
SENATE BILL 6803

State of Washington 57th Legislature

2002 Regular Session

By Senators Prentice and Winsley

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1 AN ACT Relating to the prohibition of unfair practices by motor
2 vehicle manufacturers and dealers; amending RCW 46.96.105 and
3 46.96.185; adding new sections to chapter 46.96 RCW; and creating a new
4 section.

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

6 **Sec. 1.** RCW 46.96.105 and 1998 c 298 s 1 are each amended to read
7 as follows:

8 (1) Each manufacturer shall specify in its franchise agreement, or
9 in a separate written agreement, with each of its dealers licensed in
10 this state, the dealer's obligation to perform warranty work or service
11 on the manufacturer's products. Each manufacturer shall provide each
12 of its dealers with a schedule of compensation to be paid to the dealer
13 for any warranty work or service, including parts, labor, and
14 diagnostic work, required of the dealer by the manufacturer in
15 connection with the manufacturer's products.

16 (2) All claims for warranty work for parts and labor made by
17 dealers under this section shall be submitted to the manufacturer
18 within one year of the date the work was performed. All claims
19 submitted must be paid by the manufacturer within thirty days following

1 receipt, provided the claim has been approved by the manufacturer. The
2 manufacturer has the right to audit claims for warranty work and to
3 charge the dealer for any unsubstantiated, incorrect, or false claims
4 for a period of one year following payment. However, the manufacturer
5 may audit and charge the dealer for any fraudulent claims during any
6 period for which an action for fraud may be commenced under applicable
7 state law.

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

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

18 MANUFACTURER INCENTIVE PROGRAMS. (1) A manufacturer or distributor
19 shall pay a motor vehicle dealer's claim for payment or other
20 compensation due under any manufacturer incentive program within thirty
21 days after approval of the claim. A claim that is not disapproved or
22 disallowed within thirty days after the manufacturer or distributor
23 receives the claim is automatically deemed approved. If the motor
24 vehicle dealer's claim is not approved, the manufacturer or distributor
25 shall provide the dealer with written notice of the reasons for the
26 disapproval at the time notice of disapproval is given.

27 (2) A manufacturer may not deny a claim based solely on a motor
28 vehicle dealer's incidental failure to comply with a specific
29 claim-processing requirement that results in a clerical error or other
30 administrative technicality.

31 (3) Notwithstanding the terms of a franchise agreement or other
32 contract with a manufacturer or distributor, a motor vehicle dealer has
33 one year after the expiration of a manufacturer or distributor
34 incentive program to submit a claim for payment or compensation under
35 the program.

36 (4) Notwithstanding the terms of a franchise agreement or other
37 contract with a dealer and except as provided in subsection (5) of this
38 section, after the expiration of one year after the date of payment of

1 a claim under a manufacturer or distributor incentive program, a
2 manufacturer or distributor may not:

3 (a) Charge back to a motor vehicle dealer, whether directly or
4 indirectly, the amount of a claim that has been approved and paid by
5 the manufacturer or distributor under an incentive program;

6 (b) Charge back to a motor vehicle dealer, whether directly or
7 indirectly, the cash value of a prize or other thing of value awarded
8 to the dealer under an incentive program; or

9 (c) Audit the records of a motor vehicle dealer to determine
10 compliance with the terms of an incentive program. Where, however, a
11 manufacturer or distributor has reasonable grounds to believe that the
12 dealer committed fraud with respect to the incentive program, the
13 manufacturer or distributor may audit the dealer for a fraudulent claim
14 during any period for which an action for fraud may be commenced under
15 applicable state law.

16 (5) Notwithstanding subsection (4)(a) and (b) of this section, a
17 manufacturer or distributor may make charge-backs to a motor vehicle
18 dealer if, after completion of an audit of the dealer's records, the
19 manufacturer or distributor can show, by a preponderance of the
20 evidence, that (a) the claim was intentionally false or fraudulent at
21 the time it was submitted to the manufacturer or distributor, or (b)
22 with respect to a claim under a service incentive program, the repair
23 work was improperly performed in a substandard manner or was
24 unnecessary to correct a defective condition.

