
HOUSE BILL 1388

State of Washington

67th Legislature

2021 Regular Session

By Representatives Kloba, Bateman, Ramel, Lekanoff, Chopp, and Slatter

Read first time 01/27/21. Referred to Committee on Consumer Protection & Business.

1 AN ACT Relating to motor vehicle sales; amending RCW 46.96.185
2 and 46.70.180; and reenacting and amending RCW 46.96.020.

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

4 **Sec. 1.** RCW 46.96.020 and 2014 c 214 s 2 are each reenacted and
5 amended to read as follows:

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

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

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

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

4 (4) "Designated successor" means:

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

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

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

19 (5) "Final-stage manufacturer" means a person who purchases an
20 incomplete vehicle from a licensed motor vehicle dealer and performs
21 such manufacturing operations that the incomplete vehicle becomes a
22 completed vehicle.

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

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

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

1 (8) "Incomplete vehicle" means an assemblage consisting of, at a
2 minimum, chassis (including the frame) structure, power train,
3 steering system, suspension system, and braking system, in the state
4 that those systems are to be part of the completed vehicle, but
5 requires further manufacturing operations to become a completed
6 vehicle.

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

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

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

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

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

34 (14) "Zero emissions vehicle" means a vehicle that emits no
35 exhaust gas from the onboard source of power, other than water vapor.

36 **Sec. 2.** RCW 46.96.185 and 2018 c 296 s 2 are each amended to
37 read as follows:

38 (1) Notwithstanding the terms of a franchise agreement, a
39 manufacturer, distributor, factory branch, or factory representative,

1 or an agent, officer, parent company, wholly or partially owned
2 subsidiary, affiliated entity, or other person controlled by or under
3 common control with a manufacturer, distributor, factory branch, or
4 factory representative, shall not:

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

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

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

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

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

32 (f) Give preferential treatment to some new motor vehicle dealers
33 over others by refusing or failing to deliver, in reasonable
34 quantities and within a reasonable time after receipt of an order, to
35 a dealer holding a franchise for a line or make of motor vehicles
36 sold or distributed by the manufacturer, distributor, factory branch,
37 or factory representative, a new vehicle, parts, or accessories, if
38 the vehicle, parts, or accessories are being delivered to other
39 dealers, or require a dealer to purchase unreasonable advertising
40 displays or other materials, or unreasonably require a dealer to

1 remodel or renovate existing facilities as a prerequisite to
2 receiving a model or series of vehicles;

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

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

22 (ii) A manufacturer, distributor, factory branch, or factory
23 representative to own or operate a dealership in conjunction with an
24 independent person in a bona fide business relationship for the
25 purpose of broadening the diversity of its dealer body and enhancing
26 opportunities for qualified persons who are part of a group who have
27 historically been underrepresented in its dealer body, or other
28 qualified persons who lack the resources to purchase a dealership
29 outright, and where the independent person: (A) Has made, or within a
30 period of two years from the date of commencement of operation will
31 have made, a significant, bona fide capital investment in the
32 dealership that is subject to loss; (B) has an ownership interest in
33 the dealership; and (C) operates the dealership under a bona fide
34 written agreement with the manufacturer, distributor, factory branch,
35 or factory representative under which he or she will acquire all of
36 the ownership interest in the dealership within a reasonable period
37 of time and under reasonable terms and conditions. The manufacturer,
38 distributor, factory branch, or factory representative has the burden
39 of proof of establishing that the acquisition of the dealership by
40 the independent person was made within a reasonable period of time

1 and under reasonable terms and conditions. Nothing in this subsection
2 (1)(g)(ii) relieves a manufacturer, distributor, factory branch, or
3 factory representative from complying with (a) through (f) of this
4 subsection;

