
ENGROSSED SUBSTITUTE HOUSE BILL 2547

State of Washington

61st Legislature

2010 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Conway, Condotta, Maxwell, Sullivan, Roach, Kessler, Sells, Kenney, Appleton, Hunter, Pedersen, Upthegrove, Hinkle, Ormsby, Herrera, Kretz, Hasegawa, Campbell, Takko, Springer, Dammeier, and Haler)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to franchise agreements between new motor vehicle
2 dealers and manufacturers; amending RCW 46.96.030, 46.96.070,
3 46.96.090, 46.96.105, 46.96.110, 46.96.185, and 46.96.200; and adding
4 new sections to chapter 46.96 RCW.

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

6 **Sec. 1.** RCW 46.96.030 and 1989 c 415 s 3 are each amended to read
7 as follows:

8 Notwithstanding the terms of a franchise and notwithstanding the
9 terms of a waiver, no manufacturer may terminate, cancel, or fail to
10 renew a franchise with a new motor vehicle dealer, unless the
11 manufacturer has complied with the notice requirements of RCW 46.96.070
12 and an administrative law judge has determined, if requested in writing
13 by the new motor vehicle dealer within the applicable time period
14 specified in RCW 46.96.070 (1), (2), or (3), after hearing, that there
15 is good cause for the termination, cancellation, or nonrenewal of the
16 franchise and that the manufacturer has acted in good faith, as defined
17 in this chapter, regarding the termination, cancellation, or
18 nonrenewal. Between the time of issuance of the notice required under
19 RCW 46.96.070 and the effective termination, cancellation, or

1 nonrenewal of the franchise under this chapter, the rights, duties, and
2 obligations of the new motor vehicle dealer and the manufacturer under
3 the franchise and this chapter are unaffected, including those under
4 RCW 46.96.200.

5 **Sec. 2.** RCW 46.96.070 and 1989 c 415 s 7 are each amended to read
6 as follows:

7 Before the termination, cancellation, or nonrenewal of a franchise,
8 the manufacturer shall give written notification to both the department
9 and the new motor vehicle dealer. For the purposes of this chapter,
10 the discontinuance of the sale and distribution of a new motor vehicle
11 line, or the constructive discontinuance by material reduction in
12 selection offered, such that continuing to retail the line is no longer
13 economically viable for a dealer is, at the option of the dealer,
14 considered a termination, cancellation, or nonrenewal of a franchise.
15 The notice shall be by certified mail or personally delivered to the
16 new motor vehicle dealer and shall state the intention to terminate,
17 cancel, or not renew the franchise, the reasons for the termination,
18 cancellation, or nonrenewal, and the effective date of the termination,
19 cancellation, or nonrenewal. The notice shall be given:

20 (1) Not less than ninety days before the effective date of the
21 termination, cancellation, or nonrenewal;

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

26 (a) Insolvency of the new motor vehicle dealer or the filing of any
27 petition by or against the new motor vehicle dealer under bankruptcy or
28 receivership law;

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

33 (c) Conviction of the new motor vehicle dealer, or principal
34 operator of the dealership, of a felony punishable by imprisonment; or

35 (d) Suspension or revocation of a license that the new motor
36 vehicle dealer is required to have to operate the new motor vehicle

1 dealership where the suspension or revocation is for a period in excess
2 of thirty days;

3 (3) Not less than one hundred eighty days before the effective date
4 of termination, cancellation, or nonrenewal, where the manufacturer
5 intends to discontinue sale and distribution of the new motor vehicle
6 line.

7 **Sec. 3.** RCW 46.96.090 and 1989 c 415 s 9 are each amended to read
8 as follows:

9 (1) In the event of a termination, cancellation, or nonrenewal
10 under this chapter, except for termination, cancellation, or nonrenewal
11 under RCW 46.96.070(2) or a voluntary termination, cancellation, or
12 nonrenewal initiated by the dealer, the manufacturer shall, at the
13 request and option of the new motor vehicle dealer, also pay to the new
14 motor vehicle dealer the dealer costs for any relocation, substantial
15 alteration, or remodeling of a dealer's facilities required by a
16 manufacturer for the continuance or renewal of a franchise agreement
17 completed within three years of the termination, cancellation, or
18 nonrenewal and:

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

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

28 (2) The rental payment required under subsection (1) of this
29 section is only required to the extent that the facilities were used
30 for activities under the franchise and only to the extent the
31 facilities were not leased for unrelated purposes. If the rental
32 payment under subsection (1) of this section is made, the manufacturer
33 is entitled to possession and use of the new motor vehicle dealership
34 facilities for the period rent is paid.

