

**SSB 6304** - S AMD **891**

By Senator Liiias

1 On page , after line , strike all of section .

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3 Renumber the remaining sections consecutively and correct any  
4 internal references accordingly.

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7 **Sec. 301.** RCW 46.96.185 and 2018 c 296 s 2 are each amended to  
8 read as follows:

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

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

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

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

26 (d) Discriminate between new motor vehicle dealers by adopting a  
27 method, or changing an existing method, for the allocation,

1 scheduling, or delivery of new motor vehicles, parts, or accessories  
2 to its dealers that is not fair, reasonable, and equitable. Upon the  
3 request of a dealer, a manufacturer, distributor, factory branch, or  
4 factory representative shall disclose in writing to the dealer the  
5 method by which new motor vehicles, parts, and accessories are  
6 allocated, scheduled, or delivered to its dealers handling the same  
7 line or make of vehicles;

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

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

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

31 (i) A manufacturer, distributor, factory branch, or factory  
32 representative to own or operate a dealership for a temporary period,  
33 not to exceed two years, during the transition from one owner of the  
34 dealership to another where the dealership was previously owned by a

1 franchised dealer and is currently for sale to any qualified  
2 independent person at a fair and reasonable price. The temporary  
3 operation may be extended for one twelve-month period on petition of  
4 the temporary operator to the department. The matter will be handled  
5 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who  
6 is a franchisee of the petitioning manufacturer or distributor may  
7 intervene and participate in a proceeding under this subsection (1)  
8 (g)(i). The temporary operator has the burden of proof to show  
9 justification for the extension and a good faith effort to sell the  
10 dealership to an independent person at a fair and reasonable price;  
11 (ii) A manufacturer, distributor, factory branch, or factory  
12 representative to own or operate a dealership in conjunction with an  
13 independent person in a bona fide business relationship for the  
14 purpose of broadening the diversity of its dealer body and enhancing  
15 opportunities for qualified persons who are part of a group who have  
16 historically been underrepresented in its dealer body, or other  
17 qualified persons who lack the resources to purchase a dealership  
18 outright, and where the independent person: (A) Has made, or within a  
19 period of two years from the date of commencement of operation will  
20 have made, a significant, bona fide capital investment in the  
21 dealership that is subject to loss; (B) has an ownership interest in  
22 the dealership; and (C) operates the dealership under a bona fide  
23 written agreement with the manufacturer, distributor, factory branch,  
24 or factory representative under which he or she will acquire all of  
25 the ownership interest in the dealership within a reasonable period  
26 of time and under reasonable terms and conditions. The manufacturer,  
27 distributor, factory branch, or factory representative has the burden  
28 of proof of establishing that the acquisition of the dealership by  
29 the independent person was made within a reasonable period of time  
30 and under reasonable terms and conditions. Nothing in this subsection  
31 (1)(g)(ii) relieves a manufacturer, distributor, factory branch, or  
32 factory representative from complying with (a) through (f) of this  
33 subsection;

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

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

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

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

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

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

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

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

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

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

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

16 (l) Require, by contract or otherwise, a new motor vehicle dealer  
17 to make a material alteration, expansion, or addition to any  
18 dealership facility, unless the required alteration, expansion, or  
19 addition is uniformly required of other similarly situated new motor  
20 vehicle dealers of the same make or line of vehicles and is  
21 reasonable in light of all existing circumstances, including economic  
22 conditions. In any proceeding in which a required facility  
23 alteration, expansion, or addition is an issue, the manufacturer or  
24 distributor has the burden of proof. Except for a program or any  
25 renewal or modification of a program that is in effect with one or  
26 more new motor vehicle dealers in this state on June 12, 2014, a  
27 manufacturer shall not require, coerce, or attempt to coerce any new  
28 motor vehicle dealer by program, policy, standard, or otherwise to  
29 change the location of the dealership or construct, replace,  
30 renovate, or make any substantial changes, alterations, or remodeling  
31 to a new motor vehicle dealer's sales or service facilities, except  
32 as necessary to comply with health or safety laws or to comply with  
33 technology requirements without which a dealer would be unable to  
34 service a vehicle the dealer has elected to sell, before the tenth

1 anniversary of the date of issuance of the certificate of occupancy  
2 or the manufacturer's approval, whichever is later, from:

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

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

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

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



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

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

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 or which the  
34 dealer does not have the right to return unused for a full refund

1 within ninety days or a longer period as mutually agreed upon by the  
2 dealer and manufacturer; or

3 (r) Modify the franchise agreement for any new motor vehicle  
4 dealer unless the manufacturer notifies the dealer in writing of its  
5 intention to modify the agreement at least ninety days before the  
6 effective date thereof, stating the specific grounds for the  
7 modification, and undertakes the modification in good faith, for good  
8 cause, and in a manner that would not adversely and substantially  
9 alter the rights, obligations, investment, or return on investment of  
10 the franchised new motor vehicle dealer under the existing agreement.

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

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

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

29 (b) "Control" or "controlling" means (i) the possession of, title  
30 to, or control of ten percent or more of the voting equity interest  
31 in a person, whether directly or indirectly through a fiduciary,  
32 agent, or other intermediary, or (ii) the possession, direct or  
33 indirect, of the power to direct or cause the direction of the  
34 management or policies of a person, whether through the ownership of

1 voting securities, through director control, by contract, or  
2 otherwise, except as expressly provided under the franchise  
3 agreement.

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

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

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

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

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22 **SSB 6304** S AMD

23 By Senator Lias

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25 On page 1, line ... of the title, after "...", insert "..."

EFFECT:

--- END ---