CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6272

Chapter 214, Laws of 2014

63rd Legislature
2014 Regular Session

MOTOR VEHICLE DEALER FRANCHISE AGREEMENTS

EFFECTIVE DATE: 06/12/14

Passed by the Senate February 17, 2014
YEAS 47  NAYS 0

BRAD OWEN
President of the Senate

Passed by the House March 6, 2014
YEAS 94  NAYS 2

FRANK CHOPP
Speaker of the House of Representatives

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 6272 as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN
Secretary

Approved April 3, 2014, 11:31 a.m.

FILED
April 4, 2014

JAY INSLEE
Governor of the State of Washington

Secretary of State
State of Washington
ENGROSSED SUBSTITUTE SENATE BILL 6272

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By Senate Commerce & Labor (originally sponsored by Senators Hewitt, Conway, Holmquist Newbry, King, Fain, Hobbs, Hasegawa, Cleveland, Rolfes, Hill, Rivers, Dammeier, Keiser, Kohl-Welles, and Angel)

READ FIRST TIME 02/07/14.

AN ACT Relating to manufacturer and new motor vehicle dealer franchise agreements; amending RCW 46.70.045, 46.96.020, 46.96.060, 46.96.080, 46.96.090, 46.96.105, and 46.96.185; adding a new section to chapter 46.96 RCW; and creating a new section.

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

Sec. 1. RCW 46.70.045 and 1997 c 432 s 2 are each amended to read as follows:

The director may deny a license under this chapter when the application is a subterfuge that conceals the real person in interest whose license has been denied, suspended, or revoked for cause under this chapter and the terms have not been fulfilled or a civil penalty has not been paid, ((or)) the director finds that the application was not filed in good faith, or the issuance of a new license or subagency would cause a manufacturer, distributor, factory branch, or factory representative, or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative, to be in violation of...
chapter 46.96 RCW. This section does not preclude the department from
taking an action against a current licensee.

Sec. 2. RCW 46.96.020 and 2003 c 21 s 1 are each amended to read
as follows:

In addition to the definitions contained in RCW 46.70.011, which
are incorporated by reference into this chapter, the definitions set
forth in this section apply only for the purposes of this chapter.

(1) A "new motor vehicle" is a vehicle that has not been titled by
a state and ownership of which may be transferred on a manufacturer's
statement of origin (MSO).

(2) "New motor vehicle dealer" means a motor vehicle dealer engaged
in the business of buying, selling, exchanging, or otherwise dealing in
new motor vehicles or new and used motor vehicles at an established
place of business, under a franchise, sales and service agreement, or
contract with the manufacturer of the new motor vehicles. However,
((the term)) "new motor vehicle dealer" does not include a
miscellaneous vehicle dealer as defined in RCW 46.70.011((3))) (17)(c)
or a motorcycle dealer as defined in chapter 46.94 RCW.

(3) "Franchise" means one or more agreements, whether oral or
written, between a manufacturer and a new motor vehicle dealer, under
which the new motor vehicle dealer is authorized to sell, service, and
repair new motor vehicles, parts, and accessories under a common name,
trade name, trademark, or service mark of the manufacturer.

"Franchise" includes an oral or written contract and includes a
dealer agreement, either expressed or implied, between a manufacturer
and a new motor vehicle dealer that purports to fix the legal rights
and liabilities between the parties and under which (a) the dealer is
granted the right to purchase and resell motor vehicles manufactured,
distributed, or imported by the manufacturer; (b) the dealer's business
is associated with the trademark, trade name, commercial symbol, or
advertisement designating the franchisor or the products distributed by
the manufacturer; and (c) the dealer's business relies on the
manufacturer for a continued supply of motor vehicles, parts, and
accessories.

(4) "Good faith" means honesty in fact and fair dealing in the
trade as defined and interpreted in RCW 62A.2-103.

(5) "Designated successor" means:
(a) The spouse, biological or adopted child, stepchild, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will or similar document, and if there is no such will or similar document, then under applicable intestate laws;

(b) A qualified person experienced in the business of a new motor vehicle dealer who has been nominated by the owner of a new motor vehicle dealership as the successor in a written, notarized, and witnessed instrument submitted to the manufacturer; or

(c) In the case of an incapacitated owner of a new motor vehicle dealership, the person who has been appointed by a court as the legal representative of the incapacitated owner's property.