25 **Sec. 3.** RCW 46.96.185 and 2000 c 203 s 1 are each amended to read
26 as follows:

27 (1) Notwithstanding the terms of a franchise agreement, a
28 manufacturer, distributor, factory branch, or factory representative,
29 or an agent, officer, parent company, wholly or partially owned
30 subsidiary, affiliated entity, or other person controlled by or under
31 common control with a manufacturer, distributor, factory branch, or
32 factory representative, shall not:

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

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

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

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

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

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

32 (i) A manufacturer, distributor, factory branch, or factory
33 representative to own or operate a dealership for a temporary period,
34 not to exceed two years, during the transition from one owner of the
35 dealership to another where the dealership was previously owned by a
36 franchised dealer and is currently for sale to any qualified
37 independent person at a fair and reasonable price. The temporary
38 operation may be extended for one twelve-month period on petition of
39 the temporary operator to the department. The matter will be handled

1 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is
2 a franchisee of the petitioning manufacturer or distributor may
3 intervene and participate in a proceeding under this subsection
4 (1)(f)(i). The temporary operator has the burden of proof to show
5 justification for the extension and a good faith effort to sell the
6 dealership to an independent person at a fair and reasonable price;

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

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

1 The number of dealerships operated under this subsection (1)(f)(iii)
2 may not exceed four percent rounded up to the nearest whole number of
3 a manufacturer's total of new motor vehicle dealer franchises in this
4 state;

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

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

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

1 (h) Use confidential or proprietary information obtained from a new
2 motor vehicle dealer to unfairly compete with the dealer. For purposes
3 of this subsection (1)(h), "confidential or proprietary information"
4 means trade secrets as defined in RCW 19.108.010, business plans,
5 marketing plans or strategies, customer lists, contracts, sales data,
6 revenues, or other financial information;

7 (i) Terminate, cancel, or fail to renew a franchise with a new
8 motor vehicle dealer based upon any of the following events, which do
9 not constitute good cause for termination, cancellation, or nonrenewal
10 under RCW 46.96.060: (i) The fact that the new motor vehicle dealer
11 owns, has an investment in, participates in the management of, or holds
12 a franchise agreement for the sale or service of another make or line
13 of new motor vehicles, or (ii) the fact that the new motor vehicle
14 dealer has established another make or line of new motor vehicles or
15 service in the same dealership facilities as those of the manufacturer
16 or distributor;

17 (j) Coerce or attempt to coerce a new motor vehicle dealer to
18 refrain from, or prohibit or attempt to prohibit a new motor vehicle
19 dealer from acquiring, owning, having an investment in, participating
20 in the management of, or holding a franchise agreement for the sale or
21 service of another make or line of new motor vehicles or related
22 products, or establishing another make or line of new motor vehicles or
23 service in the same dealership facilities, if acquiring, owning,
24 investing, managing, or holding a franchise for such additional make or
25 line of vehicles or products is supported by reasonable business
26 considerations, including but not limited to capitalization
27 requirements, sales and service facilities, personnel, market share,
28 and return on investment. The burden of proving by a preponderance of
29 the evidence that reasonable business considerations do not support or
30 justify the additional make or line of new motor vehicles or products
31 or nonexclusive facilities is on the manufacturer.

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

1 discount program. For purposes of this subsection, "fleet" means a
2 group of fifteen or more new motor vehicles purchased or leased by a
3 dealer at one time under a single purchase or lease agreement for use
4 as part of a fleet, and where the dealer has been assigned a fleet
5 identifier code by the department of licensing.

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

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

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

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

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

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

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

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

1 RIGHT OF FIRST REFUSAL. (1) In the event of a proposed sale or
2 transfer of a new motor vehicle dealership involving the transfer or
3 sale of more than fifty percent of the ownership interest in, or more
4 than fifty percent of the assets of, the dealership at the time of such
5 transfer or sale, where the franchise agreement for the dealership
6 contains a right of first refusal in favor of the manufacturer or
7 distributor, then notwithstanding the terms of the franchise agreement,
8 the manufacturer or distributor must be permitted to exercise a right
9 of first refusal to acquire the dealership only if all of the following
10 requirements are met:

11 (a) The manufacturer or distributor sends by certified mail, return
12 receipt requested, or delivers by personal service, notice of its
13 intent to exercise its right of first refusal within forty-five days of
14 receipt of the completed proposal for the proposed sale or transfer;
15 and

16 (b) The exercise of the right of first refusal will result in the
17 motor vehicle dealer receiving consideration, terms, and conditions
18 that are equal to or better than that for which the dealer has
19 contracted in connection with the proposed transaction.