35 **Sec. 4.** RCW 46.96.105 and 2003 c 21 s 2 are each amended to read
36 as follows:

1 (1) Each manufacturer shall specify in its franchise agreement, or
2 in a separate written agreement, with each of its dealers licensed in
3 this state, the dealer's obligation to perform warranty work or service
4 on the manufacturer's products. Each manufacturer shall provide each
5 of its dealers with a schedule of compensation to be paid to the dealer
6 for any warranty work or service, including parts, labor, and
7 diagnostic work, required of the dealer by the manufacturer in
8 connection with the manufacturer's products. The schedule of
9 compensation must not be less than the rates charged by the dealer for
10 similar service to retail customers for nonwarranty service and
11 repairs, and must not be less than the schedule of compensation for an
12 existing dealer as of the effective date of this section.

13 (a) The rates charged by the dealer for nonwarranty service or work
14 for parts means the manufacturer's suggested retail price for the part
15 or the dealer's cost for the part plus a forty percent markup,
16 whichever is greater.

17 (b) A manufacturer shall compensate a dealer for labor and
18 diagnostic work at the rates charged by the dealer to its retail
19 customers for such work. If a manufacturer can demonstrate that the
20 rates unreasonably exceed those of all other franchised motor vehicle
21 dealers in the same relevant market area offering the same or a
22 competitive motor vehicle line, the manufacturer is not required to
23 honor the rate increase proposed by the dealer. If the manufacturer is
24 not required to honor the rate increase proposed by the dealer, the
25 dealer is entitled to resubmit a new proposed rate for labor and
26 diagnostic work.

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

30 (2) All claims for warranty work for parts and labor made by
31 dealers under this section shall be submitted to the manufacturer
32 within one year of the date the work was performed. All claims
33 submitted must be paid by the manufacturer within thirty days following
34 receipt, provided the claim has been approved by the manufacturer. The
35 manufacturer has the right to audit claims for warranty work and to
36 charge the dealer for any unsubstantiated, incorrect, or false claims
37 for a period of one year following payment. However, the manufacturer

1 may audit and charge the dealer for any fraudulent claims during any
2 period for which an action for fraud may be commenced under applicable
3 state law.

4 (3) All claims submitted by dealers on the forms and in the manner
5 specified by the manufacturer shall be either approved or disapproved
6 within thirty days following their receipt. The manufacturer shall
7 notify the dealer in writing of any disapproved claim, and shall set
8 forth the reasons why the claim was not approved. Any claim not
9 specifically disapproved in writing within thirty days following
10 receipt is approved, and the manufacturer is required to pay that claim
11 within thirty days of receipt of the claim.

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

16 **Sec. 5.** RCW 46.96.110 and 1989 c 415 s 11 are each amended to read
17 as follows:

18 (1) Notwithstanding the terms of a franchise, (a) an owner may
19 appoint a designated successor to succeed to the ownership of the new
20 motor vehicle dealer franchise upon the owner's death or incapacity, or
21 (b) if an owner who has owned the franchise for not less than five
22 consecutive years, the owner may appoint a designated successor to be
23 effective on a date of the owner's choosing that is prior to the
24 owner's death or disability.

25 (2) Notwithstanding the terms of a franchise, a designated
26 successor (~~(of a deceased or incapacitated owner of a new motor vehicle~~
27 ~~dealer franchise)) described under subsection (1) of this section may
28 succeed to the ownership interest of the owner under the existing
29 franchise, if:~~

30 (a) In the case of a designated successor who meets the definition
31 of a designated successor under RCW 46.96.020(5)(a), but who is not
32 experienced in the business of a new motor vehicle dealer, the person
33 will employ an individual who is qualified and experienced in the
34 business of a new motor vehicle dealer to help manage the day-to-day
35 operations of the motor vehicle dealership; or in the case of a
36 designated successor who meets the definition of a designated successor
37 under RCW 46.96.020(5) (b) or (c), the person is qualified and

1 experienced in the business of a new motor vehicle dealer and meets the
2 normal, reasonable, and uniformly applied standards for grant of an
3 application as a new motor vehicle dealer by the manufacturer; and