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

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

32 (v) A manufacturer to own, operate, or control a new motor
33 vehicle dealership trading exclusively in a single line make of the
34 manufacturer if (A) the manufacturer does not own, directly or
35 indirectly, in the aggregate, in excess of forty-five percent of the
36 total ownership interest in the dealership, (B) at the time the
37 manufacturer first acquires ownership or assumes operation or control
38 of any such dealership, the distance between any dealership thus
39 owned, operated, or controlled and the nearest new motor vehicle
40 dealership trading in the same line make of vehicle and in which the

1 manufacturer has no ownership or control is not less than fifteen
2 miles and complies with the applicable provisions in the relevant
3 market area sections of this chapter, (C) all of the manufacturer's
4 franchise agreements confer rights on the dealer of that line make to
5 develop and operate within a defined geographic territory or area, as
6 many dealership facilities as the dealer and the manufacturer agree
7 are appropriate, and (D) as of January 1, 2000, the manufacturer had
8 no more than four new motor vehicle dealers of that manufacturer's
9 line make in this state, and at least half of those dealers owned and
10 operated two or more dealership facilities in the geographic
11 territory or area covered by their franchise agreements with the
12 manufacturer;

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

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

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

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

39 (j)(i) Terminate, cancel, or fail to renew a franchise with a new
40 motor vehicle dealer based upon any of the following events, which do

1 not constitute good cause for termination, cancellation, or
2 nonrenewal under RCW 46.96.060: (A) The fact that the new motor
3 vehicle dealer owns, has an investment in, participates in the
4 management of, or holds a franchise agreement for the sale or service
5 of another make or line of new motor vehicles; (B) the fact that the
6 new motor vehicle dealer has established another make or line of new
7 motor vehicles or service in the same dealership facilities as those
8 of the manufacturer or distributor; (C) that the new motor vehicle
9 dealer has or intends to relocate the manufacturer or distributor's
10 make or line of new motor vehicles or service to an existing
11 dealership facility that is within the relevant market area, as
12 defined in RCW 46.96.140, of the make or line to be relocated, except
13 that, in any nonemergency circumstance, the dealer must give the
14 manufacturer or distributor at least sixty days' notice of his or her
15 intent to relocate and the relocation must comply with RCW 46.96.140
16 and 46.96.150 for any same make or line facility; or (D) the failure
17 of a franchisee to change the location of the dealership or to make
18 substantial alterations to the use or number of franchises on the
19 dealership premises or facilities.

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

27 (k) Coerce or attempt to coerce a motor vehicle dealer to refrain
28 from, or prohibit or attempt to prohibit a new motor vehicle dealer
29 from acquiring, owning, having an investment in, participating in the
30 management of, or holding a franchise agreement for the sale or
31 service of another make or line of new motor vehicles or related
32 products, or establishing another make or line of new motor vehicles
33 or service in the same dealership facilities, if the prohibition
34 against acquiring, owning, investing, managing, or holding a
35 franchise for such additional make or line of vehicles or products,
36 or establishing another make or line of new motor vehicles or service
37 in the same dealership facilities, is not supported by reasonable
38 business considerations. The burden of proving that reasonable
39 business considerations support or justify the prohibition against

1 the additional make or line of new motor vehicles or products or
2 nonexclusive facilities is on the manufacturer;

3 (l) Require, by contract or otherwise, a new motor vehicle dealer
4 to make a material alteration, expansion, or addition to any
5 dealership facility, unless the required alteration, expansion, or
6 addition is uniformly required of other similarly situated new motor
7 vehicle dealers of the same make or line of vehicles and is
8 reasonable in light of all existing circumstances, including economic
9 conditions. In any proceeding in which a required facility
10 alteration, expansion, or addition is an issue, the manufacturer or
11 distributor has the burden of proof. Except for a program or any
12 renewal or modification of a program that is in effect with one or
13 more new motor vehicle dealers in this state on June 12, 2014, a
14 manufacturer shall not require, coerce, or attempt to coerce any new
15 motor vehicle dealer by program, policy, standard, or otherwise to
16 change the location of the dealership or construct, replace,
17 renovate, or make any substantial changes, alterations, or remodeling
18 to a new motor vehicle dealer's sales or service facilities, except
19 as necessary to comply with health or safety laws or to comply with
20 technology requirements without which a dealer would be unable to
21 service a vehicle the dealer has elected to sell, before the tenth
22 anniversary of the date of issuance of the certificate of occupancy
23 or the manufacturer's approval, whichever is later, from:

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

29 (ii) The date a prior change, alteration, or remodel of the
30 dealership at that location was completed if the construction was in
31 substantial compliance with standards or plans provided by a
32 manufacturer, distributor, or representative or through a subsidiary
33 or agent of the manufacturer, distributor, or representative;

34 (m) Prevent or attempt to prevent by contract or otherwise any
35 new motor vehicle dealer from changing the executive management of a
36 new motor vehicle dealer unless the manufacturer or distributor,
37 having the burden of proof, can show that a proposed change of
38 executive management will result in executive management by a person
39 or persons who are not of good moral character or who do not meet
40 reasonable, preexisting, and equitably applied standards of the

1 manufacturer or distributor. If a manufacturer or distributor rejects
2 a proposed change in the executive management, the manufacturer or
3 distributor shall give written notice of its reasons to the dealer
4 within sixty days after receiving written notice from the dealer of
5 the proposed change and all related information reasonably requested
6 by the manufacturer or distributor, or the change in executive
7 management must be considered approved;

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

16 (o) Fail to provide to a new motor vehicle dealer purchasing or
17 leasing building materials or other facility improvements the right
18 to purchase or lease franchisor image elements of like kind and
19 quality from an alternative vendor selected by the dealer if the
20 goods or services are to be supplied by a vendor selected,
21 identified, or designated by the manufacturer or distributor. If the
22 vendor selected by the manufacturer or distributor is the only
23 available vendor of like kind and quality materials, the new motor
24 vehicle dealer must be given the opportunity to purchase the
25 franchisor image elements at a price substantially similar to the
26 capitalized lease costs of the elements. This subsection (1)(o) must
27 not be construed to allow a new motor vehicle dealer or vendor to
28 gain additional intellectual property rights they are not otherwise
29 entitled to or to impair or eliminate the intellectual property
30 rights of the manufacturer or distributor or to permit a new motor
31 vehicle dealer to erect or maintain signs that do not conform to the
32 reasonable intellectual property usage guidelines of the manufacturer
33 or distributor;

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

1 behavior information, and contains only areas inside the state of
2 Washington unless specifically approved by the new motor vehicle
3 dealer;

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

12 (r) Modify the franchise agreement for any new motor vehicle
13 dealer unless the manufacturer notifies the dealer in writing of its
14 intention to modify the agreement at least ninety days before the
15 effective date thereof, stating the specific grounds for the
16 modification, and undertakes the modification in good faith, for good
17 cause, and in a manner that would not adversely and substantially
18 alter the rights, obligations, investment, or return on investment of
19 the franchised new motor vehicle dealer under the existing agreement.

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

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

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

38 (b) "Control" or "controlling" means (i) the possession of, title
39 to, or control of ten percent or more of the voting equity interest
40 in a person, whether directly or indirectly through a fiduciary,

1 agent, or other intermediary, or (ii) the possession, direct or
2 indirect, of the power to direct or cause the direction of the
3 management or policies of a person, whether through the ownership of
4 voting securities, through director control, by contract, or
5 otherwise, except as expressly provided under the franchise
6 agreement.

