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**SUBSTITUTE HOUSE BILL 2524**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** House Business & Financial Services (originally sponsored by Representatives Kirby, Vick, Ryu, Chandler, Blake, Santos, Stanford, Zeiger, Hurst, Fagan, Takko, Habib, Harris, Sullivan, Kretz, MacEwen, Wylie, Moeller, Morrell, Haigh, Freeman, Springer, and Stonier)

READ FIRST TIME 02/04/14.

1       AN ACT Relating to manufacturer and new motor vehicle dealer  
2 franchise agreements; amending RCW 46.70.045, 46.96.020, 46.96.060,  
3 46.96.080, 46.96.090, 46.96.105, and 46.96.185; adding a new section to  
4 chapter 46.96 RCW; and creating a new section.

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

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

8       The director may deny a license under this chapter when the  
9 application is a subterfuge that conceals the real person in interest  
10 whose license has been denied, suspended, or revoked for cause under  
11 this chapter and the terms have not been fulfilled or a civil penalty  
12 has not been paid, ((~~or~~)) the director finds that the application was  
13 not filed in good faith, or the issuance of a new license or subagency  
14 would cause a manufacturer, distributor, factory branch, or factory  
15 representative, or an agent, officer, parent company, wholly or  
16 partially owned subsidiary, affiliated entity, or other person  
17 controlled by or under common control with a manufacturer, distributor,  
18 factory branch, or factory representative, to be in violation of

1 chapter 46.96 RCW. This section does not preclude the department from  
2 taking an action against a current licensee.

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

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

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

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

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

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

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

37 (5) "Designated successor" means:

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

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

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

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

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

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

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

32 (10) "Second stage manufacturer" means a manufacturer who  
33 permanently installs structure and equipment upon the engine, chassis,  
34 and drivetrain of a vehicle to produce a tow truck, ambulance, or fire  
35 truck. "Second stage manufacturer" does not include the manufacturer  
36 who produces the engine, chassis, or drivetrain.

37 (11) "Security breach" means an incident of unauthorized access to  
38 and acquisition of records or data containing new motor vehicle dealer

1 or dealer customer information where unauthorized use of the dealer or  
2 dealer's customer information has occurred or is reasonably likely to  
3 occur or that creates a material risk of harm to the dealer or dealer's  
4 customer. Any incident of unauthorized access to and acquisition of  
5 records or data containing dealer or dealer customer information, or  
6 any incident of disclosure of dealer customer information to one or  
7 more third parties that has not been specifically authorized by the  
8 dealer or dealer's customer, constitutes a security breach.

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

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

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

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

29       (b) The notice under this subsection stated that notice was  
30 provided of a failure of performance under this section;

31       (c) The manufacturer provided the new motor vehicle dealer with  
32 specific, reasonable goals or reasonable performance standards with  
33 which the dealer must comply, together with a suggested timetable or  
34 program for attaining those goals or standards, and the new motor  
35 vehicle dealer was given a reasonable opportunity, for a period not  
36 less than one hundred eighty days, to comply with the goals or  
37 standards; and

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

6 (2) A manufacturer does not have good cause for termination,  
7 cancellation, or nonrenewal, unless:

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

13 (b) None of the new motor vehicle dealer's primary allocations of  
14 any vehicle during the period was more than one hundred twenty percent  
15 of any other primary allocation of that vehicle during another period  
16 established by the manufacturer or distributor; and

17 (c) The manufacturer provides to the new motor vehicle dealer, upon  
18 the dealer's request, documentation sufficient to develop a market  
19 analysis. This documentation must include, but is not limited to, the  
20 allocation of inventory to the dealer and other dealers in the same  
21 zone during the period established by the manufacturer.

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

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

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

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

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

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

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

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

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

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

35 (2)(a) For the nonrenewal or termination of a franchise that is  
36 implemented as a result of the sale of assets or stock of the motor  
37 vehicle dealer, the party purchasing the assets or stock of the motor  
38 vehicle dealer may negotiate for the purchase or other transfer of some

1 or all unused, undamaged, and unsold new motor vehicles in the selling  
2 new motor vehicle dealer's inventory that were acquired from the  
3 manufacturer or another new motor vehicle dealer of the same line make  
4 in the ordinary course of business within the previous twelve months.

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

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

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

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

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

30 (1) Except for termination, cancellation, or nonrenewal under RCW  
31 46.96.070(2), in the event of a termination, cancellation, or  
32 nonrenewal under this chapter((, except for termination, cancellation,  
33 or nonrenewal under RCW 46.96.070(2))) or a voluntary termination,  
34 cancellation, or nonrenewal initiated by the dealer, the manufacturer  
35 shall, at the request and option of the new motor vehicle dealer, also  
36 pay to the new motor vehicle dealer the dealer costs for any  
37 relocation, substantial alteration, or remodeling of a dealer's

1 facilities required by a manufacturer for the granting of a franchise  
2 or the continuance or renewal of a franchise agreement completed within  
3 three years of the termination, cancellation, or nonrenewal and:

