Chapter 46.93 RCW
MOTORSPORTS VEHICLES—DEALER AND MANUFACTURER FRANCHISES

Sections

RCW 46.93.010 Findings—Intent. The legislature finds and declares that the distribution and sale of motorsports vehicles in this state vitally affect the general economy of the state and the public interest and public welfare, that provision for warranty service to motorsports vehicles is of substantial concern to the people of this state, that the maintenance of fair competition among dealers and others is in the public interest, and that the maintenance of strong and sound dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state. The legislature further finds that there is a substantial disparity in bargaining power between motorsports vehicle manufacturers and their dealers, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate the relationship between motorsports vehicle dealers and motorsports vehicle manufacturers, importers, distributors, and their representatives doing business in this state, not only for the protection of dealers but also for the benefit for the public in assuring the continued availability and servicing of motorsports vehicles sold to the public.

The legislature recognizes it is in the best interest for manufacturers and dealers of motorsports vehicles to conduct business with each other in a fair, efficient, and competitive manner. The legislature declares the public interest is best served by dealers being assured of the ability to manage their business enterprises under a contractual obligation with manufacturers where dealers do not experience unreasonable interference and are assured of the ability to transfer ownership of their business without undue constraints. It is the intent of the legislature to impose a regulatory scheme and to regulate competition in the motorsports vehicle industry to the extent necessary to balance fairness and efficiency. These actions will permit motorsports vehicle dealers to better serve consumers and allow dealers to devote their best competitive efforts and resources to the sale and services of the manufacturer's products to consumers. [2003 c 354 § 1.]

RCW 46.93.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Department" means the department of licensing.

(2) "Designated successor" means:

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

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

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

(3) "Director" means the director of the department of licensing.

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

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

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

(6) "Manufacturer" means a person, firm, association, corporation, or trust, resident or nonresident, who manufactures or

assembles new and unused motorsports vehicles or remanufactures motorsports vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means a person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes new and unused motorsports vehicles to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, motorsports vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes a sales promotion organization, whether a person, firm, or corporation, that is engaged in promoting the sale of new and unused motorsports vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their motorsports vehicles or for supervising or contracting with their dealers or prospective dealers.

(7) "Motorsports vehicle" means a motorcycle as defined in RCW 46.04.330; a moped as defined in RCW 46.04.304; a motor-driven cycle as defined in RCW 46.04.332; a personal watercraft as defined in RCW 79A.60.010; a snowmobile as defined in RCW 46.04.546; a four-wheel, all-terrain vehicle; and any other motorsports vehicle defined under RCW 46.93.200 by the department that is otherwise not subject to chapter 46.96 RCW.

(8) "New motorsports vehicle dealer" or "dealer" means a person engaged in the business of buying, selling, exchanging, or otherwise dealing in new motorsports vehicles or new and used motorsports vehicles at an established place of business under a franchise, sales and service agreement, or any other contract with a manufacturer of any one or more types of new motorsports vehicles. The term does not include a miscellaneous vehicle dealer as defined in RCW 46.70.011.

(9) "Owner" means a person holding an ownership interest in the business entity operating as a new motorsports vehicle dealer and who is the designated dealer in the new motorsports vehicle franchise agreement.

(10) "Person" means a natural person, partnership, stock company, corporation, trust, agency, or any other legal entity, as well as any individual officers, directors, or other persons in active control of the activities of the entity.

(11) "Place of business" means a permanent, enclosed commercial building, situated within this state, and the real property on which it is located, at which the business of a motorsports vehicle dealer, including the display and repair of motorsports vehicles, may be lawfully conducted in accordance with the terms of all applicable laws and at which the public may contact the motorsports vehicle dealer and employees at all reasonable times.

(12) "Relevant market area" is defined as follows:

(a) If the population in the county in which the existing, proposed new, or relocated dealership is located or is to be located is four hundred thousand or more, the relevant market area is the geographic area within the radius of ten miles around the existing, proposed new, or relocated place of business for the dealership;

(b) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is two hundred

thousand or more and less than four hundred thousand, the relevant market area is the geographic area within a radius of twelve miles around the existing, proposed new, or relocated place of business for the dealership;

(c) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is less than two hundred thousand, the relevant market area is the geographic area within a radius of twenty miles around the existing, proposed new, or relocated place of business for the dealership;

(d) In determining population for this definition, the most recent census by the United States Bureau of Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, will be accumulated for all census tracts either wholly or partially within the relevant market area. [2011 c 171 § 102; 2003 c 354 § 2.]

