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SENATE BILL 6391

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State of Washington

61st Legislature

2010 Regular Session

By Senators Keiser, King, Kohl-Welles, Holmquist, Kline, Honeyford, and Shin

Read first time 01/13/10. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to franchise agreements between new motor vehicle  
2 dealers and manufacturers; amending RCW 46.96.030, 46.96.070,  
3 46.96.090, 46.96.105, 46.96.110, 46.96.185, and 46.96.200; and adding  
4 new sections to chapter 46.96 RCW.

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

6 **Sec. 1.** RCW 46.96.030 and 1989 c 415 s 3 are each amended to read  
7 as follows:

8 Notwithstanding the terms of a franchise and notwithstanding the  
9 terms of a waiver, no manufacturer may terminate, cancel, or fail to  
10 renew a franchise with a new motor vehicle dealer, unless the  
11 manufacturer has complied with the notice requirements of RCW 46.96.070  
12 and an administrative law judge has determined, if requested in writing  
13 by the new motor vehicle dealer within the applicable time period  
14 specified in RCW 46.96.070 (1), (2), or (3), after hearing, that there  
15 is good cause for the termination, cancellation, or nonrenewal of the  
16 franchise and that the manufacturer has acted in good faith, as defined  
17 in this chapter, regarding the termination, cancellation, or  
18 nonrenewal. Between the time of issuance of the notice required under  
19 RCW 46.96.070 and the effective termination, cancellation, or

1 nonrenewal of the franchise under this chapter, the rights, duties, and  
2 obligations of the new motor vehicle dealer and the manufacturer under  
3 the franchise and this chapter are unaffected, including those under  
4 RCW 46.96.200.

5 **Sec. 2.** RCW 46.96.070 and 1989 c 415 s 7 are each amended to read  
6 as follows:

7 Before the termination, cancellation, or nonrenewal of a franchise,  
8 the manufacturer shall give written notification to both the department  
9 and the new motor vehicle dealer. For the purposes of this chapter,  
10 the discontinuance of the sale and distribution of a new motor vehicle  
11 line, or the constructive discontinuance by material reduction in  
12 selection offered, is considered a termination, cancellation, or  
13 nonrenewal of a franchise. The notice shall be by certified mail or  
14 personally delivered to the new motor vehicle dealer and shall state  
15 the intention to terminate, cancel, or not renew the franchise, the  
16 reasons for the termination, cancellation, or nonrenewal, and the  
17 effective date of the termination, cancellation, or nonrenewal. The  
18 notice shall be given:

19 (1) Not less than ninety days before the effective date of the  
20 termination, cancellation, or nonrenewal;

21 (2) Not less than fifteen days before the effective date of the  
22 termination, cancellation, or nonrenewal with respect to any of the  
23 following that constitute good cause for termination, cancellation, or  
24 nonrenewal:

25 (a) Insolvency of the new motor vehicle dealer or the filing of any  
26 petition by or against the new motor vehicle dealer under bankruptcy or  
27 receivership law;

28 (b) Failure of the new motor vehicle dealer to conduct sales and  
29 service operations during customary business hours for seven  
30 consecutive business days, except for acts of God or circumstances  
31 beyond the direct control of the new motor vehicle dealer;

32 (c) Conviction of the new motor vehicle dealer, or principal  
33 operator of the dealership, of a felony punishable by imprisonment; or

34 (d) Suspension or revocation of a license that the new motor  
35 vehicle dealer is required to have to operate the new motor vehicle  
36 dealership where the suspension or revocation is for a period in excess  
37 of thirty days;

1 (3) Not less than one hundred eighty days before the effective date  
2 of termination, cancellation, or nonrenewal, where the manufacturer  
3 intends to discontinue sale and distribution of the new motor vehicle  
4 line.