4 (b) The designated successor furnishes written notice to the
5 manufacturer of his or her intention to succeed to the ownership of the
6 new motor vehicle dealership within sixty days after the owner's death
7 or incapacity, or if the appointment is under subsection (1)(b) of this
8 section, at least thirty days before the designated successor's
9 proposed succession; and

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

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

16 (4) A manufacturer may refuse to honor the succession to the
17 ownership of a new motor vehicle dealer franchise by a designated
18 successor if the manufacturer establishes that good cause exists for
19 its refusal to honor the succession. If the designated successor (~~of~~
20 ~~a deceased or incapacitated owner~~) of a new motor vehicle dealer
21 franchise fails to meet the requirements set forth in subsections
22 (2)(a), (b), and (c) of this section, good cause for refusing to honor
23 the succession is presumed to exist. If a manufacturer believes that
24 good cause exists for refusing to honor the succession to the ownership
25 of a new motor vehicle dealer franchise by a designated successor, the
26 manufacturer shall serve written notice on the designated successor and
27 on the department of its refusal to honor the succession no earlier
28 than sixty days from the date the notice is served. The notice must be
29 served not later than sixty days after the manufacturer's receipt of:

30 (a) Notice of the designated successor's intent to succeed to the
31 ownership interest of the new motor vehicle dealer's franchise; or

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

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

1 (6) Within twenty days after receipt of the notice or within twenty
2 days after the end of any appeal procedure provided by the
3 manufacturer, whichever is greater, the designated successor may file
4 a petition with the department protesting the refusal to honor the
5 succession. The petition shall contain a short statement setting forth
6 the reasons for the designated successor's protest. Upon the filing of
7 a protest and the receipt of the filing fee, the department shall
8 promptly notify the manufacturer that a timely protest has been filed
9 and shall request the appointment of an administrative law judge under
10 chapter 34.12 RCW to conduct a hearing. The manufacturer shall not
11 terminate or otherwise discontinue the existing franchise until the
12 administrative law judge has held a hearing and has determined that
13 there is good cause for refusing to honor the succession. If an appeal
14 is taken, the manufacturer shall not terminate or discontinue the
15 franchise until the appeal to superior court is finally determined or
16 until the expiration of one hundred eighty days from the date of
17 issuance of the administrative law judge's written decision, whichever
18 is less. Nothing in this section precludes a manufacturer or dealer
19 from petitioning the superior court for a stay or other relief pending
20 judicial review.

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

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

26 (9) The administrative law judge shall conduct any hearing
27 concerning the refusal to the succession as provided in RCW
28 46.96.050(2) and all hearing costs shall be borne as provided in that
29 subsection. A party to such a hearing aggrieved by the final order of
30 the administrative law judge may appeal as provided and allowed in RCW
31 46.96.050(3).

32 (10) This section does not preclude the owner of a new motor
33 vehicle dealer franchise from designating any person as his or her
34 successor by a written, notarized, and witnessed instrument filed with
35 the manufacturer. In the event of a conflict between such a written
36 instrument that has not been revoked by written notice from the owner
37 to the manufacturer and this section, the written instrument governs.

1 **Sec. 6.** RCW 46.96.185 and 2003 c 21 s 3 are each amended to read
2 as follows:

3 (1) Notwithstanding the terms of a franchise agreement, a
4 manufacturer, distributor, factory branch, or factory representative,
5 or an agent, officer, parent company, wholly or partially owned
6 subsidiary, affiliated entity, or other person controlled by or under
7 common control with a manufacturer, distributor, factory branch, or
8 factory representative, shall not:

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

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

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

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

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

35 (f) Give preferential treatment to some new motor vehicle dealers
36 over others by refusing or failing to deliver, in reasonable quantities
37 and within a reasonable time after receipt of an order, to a dealer
38 holding a franchise for a line or make of motor vehicles sold or

1 distributed by the manufacturer, distributor, factory branch, or
2 factory representative, a new vehicle, parts, or accessories, if the
3 vehicle, parts, or accessories are being delivered to other dealers, or
4 require a dealer to purchase unreasonable advertising displays or other
5 materials, or unreasonably require a dealer to remodel or renovate
6 existing facilities as a prerequisite to receiving a model or series of
7 vehicles;