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

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

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

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

24 **Sec. 3.** RCW 46.70.180 and 2017 c 41 s 1 are each amended to read
25 as follows:

26 Each of the following acts or practices is unlawful:

27 (1) To cause or permit to be advertised, printed, displayed,
28 published, distributed, broadcasted, televised, or disseminated in
29 any manner whatsoever, any statement or representation with regard to
30 the sale, lease, or financing of a vehicle which is false, deceptive,
31 or misleading, including but not limited to the following:

32 (a) That no down payment is required in connection with the sale
33 of a vehicle when a down payment is in fact required, or that a
34 vehicle may be purchased for a smaller down payment than is actually
35 required;

36 (b) That a certain percentage of the sale price of a vehicle may
37 be financed when such financing is not offered in a single document
38 evidencing the entire security transaction;

1 (c) That a certain percentage is the amount of the service charge
2 to be charged for financing, without stating whether this percentage
3 charge is a monthly amount or an amount to be charged per year;

4 (d) That a new vehicle will be sold for a certain amount above or
5 below cost without computing cost as the exact amount of the factory
6 invoice on the specific vehicle to be sold;

7 (e) That a vehicle will be sold upon a monthly payment of a
8 certain amount, without including in the statement the number of
9 payments of that same amount which are required to liquidate the
10 unpaid purchase price.

11 (2) (a) (i) To incorporate within the terms of any purchase and
12 sale or lease agreement any statement or representation with regard
13 to the sale, lease, or financing of a vehicle which is false,
14 deceptive, or misleading, including but not limited to terms that
15 include as an added cost to the selling price or capitalized cost of
16 a vehicle an amount for licensing or transfer of title of that
17 vehicle which is not actually due to the state, unless such amount
18 has in fact been paid by the dealer prior to such sale.

19 (ii) However, an amount not to exceed (~~one hundred fifty~~
20 ~~dollars~~) \$300 per vehicle sale or lease may be charged by a dealer
21 to recover administrative costs for collecting motor vehicle excise
22 taxes, licensing and registration fees and other agency fees,
23 verifying and clearing titles, transferring titles, perfecting,
24 releasing, or satisfying liens or other security interests, and other
25 administrative and documentary services rendered by a dealer in
26 connection with the sale or lease of a vehicle and in carrying out
27 the requirements of this chapter or any other provisions of state
28 law.

29 (b) A dealer may charge the documentary service fee in (a) of
30 this subsection under the following conditions:

31 (i) The documentary service fee is disclosed in writing to a
32 prospective purchaser or lessee before the execution of a purchase
33 and sale or lease agreement;

34 (ii) The dealer discloses to the purchaser or lessee in writing
35 that the documentary service fee is a negotiable fee. The disclosure
36 must be written in a typeface that is at least as large as the
37 typeface used in the standard text of the document that contains the
38 disclosure and that is bold faced, capitalized, underlined, or
39 otherwise set out from the surrounding material so as to be
40 conspicuous. The dealer shall not represent to the purchaser or

1 lessee that the fee or charge is required by the state to be paid by
2 either the dealer or prospective purchaser or lessee;

3 (iii) The documentary service fee is separately designated from
4 the selling price or capitalized cost of the vehicle and from any
5 other taxes, fees, or charges; and

6 (iv) Dealers disclose in any advertisement that a documentary
7 service fee in an amount up to (~~one hundred fifty dollars~~) \$300 may
8 be added to the sale price or the capitalized cost.

9 For the purposes of this subsection (2), the term "documentary
10 service fee" means the optional amount charged by a dealer to provide
11 the services specified in (a) of this subsection.

12 (3) To set up, promote, or aid in the promotion of a plan by
13 which vehicles are to be sold or leased to a person for a
14 consideration and upon further consideration that the purchaser or
15 lessee agrees to secure one or more persons to participate in the
16 plan by respectively making a similar purchase and in turn agreeing
17 to secure one or more persons likewise to join in said plan, each
18 purchaser or lessee being given the right to secure money, credits,
19 goods, or something of value, depending upon the number of persons
20 joining the plan.