5 **Sec. 3.** RCW 46.96.090 and 1989 c 415 s 9 are each amended to read  
6 as follows:

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

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

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

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

32 **Sec. 4.** RCW 46.96.105 and 2003 c 21 s 2 are each amended to read  
33 as follows:

34 (1) Each manufacturer shall specify in its franchise agreement, or  
35 in a separate written agreement, with each of its dealers licensed in  
36 this state, the dealer's obligation to perform warranty work or service

1 on the manufacturer's products. Each manufacturer shall provide each  
2 of its dealers with a schedule of compensation to be paid to the dealer  
3 for any warranty work or service, including parts, labor, and  
4 diagnostic work, required of the dealer by the manufacturer in  
5 connection with the manufacturer's products. The schedule of  
6 compensation must not be less than (a) the rates charged by the dealer  
7 for similar service to retail customers for nonwarranty service and  
8 repairs and (b) the schedule of compensation for any existing dealer as  
9 of the effective date of this section.

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

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

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

33 **Sec. 5.** RCW 46.96.110 and 1989 c 415 s 11 are each amended to read  
34 as follows:

35 (1) Notwithstanding the terms of a franchise, (a) an owner may  
36 appoint a designated successor to succeed to the ownership of the new  
37 motor vehicle dealer franchise upon the owner's death or incapacity, or

1 (b) if an owner who has owned the franchise for not less than five  
2 consecutive years, the owner may appoint a designated successor to be  
3 effective on a date of the owner's choosing that is prior to the  
4 owner's death or disability.

5 (2) Notwithstanding the terms of a franchise, a designated  
6 successor (~~(of a deceased or incapacitated owner of a new motor vehicle~~  
7 ~~dealer franchise)) described under subsection (1) of this section may  
8 succeed to the ownership interest of the owner under the existing  
9 franchise, if:~~

10 (a) In the case of a designated successor who meets the definition  
11 of a designated successor under RCW 46.96.020(5)(a), but who is not  
12 experienced in the business of a new motor vehicle dealer, the person  
13 will employ an individual who is qualified and experienced in the  
14 business of a new motor vehicle dealer to help manage the day-to-day  
15 operations of the motor vehicle dealership; or in the case of a  
16 designated successor who meets the definition of a designated successor  
17 under RCW 46.96.020(5) (b) or (c), the person is qualified and  
18 experienced in the business of a new motor vehicle dealer and meets the  
19 normal, reasonable, and uniformly applied standards for grant of an  
20 application as a new motor vehicle dealer by the manufacturer; and

21 (b) The designated successor furnishes written notice to the  
22 manufacturer of his or her intention to succeed to the ownership of the  
23 new motor vehicle dealership within sixty days after the owner's death  
24 (~~(or)), incapacity, or appointment under subsection (1)(b) of this~~  
25 section; and

26 (c) The designated successor agrees to be bound by all terms and  
27 conditions of the franchise.

28 (3) The manufacturer may request, and the designated successor  
29 shall promptly provide, such personal and financial information as is  
30 reasonably necessary to determine whether the succession should be  
31 honored.

32 (4) A manufacturer may refuse to honor the succession to the  
33 ownership of a new motor vehicle dealer franchise by a designated  
34 successor if the manufacturer establishes that good cause exists for  
35 its refusal to honor the succession. If the designated successor (~~(of~~  
36 ~~a deceased or incapacitated owner)) of a new motor vehicle dealer~~  
37 franchise fails to meet the requirements set forth in subsections  
38 (2)(a), (b), and (c) of this section, good cause for refusing to honor

1 the succession is presumed to exist. If a manufacturer believes that  
2 good cause exists for refusing to honor the succession to the ownership  
3 of a new motor vehicle dealer franchise by a designated successor, the  
4 manufacturer shall serve written notice on the designated successor and  
5 on the department of its refusal to honor the succession no earlier  
6 than sixty days from the date the notice is served. The notice must be  
7 served not later than sixty days after the manufacturer's receipt of:

8 (a) Notice of the designated successor's intent to succeed to the  
9 ownership interest of the new motor vehicle dealer's franchise; or

10 (b) Any personal or financial information requested by the  
11 manufacturer.

12 (5) The notice in subsection (4) of this section shall state the  
13 specific grounds for the refusal to honor the succession. If the  
14 notice of refusal is not timely and properly served, the designated  
15 successor may continue the franchise in full force and effect, subject  
16 to termination only as otherwise provided under this chapter.