(6) "Owner" means a person holding an ownership interest in the business entity operating as a new motor vehicle dealer and who is the designated dealer in the new motor vehicle franchise agreement.

(7) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(8) "Completed vehicle" means a vehicle that requires no further manufacturing operations to perform its intended function.

(9) "Dealer management computer system" means a computer hardware and software system that is owned or leased by a new motor vehicle dealer, including the dealer's use of internet applications, software, or hardware, whether located at an existing dealership facility or provided at a remote location, that provides access to customer records and transactions by a motor vehicle dealer located in this state, and that allows the new motor vehicle dealer timely information in order to sell vehicles, parts, or services through the existing dealership facility.

(10) "Dealer management computer system vendor" means a seller or reseller of dealer management computer systems, to the extent that the seller or reseller is engaged in such activities.

(11) "Final-stage manufacturer" means a person who purchases an incomplete vehicle from a licensed motor vehicle dealer and performs such manufacturing operations that the incomplete vehicle becomes a completed vehicle.
(12) "Incomplete vehicle" means an assemblage consisting of, at a minimum, chassis (including the frame) structure, power train, steering system, suspension system, and braking system, in the state that those systems are to be part of the completed vehicle, but requires further manufacturing operations to become a completed vehicle.

(13) "Security breach" means an incident of unauthorized access to and acquisition of records or data containing new motor vehicle dealer or dealer customer information where unauthorized use of the dealer's customer or dealer information has occurred or is reasonably likely to occur or that creates a material risk of harm to the dealer or dealer's customer. Any incident of unauthorized access to and acquisition of records or data containing dealer or dealer customer information, or any incident of disclosure of dealer customer information to one or more third parties that has not been specifically authorized by the dealer or dealer's customer, constitutes a security breach.

Sec. 3. RCW 46.96.060 and 1989 c 415 s 6 are each amended to read as follows:

(1) Notwithstanding the terms of a franchise or the terms of a waiver, and except as otherwise provided in RCW 46.96.070(2) (a) through (d), good cause exists for termination, cancellation, or nonrenewal when there is a failure by the new motor vehicle dealer to comply with a provision of the franchise that is both reasonable and of material significance to the franchise relationship, if the new motor vehicle dealer was notified of the failure within one hundred eighty days after the manufacturer first acquired knowledge of the failure and the new motor vehicle dealer did not correct the failure after being requested to do so.

If, however, the failure of the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales, service, or level of customer satisfaction, good cause is the failure of the new motor vehicle dealer to comply with reasonable performance standards determined by the manufacturer in accordance with uniformly applied criteria, and:

(a) The new motor vehicle dealer was advised, in writing, by the manufacturer of the failure;

(b) The notice under this subsection stated that notice was provided of a failure of performance under this section;
(c) The manufacturer provided the new motor vehicle dealer with specific, reasonable goals or reasonable performance standards with which the dealer must comply, together with a suggested timetable or program for attaining those goals or standards, and the new motor vehicle dealer was given a reasonable opportunity, for a period not less than one hundred eighty days, to comply with the goals or standards; and

(d) The new motor vehicle dealer did not substantially comply with the manufacturer's performance standards during that period and the failure to demonstrate substantial compliance was not due to market or economic factors within the new motor vehicle dealer's relevant market area that were beyond the control of the dealer.

(2) If the new motor vehicle dealer claims insufficient allocation, a manufacturer does not have good cause for termination, cancellation, or nonrenewal, unless:

(a) The manufacturer or distributor allocated sufficient inventory in the new motor vehicle dealer's primary allocation, both in quantity and product mix, for the dealers' assigned market area. The inventory must have been delivered in a manner that allowed the dealer to reasonably meet the manufacturer's performance standards; and

(b) The manufacturer provides to the new motor vehicle dealer, upon the dealers' request, documentation sufficient to develop a market analysis. This documentation must include, but is not limited to, the allocation of inventory to the dealer and other dealers in the same zone during the period established by the manufacturer, and must not be shared by the dealer with any party not involved in preparing a market analysis or otherwise engaged in the termination proceeding.