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

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

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

1 written agreement with the manufacturer, distributor, factory branch,
2 or factory representative under which he or she will acquire all of the
3 ownership interest in the dealership within a reasonable period of time
4 and under reasonable terms and conditions. The manufacturer,
5 distributor, factory branch, or factory representative has the burden
6 of proof of establishing that the acquisition of the dealership by the
7 independent person was made within a reasonable period of time and
8 under reasonable terms and conditions. Nothing in this subsection
9 (1)((+f+)) (g)(ii) relieves a manufacturer, distributor, factory
10 branch, or factory representative from complying with ((RCW
11 ~~46.96.185(1)~~)) (a) through ((+e+)) (f) of this subsection;

12 (iii) A manufacturer, distributor, factory branch, or factory
13 representative to own or operate a dealership in conjunction with an
14 independent person in a bona fide business relationship where the
15 independent person: (A) Has made, or within a period of two years from
16 the date of commencement of operation will have made, a significant,
17 bona fide capital investment in the dealership that is subject to loss;
18 (B) has an ownership interest in the dealership; and (C) operates the
19 dealership under a bona fide written agreement with the manufacturer,
20 distributor, factory branch, or factory representative under which he
21 or she will acquire all of the ownership interest in the dealership
22 within a reasonable period of time and under reasonable terms and
23 conditions. The manufacturer, distributor, factory branch, or factory
24 representative has the burden of proof of establishing that the
25 acquisition of the dealership by the independent person was made within
26 a reasonable period of time and under reasonable terms and conditions.
27 The number of dealerships operated under this subsection (1)((+f+))
28 (g)(iii) may not exceed four percent rounded up to the nearest whole
29 number of a manufacturer's total of new motor vehicle dealer franchises
30 in this state. Nothing in this subsection (1)((+f+)) (g)(iii) relieves
31 a manufacturer, distributor, factory branch, or factory representative
32 from complying with ((RCW-46.96.185(1))) (a) through ((+e+)) (f) of
33 this subsection;

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

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

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

31 ~~((h))~~ (i) Use confidential or proprietary information obtained
32 from a new motor vehicle dealer to unfairly compete with the dealer.
33 For purposes of this subsection (1)~~((h))~~ (i), "confidential or
34 proprietary information" means trade secrets as defined in RCW
35 19.108.010, business plans, marketing plans or strategies, customer
36 lists, contracts, sales data, revenues, or other financial information;

37 ~~((i))~~ (j) Terminate, cancel, or fail to renew a franchise with a
38 new motor vehicle dealer based upon any of the following events, which

1 do not constitute good cause for termination, cancellation, or
2 nonrenewal under RCW 46.96.060: (A) The fact that the new motor
3 vehicle dealer owns, has an investment in, participates in the
4 management of, or holds a franchise agreement for the sale or service
5 of another make or line of new motor vehicles(~~(, or~~)); (B) the fact
6 that the new motor vehicle dealer has established another make or line
7 of new motor vehicles or service in the same dealership facilities as
8 those of the manufacturer or distributor (~~(with the prior written~~
9 ~~approval of the manufacturer or distributor, if the approval was~~
10 ~~required under the terms of the new motor vehicle dealer's franchise~~
11 ~~agreement)); (C) that the new motor vehicle dealer has or intends to
12 relocate the manufacturer or distributor's make or line of new motor
13 vehicles or service to an existing dealership facility that is within
14 the relevant market area, as defined in RCW 46.96.140, of the make or
15 line to be relocated, except that, in any nonemergency circumstance,
16 the dealer must give the manufacturer or distributor at least sixty
17 days' notice of his or her intent to relocate; or (D) the failure of a
18 franchisee to change the location of the dealership or to make
19 substantial alterations to the use or number of franchises on the
20 dealership premises or facilities; (~~or~~~~

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

36 (l) Require, by contract or otherwise, a new motor vehicle dealer
37 to make a material alteration, expansion, or addition to any dealership
38 facility, unless the required alteration, expansion, or addition is

1 uniformly required of other similarly situated new motor vehicle
2 dealers of the same make or line of vehicles and is reasonable in light
3 of all existing circumstances, including economic conditions. In any
4 proceeding in which a required facility alteration, expansion, or
5 addition is an issue, the manufacturer or distributor has the burden of
6 proof;

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

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

29 (2) Subsection (1)(a), (b), and (c) of this section do not apply to
30 sales to a motor vehicle dealer: (a) For resale to a federal, state,
31 or local government agency; (b) where the vehicles will be sold or
32 donated for use in a program of driver's education; (c) where the sale
33 is made under a manufacturer's bona fide promotional program offering
34 sales incentives or rebates; (d) where the sale of parts or accessories
35 is under a manufacturer's bona fide quantity discount program; or (e)
36 where the sale is made under a manufacturer's bona fide fleet vehicle
37 discount program. For purposes of this subsection, "fleet" means a
38 group of fifteen or more new motor vehicles purchased or leased by a

1 dealer at one time under a single purchase or lease agreement for use
2 as part of a fleet, and where the dealer has been assigned a fleet
3 identifier code by the department of licensing.