17 (6) Within twenty days after receipt of the notice or within twenty  
18 days after the end of any appeal procedure provided by the  
19 manufacturer, whichever is greater, the designated successor may file  
20 a petition with the department protesting the refusal to honor the  
21 succession. The petition shall contain a short statement setting forth  
22 the reasons for the designated successor's protest. Upon the filing of  
23 a protest and the receipt of the filing fee, the department shall  
24 promptly notify the manufacturer that a timely protest has been filed  
25 and shall request the appointment of an administrative law judge under  
26 chapter 34.12 RCW to conduct a hearing. The manufacturer shall not  
27 terminate or otherwise discontinue the existing franchise until the  
28 administrative law judge has held a hearing and has determined that  
29 there is good cause for refusing to honor the succession. If an appeal  
30 is taken, the manufacturer shall not terminate or discontinue the  
31 franchise until the appeal to superior court is finally determined or  
32 until the expiration of one hundred eighty days from the date of  
33 issuance of the administrative law judge's written decision, whichever  
34 is less. Nothing in this section precludes a manufacturer or dealer  
35 from petitioning the superior court for a stay or other relief pending  
36 judicial review.

37 (7) The manufacturer has the burden of proof to show that good  
38 cause exists for the refusal to honor the succession.

1 (8) The administrative law judge shall conduct the hearing and  
2 render a final decision as expeditiously as possible, but in any event  
3 not later than one hundred eighty days after a protest is filed.

4 (9) The administrative law judge shall conduct any hearing  
5 concerning the refusal to the succession as provided in RCW  
6 46.96.050(2) and all hearing costs shall be borne as provided in that  
7 subsection. A party to such a hearing aggrieved by the final order of  
8 the administrative law judge may appeal as provided and allowed in RCW  
9 46.96.050(3).

10 (10) This section does not preclude the owner of a new motor  
11 vehicle dealer franchise from designating any person as his or her  
12 successor by a written, notarized, and witnessed instrument filed with  
13 the manufacturer. In the event of a conflict between such a written  
14 instrument that has not been revoked by written notice from the owner  
15 to the manufacturer and this section, the written instrument governs.

16 **Sec. 6.** RCW 46.96.185 and 2003 c 21 s 3 are each amended to read  
17 as follows:

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

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

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

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

35 (d) Discriminate between new motor vehicle dealers by adopting a  
36 method, or changing an existing method, for the allocation, scheduling,  
37 or delivery of new motor vehicles, parts, or accessories to its dealers

1 that is not fair, reasonable, and equitable. Upon the request of a  
2 dealer, a manufacturer, distributor, factory branch, or factory  
3 representative shall disclose in writing to the dealer the method by  
4 which new motor vehicles, parts, and accessories are allocated,  
5 scheduled, or delivered to its dealers handling the same line or make  
6 of vehicles;

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

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

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

29 (i) A manufacturer, distributor, factory branch, or factory  
30 representative to own or operate a dealership for a temporary period,  
31 not to exceed two years, during the transition from one owner of the  
32 dealership to another where the dealership was previously owned by a  
33 franchised dealer and is currently for sale to any qualified  
34 independent person at a fair and reasonable price. The temporary  
35 operation may be extended for one twelve-month period on petition of  
36 the temporary operator to the department. The matter will be handled  
37 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is  
38 a franchisee of the petitioning manufacturer or distributor may



1 intervene and participate in a proceeding under this subsection  
2 (1)((+f+)) (g)(i). The temporary operator has the burden of proof to  
3 show justification for the extension and a good faith effort to sell  
4 the dealership to an independent person at a fair and reasonable price;

5 (ii) 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 for the purpose  
8 of broadening the diversity of its dealer body and enhancing  
9 opportunities for qualified persons who are part of a group who have  
10 historically been underrepresented in its dealer body, or other  
11 qualified persons who lack the resources to purchase a dealership  
12 outright, and where the independent person: (A) Has made, or within a  
13 period of two years from the date of commencement of operation will  
14 have made, a significant, bona fide capital investment in the  
15 dealership that is subject to loss; (B) has an ownership interest in  
16 the dealership; and (C) operates the dealership under a bona fide  
17 written agreement with the manufacturer, distributor, factory branch,  
18 or factory representative under which he or she will acquire all of the  
19 ownership interest in the dealership within a reasonable period of time  
20 and under reasonable terms and conditions. The manufacturer,  
21 distributor, factory branch, or factory representative has the burden  
22 of proof of establishing that the acquisition of the dealership by the  
23 independent person was made within a reasonable period of time and  
24 under reasonable terms and conditions. Nothing in this subsection  
25 (1)((+f+)) (g)(ii) relieves a manufacturer, distributor, factory  
26 branch, or factory representative from complying with ((RCW  
27 ~~46.96.185(1+)~~) (a) through ((+e+)) (f) of this subsection;