(3) The manufacturer has the burden of proof of establishing good cause and good faith for the termination, cancellation, or nonrenewal of the franchise under this section.

Sec. 4. RCW 46.96.080 and 2009 c 12 s 1 are each amended to read as follows:

(1) Upon the termination, cancellation, or nonrenewal of a franchise, the manufacturer shall pay the new motor vehicle dealer, at a minimum:

(a) Dealer cost plus any charges by the manufacturer for distribution, delivery, and taxes, less all allowances paid or credited
to the dealer by the manufacturer, of unused, undamaged, and unsold new
motor vehicles in the new motor vehicle dealer's inventory that were
acquired from the manufacturer or another new motor vehicle dealer of
the same line make in the ordinary course of business within the
previous twelve months;

(b) Dealer cost for all unused, undamaged, and unsold supplies,
parts, and accessories in original packaging, except that in the case
of sheet metal, a comparable substitute for original packaging may be
used, if the supply, part, or accessory was acquired from the
manufacturer or from another new motor vehicle dealer ceasing
operations as a part of the new motor vehicle dealer's initial
inventory as long as the supplies, parts, and accessories appear in the
manufacturer's current parts catalog, list, or current offering;

(c) Dealer cost for all unused, undamaged, and unsold inventory,
whether vehicles, parts, or accessories, the purchase of which was
required by the manufacturer;

(d) The fair market value of each undamaged sign owned by the new
motor vehicle dealer that bears a common name, trade name, or trademark
of the manufacturer, if acquisition of the sign was recommended or
required by the manufacturer and the sign is in good and usable
condition less reasonable wear and tear, and has not been depreciated
by the dealer more than fifty percent of the value of the sign;

(e) The fair market value of all equipment, furnishings, and
special tools owned or leased by the new motor vehicle dealer that were
acquired from the manufacturer or sources approved by the manufacturer
and that were recommended or required by the manufacturer and are in
good and usable condition, less reasonable wear and tear. However, if
the equipment, furnishings, or tools are leased by the new motor
vehicle dealer, the manufacturer shall pay the new motor vehicle dealer
such amounts that are required by the lessor to terminate the lease
under the terms of the lease agreement; and

(f) The cost of transporting, handling, packing, and loading of new
motor vehicles, supplies, parts, accessories, signs, special tools,
equipment, and furnishings purchased from the manufacturer or
manufacturer-approved vendor.

To the extent the franchise agreement provides for payment or
reimbursement to the new motor vehicle dealer in excess of that
specified in this section, the provisions of the franchise agreement shall control.

(2)(a) For the nonrenewal or termination of a franchise that is implemented as a result of the sale of assets or stock of the motor vehicle dealer, the party purchasing the assets or stock of the motor vehicle dealer may negotiate for the purchase or other transfer of some or all unused, undamaged, and unsold new motor vehicles in the selling new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make in the ordinary course of business within the previous twelve months.

(b) For the nonrenewal or termination of a franchise that is implemented as a result of the sale of assets or stock of the motor vehicle dealer, this section does not prohibit a manufacturer from negotiating with the purchasing party for the purchase or other transfer of some or all unused, undamaged, and unsold new motor vehicles in the selling new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make in the ordinary course of business within the previous twelve months.

(c) A manufacturer's obligation under (a) of this subsection extends only to vehicles not purchased or otherwise transferred to the party purchasing the assets or stock of the motor vehicle dealer.

(3) The manufacturer shall pay the new motor vehicle dealer the sums specified in subsection (1) of this section (a) within ninety days after the termination, cancellation, or nonrenewal of the franchise, if the new motor vehicle dealer has clear title to the property or can provide clear title to the property upon payment by the manufacturer and is in a position to convey that title to the manufacturer, or (b) on the date of delivery of the assets to the manufacturer, whichever is earlier.

(4) In the case of motor homes, this section applies only to manufacturer-initiated termination, cancellation, or nonrenewal of a franchise.