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

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

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

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

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

34 (a) The rates charged by the dealer for nonwarranty service or work  
35 for parts means the price paid by the dealer for those parts, including  
36 all shipping and other charges, increased by the franchisee's average  
37 percentage markup. A dealer must establish and declare the dealer's



1 average percentage markup by submitting to the manufacturer one hundred  
2 sequential customer-paid service repair orders or ninety days of  
3 customer-paid service repair orders, whichever is less, covering  
4 repairs made no more than one hundred eighty days before the  
5 submission, and the average percentage markup must be computed by  
6 averaging the individual markup rates of each sequential invoice  
7 submitted to the manufacturer. A change in a dealer's established  
8 average percentage markup takes effect thirty days following the  
9 submission. A manufacturer may not require a dealer to establish  
10 average percentage markup by another methodology. A manufacturer may  
11 not require information that the dealer believes is unduly burdensome  
12 or time consuming to provide, including, but not limited to, part-by-  
13 part or transaction-by-transaction calculations. In calculating the  
14 retail rate customarily charged by the dealer for parts and labor, the  
15 following work must not be included in the calculation:

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

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

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

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

24 (v) Tires;

25 (vi) Batteries and light bulbs; and

26 (vii) Vehicle reconditioning.

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

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

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

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

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

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

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

36 (a) Discriminate between new motor vehicle dealers by selling or

1 offering to sell a like vehicle to one dealer at a lower actual price  
2 than the actual price offered to another dealer for the same model  
3 similarly equipped;

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

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

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

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

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

37 (g) Compete with a new motor vehicle dealer of any make or line by  
38 acting in the capacity of a new motor vehicle dealer, or by owning,

1 operating, or controlling, whether directly or indirectly, a motor  
2 vehicle dealership in this state. It is not, however, a violation of  
3 this subsection for:

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

18 (ii) A manufacturer, distributor, factory branch, or factory  
19 representative to own or operate a dealership in conjunction with an  
20 independent person in a bona fide business relationship for the purpose  
21 of broadening the diversity of its dealer body and enhancing  
22 opportunities for qualified persons who are part of a group who have  
23 historically been underrepresented in its dealer body, or other  
24 qualified persons who lack the resources to purchase a dealership  
25 outright, and where the independent person: (A) Has made, or within a  
26 period of two years from the date of commencement of operation will  
27 have made, a significant, bona fide capital investment in the  
28 dealership that is subject to loss; (B) has an ownership interest in  
29 the dealership; and (C) operates the dealership under a bona fide  
30 written agreement with the manufacturer, distributor, factory branch,  
31 or factory representative under which he or she will acquire all of the  
32 ownership interest in the dealership within a reasonable period of time  
33 and under reasonable terms and conditions. The manufacturer,  
34 distributor, factory branch, or factory representative has the burden  
35 of proof of establishing that the acquisition of the dealership by the  
36 independent person was made within a reasonable period of time and  
37 under reasonable terms and conditions. Nothing in this subsection

1 (1)(g)(ii) relieves a manufacturer, distributor, factory branch, or  
2 factory representative from complying with (a) through (f) of this  
3 subsection;

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

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

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

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

12 (vi) A second stage manufacturer to own, operate, or control a new  
13 motor vehicle dealership;

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

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

30 (j)(i) Terminate, cancel, or fail to renew a franchise with a new  
31 motor vehicle dealer based upon any of the following events, which do  
32 not constitute good cause for termination, cancellation, or nonrenewal  
33 under RCW 46.96.060: (A) The fact that the new motor vehicle dealer  
34 owns, has an investment in, participates in the management of, or holds  
35 a franchise agreement for the sale or service of another make or line  
36 of new motor vehicles; (B) the fact that the new motor vehicle dealer  
37 has established another make or line of new motor vehicles or service  
38 in the same dealership facilities as those of the manufacturer or

1 distributor; (C) that the new motor vehicle dealer has or intends to  
2 relocate the manufacturer or distributor's make or line of new motor  
3 vehicles or service to an existing dealership facility that is within  
4 the relevant market area, as defined in RCW 46.96.140, of the make or  
5 line to be relocated, except that, in any nonemergency circumstance,  
6 the dealer must give the manufacturer or distributor at least sixty  
7 days' notice of his or her intent to relocate and the relocation must  
8 comply with RCW 46.96.140 and 46.96.150 for any same make or line  
9 facility; or (D) the failure of a franchisee to change the location of  
10 the dealership or to make substantial alterations to the use or number  
11 of franchises on the dealership premises or facilities.