Reviser's note: *(1) RCW 62A.2-103 was amended by 2012 c 214 § 801, deleting the definition of "good faith."

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

RCW 46.93.030 Termination, cancellation, nonrenewal of franchise restricted. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, no manufacturer may terminate, cancel, or fail to renew a franchise with a new motorsports vehicle dealer, unless the manufacturer has complied with the notice requirements of RCW 46.93.070 and an administrative law judge has determined, if requested in writing by the dealer within forty-five days of receiving a notice from a manufacturer, after hearing, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith regarding the termination, cancellation, or nonrenewal. [2003 c 354 § 3.]

RCW 46.93.040 Determination of good cause, good faith—Petition, notice, decision, appeal. A new motorsports vehicle dealer who has received written notification from the manufacturer of the manufacturer's intent to terminate, cancel, or not renew the franchise, may file a petition with the department for a determination as to the existence of good cause and good faith for the termination, cancellation, or nonrenewal of a franchise. The petition must contain a short statement setting forth the reasons for the dealer's objection to the termination, cancellation, or nonrenewal of the franchise. Upon the filing of the petition and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely petition has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The franchise in question continues in full force and effect pending the administrative law judge's decision. If the decision of the administrative law judge terminating, canceling, or failing to renew a dealer's franchise is appealed by a dealer or manufacturer, the franchise continues in full force and effect until all appeals to a

superior court or any appellate court have been completed. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review. [2003 c 354 § 4.]

RCW 46.93.050 Determination of good cause, good faith—Hearing, decision, procedures—Judicial review. (1) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a petition is filed. If the termination, cancellation, or nonrenewal is under RCW 46.93.070(2), the administrative law judge shall give the proceeding priority consideration and shall render a final decision not later than sixty days after a petition is filed.

(2) The administrative law judge shall conduct the hearing as an adjudicative proceeding in accordance with the procedures provided for in the Administrative Procedure Act, chapter 34.05 RCW. The administrative law judge shall render the final decision and shall enter a final order. Except as otherwise provided in RCW 34.05.446 and 34.05.449, all hearing costs must be borne on an equal basis by the parties to the hearing.

(3) A party to a hearing under this chapter may be represented by counsel. A party to a hearing aggrieved by the final order of the administrative law judge concerning the termination, cancellation, or nonrenewal of a franchise may seek judicial review of the order in the superior court or appellate court in the manner provided for in RCW 34.05.510 through 34.05.598. A petitioner for judicial review need not exhaust all administrative appeals or administrative review processes as a prerequisite for seeking judicial review under this section. [2003 c 354 § 5.]

RCW 46.93.060 Good cause, what constitutes—Burden of proof. (1) Notwithstanding the terms of a franchise or the terms of a waiver, and except as otherwise provided in RCW 46.93.070(2) (a) through (d), good cause exists for termination, cancellation, or nonrenewal of a franchise when there is a failure by the dealer to comply with a provision of the franchise that is both reasonable and of material significance to the franchise relationship, if the dealer was notified of the failure within one hundred eighty days after the manufacturer first acquired knowledge of the failure, and the dealer did not correct the failure after being requested to do so.

If, however, the failure of the dealer relates to the performance of the dealer in sales, service, or level of customer satisfaction, good cause is the failure of the dealer to comply with reasonable performance standards determined by the manufacturer in accordance with uniformly applied criteria, and:

(a) The dealer was advised, in writing, by the manufacturer of the failure;

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

(c) The manufacturer provided the dealer with specific, reasonable goals or reasonable performance standards with which the dealer must comply, together with a suggested timetable or program for attaining those goals or standards, and the dealer was given a

reasonable opportunity, for a period of not more than ninety days, to comply with the goals or standards; and

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

(2) The manufacturer has the burden of proof of establishing good cause and good faith for the termination, cancellation, or nonrenewal of the franchise under this section. [2003 c 354 § 6.]