28 (iii) A manufacturer, distributor, factory branch, or factory  
29 representative to own or operate a dealership in conjunction with an  
30 independent person in a bona fide business relationship where the  
31 independent person: (A) Has made, or within a period of two years from  
32 the date of commencement of operation will have made, a significant,  
33 bona fide capital investment in the dealership that is subject to loss;  
34 (B) has an ownership interest in the dealership; and (C) operates the  
35 dealership under a bona fide written agreement with the manufacturer,  
36 distributor, factory branch, or factory representative under which he  
37 or she will acquire all of the ownership interest in the dealership  
38 within a reasonable period of time and under reasonable terms and

1 conditions. The manufacturer, distributor, factory branch, or factory  
2 representative has the burden of proof of establishing that the  
3 acquisition of the dealership by the independent person was made within  
4 a reasonable period of time and under reasonable terms and conditions.  
5 The number of dealerships operated under this subsection (1)((+f+))  
6 (g)(iii) may not exceed four percent rounded up to the nearest whole  
7 number of a manufacturer's total of new motor vehicle dealer franchises  
8 in this state. Nothing in this subsection (1)((+f+)) (g)(iii) relieves  
9 a manufacturer, distributor, factory branch, or factory representative  
10 from complying with ((RCW 46.96.185(1))) (a) through ((+e+)) (f) of  
11 this subsection;

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

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

37 ((+g+)) (h) Compete with a new motor vehicle dealer by owning,  
38 operating, or controlling, whether directly or indirectly, a service

1 facility in this state for the repair or maintenance of motor vehicles  
2 under the manufacturer's new car warranty and extended warranty.  
3 Nothing in this subsection ~~(1)(g))~~ (h), however, prohibits a  
4 manufacturer, distributor, factory branch, or factory representative  
5 from owning or operating a service facility for the purpose of  
6 providing or performing maintenance, repair, or service work on motor  
7 vehicles that are owned by the manufacturer, distributor, factory  
8 branch, or factory representative;

9 ~~((h))~~ (i) Use confidential or proprietary information obtained  
10 from a new motor vehicle dealer to unfairly compete with the dealer.  
11 For purposes of this subsection ~~(1)(h))~~ (i), "confidential or  
12 proprietary information" means trade secrets as defined in RCW  
13 19.108.010, business plans, marketing plans or strategies, customer  
14 lists, contracts, sales data, revenues, or other financial information;

15 ~~((i))~~ (j) Terminate, cancel, or fail to renew a franchise with a  
16 new motor vehicle dealer based upon any of the following events, which  
17 do not constitute good cause for termination, cancellation, or  
18 nonrenewal under RCW 46.96.060: (A) The fact that the new motor  
19 vehicle dealer owns, has an investment in, participates in the  
20 management of, or holds a franchise agreement for the sale or service  
21 of another make or line of new motor vehicles~~((, or))~~i; (B) the fact  
22 that the new motor vehicle dealer has established another make or line  
23 of new motor vehicles or service in the same dealership facilities as  
24 those of the manufacturer or distributor ~~((with the prior written  
25 approval of the manufacturer or distributor, if the approval was  
26 required under the terms of the new motor vehicle dealer's franchise  
27 agreement))~~; (C) that the new motor vehicle dealer has or intends to  
28 relocate the manufacturer or distributor's make or line of new motor  
29 vehicles or service to an existing dealership facility; or (D) the  
30 failure of a franchisee to change the location of the dealership or to  
31 make substantial alterations to the use or number of franchises on the  
32 dealership premises or facilities; ~~((or~~