21 (4) To commit, allow, or ratify any act of "bushing" which is
22 defined as follows: Entering into a written contract, written
23 purchase order or agreement, retail installment sales agreement, note
24 and security agreement, or written lease agreement, hereinafter
25 collectively referred to as contract or lease, signed by the
26 prospective buyer or lessee of a vehicle, which:

27 (a) Is subject to any conditions or the dealer's or his or her
28 authorized representative's future acceptance, and the dealer fails
29 or refuses within the "bushing" period, which is four calendar days,
30 exclusive of Saturday, Sunday, or legal holiday, and prior to any
31 further negotiations with said buyer or lessee to inform the buyer or
32 lessee either: (i) That the dealer unconditionally accepts the
33 contract or lease, having satisfied, removed, or waived all
34 conditions to acceptance or performance, including, but not limited
35 to, financing, assignment, or lease approval; or (ii) that the dealer
36 rejects the contract or lease, thereby automatically voiding the
37 contract or lease, as long as such voiding does not negate
38 commercially reasonable contract or lease provisions pertaining to
39 the return of the subject vehicle and any physical damage, excessive
40 mileage after the demand for return of the vehicle, and attorneys'

1 fees authorized by law, and tenders the refund of any initial payment
2 or security made or given by the buyer or lessee, including, but not
3 limited to, any down payment, and tenders return of the trade-in
4 vehicle, key, other trade-in, or certificate of title to a trade-in.
5 Tender may be conditioned on return of the subject vehicle if
6 previously delivered to the buyer or lessee.

7 The provisions of this subsection (4)(a) do not impair,
8 prejudice, or abrogate the rights of a dealer to assert a claim
9 against the buyer or lessee for misrepresentation or breach of
10 contract and to exercise all remedies available at law or in equity,
11 including those under chapter 62A.9A RCW, if the dealer, bank, or
12 other lender or leasing company discovers that approval of the
13 contract or financing or approval of the lease was based upon
14 material misrepresentations made by the buyer or lessee, including,
15 but not limited to, misrepresentations regarding income, employment,
16 or debt of the buyer or lessee, as long as the dealer, or his or her
17 staff, has not, with knowledge of the material misrepresentation,
18 aided, assisted, encouraged, or participated, directly or indirectly,
19 in the misrepresentation. A dealer shall not be in violation of this
20 subsection (4)(a) if the buyer or lessee made a material
21 misrepresentation to the dealer, as long as the dealer, or his or her
22 staff, has not, with knowledge of the material misrepresentation,
23 aided, assisted, encouraged, or participated, directly or indirectly,
24 in the misrepresentation.

25 A dealer may inform a buyer or lessee under this subsection
26 (4)(a) regarding the unconditional acceptance or rejection of the
27 contract, lease, or financing by sending an email message to the
28 buyer's or lessee's supplied email address, by phone call, by leaving
29 a voice message or sending a text message to a phone number provided
30 by the buyer or lessee, by in-person oral communication, by mailing a
31 letter by first-class mail if the buyer or lessee expresses a
32 preference for a letter or declines to provide an email address and a
33 phone number capable of receiving a free text message, or by another
34 means agreed to by the buyer or lessee or approved by the department,
35 effective upon the execution, mailing, or sending of the
36 communication and before expiration of the "bushing" period;

37 (b) Permits the dealer to renegotiate a dollar amount specified
38 as trade-in allowance on a vehicle delivered or to be delivered by
39 the buyer or lessee as part of the purchase price or lease, for any
40 reason except:

1 (i) Failure to disclose that the vehicle's certificate of title
2 has been branded for any reason, including, but not limited to,
3 status as a rebuilt vehicle as provided in RCW 46.12.540 and
4 46.12.560; or

5 (ii) Substantial physical damage or latent mechanical defect
6 occurring before the dealer took possession of the vehicle and which
7 could not have been reasonably discoverable at the time of the taking
8 of the order, offer, or contract; or