RCW 46.93.070 Notice of termination, cancellation, or nonrenewal. Before the termination, cancellation, or nonrenewal of a franchise, the manufacturer shall give written notification to both the department and the dealer. The notice must be by certified mail or personally delivered to the new motorsports vehicle dealer and must state the intention to terminate, cancel, or not renew the franchise, the reasons for the termination, cancellation, or nonrenewal, and the effective date of the termination, cancellation, or nonrenewal. The notice must be given:

(1) Not less than ninety days, which runs concurrently with the ninety-day period provided in RCW 46.93.060(1)(c), before the effective date of the termination, cancellation, or nonrenewal;

(2) Not less than fifteen days before the effective date of the termination, cancellation, or nonrenewal with respect to any of the following that constitute good cause for termination, cancellation, or nonrenewal:

(a) Insolvency of the dealer or the filing of any petition by or against the dealer under bankruptcy or receivership law;

(b) Failure of the dealer to conduct sales and service operations during customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the dealer;

(c) Conviction of the dealer, or principal operator of the dealership, of a felony punishable by imprisonment; or

(d) Suspension or revocation of a license that the dealer is required to have to operate the dealership where the suspension or revocation is for a period in excess of thirty days;

(3) Not less than one hundred eighty days before the effective date of termination, cancellation, or nonrenewal, where the manufacturer intends to discontinue sale and distribution of the new motorsports vehicle line. [2003 c 354 § 7.]

RCW 46.93.080 Payments by manufacturer to dealer for inventory, equipment, etc. (1) Upon the termination, cancellation, or nonrenewal of a franchise, the manufacturer shall pay the dealer, at a minimum:

(a) Dealer cost, less all allowances paid or credited to the dealer by the manufacturer, of unused, undamaged, and unsold new motorsports vehicles in the dealer's inventory that were acquired from the manufacturer or another dealer of the same line make in the ordinary course of business;

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

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

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

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

(e) The fair market value of all special tools owned or leased by the dealer that were acquired from the manufacturer or persons approved by the manufacturer, and that were required by the manufacturer, and are in good and usable condition, less reasonable wear and tear. However, if the tools are leased by the dealer, the manufacturer shall pay the dealer such amounts that are required by the lessor to terminate the lease under the terms of the lease agreement.

(2) To the extent the franchise agreement provides for payment or reimbursement to the dealer in excess of that specified in this section, the provisions of the franchise agreement will control.

(3) The manufacturer shall pay the dealer the sums specified in subsection (1) of this section within ninety days after the termination, cancellation, or nonrenewal of the franchise, if the dealer has clear title to the property or can provide clear title to the property upon payment by the manufacturer and is in a position to convey that title to the manufacturer. [2009 c 232 § 1; 2003 c 354 § 8.]

RCW 46.93.090 Mitigation of damages. RCW 46.93.030 through 46.93.080 do not relieve a dealer from the obligation to mitigate the dealer's damages upon termination, cancellation, or nonrenewal of the franchise. [2003 c 354 § 9.]

RCW 46.93.100 Warranty work. (1) Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products, and for work on and preparation of motorsports vehicles received from the manufacturer. The compensation may not be less than the rates reasonably charged by the dealer for like services and parts to retail customers. The compensation may not be reduced by the manufacturer for any reason or made conditional on an activity outside the performance of warranty work.

(2) All claims for warranty work for parts and labor made by dealers under this section must be paid by the manufacturer within thirty days after approval, and must be approved or denied within thirty days of receipt by the manufacturer. Denial of a claim must be

in writing with the specific grounds for denial. The manufacturer may audit claims for warranty work and charge the dealer for any unsubstantiated, incorrect, or false claims for a period of one year after payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

(3) All claims submitted by dealers on the forms and in the manner specified by the manufacturer must be either approved or disapproved within thirty days after their receipt. The manufacturer shall notify the dealer in writing of a disapproved claim, and shall set forth the reasons why the claim was not approved. A claim not specifically disapproved in writing within thirty days after receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim. [2003 c 354 § 10.]

RCW 46.93.110 Designated successor to franchise ownership. (1) Notwithstanding the terms of a franchise, an owner may appoint a designated successor to succeed to the ownership of the dealer franchise upon the owner's death or incapacity.

(2) Notwithstanding the terms of a franchise, a designated successor of a deceased or incapacitated owner of a dealer franchise may succeed to the ownership interest of the owner under the existing franchise, if:

(a) In the case of a designated successor who meets the definition of a designated successor under *RCW 46.93.020(5), but who is not experienced in the business of a new motorsports vehicle dealer, the person will employ an individual who is qualified and experienced in the business of a new motorsports vehicle dealer to help manage the day-to-day operations of the dealership; or in the case of a designated successor who meets the definition of a designated successor under *RCW 46.93.020(5) (b) or (c), the person is qualified and experienced in the business of a new motorsports vehicle dealer and meets the normal, reasonable, and uniformly applied standards for grant of an application as a dealer by the manufacturer; and

(b) The designated successor furnishes written notice to the manufacturer of his or her intention to succeed to the ownership of the dealership within sixty days after the owner's death or incapacity; and

(c) The designated successor agrees to be bound by all terms and conditions of the franchise.