20 (2) Notwithstanding subsection (1) of this section, the
21 manufacturer's or distributor's right of first refusal does not apply
22 to a proposed transaction involving any of the following purchasers or
23 transferees:

24 (a) A purchaser or transferee who has been preapproved by the
25 manufacturer or distributor with respect to the transaction;

26 (b) A designated successor as defined in RCW 46.96.020, or a
27 designated successor as defined in the franchise agreement who has been
28 approved in writing by the manufacturer;

29 (c) A family member or members, including the spouse, biological or
30 adopted child, grandchild, spouse of a child or grandchild, brother,
31 sister or parent of the dealer-operator or one or more of the
32 dealership's owners;

33 (d) A manager employed by the motor vehicle dealer in the
34 dealership during the previous five years who is otherwise qualified as
35 a dealer-operator;

36 (e) A partnership, corporation, limited liability company, or other
37 entity controlled by any of the family members of the dealer-operator;
38 or

1 (f) A trust established or to be established for the purpose of
2 allowing the new motor vehicle dealer to continue to qualify as such
3 under the manufacturer's or distributor's standards, or provides for
4 the succession of the franchise agreement to designated family members
5 or qualified management in the event of the death or incapacity of the
6 dealer-operator or its principal owner or owners.

7 (3) As a condition to the manufacturer or distributor exercising
8 its right of first refusal, the manufacturer or distributor shall pay
9 the reasonable expenses, including attorneys' fees, incurred by the
10 proposed purchaser or transferee in negotiating, and undertaking an
11 action to consummate, the contract for the proposed sale of the
12 dealership. In addition, the manufacturer or distributor shall pay the
13 reasonable expenses, including attorneys' fees, incurred by the motor
14 vehicle dealer on and after the date the manufacturer or distributor
15 gives notice of the exercise of its right of first refusal. The
16 expenses and fees must be paid by the manufacturer or distributor to
17 the dealer and to the preempted purchaser or transferee by the closing
18 date of the sale of the dealership to the manufacturer or distributor
19 if the party entitled to reimbursement has submitted or caused to be
20 submitted to the manufacturer or distributor an accounting of the
21 expenses and fees within thirty days after receipt of the
22 manufacturer's or distributor's written request for such an accounting.
23 A manufacturer or distributor may request such an accounting from the
24 proposed purchaser or transferee before exercising its right of first
25 refusal.

26 As a further condition to the exercise of its right of first
27 refusal, a manufacturer or distributor shall assume and guarantee the
28 lease or shall acquire the real property on which the motor vehicle
29 franchise is conducted. Unless otherwise agreed to by the dealer and
30 manufacturer or distributor, the lease terms or the real property
31 acquisition terms must be the same as those on which the lease or
32 property was to be transferred or sold to the proposed purchaser or
33 transferee.

34 (4) If the selling dealer has disclosed to the proposed purchaser
35 or transferee, in writing, the existence of the manufacturer's or
36 distributor's right of first refusal, then the selling dealer has no
37 liability to the proposed purchaser or transferee for a claim for
38 damages resulting from the manufacturer or distributor exercising the
39 right of first refusal. The manufacturer or distributor shall assume

1 the defense of and hold the selling dealer harmless from and against
2 any and all claims, damages, losses, actions, or causes of action
3 asserted by the proposed purchaser or transferee arising from the
4 manufacturer's or distributor's exercise of its right of first refusal.

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

7 **VENUE.** Notwithstanding the provisions of any franchise agreement
8 or any other provision of law to the contrary, the venue for a cause of
9 action, claim, lawsuit, administrative hearing or proceeding,
10 arbitration, or mediation, whether arising under this chapter or
11 otherwise, in which the parties or litigants are a manufacturer or
12 distributor and one or more motor vehicle dealers, is the state of
13 Washington. This provision does not apply to any voluntary dispute
14 resolution procedure that is not binding on the dealer. It is the
15 public policy of this state that venue provided for in this section may
16 not be modified or waived in a contract or other agreement, and any
17 provision contained in a franchise agreement that requires arbitration
18 or litigation to be conducted outside the state of Washington is void
19 and unenforceable.

20 NEW SECTION. **Sec. 6.** Section captions used in this act are not
21 part of the law.

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