9 (iii) Excessive additional miles or a discrepancy in the mileage.
10 "Excessive additional miles" means the addition of five hundred miles
11 or more, as reflected on the vehicle's odometer, between the time the
12 vehicle was first valued by the dealer for purposes of determining
13 its trade-in value and the time of actual delivery of the vehicle to
14 the dealer. "A discrepancy in the mileage" means (A) a discrepancy
15 between the mileage reflected on the vehicle's odometer and the
16 stated mileage on the signed odometer statement; or (B) a discrepancy
17 between the mileage stated on the signed odometer statement and the
18 actual mileage on the vehicle; or

19 (c) Fails to comply with the obligation of any written warranty
20 or guarantee given by the dealer requiring the furnishing of services
21 or repairs within a reasonable time.

22 (5) To commit any offense relating to odometers, as such offenses
23 are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A
24 violation of this subsection is a class C felony punishable under
25 chapter 9A.20 RCW.

26 (6) For any vehicle dealer or vehicle salesperson to refuse to
27 furnish, upon request of a prospective purchaser or lessee, for
28 vehicles previously registered to a business or governmental entity,
29 the name and address of the business or governmental entity.

30 (7) To commit any other offense under RCW 46.37.423, 46.37.424,
31 or 46.37.425.

32 (8) To commit any offense relating to a dealer's temporary
33 license permit, including but not limited to failure to properly
34 complete each such permit, or the issuance of more than one such
35 permit on any one vehicle. However, a dealer may issue a second
36 temporary permit on a vehicle if the following conditions are met:

37 (a) The lienholder fails to deliver the vehicle title to the
38 dealer within the required time period;

39 (b) The dealer has satisfied the lien; and

1 (c) The dealer has proof that payment of the lien was made within
2 two calendar days, exclusive of Saturday, Sunday, or a legal holiday,
3 after the sales contract has been executed by all parties and all
4 conditions and contingencies in the sales contract have been met or
5 otherwise satisfied.

6 (9) For a dealer, salesperson, or mobile home manufacturer,
7 having taken an instrument or cash "on deposit" from a purchaser or
8 lessee prior to the delivery of the bargained-for vehicle, to
9 commingle the "on deposit" funds with assets of the dealer,
10 salesperson, or mobile home manufacturer instead of holding the "on
11 deposit" funds as trustee in a separate trust account until the
12 purchaser or lessee has taken delivery of the bargained-for vehicle.
13 Delivery of a manufactured home shall be deemed to occur in
14 accordance with RCW 46.70.135(5). Failure, immediately upon receipt,
15 to endorse "on deposit" instruments to such a trust account, or to
16 set aside "on deposit" cash for deposit in such trust account, and
17 failure to deposit such instruments or cash in such trust account by
18 the close of banking hours on the day following receipt thereof,
19 shall be evidence of intent to commit this unlawful practice:
20 PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate
21 trust account which equals his or her customary total customer
22 deposits for vehicles for future delivery. For purposes of this
23 section, "on deposit" funds received from a purchaser of a
24 manufactured home means those funds that a seller requires a
25 purchaser to advance before ordering the manufactured home, but does
26 not include any loan proceeds or moneys that might have been paid on
27 an installment contract.

28 (10) For a dealer or manufacturer to fail to comply with the
29 obligations of any written warranty or guarantee given by the dealer
30 or manufacturer requiring the furnishing of goods and services or
31 repairs within a reasonable period of time, or to fail to furnish to
32 a purchaser or lessee, all parts which attach to the manufactured
33 unit including, but not limited to, the undercarriage, and all items
34 specified in the terms of a sales or lease agreement signed by the
35 seller and buyer or lessee.

36 (11) For a vehicle dealer to pay to or receive from any person,
37 firm, partnership, association, or corporation acting, either
38 directly or through a subsidiary, as a buyer's agent for consumers,
39 any compensation, fee, purchase moneys or funds that have been
40 deposited into or withdrawn out of any account controlled or used by

1 any buyer's agent, gratuity, or reward in connection with the
2 purchase, sale, or lease of a new motor vehicle.