(3) The manufacturer may request, and the designated successor shall promptly provide, such personal and financial information as is reasonably necessary to determine whether the succession should be honored.

(4) A manufacturer may refuse to honor the succession to the ownership of a dealer franchise by a designated successor if the manufacturer establishes that good cause exists for its refusal to honor the succession. If the designated successor of a deceased or incapacitated owner of a dealer franchise fails to meet the requirements set forth in subsection (2)(a), (b), and (c) of this section, good cause for refusing to honor the succession is presumed to exist. If a manufacturer believes that good cause exists for refusing to honor the succession to the ownership of a dealer franchise by a designated successor, the manufacturer shall serve written notice on the designated successor and on the department of

its refusal to honor the succession no earlier than sixty days from the date the notice is served. The notice must be served not later than sixty days after the manufacturer's receipt of:

(a) Notice of the designated successor's intent to succeed to the ownership interest of the dealer's franchise; or

(b) Any personal or financial information requested by the manufacturer.

(5) The notice in subsection (4) of this section must state the specific grounds for the refusal to honor the succession. If the notice of refusal is not timely and properly served, the designated successor may continue the franchise in full force and effect, subject to termination only as otherwise provided under this chapter.

(6) Within twenty days after receipt of the notice, or within twenty days after the end of any appeal procedure provided by the manufacturer, whichever is greater, the designated successor may file a petition with the department protesting the refusal to honor the succession. The petition must contain a short statement setting forth the reasons for the designated successor's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer may not terminate or otherwise discontinue the existing franchise until the administrative law judge has held a hearing and has determined that there is good cause for refusing to honor the succession. If an appeal is taken, the manufacturer may not terminate or discontinue the franchise until all appeals to a superior court or any appellate court have been completed. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review.

(7) The manufacturer has the burden of proof to show that good cause exists for the refusal to honor the succession.

(8) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a protest is filed.

(9) The administrative law judge shall conduct a hearing concerning the refusal to the succession as provided in RCW 46.93.050(2), and all hearing costs must be borne as provided in that subsection. A party to such a hearing aggrieved by the final order of the administrative law judge may appeal as provided and allowed in RCW 46.93.050(3).

(10) This section does not preclude the owner of a dealer franchise from designating any person as his or her successor by a written, notarized, and witnessed instrument filed with the manufacturer. In the event of a conflict between this section and such a written instrument that has not been revoked by written notice from the owner to the manufacturer, the written instrument governs. [2003 c 354 § 11.]

***Reviser's note:** RCW 46.93.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (5) to subsection (2).

RCW 46.93.120 Relevant market area—New or relocated dealerships, notice of. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, if a manufacturer intends or proposes to enter into a franchise to establish an additional dealer

or to relocate an existing dealer within or into a relevant market area in which the same line make of motorsports vehicle is then represented, the manufacturer shall provide at least ten days advance written notice to the department and to each dealer of the same line make in the relevant market area, of the manufacturer's intention to establish an additional dealer or to relocate an existing dealer within or into the relevant market area. The notice must be sent by certified mail to each such party and include the following information:

(1) The specific location at which the additional or relocated dealer will be established;

(2) The date on or after which the additional or relocated dealer intends to commence business at the proposed location;

(3) The identity of all dealers who are franchised to sell the same line make vehicles as the proposed dealer and who have licensed locations within the relevant market area;

(4) The names and addresses, if available, of the owners of and principal investors in the proposed additional or relocated dealership; and

(5) The specific grounds or reasons for the proposed establishment of an additional dealer or relocation of an existing dealer. [2003 c 354 § 12.]

RCW 46.93.130 Protest of new or relocated dealership—Hearing—Arbitration. (1) Within thirty days after receipt of the notice under RCW 46.93.120, or within thirty days after the end of an appeal procedure provided by the manufacturer, whichever is greater, a dealer notified or entitled to notice may file a petition with the department protesting the proposed establishment or relocation. The petition must contain a short statement setting forth the reasons for the dealer's objection to the proposed establishment or relocation. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer may not establish or relocate the dealer until the administrative law judge has held a hearing and administrative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, and has determined that there is good cause for permitting the proposed establishment or relocation. When more than one protest is filed against the establishment or relocation of the same dealer, the administrative law judge shall consolidate the hearings to expedite disposition of the matter.