Sec. 5. RCW 46.96.090 and 2010 c 178 s 3 are each amended to read as follows:

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

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

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

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

Sec. 6. RCW 46.96.105 and 2010 c 178 s 4 are each amended to read as follows:

(1) Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products. The schedule of compensation must not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty service and
repairs, and must not be less than the schedule of compensation for an existing dealer as of June 10, 2010.

(a) The rates charged by the dealer for nonwarranty service or work for parts means the price paid by the dealer for those parts, including all shipping and other charges, increased by the franchisee's average percentage markup. A dealer must establish and declare the dealer's average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission. A change in a dealer's established average percentage markup takes effect thirty days following the submission. A manufacturer may not require a dealer to establish average percentage markup by another methodology. A manufacturer may not require information that the dealer believes is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. In calculating the retail rate customarily charged by the dealer for parts and labor, the following work must not be included in the calculation:

(i) Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;

(ii) Parts sold at wholesale or at reduced or specially negotiated rates for insurance repairs;

(iii) Routine maintenance not covered under warranty, such as fluids, filters, and belts not provided in the course of repairs;

(iv) Nuts, bolts, fasteners, and similar items that do not have an individual part number;

(v) Tires;

(vi) Batteries and light bulbs; and

(vii) Vehicle reconditioning.

(b) A manufacturer shall compensate a dealer for labor and diagnostic work at the rates charged by the dealer to its retail customers for such work and for any documentation work required by the manufacturer to authorize or verify the work including, but not limited to, photographs, paperwork, and electronic data entry. However, a manufacturer is not required to compensate a dealer more than once for the same documentation work. If a manufacturer can demonstrate that the rates unreasonably exceed those of all other franchised motor
vehicle dealers in the same relevant market area offering the same or
a competitive motor vehicle line, the manufacturer is not required to
honor the rate increase proposed by the dealer. If the manufacturer is
not required to honor the rate increase proposed by the dealer, the
dealer is entitled to resubmit a new proposed rate for labor and
diagnostic work.

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

(2) All claims for warranty work for parts and labor made by
dealers under this section (shall) must be submitted to the
manufacturer within (one year) ninety days of the date the work was
performed. All claims submitted must be paid by the manufacturer
within thirty days following receipt, provided the claim has been
approved by the manufacturer. The manufacturer has the right to audit
claims for warranty work and to charge the dealer for any
unsubstantiated, incorrect, or false claims for a period of (one
year) nine months following payment. However, the manufacturer may
audit and charge the dealer for any fraudulent claims during any period
for which an action for fraud may be commenced under applicable state
law.

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

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

Sec. 7. RCW 46.96.185 and 2010 c 178 s 6 are each amended to read
as follows:

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

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

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

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

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

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

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

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

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

(ii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship for the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, and where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer,
distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. Nothing in this subsection (1)(g)(ii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with (a) through (f) of this subsection;

(iii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer, distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. The number of dealerships operated under this subsection (1)(g)(iii) may not exceed four percent rounded up to the nearest whole number of a manufacturer's total of new motor vehicle dealer franchises in this state. Nothing in this subsection (1)(g)(iii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with (a) through (f) of this subsection;

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

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

(vi) A final-stage manufacturer to own, operate, or control a new motor vehicle dealership; or

(vii) A manufacturer that held a vehicle dealer license in this state on January 1, 2014, to own, operate, or control a new motor vehicle dealership that sells new vehicles that are only of that manufacturer's makes or lines and that are not sold new by a licensed independent franchise dealer, or to own, operate, or control or contract with companies that provide finance, leasing, or service for vehicles that are of that manufacturer's makes or lines;

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

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

(j)(i) Terminate, cancel, or fail to renew a franchise with a new motor vehicle dealer based upon any of the following events, which do not constitute good cause for termination, cancellation, or nonrenewal under RCW 46.96.060:  (A) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles; (B) the fact that the new motor vehicle dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor; (C) that the new motor vehicle dealer has or intends to relocate the manufacturer or distributor's make or line of new motor vehicles or service to an existing dealership facility that is within the relevant market area, as defined in RCW 46.96.140, of the make or line to be relocated, except that, in any nonemergency circumstance, the dealer must give the manufacturer or distributor at least sixty days' notice of his or her intent to relocate and the relocation must comply with RCW 46.96.140 and 46.96.150 for any same make or line facility; or (D) the failure of a franchisee to change the location of the dealership or to make substantial alterations to the use or number of franchises on the dealership premises or facilities.