3 (12) For a buyer's agent, acting directly or through a
4 subsidiary, to pay to or to receive from any motor vehicle dealer any
5 compensation, fee, gratuity, or reward in connection with the
6 purchase, sale, or lease of a new motor vehicle. In addition, it is
7 unlawful for any buyer's agent to engage in any of the following acts
8 on behalf of or in the name of the consumer:

9 (a) Receiving or paying any purchase moneys or funds into or out
10 of any account controlled or used by any buyer's agent;

11 (b) Signing any vehicle purchase orders, sales contracts, leases,
12 odometer statements, or title documents, or having the name of the
13 buyer's agent appear on the vehicle purchase order, sales contract,
14 lease, or title; or

15 (c) Signing any other documentation relating to the purchase,
16 sale, lease, or transfer of any new motor vehicle.

17 It is unlawful for a buyer's agent to use a power of attorney
18 obtained from the consumer to accomplish or effect the purchase,
19 sale, lease, or transfer of ownership documents of any new motor
20 vehicle by any means which would otherwise be prohibited under (a)
21 through (c) of this subsection. However, the buyer's agent may use a
22 power of attorney for physical delivery of motor vehicle license
23 plates to the consumer.

24 Further, it is unlawful for a buyer's agent to engage in any
25 false, deceptive, or misleading advertising, disseminated in any
26 manner whatsoever, including but not limited to making any claim or
27 statement that the buyer's agent offers, obtains, or guarantees the
28 lowest price on any motor vehicle or words to similar effect.

29 (13) For a buyer's agent to arrange for or to negotiate the
30 purchase, or both, of a new motor vehicle through an out-of-state
31 dealer without disclosing in writing to the customer that the new
32 vehicle would not be subject to chapter 19.118 RCW. This subsection
33 also applies to leased vehicles. In addition, it is unlawful for any
34 buyer's agent to fail to have a written agreement with the customer
35 that: (a) Sets forth the terms of the parties' agreement; (b)
36 discloses to the customer the total amount of any fees or other
37 compensation being paid by the customer to the buyer's agent for the
38 agent's services; and (c) further discloses whether the fee or any
39 portion of the fee is refundable.

1 (14) Being a manufacturer, other than a motorcycle manufacturer
2 governed by chapter 46.93 RCW, to:

3 (a) Coerce or attempt to coerce any vehicle dealer to order or
4 accept delivery of any vehicle or vehicles, parts or accessories, or
5 any other commodities which have not been voluntarily ordered by the
6 vehicle dealer: PROVIDED, That recommendation, endorsement,
7 exposition, persuasion, urging, or argument are not deemed to
8 constitute coercion;

9 (b) Cancel or fail to renew the franchise or selling agreement of
10 any vehicle dealer doing business in this state without fairly
11 compensating the dealer at a fair going business value for his or her
12 capital investment which shall include but not be limited to tools,
13 equipment, and parts inventory possessed by the dealer on the day he
14 or she is notified of such cancellation or termination and which are
15 still within the dealer's possession on the day the cancellation or
16 termination is effective, if: (i) The capital investment has been
17 entered into with reasonable and prudent business judgment for the
18 purpose of fulfilling the franchise; and (ii) the cancellation or
19 nonrenewal was not done in good faith. Good faith is defined as the
20 duty of each party to any franchise to act in a fair and equitable
21 manner towards each other, so as to guarantee one party freedom from
22 coercion, intimidation, or threats of coercion or intimidation from
23 the other party: PROVIDED, That recommendation, endorsement,
24 exposition, persuasion, urging, or argument are not deemed to
25 constitute a lack of good faith;

26 (c) Encourage, aid, abet, or teach a vehicle dealer to sell or
27 lease vehicles through any false, deceptive, or misleading sales or
28 financing practices including but not limited to those practices
29 declared unlawful in this section;