(2) If a manufacturer provides in the franchise agreement or by written statement distributed and provided to its dealers for arbitration under the Washington Arbitration Act, *chapter 7.04 RCW, as a mechanism for resolving disputes relating to the establishment of an additional new motorsports vehicle dealer or the relocation of a new motorsports vehicle dealer, subsection (1) of this section and RCW 46.93.140 will take precedence and the arbitration provision in the franchise agreement or a written statement is void, unless the manufacturer and dealer agree to use arbitration.

(3) If the manufacturer and dealer agree to use arbitration, the dispute must be referred for arbitration to such arbitrator as may be agreed upon by the parties to the dispute. The thirty-day period for

filing a protest under subsection (1) of this section still applies except the protesting dealer shall file the protest with the manufacturer. If the parties cannot agree upon a single arbitrator within thirty days from the date the protest is filed, the protesting dealer will select an arbitrator, the manufacturer will select an arbitrator, and the two arbitrators will then select a third arbitrator. If a third arbitrator is not agreed upon within thirty days, any party may apply to the superior court, and the judge of the superior court having jurisdiction will appoint the third arbitrator. The protesting dealer will pay the arbitrator selected by him or her, and the manufacturer will pay the arbitrator it selected. The expense of the third arbitrator and all other expenses of arbitration will be shared equally by the parties. Attorneys' fees and fees paid to expert witnesses are not expenses of arbitration and will be paid by the person incurring them.

(4) Notwithstanding the terms of a franchise or written statement of the manufacturer and notwithstanding the terms of a waiver, the arbitration will take place in this state in the county where the protesting dealer has its principal place of business. RCW 46.93.140 applies to a determination made by the arbitrator or arbitrators in determining whether good cause exists for permitting the proposed establishment or relocation of a dealer, and the manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation. After a hearing has been held, the arbitrator or arbitrators shall render a decision as expeditiously as possible, but in any event not later than one hundred twenty days from the date the arbitrator or arbitrators are selected or appointed. The manufacturer may not establish or relocate the new motorsports vehicle dealer until the arbitration hearing has been held and the arbitrator or arbitrators have determined that there is good cause for permitting the proposed establishment or relocation and any judicial appeals under *chapter 7.04 RCW have been completed. The written decision of the arbitrator is binding upon the parties unless modified, corrected, or vacated under the Washington Arbitration Act. Any party may appeal the decision of the arbitrator or arbitrators under the Washington Arbitration Act, *chapter 7.04 RCW. [2003 c 354 § 13.]

***Reviser's note:** Chapter 7.04 RCW was repealed in its entirety by 2005 c 433 § 50, effective January 1, 2006. Cf. chapter 7.04A RCW.

RCW 46.93.140 Factors considered by administrative law judge. In determining whether good cause exists for permitting the proposed establishment or relocation of a dealer of the same line make, the factors that the administrative law judge shall consider must include, but are not limited to the following:

(1) The extent, nature, and permanency of the investment of both the existing dealers of the same line make in the relevant market area and the proposed additional or relocating dealer, including obligations reasonably incurred by the existing dealers to perform their obligations under their respective franchises;

(2) The growth or decline in population and new motorsports vehicle registrations during the past five years in the relevant market area;

(3) The effect on the consuming public;

(4) The effect on the existing dealers in the relevant market area, including any adverse financial impact;

(5) The reasonably expected or anticipated vehicle market for the relevant market area, including demographic factors such as age of population, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers in the relevant market area;

(6) Whether it is injurious or beneficial to the public welfare for an additional dealership to be established;

(7) Whether the dealers of the same line make in the relevant market area are providing adequate competition and convenient customer care for the motorsports vehicles of the same line make in the relevant market area, including the adequacy of motorsports vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel;

(8) Whether the establishment of an additional dealer would increase competition and be in the public interest;

(9) Whether the manufacturer is motivated principally by good faith to establish an additional or new dealer and not by noneconomic considerations;

(10) Whether the manufacturer has denied its existing dealers of the same line make the opportunity for reasonable growth, market expansion, or relocation;

(11) Whether the protesting dealer or dealers are in substantial compliance with their dealer agreements or franchises; and

(12) Whether the manufacturer has complied with the requirements of RCW 46.93.120 and 46.93.130. [2003 c 354 § 14.]