(ii) Notwithstanding the limitations of this section, a manufacturer may, for separate consideration, enter into a written contract with a dealer to exclusively sell and service a single make or line of new motor vehicles at a specific facility for a defined period of time. The penalty for breach of the contract must not exceed the amount of consideration paid by the manufacturer plus a reasonable rate of interest;

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

(1) Require, by contract or otherwise, a new motor vehicle dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is uniformly required of other similarly situated new motor vehicle dealers of the same make or line of vehicles and is reasonable in light of all existing circumstances, including economic conditions. In any proceeding in which a required facility alteration, expansion, or addition is an issue, the manufacturer or distributor has the burden of proof. Except for a program or any renewal or modification of a program that is in effect with one or more new motor vehicle dealers in this state on the effective date of this section, a manufacturer shall not require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, standard, or otherwise to change the location of the dealership or construct, replace, renovate, or make any substantial changes, alterations, or remodeling to a new motor vehicle dealer's sales or service facilities, except as necessary to comply with health or safety laws or to comply with technology requirements without which a dealer would be unable to service a vehicle the dealer has elected to sell, before the tenth anniversary of the date of issuance of the certificate of occupancy or the manufacturer's approval, whichever is later, from:

(i) The date construction of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative; or

(ii) The date a prior change, alteration, or remodel of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative;
(m) Prevent or attempt to prevent by contract or otherwise any new motor vehicle dealer from changing the executive management of a new motor vehicle dealer unless the manufacturer or distributor, having the burden of proof, can show that a proposed change of executive management will result in executive management by a person or persons who are not of good moral character or who do not meet reasonable, preexisting, and equitably applied standards of the manufacturer or distributor. If a manufacturer or distributor rejects a proposed change in the executive management, the manufacturer or distributor shall give written notice of its reasons to the dealer within sixty days after receiving written notice from the dealer of the proposed change and all related information reasonably requested by the manufacturer or distributor, or the change in executive management must be considered approved; ((or))

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

(o) Fail to provide to a new motor vehicle dealer purchasing or leasing building materials or other facility improvements the right to purchase or lease franchisor image elements of like kind and quality from an alternative vendor selected by the dealer if the goods or services are to be supplied by a vendor selected, identified, or designated by the manufacturer or distributor. If the vendor selected by the manufacturer or distributor is the only available vendor of like kind and quality materials, the new motor vehicle dealer must be given the opportunity to purchase the franchisor image elements at a price substantially similar to the capitalized lease costs of the elements. This subsection (l)(o) must not be construed to allow a new motor vehicle dealer or vendor to gain additional intellectual property rights they are not otherwise entitled to or to impair or eliminate the intellectual property rights of the manufacturer or distributor or to permit a new motor vehicle dealer to erect or maintain signs that do
not conform to the reasonable intellectual property usage guidelines of
the manufacturer or distributor;

(p) Take any adverse action against a new motor vehicle dealer
including, but not limited to, charge backs or reducing vehicle
allocations, for sales and service performance within a designated area
of primary responsibility unless that area is reasonable in light of
proximity to relevant census tracts to the dealership and competing
dealerships, highways and road networks, state borders, any natural or
man-made barriers, demographics, including economic factors, and buyer
behavior information; or

(q) Require, coerce, or attempt to coerce any new motor vehicle
dealer by program, policy, facility guide, standard, or otherwise to
order or accept delivery of any service or repair appliances, equipment, parts, or accessories, or any other commodity not required
by law, which the dealer has not voluntarily ordered or which the
dealer does not have the right to return unused for a full refund
within ninety days or a longer period as mutually agreed upon by the
dealer and manufacturer.