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

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

34 (l) Require, by contract or otherwise, a new motor vehicle dealer  
35 to make a material alteration, expansion, or addition to any dealership  
36 facility, unless the required alteration, expansion, or addition is  
37 uniformly required of other similarly situated new motor vehicle  
38 dealers of the same make or line of vehicles and is reasonable in light

1 of all existing circumstances, including economic conditions. In any  
2 proceeding in which a required facility alteration, expansion, or  
3 addition is an issue, the manufacturer or distributor has the burden of  
4 proof. Except for a program or any renewal or modification of a  
5 program that is in effect with one or more new motor vehicle dealers in  
6 this state on the effective date of this section, a manufacturer shall  
7 not require, coerce, or attempt to coerce any new motor vehicle dealer  
8 by program, policy, standard, or otherwise to change the location of  
9 the dealership or construct, replace, renovate, or make any substantial  
10 changes, alterations, or remodeling to a new motor vehicle dealer's  
11 sales or service facilities, except as necessary to comply with health  
12 or safety laws or to comply with technology requirements without which  
13 a dealer would be unable to service a vehicle the dealer has elected to  
14 sell, before the fifteenth anniversary of the date of issuance of the  
15 certificate of occupancy or the manufacturer's approval, whichever is  
16 later, from:

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

22 (ii) The date a prior change, alteration, or remodel of the  
23 dealership at that location was completed if the construction was in  
24 substantial compliance with standards or plans provided by a  
25 manufacturer, distributor, or representative or through a subsidiary or  
26 agent of the manufacturer, distributor, or representative;

27 (m) Prevent or attempt to prevent by contract or otherwise any new  
28 motor vehicle dealer from changing the executive management of a new  
29 motor vehicle dealer unless the manufacturer or distributor, having the  
30 burden of proof, can show that a proposed change of executive  
31 management will result in executive management by a person or persons  
32 who are not of good moral character or who do not meet reasonable,  
33 preexisting, and equitably applied standards of the manufacturer or  
34 distributor. If a manufacturer or distributor rejects a proposed  
35 change in the executive management, the manufacturer or distributor  
36 shall give written notice of its reasons to the dealer within sixty  
37 days after receiving written notice from the dealer of the proposed



1 change and all related information reasonably requested by the  
2 manufacturer or distributor, or the change in executive management must  
3 be considered approved; ((or))

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

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

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

1       (g) Require, coerce, or attempt to coerce any new motor vehicle  
2 dealer by program, policy, facility guide, standard, or otherwise to  
3 order or accept delivery of any service or repair appliances,  
4 equipment, parts, or accessories, or any other commodity not required  
5 by law, which the dealer has not voluntarily ordered or which the  
6 dealer does not have the right to return for a full refund within  
7 ninety days.

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

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

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

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

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

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

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

8 (4) A violation of this section is deemed to affect the public  
9 interest and constitutes an unlawful and unfair practice under chapter  
10 19.86 RCW. A person aggrieved by an alleged violation of this section  
11 may petition the department to have the matter handled as an  
12 adjudicative proceeding under chapter 34.05 RCW.

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

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

29 However, the new motor vehicle dealer may provide any other new  
30 motor vehicle dealer, consumer, or customer data or information  
31 specified by the requesting party by timely obtaining and pushing or  
32 otherwise furnishing the requested data to the requesting party in a  
33 widely accepted file format, such as comma delimited, provided that  
34 when a new motor vehicle dealer would otherwise be required to provide  
35 direct access to its management computer system under the terms of a  
36 consent, authorization, release, novation, franchise, or other contract  
37 or agreement, a new motor vehicle dealer that elects to provide data or

1 information through other means may be charged a reasonable initial  
2 set-up fee and reasonable processing fee based on the actual  
3 incremental costs incurred by the party requesting the data for  
4 establishing and implementing the process for the dealer. Any term or  
5 provision contained in any consent, authorization, release, novation,  
6 franchise, or other contract or agreement that is inconsistent with  
7 this subsection is voidable at the option of the new motor vehicle  
8 dealer.

9 (2) Notwithstanding the terms or conditions of any consent,  
10 authorization, release, novation, franchise, or other contract or  
11 agreement, every manufacturer, factory branch, distributor, distributor  
12 branch, dealer management computer system vendor, or any third party  
13 acting on behalf of or through any manufacturer, factory branch,  
14 distributor, distributor branch, or dealer management computer system  
15 vendor, having electronic access to consumer or customer data or other  
16 information in a computer system utilized by a new motor vehicle  
17 dealer, or who has otherwise been provided consumer or customer data or  
18 information by the dealer, shall fully indemnify and hold harmless the  
19 dealer from whom it has acquired the consumer or customer data or other  
20 information from all damages, costs, and expenses incurred by the  
21 dealer including, but not limited to, judgments, settlements, fines,  
22 penalties, litigation costs, defense costs, court costs, costs related  
23 to the disclosure of security breaches, and attorneys' fees arising out  
24 of complaints, claims, security breaches, civil or administrative  
25 actions, and, to the fullest extent allowable under the law,  
26 governmental investigations and prosecutions to the extent caused by  
27 the access, storage, maintenance, use, sharing, disclosure, or  
28 retention of the dealer's consumer or customer data or other  
29 information, or maintenance or services provided to any computer system  
30 utilized by the dealer by the manufacturer, factory branch,  
31 distributor, distributor branch, dealer management computer system  
32 vendor, or third party acting on behalf of or through the manufacturer,  
33 factory branch, distributor, distributor branch, or dealer management  
34 computer system vendor.

35 NEW SECTION. **Sec. 9.** This act applies to all franchises and  
36 contracts between manufacturers and new motor vehicle dealers in

1 existence on, or amended, renewed, or entered into after, the effective  
2 date of this section.

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