RCW 46.93.150 Hearing—Procedures, costs, appeal. (1) The manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation.

(2) The administrative law judge shall conduct any hearing as provided in RCW 46.93.050(2) and all hearing costs will be borne as provided in that subsection. The administrative law judge shall render the final decision as expeditiously as possible, but in any event not later than one hundred twenty days after a protest is filed. If more than one protest is filed, the one hundred twenty days commences to run from the date the last protest is filed. A party to such a hearing aggrieved by the final order of the administrative law judge may appeal as provided and allowed in RCW 46.93.050(3). [2003 c 354 § 15.]

RCW 46.93.160 Relocation requirements—Exceptions. RCW 46.93.120 through 46.93.150 do not apply:

(1) To the sale or transfer of the ownership or assets of an existing dealer where the transferee proposes to engage in business representing the same line make at the same location or within two miles of that location;

(2) To the relocation of an existing dealer within the dealer's relevant market area, if the relocation is not at a site within eight miles of any dealer of the same line make;

(3) If the proposed dealer is to be established at or within two miles of a location at which a former dealer of the same line make had ceased operating within the previous twenty-four months;

(4) Where the proposed relocation is two miles or less from the existing location of the relocating dealer; or

(5) Where the proposed relocation is to be further away from all other existing dealers of the same line make in the relevant market area. [2003 c 354 § 16.]

RCW 46.93.170 Unfair practices. (1) Notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative, or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative, shall not:

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

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

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

(d) Discriminate between dealers by adopting a method, or changing an existing method, for the allocation, scheduling, or delivery of new motorsports vehicles, parts, or accessories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer shall disclose in writing to the dealer the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles;

(e) Give preferential treatment to some dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motorsports vehicles sold or distributed by the manufacturer, a new vehicle, parts, or accessories, if the vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials, or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles;

(f) Compete with a dealer by acting in the capacity of a dealer, or by owning, operating, or controlling, whether directly or indirectly, a dealership in this state. It is not, however, a violation of this subsection for:

(i) A manufacturer to own or operate a dealership for a temporary period, not to exceed two years, during the transition from one owner of the dealership to another where the dealership was previously owned by a franchised dealer and is currently for sale to any qualified independent person at a fair and reasonable price. The temporary operation may be extended for one twelve-month period on petition of the temporary operator to the department. The matter will be handled as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is a franchisee of the petitioning manufacturer or distributor may intervene and participate in a proceeding under this subsection (1)(f)(i). The temporary operator has the burden of proof to show

justification for the extension and a good faith effort to sell the dealership to an independent person at a fair and reasonable price;

(ii) A manufacturer to own or operate a dealership in conjunction with an independent person in a bona fide business relationship for the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, and where the independent person (A) has made a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions;

(iii) A manufacturer to own or operate a dealership in conjunction with an independent person in a bona fide business relationship where the independent person (A) has made a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacture [manufacturer] has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. The number of dealerships operated under this subsection (1)(f)(iii) may not exceed four percent rounded up to the nearest whole number of a manufacturer's total of dealer franchises in this state;

(iv) A manufacturer to own, operate, or control a dealership trading exclusively in a single line make of the manufacturer if (A) the manufacturer does not own, directly or indirectly, in the aggregate, in excess of forty-five percent of the total ownership interest in the dealership; (B) at the time the manufacturer first acquires ownership or assumes operation or control of any such dealership, the distance between any dealership thus owned, operated, or controlled and the nearest dealership trading in the same line make of vehicle and in which the manufacturer has no ownership or control complies with the applicable provisions in the relevant market area sections of this chapter; (C) all of the manufacturer's franchise agreements confer rights on the dealer of that line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and the manufacturer agree are appropriate; and (D) the manufacturer had no more than four new motorsports vehicle dealers of that manufacturer's line make in this state, and at least half of those dealers owned and operated two or more dealership facilities in the geographic territory or area covered by their franchise agreements with the manufacturer;

(g) Compete with a dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the manufacturer's new motorsports vehicle warranty and extended warranty.