33 ~~(+j))~~ (k) Coerce or attempt to coerce a motor vehicle dealer to  
34 refrain from, or prohibit or attempt to prohibit a new motor vehicle  
35 dealer from acquiring, owning, having an investment in, participating  
36 in the management of, or holding a franchise agreement for the sale or  
37 service of another make or line of new motor vehicles or related  
38 products, or establishing another make or line of new motor vehicles or

1 service in the same dealership facilities, if the prohibition against  
2 acquiring, owning, investing, managing, or holding a franchise for such  
3 additional make or line of vehicles or products, or establishing  
4 another make or line of new motor vehicles or service in the same  
5 dealership facilities, is not supported by reasonable business  
6 considerations. The burden of proving that reasonable business  
7 considerations support or justify the prohibition against the  
8 additional make or line of new motor vehicles or products or  
9 nonexclusive facilities is on the manufacturer;

10 (l) Require, by contract or otherwise, a new motor vehicle dealer  
11 to make a material alteration, expansion, or addition to any dealership  
12 facility, unless the required alteration, expansion, or addition is  
13 uniformly required of other similarly situated new motor vehicle  
14 dealers of the same make or line of vehicles and is reasonable in light  
15 of all existing circumstances, including economic conditions. In any  
16 proceeding in which a required facility alteration, expansion, or  
17 addition is an issue, the manufacturer or distributor has the burden of  
18 proof;

19 (m) Prevent or attempt to prevent by contract or otherwise any new  
20 motor vehicle dealer from changing the executive management of a new  
21 motor vehicle dealer unless the manufacturer or distributor, having the  
22 burden of proof, can show that a proposed change of executive  
23 management will result in executive management by a person or persons  
24 who are not of good moral character or who do not meet reasonable,  
25 preexisting, and equitably applied standards of the manufacturer or  
26 distributor. If a manufacturer or distributor rejects a proposed  
27 change in the executive management, the manufacturer or distributor  
28 shall give written notice of its reasons to the dealer within sixty  
29 days after receiving written notice from the dealer of the proposed  
30 change and all related information reasonably requested by the  
31 manufacturer or distributor, or the change in executive management must  
32 be considered approved; or

33 (n) Condition the sale, transfer, relocation, or renewal of a  
34 franchise agreement or condition sales, services, parts, or financial  
35 incentives upon site control or an agreement to renovate or make  
36 improvements to a facility.

37 (2) Subsection (1)(a), (b), and (c) of this section do not apply to  
38 sales to a motor vehicle dealer: (a) For resale to a federal, state,

1 or local government agency; (b) where the vehicles will be sold or  
2 donated for use in a program of driver's education; (c) where the sale  
3 is made under a manufacturer's bona fide promotional program offering  
4 sales incentives or rebates; (d) where the sale of parts or accessories  
5 is under a manufacturer's bona fide quantity discount program; or (e)  
6 where the sale is made under a manufacturer's bona fide fleet vehicle  
7 discount program. For purposes of this subsection, "fleet" means a  
8 group of fifteen or more new motor vehicles purchased or leased by a  
9 dealer at one time under a single purchase or lease agreement for use  
10 as part of a fleet, and where the dealer has been assigned a fleet  
11 identifier code by the department of licensing.

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

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

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

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

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

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

37 (4) A violation of this section is deemed to affect the public  
38 interest and constitutes an unlawful and unfair practice under chapter

1 19.86 RCW. A person aggrieved by an alleged violation of this section  
2 may petition the department to have the matter handled as an  
3 adjudicative proceeding under chapter 34.05 RCW.