30 (d) Coerce or attempt to coerce a vehicle dealer to engage in any
31 practice forbidden in this section by either threats of actual
32 cancellation or failure to renew the dealer's franchise agreement;

33 (e) Refuse to deliver any vehicle publicly advertised for
34 immediate delivery to any duly licensed vehicle dealer having a
35 franchise or contractual agreement for the retail sale or lease of
36 new and unused vehicles sold or distributed by such manufacturer
37 within sixty days after such dealer's order has been received in
38 writing unless caused by inability to deliver because of shortage or
39 curtailment of material, labor, transportation, or utility services,

1 or by any labor or production difficulty, or by any cause beyond the
2 reasonable control of the manufacturer;

3 (f) To provide under the terms of any warranty that a purchaser
4 or lessee of any new or unused vehicle that has been sold or leased,
5 distributed for sale or lease, or transferred into this state for
6 resale or lease by the vehicle manufacturer may only make any
7 warranty claim on any item included as an integral part of the
8 vehicle against the manufacturer of that item.

9 Nothing in this section may be construed to impair the
10 obligations of a contract or to prevent a manufacturer, distributor,
11 representative, or any other person, whether or not licensed under
12 this chapter, from requiring performance of a written contract
13 entered into with any licensee hereunder, nor does the requirement of
14 such performance constitute a violation of any of the provisions of
15 this section if any such contract or the terms thereof requiring
16 performance, have been freely entered into and executed between the
17 contracting parties. This paragraph and subsection (14)(b) of this
18 section do not apply to new motor vehicle manufacturers governed by
19 chapter 46.96 RCW.

20 (15) Unlawful transfer of an ownership interest in a motor
21 vehicle as defined in RCW 19.116.050.

22 (16) To knowingly and intentionally engage in collusion with a
23 registered owner of a vehicle to repossess and return or resell the
24 vehicle to the registered owner in an attempt to avoid a suspended
25 license impound under chapter 46.55 RCW. However, compliance with
26 chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise
27 disposing of the vehicle, including providing redemption rights to
28 the debtor, is not a violation of this section.

29 (17)(a) For a dealer to enter into a new motor vehicle sales
30 contract without disclosing in writing to a buyer of the new motor
31 vehicle, or to a dealer in the case of an unregistered motor vehicle,
32 any known damage and repair to the new motor vehicle if the damage
33 exceeds five percent of the manufacturer's suggested retail price as
34 calculated at the dealer's authorized warranty rate for labor and
35 parts, or one thousand dollars, whichever amount is greater. A
36 manufacturer or new motor vehicle dealer is not required to disclose
37 to a dealer or buyer that glass, tires, bumpers, or cosmetic parts of
38 a new motor vehicle were damaged at any time if the damaged item has
39 been replaced with original or comparable equipment. A replaced part

1 is not part of the cumulative damage required to be disclosed under
2 this subsection.

3 (b) A manufacturer is required to provide the same disclosure to
4 a dealer of any known damage or repair as required in (a) of this
5 subsection.

6 (c) If disclosure of any known damage or repair is not required
7 under this section, a buyer may not revoke or rescind a sales
8 contract due to the fact that the new motor vehicle was damaged and
9 repaired before completion of the sale.

10 (d) As used in this section:

11 (i) "Cosmetic parts" means parts that are attached by and can be
12 replaced in total through the use of screws, bolts, or other
13 fasteners without the use of welding or thermal cutting, and includes
14 windshields, bumpers, hoods, or trim panels.

15 (ii) "Manufacturer's suggested retail price" means the retail
16 price of the new motor vehicle suggested by the manufacturer, and
17 includes the retail delivered price suggested by the manufacturer for
18 each accessory or item of optional equipment physically attached to
19 the new motor vehicle at the time of delivery to the new motor
20 vehicle dealer that is not included within the retail price suggested
21 by the manufacturer for the new motor vehicle.

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