or through a subsidiary or
26 agent of the manufacturer, distributor, or representative;

27 (m) Prevent or attempt to prevent by contract or otherwise any new
28 motor vehicle dealer from changing the executive management of a new
29 motor vehicle dealer unless the manufacturer or distributor, having the
30 burden of proof, can show that a proposed change of executive
31 management will result in executive management by a person or persons
32 who are not of good moral character or who do not meet reasonable,
33 preexisting, and equitably applied standards of the manufacturer or
34 distributor. If a manufacturer or distributor rejects a proposed
35 change in the executive management, the manufacturer or distributor
36 shall give written notice of its reasons to the dealer within sixty
37 days after receiving written notice from the dealer of the proposed

1 change and all related information reasonably requested by the
2 manufacturer or distributor, or the change in executive management must
3 be considered approved; ((or))

4 (n) Condition the sale, transfer, relocation, or renewal of a
5 franchise agreement or condition manufacturer, distributor, factory
6 branch, or factory representative sales, services, or parts incentives
7 upon the manufacturer obtaining site control, including rights to
8 purchase or lease the dealer's facility, or an agreement to make
9 improvements or substantial renovations to a facility. For purposes of
10 this section, a substantial renovation has a gross cost to the dealer
11 in excess of five thousand dollars;

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

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

1 (g) Require, coerce, or attempt to coerce any new motor vehicle
2 dealer by program, policy, facility guide, standard, or otherwise to
3 order or accept delivery of any service or repair appliances,
4 equipment, parts, or accessories, or any other commodity not required
5 by law, which the dealer has not voluntarily ordered or which the
6 dealer does not have the right to return for a full refund within
7 ninety days.

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

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

22 (a) "Actual price" means the price to be paid by the dealer less
23 any incentive paid by the manufacturer, distributor, factory branch, or
24 factory representative, whether paid to the dealer or the ultimate
25 purchaser of the vehicle.

26 (b) "Control" or "controlling" means (i) the possession of, title
27 to, or control of ten percent or more of the voting equity interest in
28 a person, whether directly or indirectly through a fiduciary, agent, or
29 other intermediary, or (ii) the possession, direct or indirect, of the
30 power to direct or cause the direction of the management or policies of
31 a person, whether through the ownership of voting securities, through
32 director control, by contract, or otherwise, except as expressly
33 provided under the franchise agreement.

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

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

1 (e) "Own" or "ownership" means to hold the beneficial ownership of
2 one percent or more of any class of equity interest in a dealership,
3 whether the interest is that of a shareholder, partner, limited
4 liability company member, or otherwise. To hold an ownership interest
5 means to have possession of, title to, or control of the ownership
6 interest, whether directly or indirectly through a fiduciary, agent, or
7 other intermediary.

8 (4) A violation of this section is deemed to affect the public
9 interest and constitutes an unlawful and unfair practice under chapter
10 19.86 RCW. A person aggrieved by an alleged violation of this section
11 may petition the department to have the matter handled as an
12 adjudicative proceeding under chapter 34.05 RCW.

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 46.96 RCW
14 to read as follows:

15 (1) Notwithstanding the terms or conditions of any consent,
16 authorization, release, novation, franchise, or other contract or
17 agreement, whenever any manufacturer, factory branch, distributor,
18 distributor branch, dealer management computer system vendor, or any
19 third party acting on behalf of or through, or approved, referred,
20 endorsed, authorized, certified, granted preferred status, or
21 recommended by, any manufacturer, factory branch, distributor,
22 distributor branch, or dealer management computer system vendor,
23 requires that a new motor vehicle dealer provide any other new motor
24 vehicle dealer, consumer, or customer data or information through
25 direct access to the dealer's management computer system, the new motor
26 vehicle dealer is not required to provide, and may not be required to
27 consent to provide in any written agreement, such direct access to its
28 management computer system.

29 However, the new motor vehicle dealer may provide any other new
30 motor vehicle dealer, consumer, or customer data or information
31 specified by the requesting party by timely obtaining and pushing or
32 otherwise furnishing the requested data to the requesting party in a
33 widely accepted file format, such as comma delimited, provided that
34 when a new motor vehicle dealer would otherwise be required to provide
35 direct access to its management computer system under the terms of a
36 consent, authorization, release, novation, franchise, or other contract
37 or agreement, a new motor vehicle dealer that elects to provide data or

1 information through other means may be charged a reasonable initial
2 set-up fee and reasonable processing fee based on the actual
3 incremental costs incurred by the party requesting the data for
4 establishing and implementing the process for the dealer. Any term or
5 provision contained in any consent, authorization, release, novation,
6 franchise, or other contract or agreement that is inconsistent with
7 this subsection is voidable at the option of the new motor vehicle
8 dealer.

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

35 NEW SECTION. **Sec. 8.** This act applies to all franchises and
36 contracts between manufacturers and new motor vehicle dealers amended,
37 renewed, or entered into after the effective date of this section. For

1 purposes of chapter 46.96 RCW, an agreement between a manufacturer and
2 new motor vehicle dealer entered into after the effective date of this
3 section, addressing any issues governed by chapter 46.96 RCW, is
4 considered an amendment to an existing franchise.

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