

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6220

Chapter 203, Laws of 2000

56th Legislature
2000 Regular Session

MOTOR VEHICLE MANUFACTURERS--UNFAIR PRACTICES

EFFECTIVE DATE: 6/8/00

Passed by the Senate March 6, 2000
YEAS 45 NAYS 0

BRAD OWEN
President of the Senate

Passed by the House February 29, 2000
YEAS 96 NAYS 1

CLYDE BALLARD
Speaker of the
House of Representatives

FRANK CHOPP
Speaker of the
House of Representatives

Approved March 29, 2000

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6220** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

March 29, 2000 - 2:53 p.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 6220

AS AMENDED BY THE HOUSE

Passed Legislature - 2000 Regular Session

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 unreasonably 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 one twelve-month period on petition of
36 the temporary operator to the department. The matter will be handled
37 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is
38 a franchisee of the petitioning manufacturer or distributor may
39 intervene and participate in a proceeding under this subsection

1 (1)(f)(i). The temporary operator has the burden of proof to show
2 justification for the extension and a good faith effort to sell the
3 dealership to an independent person at a fair and reasonable price;

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

23 (iii) A manufacturer, distributor, factory branch, or factory
24 representative to own or operate a dealership in conjunction with an
25 independent person in a bona fide business relationship where the
26 independent person: (A) Has made a significant, bona fide capital
27 investment in the dealership that is subject to loss; (B) has an
28 ownership interest in the dealership; and (C) operates the dealership
29 under a bona fide written agreement with the manufacturer, distributor,
30 factory branch, or factory representative under which he or she will
31 acquire all of the ownership interest in the dealership within a
32 reasonable period of time and under reasonable terms and conditions.
33 The manufacturer, distributor, factory branch, or factory
34 representative has the burden of proof of establishing that the
35 acquisition of the dealership by the independent person was made within
36 a reasonable period of time and under reasonable terms and conditions.
37 The number of dealerships operated under this subsection (1)(f)(iii)
38 may not exceed four percent rounded up to the nearest whole number of

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

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 under the
31 manufacturer's new car warranty and extended warranty. Nothing in this
32 subsection (1)(g), however, prohibits a manufacturer, distributor,
33 factory branch, or factory representative from owning or operating a
34 service facility for the purpose of providing or performing
35 maintenance, repair, or service work on motor vehicles that are owned
36 by the manufacturer, distributor, factory branch, or factory
37 representative;

38 (h) Use confidential or proprietary information obtained from a new
39 motor vehicle dealer to unfairly compete with the dealer. For purposes

1 of this subsection (1)(h), "confidential or proprietary information"
2 means trade secrets as defined in RCW 19.108.010, business plans,
3 marketing plans or strategies, customer lists, contracts, sales data,
4 revenues, or other financial information.

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

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

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

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

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

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

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

1 means to have possession of, title to, or control of the ownership
2 interest, whether directly or indirectly through a fiduciary, agent, or
3 other intermediary.

4 (4) A violation of this section is deemed to affect the public
5 interest and constitutes an unlawful and unfair practice under chapter
6 19.86 RCW. A person aggrieved by an alleged violation of this section
7 may petition the department to have the matter handled as an
8 adjudicative proceeding under chapter 34.05 RCW.

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Passed the House February 29, 2000.

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