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

(3) The following definitions apply to this section:

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

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

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

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

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

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

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

(1) Notwithstanding the terms or conditions of any consent,
authorization, release, novation, franchise, or other contract or
agreement, whenever any manufacturer, factory branch, distributor,
distributor branch, dealer management computer system vendor, or any
third party acting on behalf of or through, or approved, referred,
endorsed, authorized, certified, granted preferred status, or
recommended by, any manufacturer, factory branch, distributor,
distributor branch, or dealer management computer system vendor,
requires that a new motor vehicle dealer provide any other new motor
vehicle dealer, consumer, or customer data or information through
direct access to the dealer's management computer system, the new motor
vehicle dealer is not required to provide, and may not be required to
consent to provide in any written agreement, such direct access to its
management computer system.

However, the new motor vehicle dealer may provide any other new
motor vehicle dealer, consumer, or customer data or information
specified by the requesting party by timely obtaining and pushing or
otherwise furnishing the requested data to the requesting party in a
widely accepted file format, such as comma delimited, provided that
when a new motor vehicle dealer would otherwise be required to provide
direct access to its management computer system under the terms of a
consent, authorization, release, novation, franchise, or other contract
or agreement, a new motor vehicle dealer that elects to provide data or
information through other means may be charged a reasonable initial
set-up fee and reasonable processing fee based on the actual
incremental costs incurred by the party requesting the data for
establishing and implementing the process for the dealer. Any term or
provision contained in any consent, authorization, release, novation,
franchise, or other contract or agreement that is inconsistent with
this subsection is voidable at the option of the new motor vehicle
dealer.

(2) Notwithstanding the terms or conditions of any consent,
authorization, release, novation, franchise, or other contract or
agreement, every manufacturer, factory branch, distributor, distributor
branch, or any third party acting on behalf of or through any
manufacturer, factory branch, distributor, or distributor branch,
having electronic access to consumer or customer data or other
information in a computer system utilized by a new motor vehicle
dealer, or who has otherwise been provided consumer or customer data or
information by the dealer, shall fully indemnify and hold harmless the
dealer from whom it has acquired the consumer or customer data or other
information from all damages, costs, and expenses incurred by the
dealer including, but not limited to, judgments, settlements, fines,
penalties, litigation costs, defense costs, court costs, costs related
to the disclosure of security breaches, and attorneys' fees arising out
of complaints, claims, security breaches, civil or administrative
actions, and, to the fullest extent allowable under the law,
governmental investigations and prosecutions to the extent caused by
the manufacturer, factory branch, distributor, distributor branch, or
third party acting on behalf of the manufacturer, factory branch, distributor, or distributor branch's access, storage, maintenance, use, sharing, disclosure, or retention of the dealer's consumer or customer data or other information, or maintenance or services provided to any computer system utilized by the dealer by the manufacturer, factory branch, distributor, distributor branch, or third party acting on behalf of or through the manufacturer, factory branch, distributor, or distributor branch.

(3) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, a dealer management computer system vendor or any third party acting on behalf of or through any dealer management computer system vendor, having electronic access to consumer or customer data or other information in a computer system utilized by a new motor vehicle dealer, or who has otherwise been provided consumer or customer data or information by the dealer, shall fully indemnify and hold harmless the dealer from whom it has acquired the consumer or customer data or other information from all damages, costs, and expenses incurred by the dealer including, but not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, security breaches, civil or administrative actions, and, to the fullest extent allowable under the law, governmental investigations and prosecutions to the extent caused by the dealer management computer system vendor or any third party acting on behalf of the dealer management computer system vendor's access, storage, maintenance, use, sharing, disclosure, or retention of the dealer's consumer or customer data or other information, or maintenance or services provided to any computer system utilized by the dealer, by the dealer management computer system vendor or third party acting on behalf of or through the dealer management computer system vendor.

NEW SECTION. Sec. 9. This act applies to all franchises and contracts between manufacturers and new motor vehicle dealers amended, renewed, or entered into after the effective date of this section. For purposes of chapter 46.96 RCW, an agreement between a manufacturer and new motor vehicle dealer entered into after the effective date of this
section, addressing any issues governed by chapter 46.96 RCW, is considered an amendment to an existing franchise.

Passed by the Senate February 17, 2014.
Passed by the House March 6, 2014.
Approved by the Governor April 3, 2014.
Filed in Office of Secretary of State April 4, 2014.