4 **Sec. 7.** RCW 46.96.200 and 1994 c 274 s 7 are each amended to read  
5 as follows:

6 (1) Notwithstanding the terms of a franchise, a manufacturer shall  
7 not ((unreasonably)) withhold consent to the sale, transfer, or  
8 exchange of a franchise to a qualified buyer who meets the normal,  
9 reasonable, and uniformly applied standards established by the  
10 manufacturer for the appointment of a new dealer who does not already  
11 hold a franchise with the manufacturer or is capable of being licensed  
12 as a new motor vehicle dealer in the state of Washington. A decision  
13 or determination made by the administrative law judge as to whether a  
14 qualified buyer is capable of being licensed as a new motor vehicle  
15 dealer in the state of Washington is not conclusive or determinative of  
16 any ultimate determination made by the department of licensing as to  
17 the buyer's qualification for a motor vehicle dealer license. A  
18 manufacturer's failure to respond in writing to a request for consent  
19 under this subsection within sixty days after receipt of a written  
20 request on the forms, if any, generally used by the manufacturer  
21 containing the information and reasonable promises required by a  
22 manufacturer is deemed to be consent to the request. A manufacturer  
23 may request, and, if so requested, the applicant for a franchise (a)  
24 shall promptly provide such personal and financial information as is  
25 reasonably necessary to determine whether the sale, transfer, or  
26 exchange should be approved, and (b) shall agree to be bound by all  
27 reasonable terms and conditions of the franchise.

28 (2) If a manufacturer refuses to approve the sale, transfer, or  
29 exchange of a franchise, the manufacturer shall serve written notice on  
30 the applicant, the transferring, selling, or exchanging new motor  
31 vehicle dealer, and the department of its refusal to approve the  
32 transfer of the franchise no later than sixty days after the date the  
33 manufacturer receives the written request from the new motor vehicle  
34 dealer. If the manufacturer has requested personal or financial  
35 information from the applicant under subsection (1) of this section,  
36 the notice shall be served not later than sixty days after the receipt

1 of all of such documents. Service of all notices under this section  
2 shall be made by personal service or by certified mail, return receipt  
3 requested.

4 (3) The notice in subsection (2) of this section shall state the  
5 specific grounds for the refusal to approve the sale, transfer, or  
6 exchange of the franchise.

7 (4) Within twenty days after receipt of the notice of refusal to  
8 approve the sale, transfer, or exchange of the franchise by the  
9 transferring new motor vehicle dealer, the new motor vehicle dealer may  
10 file a petition with the department to protest the refusal to approve  
11 the sale, transfer, or exchange. The petition shall contain a short  
12 statement setting forth the reasons for the dealer's protest. Upon the  
13 filing of a protest and the receipt of the filing fee, the department  
14 shall promptly notify the manufacturer that a timely protest has been  
15 filed, and the department shall arrange for a hearing with an  
16 administrative law judge as the presiding officer to determine if the  
17 manufacturer unreasonably withheld consent to the sale, transfer, or  
18 exchange of the franchise.

19 ~~(5) ((In determining whether the manufacturer unreasonably withheld~~  
20 ~~its approval to the sale, transfer, or exchange, the manufacturer has~~  
21 ~~the burden of proof that it acted reasonably. A manufacturer's refusal~~  
22 ~~to accept or approve a proposed buyer who otherwise meets the normal,~~  
23 ~~reasonable, and uniformly applied standards established by the~~  
24 ~~manufacturer for the appointment of a new dealer, or who otherwise is~~  
25 ~~capable of being licensed as a new motor vehicle dealer in the state of~~  
26 ~~Washington, is presumed to be unreasonable.~~

27 ~~(6))~~ The administrative law judge shall conduct a hearing and  
28 render a final decision as expeditiously as possible, but in any event  
29 not later than one hundred twenty days after a protest is filed. Only  
30 the selling, transferring, or exchanging new motor vehicle dealer and  
31 the manufacturer may be parties to the hearing.

32 ~~((7))~~ (6) The administrative law judge shall conduct any hearing  
33 as provided in RCW 46.96.050(2), and all hearing costs shall be borne  
34 as provided in that subsection. Only the manufacturer and the selling,  
35 transferring, or exchanging new motor vehicle dealer may appeal the  
36 final order of the administrative law judge as provided in RCW  
37 46.96.050(3).

1           ~~((+8))~~ (7) This section and RCW 46.96.030 through 46.96.110 apply  
2 to all franchises and contracts existing on July 23, 1989, between  
3 manufacturers and new motor vehicle dealers as well as to all future  
4 franchises and contracts between manufacturers and new motor vehicle  
5 dealers.

