

---

ENGROSSED SUBSTITUTE SENATE BILL 6220

---

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Commerce, Trade, Housing & Financial  
Institutions (originally sponsored by Senators Prentice, Winsley,  
Deccio and Rasmussen)

Read first time 02/04/00.

1 AN ACT Relating to a prohibition on unfair competition by motor  
2 vehicle dealers and manufacturers; and adding a new section to chapter  
3 46.96 RCW.

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

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

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

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

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

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

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

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

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

29 (i) A manufacturer, distributor, factory branch, or factory  
30 representative to own or operate a dealership for a temporary period,  
31 not to exceed two years, during the transition from one owner of the  
32 dealership to another where the dealership was previously owned by a  
33 franchised dealer and is currently for sale to any qualified  
34 independent person at a fair and reasonable price. The temporary  
35 operation may be extended for up to one twelve-month period on petition  
36 of the temporary operator to the department. The matter will be  
37 handled as an adjudicative proceeding under chapter 34.05 RCW. Any  
38 dealer who is a franchisee of the petitioning manufacturer or  
39 distributor shall have the right to intervene and participate in any

1 proceeding under chapter 34.05 RCW. The temporary operator has the  
2 burden of proof to show justification for the extension and a good  
3 faith effort to sell the dealership to an independent person at a fair  
4 and reasonable price;

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

24 (iii) A manufacturer, distributor, factory branch, or factory  
25 representative to own or operate a dealership in conjunction with an  
26 independent person in a bona fide business relationship where the  
27 independent person: (A) Has made a significant, bona fide capital  
28 investment in the dealership that is subject to loss; (B) has an  
29 ownership interest in the dealership; and (C) operates the dealership  
30 under a bona fide written agreement with the manufacturer, distributor,  
31 factory branch, or factory representative under which he or she will  
32 acquire all of the ownership interest in the dealership within a  
33 reasonable period of time and under reasonable terms and conditions.  
34 The manufacturer, distributor, factory branch, or factory  
35 representative has the burden of proof of establishing that the  
36 acquisition of the dealership by the independent person was made within  
37 a reasonable period of time and under reasonable terms and conditions.  
38 The number of dealerships operated under this subsection (1)(f)(iii)

1 may not exceed two percent of the total of new motor vehicle dealer  
2 franchises per manufacturer in this state;

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

8 (v) A manufacturer to own, operate, or control a new motor vehicle  
9 dealership trading exclusively in a single line make of the  
10 manufacturer if (A) the manufacturer's ownership interest is no more  
11 than forty-five percent of the total ownership, (B) at the time the  
12 manufacturer first acquires an ownership interest or assumes operation,  
13 the distance between any dealership thus owned or operated and the  
14 nearest unaffiliated motor vehicle dealership trading in the same line  
15 make is not less than fifteen miles, (C) during the period of  
16 ownership, the manufacturer of the line make has no more than five  
17 motor vehicle franchise agreements governing the line make in effect in  
18 this state, and (D) the manufacturer has been continuously engaged, at  
19 least since January 1, 1993, in the retail sale of motor vehicles of  
20 its own line make through the dealership;

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

30 (h) Disclose, misappropriate, or unfairly use confidential or  
31 proprietary information obtained from an entity or person having a  
32 franchise agreement or franchise relationship with the manufacturer,  
33 distributor, factory branch, or factory representative. Confidential  
34 or proprietary information obtained from a franchisee is a valuable  
35 trade secret and may not be used by the manufacturer or distributor in  
36 a manner that is detrimental or disadvantageous to the franchisee,  
37 including but not limited to competing with the franchisee. For  
38 purposes of this section, the term "confidential or proprietary  
39 information" means trade secrets as defined in RCW 19.108.010, business

1 plans, marketing plans or strategies, customer lists, contracts, sales  
2 data, revenues or other financial information, forecasts, or any other  
3 information that is designated as confidential, or, if disclosed  
4 orally, is identified as confidential or proprietary at the time of  
5 disclosure.

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

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

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

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

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

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

37 (e) "Own" or "ownership" means to hold the beneficial ownership of  
38 one percent or more of any class of equity interest in a dealership,  
39 whether the interest is that of a shareholder, partner, limited

1 liability company member, or otherwise. To hold an ownership interest  
2 means to have possession of, title to, or control of the ownership  
3 interest, whether directly or indirectly through a fiduciary, agent, or  
4 other intermediary.

5 (4) A violation of this section is deemed to affect the public  
6 interest and constitutes an unlawful and unfair practice under chapter  
7 19.86 RCW. A new motor vehicle dealer having a franchise with a  
8 manufacturer or distributor, who is alleged to have violated any  
9 provision of this section, may bring an action under chapter 7.04 RCW  
10 against that manufacturer or distributor to restrain and prevent the  
11 doing of any act prohibited in this section or declared to be unlawful  
12 and to recover any damages sustained by reason of the manufacturer's or  
13 distributor's violation, together with the costs of the suit, including  
14 reasonable attorneys' fees.

--- END ---