Nothing in this subsection (1)(g), however, prohibits a manufacturer from owning or operating a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the manufacturer;

(h) Use confidential or proprietary information obtained from a dealer to unfairly compete with the dealer without the prior written consent of the dealer. For purposes of this subsection (1)(h), "confidential or proprietary information" means trade secrets as defined in RCW 19.108.010, business plans, marketing plans or strategies, customer lists, contracts, sales data, revenues, or other financial information;

(i) Coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to accept, buy, or order any motorsports vehicle, part, or accessory, or any other commodity or service not voluntarily ordered, or requested, or to buy, order, or pay anything of value for such items in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(j) Coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter;

(k) Require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;

(l) Prevent or attempt to prevent a dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed if the dealer meets the reasonable, written, and uniformly applied capital requirements determined by the manufacturer;

(m) Unreasonably require the dealer to change the location or require any substantial alterations to the place of business;

(n) Condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written notice is first provided one hundred eighty days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business;

(o) Coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items that have been voluntarily requested or ordered by the dealer, and except items required by law;

(p) Fail to hold harmless and indemnify a dealer against losses, including lawsuits and court costs, arising from: (i) The manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the manufacturer on the manufacture or performance of a motorsports vehicle without negligence on the part of the dealer; (ii) damage to merchandise in transit where the manufacturer specifies the carrier; (iii) the manufacturer's failure to jointly defend product liability suits concerning the

motorsports vehicle, part, or accessory provided to the dealer; or (iv) any other act performed by the manufacturer;

(q) Unfairly prevent or attempt to prevent a dealer from receiving reasonable compensation for the value of a motorsports vehicle;

(r) Fail to pay to a dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the manufacturer on grounds that a new motorsports vehicle, or a prior year's model, is in the dealer's inventory at the time of introduction of new model motorsports vehicles;

(s) Deny a dealer the right of free association with any other dealer for any lawful purpose;

(t) Charge increased prices without having given written notice to the dealer at least fifteen days before the effective date of the price increases;

(u) Permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than their franchised dealers;

(v) Require or coerce a dealer to sell, assign, or transfer a retail sales installment contract, or require the dealer to act as an agent for a manufacturer, in the securing of a promissory note, a security agreement given in connection with the sale of a motorsports vehicle, or securing of a policy of insurance for a motorsports vehicle. The manufacturer may not condition delivery of any motorsports vehicle, parts, or accessories upon the dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;

(w) Require or coerce a dealer to grant a manufacturer a right of first refusal or other preference to purchase the dealer's franchise or place of business, or both.

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

(3) The following definitions apply to this section:

(a) "Actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, whether paid to the dealer or the ultimate purchaser of the motorsports vehicle.

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

(c) "Operate" means to manage a dealership, whether directly or indirectly.

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

(4) A violation of this section is deemed to affect the public interest and constitutes an unlawful and unfair practice under chapter 19.86 RCW. A person aggrieved by an alleged violation of this section may petition the department to have the matter handled as an adjudicative proceeding under chapter 34.05 RCW. [2003 c 354 § 17; (2009 c 517 § 1 expired August 1, 2009).]

Effective date—2009 c 517: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2009]." [2009 c 517 § 2.]

Expiration date—2009 c 517: "This act expires August 1, 2009." [2009 c 517 § 3.]

RCW 46.93.180 Sale, transfer, or exchange of franchise. (1) Notwithstanding the terms of a franchise, a manufacturer may not unreasonably withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer who meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a dealer or is capable of being approved by the department as a dealer in this state. A manufacturer's failure to respond in writing to a request for consent under this subsection within sixty days after receipt of a written request on the forms, if any, generally used by the manufacturer containing the information and reasonable promises required by a manufacturer, is deemed to be consent to the request. A manufacturer may request, and, if so requested, the applicant for a franchise (a) shall promptly provide such personal and financial information as is reasonably necessary to determine whether the sale, transfer, or exchange should be approved, and (b) shall agree to be bound by all reasonable terms and conditions of the franchise.

(2) If a manufacturer refuses to approve the sale, transfer, or exchange of a franchise, the manufacturer shall serve written notice on the applicant, the transferring, selling, or exchanging dealer, and the department, of its refusal to approve the transfer of the franchise no later than sixty days after the date the manufacturer receives the written request from the dealer. If the manufacturer has requested personal or financial information from the applicant under subsection (1) of this section, the notice must be served not later than sixty days after the receipt of all of such documents. Service of all notices under this section must be made by personal service or by certified mail, return receipt requested.

(3) The notice in subsection (2) of this section must state the specific grounds for the refusal to approve the sale, transfer, or exchange of the franchise.