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

5 (a) "Actual price" means the price to be paid by the dealer less
6 any incentive paid by the manufacturer, distributor, factory branch, or
7 factory representative, whether paid to the dealer or the ultimate
8 purchaser of the vehicle.

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

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

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

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

29 (4) A violation of this section is deemed to affect the public
30 interest and constitutes an unlawful and unfair practice under chapter
31 19.86 RCW. A person aggrieved by an alleged violation of this section
32 may petition the department to have the matter handled as an
33 adjudicative proceeding under chapter 34.05 RCW.

34 **Sec. 7.** RCW 46.96.200 and 1994 c 274 s 7 are each amended to read
35 as follows:

36 (1) Notwithstanding the terms of a franchise, a manufacturer shall
37 not (~~unreasonably~~) withhold consent to the sale, transfer, or

1 exchange of a franchise to a qualified buyer who meets the normal,
2 reasonable, and uniformly applied standards established by the
3 manufacturer for the appointment of a new dealer who does not already
4 hold a franchise with the manufacturer or is capable of being licensed
5 as a new motor vehicle dealer in the state of Washington. A decision
6 or determination made by the administrative law judge as to whether a
7 qualified buyer is capable of being licensed as a new motor vehicle
8 dealer in the state of Washington is not conclusive or determinative of
9 any ultimate determination made by the department of licensing as to
10 the buyer's qualification for a motor vehicle dealer license. A
11 manufacturer's failure to respond in writing to a request for consent
12 under this subsection within sixty days after receipt of a written
13 request on the forms, if any, generally used by the manufacturer
14 containing the information and reasonable promises required by a
15 manufacturer is deemed to be consent to the request. A manufacturer
16 may request, and, if so requested, the applicant for a franchise (a)
17 shall promptly provide such personal and financial information as is
18 reasonably necessary to determine whether the sale, transfer, or
19 exchange should be approved, and (b) shall agree to be bound by all
20 reasonable terms and conditions of the franchise.

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

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

36 (4) Within twenty days after receipt of the notice of refusal to
37 approve the sale, transfer, or exchange of the franchise by the
38 transferring new motor vehicle dealer, the new motor vehicle dealer may

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

10 ~~(5) ((In determining whether the manufacturer unreasonably withheld~~
11 ~~its approval to the sale, transfer, or exchange, the manufacturer has~~
12 ~~the burden of proof that it acted reasonably. A manufacturer's refusal~~
13 ~~to accept or approve a proposed buyer who otherwise meets the normal,~~
14 ~~reasonable, — and — uniformly — applied — standards — established — by — the~~
15 ~~manufacturer for the appointment of a new dealer, or who otherwise is~~
16 ~~capable of being licensed as a new motor vehicle dealer in the state of~~
17 ~~Washington, is presumed to be unreasonable.~~

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

23 ~~((7))~~ (6) The administrative law judge shall conduct any hearing
24 as provided in RCW 46.96.050(2), and all hearing costs shall be borne
25 as provided in that subsection. Only the manufacturer and the selling,
26 transferring, or exchanging new motor vehicle dealer may appeal the
27 final order of the administrative law judge as provided in RCW
28 46.96.050(3).

29 ~~((8))~~ (7) This section and RCW 46.96.030 through 46.96.110 apply
30 to all franchises and contracts existing on July 23, 1989, between
31 manufacturers and new motor vehicle dealers as well as to all future
32 franchises and contracts between manufacturers and new motor vehicle
33 dealers.

34 ~~((9))~~ (8) RCW 46.96.140 through 46.96.190 apply to all franchises
35 and contracts existing on October 1, 1994, between manufacturers and
36 new motor vehicle dealers as well as to all future franchises and
37 contracts between manufacturers and new motor vehicle dealers.

