
SUBSTITUTE HOUSE BILL 2529

State of Washington

56th Legislature

2000 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Clements, Hurst, B. Chandler, Wood, Lisk, G. Chandler, Wensman, Mastin, Delvin, Conway, Carlson, Ogden, Mulliken, Huff, Campbell, Mitchell, Schoesler and Cox)

Read first time 02/03/2000. Referred to Committee on .

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 or other similar device that results in a lower actual
3 price on vehicles, parts, or accessories being charged to one dealer
4 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 require a dealer to remodel or renovate existing
23 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 retail dealer, or by owning, operating, or controlling,
27 whether directly or indirectly, a motor vehicle dealership in this
28 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 one year, 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;

35 (ii) A manufacturer, distributor, factory branch, or factory
36 representative to own or operate a dealership in conjunction with an
37 independent person in a bona fide business relationship as part of a
38 "dealer development program" for the purpose of broadening the
39 diversity of its dealer body and enhancing opportunities for qualified

1 persons who are part of a group who have historically been
2 underrepresented in its dealer body, or other qualified persons who
3 lack the resources to purchase a dealership outright, and where the
4 independent person: (A) Has made a significant, bona fide capital
5 investment in the dealership that is subject to loss; (B) has an
6 ownership interest in the dealership; and (C) operates the dealership
7 under a bona fide written agreement with the manufacturer, distributor,
8 factory branch, or factory representative under which he or she will
9 acquire all of the ownership interest in the dealership within a
10 reasonable period of time and under reasonable terms and conditions.
11 The manufacturer, distributor, factory branch, or factory
12 representative has the burden of proof of establishing that the
13 acquisition of the dealership by the independent person under a "dealer
14 development program" was made within a reasonable period of time and
15 under reasonable terms and conditions;

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

21 (iv) A manufacturer to own, operate, or control a new motor vehicle
22 dealership that sells only vehicles of that manufacturer's line make
23 if, at least since January 1, 1993, the manufacturer has been
24 continuously engaged in the retail sale of motor vehicles of its own
25 line make through the dealership, and if the manufacturer does not own,
26 directly or indirectly, in the aggregate in excess of forty-five
27 percent of the total ownership interest in the dealership;

28 (g) Compete with a new motor vehicle dealer by owning, operating,
29 or controlling, whether directly or indirectly, a service facility in
30 this state for the repair or maintenance of motor vehicles. Nothing in
31 this subsection (1)(g), however, prohibits a manufacturer, distributor,
32 factory branch, or factory representative from owning or operating a
33 service facility for the purpose of providing or performing
34 maintenance, repair, or service work on motor vehicles that are owned
35 by the manufacturer, distributor, factory branch, or factory
36 representative;

37 (h) Use information regarding sales of new motor vehicles obtained
38 as the manufacturer from a new motor vehicle dealer to market products

1 or services in a manner that would create unfair competition in the new
2 motor vehicle dealer's relevant market area.

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

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

16 (a) "Actual price" means the price to be paid by the dealer less
17 any incentive paid by the manufacturer, distributor, factory branch, or
18 factory representative, whether paid to the dealer or the ultimate
19 purchaser of the vehicle.

20 (b) "Control" or "controlling" means (i) the possession of, title
21 to, or control of ten percent or more of the voting equity interest in
22 a person, whether directly or indirectly through a fiduciary, agent, or
23 other intermediary, or (ii) the possession, direct or indirect, of the
24 power to direct or cause the direction of the management or policies of
25 a person, whether through the ownership of voting securities, through
26 director control, by contract, or otherwise.

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

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

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

1 (4) A violation of this section is deemed to affect the public
2 interest and constitutes an unlawful and unfair practice under chapter
3 19.86 RCW.

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