(4) Within twenty days after receipt of the notice of refusal to approve the sale, transfer, or exchange of the franchise by the

transferring dealer, the dealer may file a petition with the department to protest the refusal to approve the sale, transfer, or exchange. The petition must contain a short statement setting forth the reasons for the dealer's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed, and the department shall arrange for a hearing with an administrative law judge as the presiding officer to determine if the manufacturer unreasonably withheld consent to the sale, transfer, or exchange of the franchise.

(5) In determining whether the manufacturer unreasonably withheld its approval to the sale, transfer, or exchange, the manufacturer has the burden of proof that it acted reasonably. A manufacturer's refusal to accept or approve a proposed buyer who otherwise meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer, or who otherwise is capable of operating as a dealer in this state, is presumed to be unreasonable.

(6) The administrative law judge shall conduct a hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred twenty days after a protest is filed. Only the selling, transferring, or exchanging dealer and the manufacturer may be parties to the hearing.

(7) The administrative law judge shall conduct any hearing as provided in RCW 46.93.050(2), and all hearing costs must be borne as provided in that subsection. Only the manufacturer and the selling, transferring, or exchanging dealer may appeal the final order of the administrative law judge to the superior court or the appellate court as provided in the Administrative Procedure Act, chapter 34.05 RCW. [2003 c 354 § 18.]

RCW 46.93.190 Petition and hearing filing fees, costs, security. The department shall determine and establish the amount of the filing fees required in RCW 46.93.040, 46.93.110, 46.93.130, and 46.93.180. The fees must be set in accordance with RCW 43.24.086.

The department may also require the petitioning or protesting party to give security, in such sum as the department deems proper but not to exceed one thousand dollars, for the payment of such costs as may be incurred in conducting the hearing as required under this chapter. The security may be given in the form of a bond or stipulation or other undertaking with one or more sureties.

At the conclusion of the hearing, the department shall assess, in equal shares, each of the parties to the hearing for the cost of conducting the hearing. Upon receipt of payment of the costs, the department shall refund and return to the petitioning party any excess funds initially posted by the party as security for the hearing costs. If the petitioning party provided security in the form of a bond or other undertaking with one or more sureties, the bond or other undertaking will then be exonerated and the surety or sureties under it discharged. [2003 c 354 § 19.]

RCW 46.93.200 Department defining additional motorsports vehicles. The department shall determine through rule making under the Administrative Procedure Act any motorsports vehicles not already

defined in RCW 46.93.020(7) as of July 27, 2003, that are manufactured after July 27, 2003. [2003 c 354 § 20.]

RCW 46.93.210 Reporting of warranties for off-road vehicles and snowmobiles sold by out-of-state dealers—Department notice to buyers—Apportionment of fines. (1) By the first business day in February of each year, beginning in 2018, motorsports vehicle manufacturers must report to the department of licensing a listing of all motorsports vehicle warranties for off-road vehicles under chapter 46.09 RCW and snowmobiles under chapter 46.10 RCW sold to Washington residents by out-of-state motorsports vehicle dealers in the previous calendar year. The report must be transmitted such that the department receives the listing no later than the first business day in February. Failure to report a complete listing as required under this subsection results in an administrative fine of one hundred dollars for each day after the first business day in February that the department has not received the report.

(2) The department of licensing shall examine the listing reported in subsection (1) of this section to verify whether the vehicles are properly registered in the state and shall transmit the results of its analysis to the department of revenue. Beginning in 2018, and to the extent that it has received the listing required under subsection (1) of this section, the department and the department of revenue shall jointly notify by first-class mail from the United States postal service by the end of February of each year, the purchasers of the warranties of the off-road vehicles and snowmobiles that are not properly registered in the state of the owner's obligations under state law regarding vehicle titling, registration, and use tax payment, as well as of the penalties for failure to comply with the law.

(3) Fines received under this section must be paid into the state treasury and credited to the nonhighway and off-road vehicle activities program account under RCW 46.09.510 and to the snowmobile account under RCW 46.68.350. The state treasurer must apportion the fines between the accounts according to the pro rata share of the number of off-road vehicle and snowmobile registrations in the previous calendar year. The department must provide the state treasurer with the information needed to determine the apportionment. [2021 c 216 § 5; 2017 c 218 § 4.]

Effective date—2021 c 216: See note following RCW 46.09.420.

Application—2017 c 218 § 4: "Section 4 of this act applies to the sales of off-road vehicles and snowmobiles beginning in January 2017." [2017 c 218 § 5.]

Finding—Intent—Effective date—2017 c 218: See notes following RCW 46.09.495.