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

3 (1) In the event of a termination, cancellation, or nonrenewal
4 under this chapter, except for a termination, cancellation, or
5 nonrenewal under RCW 46.96.070(2), or a voluntary termination,
6 cancellation, or nonrenewal initiated by the dealer, the manufacturer
7 shall, at the request and option of the new motor vehicle dealer, also
8 pay to the new motor vehicle dealer the fair market value of the motor
9 vehicle dealer's goodwill for the make or line as of the date
10 immediately preceding any communication to the public or dealer
11 regarding termination. To the extent the franchise agreement provides
12 for the payment or reimbursement to the new motor vehicle dealer in
13 excess of the value specified in this section, the provisions of the
14 franchise agreement control.

15 (2) The manufacturer shall pay the new motor vehicle dealer the
16 value specified in subsection (1) of this section within ninety days
17 after the date of termination.

18 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.96 RCW
19 to read as follows:

20 A manufacturer shall, upon demand, indemnify and hold harmless any
21 existing or former franchisee and the franchisee's successors and
22 assigns from any and all damages sustained and attorneys' fees and
23 other expenses reasonably incurred by the franchisee that result from
24 or relate to any claim made or asserted by a third party against the
25 franchisee to the extent the claim results from any of the following:

26 (1) The condition, characteristics, manufacture, assembly, or
27 design of any vehicle, parts, accessories, tools, or equipment, or the
28 selection or combination of parts or components manufactured or
29 distributed by the manufacturer or distributor;

30 (2) Service systems, procedures, or methods that the franchisor
31 required or recommended the franchisee to use;

32 (3) Improper use by the manufacturer, its assignees, contractors,
33 representatives, or licensees of nonpublic personal information
34 obtained from a franchisee concerning any consumer, customer, or
35 employee of the franchisee; or

36 (4) Any act or omission of the manufacturer or distributor for

1 which the franchisee would have a claim for contribution or indemnity
2 under applicable law or under the franchise, irrespective of any prior
3 termination or expiration of the franchise.

4 NEW SECTION. **Sec. 10.** A new section is added to chapter 46.96 RCW
5 to read as follows:

6 A manufacturer may not take or threaten to take any adverse action
7 against a new motor vehicle dealer, including charge backs, reducing
8 vehicle allocations, or terminating or threatening to terminate a
9 franchise, because the dealer sold or leased a vehicle to a customer
10 who exported the vehicle to a foreign country or who resold the
11 vehicle, unless the manufacturer or distributor definitively proves
12 that the dealer knew or reasonably should have known that the customer
13 intended to export or resell the vehicle. A manufacturer or
14 distributor shall, upon demand, indemnify, hold harmless, and defend
15 any existing or former franchisee or franchisee's successors or assigns
16 from any and all claims asserted, or damages sustained and attorneys'
17 fees and other expenses reasonably incurred by the franchisee that
18 result from or relate to any claim made or asserted, by a third party
19 against the franchisee for any policy, program, or other behavior
20 suggested by the manufacturer for sales of vehicles to parties that
21 intend to export a vehicle purchased from the franchisee.

22 NEW SECTION. **Sec. 11.** A new section is added to chapter 46.96 RCW
23 to read as follows:

24 A new motor vehicle dealer who is injured in his or her business or
25 property by a violation of this chapter may bring a civil action in the
26 superior court to recover the actual damages sustained by the dealer,
27 together with the costs of the suit, including reasonable attorneys'
28 fees if the new motor vehicle dealer prevails. The new motor vehicle
29 dealer may bring a civil action in district court to recover his or her
30 actual damages, except for damages that exceed the amount specified in
31 RCW 3.66.020, and the costs of the suit, including reasonable
32 attorneys' fees.

33 NEW SECTION. **Sec. 12.** A new section is added to chapter 46.96 RCW
34 to read as follows:

35 A manufacturer or distributor shall not enter into an agreement or

1 understanding with a new motor vehicle dealer that requires the dealer
2 to waive any provisions of this chapter. However, a dealer may, by
3 written contract and for valuable and reasonable separate
4 consideration, waive, limit, or disclaim a manufacturer's obligations
5 or a dealer's rights under RCW 46.96.080, 46.96.090, 46.96.105,
6 46.96.140, and 46.96.150, if the contract sets forth the specific
7 provisions of this chapter that are waived, limited, or disclaimed. A
8 manufacturer shall not coerce, threaten, intimidate, or require a new
9 motor vehicle dealer, as a condition to granting or renewing a
10 franchise, to enter into such an agreement or understanding.

11 NEW SECTION. **Sec. 13.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

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