6           ~~((+9))~~ (8) RCW 46.96.140 through 46.96.190 apply to all franchises  
7 and contracts existing on October 1, 1994, between manufacturers and  
8 new motor vehicle dealers as well as to all future franchises and  
9 contracts between manufacturers and new motor vehicle dealers.

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

12           (1) In the event of a termination, cancellation, or nonrenewal  
13 under this chapter, except for a termination, cancellation, or  
14 nonrenewal under RCW 46.96.070(2), the manufacturer shall, at the  
15 request and option of the new motor vehicle dealer, also pay to the new  
16 motor vehicle dealer the fair market value of the motor vehicle  
17 dealer's goodwill for the make or line as of the date immediately  
18 preceding any communication to the public or dealer regarding  
19 termination. To the extent the franchise agreement provides for the  
20 payment or reimbursement to the new motor vehicle dealer in excess of  
21 the value specified in this section, the provisions of the franchise  
22 agreement control.

23           (2) The manufacturer shall pay the new motor vehicle dealer the  
24 value specified in subsection (1) of this section within ninety days  
25 after the date of termination.

26           NEW SECTION.   **Sec. 9.** A new section is added to chapter 46.96 RCW  
27 to read as follows:

28           A manufacturer shall, upon demand, indemnify and hold harmless any  
29 existing or former franchisee and the franchisee's successors and  
30 assigns from any and all damages sustained and attorneys' fees and  
31 other expenses reasonably incurred by the franchisee that result from  
32 or relate to any claim made or asserted by a third party against the  
33 franchisee to the extent the claim results from any of the following:

34           (1) The condition, characteristics, manufacture, assembly, or  
35 design of any vehicle, parts, accessories, tools, or equipment, or the



1 selection or combination of parts or components manufactured or  
2 distributed by the manufacturer or distributor;

3 (2) Service systems, procedures, or methods that the franchisor  
4 required or recommended the franchisee to use;

5 (3) Improper use of nonpublic personal information obtained from a  
6 franchisee concerning any consumer, customer, or employee of the  
7 franchisee; or

8 (4) Any act or omission of the manufacturer or distributor for  
9 which the franchisee would have a claim for contribution or indemnity  
10 under applicable law or under the franchise, irrespective of any prior  
11 termination or expiration of the franchise.

12 NEW SECTION. **Sec. 10.** A new section is added to chapter 46.96 RCW  
13 to read as follows:

14 A manufacturer may not take or threaten to take any adverse action  
15 against a new motor vehicle dealer including, but not limited to,  
16 charge backs, reducing vehicle allocations, or terminating or  
17 threatening to terminate a franchise, because the dealer sold or leased  
18 a vehicle to a customer who exported the vehicle to a foreign country  
19 or who resold the vehicle, unless the manufacturer or distributor  
20 definitively proves that the dealer had actual knowledge that the  
21 customer intended to export or resell the vehicle. A manufacturer or  
22 distributor shall, upon demand, indemnify, hold harmless, and defend  
23 any existing or former franchisee or franchisee's successors or assigns  
24 from any and all claims asserted, or damages sustained and attorneys'  
25 fees and other expenses reasonably incurred by the franchisee that  
26 result from or relate to any claim made or asserted, by a third party  
27 against the franchisee for any policy, program, or other behavior  
28 suggested by the manufacturer for sales of vehicles to parties that  
29 intend to export a vehicle purchased from the franchisee.

30 NEW SECTION. **Sec. 11.** A new section is added to chapter 46.96 RCW  
31 to read as follows:

32 A new motor vehicle dealer who is injured in his or her business or  
33 property by a violation of this chapter may bring a civil action in the  
34 superior court to recover the actual damages sustained by the dealer,  
35 together with the costs of the suit, including reasonable attorneys'  
36 fees. The new motor vehicle dealer may bring a civil action in

1 district court to recover his or her actual damages, except for damages  
2 that exceed the amount specified in RCW 3.66.020, and the costs of the  
3 suit, including reasonable attorneys' fees.

4 NEW SECTION. **Sec. 12.** A new section is added to chapter 46.96 RCW  
5 to read as follows:

6 It is an unfair practice for a manufacturer or distributor to enter  
7 into an agreement or understanding in which a new motor vehicle dealer  
8 is asked or required to waive any provision of this chapter.

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