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HOUSE BILL 2096

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Sullivan, Hinkle, Cooper, Wood, Conway, Armstrong and Kristiansen

Read first time 02/25/2003. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to franchise agreements between motorsports vehicle  
2 dealers and manufacturers; adding a new chapter to Title 46 RCW; and  
3 repealing RCW 46.94.001, 46.94.005, 46.94.010, 46.94.020, 46.94.030,  
4 46.94.040, 46.94.050, 46.94.060, and 46.94.900.

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

6 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS. The legislature finds  
7 and declares that the distribution and sale of motorsports vehicles in  
8 this state vitally affect the general economy of the state and the  
9 public interest and public welfare, that provision for warranty service  
10 to motorsports vehicles is of substantial concern to the people of this  
11 state, that the maintenance of fair competition among dealers and  
12 others is in the public interest, and that the maintenance of strong  
13 and sound dealerships is essential to provide continuing and necessary  
14 reliable services to the consuming public in this state and to provide  
15 stable employment to the citizens of this state. The legislature  
16 further finds that there is a substantial disparity in bargaining power  
17 between motorsports vehicle manufacturers and their dealers, and that  
18 in order to promote the public interest and the public welfare, and in  
19 the exercise of its police power, it is necessary to regulate the

1 relationship between motorsports vehicle dealers and motorsports  
2 vehicle manufacturers, importers, distributors, and their  
3 representatives doing business in this state, not only for the  
4 protection of dealers but also for the benefit for the public in  
5 assuring the continued availability and servicing of motorsports  
6 vehicles sold to the public.

7 The legislature recognizes it is in the best interest for  
8 manufacturers and dealers of motorsports vehicles to conduct business  
9 with each other in a fair, efficient, and competitive manner. The  
10 legislature declares the public interest is best served by dealers  
11 being assured of the ability to manage their business enterprises under  
12 a contractual obligation with manufacturers where dealers do not  
13 experience unreasonable interference and are assured of the ability to  
14 transfer ownership of their business without undue constraints. It is  
15 the intent of the legislature to impose a regulatory scheme and to  
16 regulate competition in the motorsports vehicle industry to the extent  
17 necessary to balance fairness and efficiency. These actions will  
18 permit motorsports vehicle dealers to better serve consumers and allow  
19 dealers to devote their best competitive efforts and resources to the  
20 sale and services of the manufacturer's products to consumers.

21 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
22 section apply throughout this chapter.

23 (1) "Department" means the department of licensing.

24 (2) "Director" means the director of the department of licensing.

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

31 "Franchise" includes an oral or written contract and includes a  
32 dealer agreement, either expressed or implied, between a manufacturer  
33 and a new motorsports vehicle dealer that purports to fix the legal  
34 rights and liabilities between the parties and under which (a) the  
35 dealer is granted the right to purchase and resell motorsports vehicles  
36 manufactured, distributed, or imported by the manufacturer; (b) the  
37 dealer's business is associated with the trademark, trade name,

1 commercial symbol, or advertisement designating the franchisor or the  
2 products distributed by the manufacturer; and (c) the dealer's business  
3 relies on the manufacturer for a continued supply of motorsports  
4 vehicles, parts, and accessories.

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

7 (5) "Designated successor" means:

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

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

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

21 (6) "Manufacturer" means a person, firm, association, corporation,  
22 or trust, resident or nonresident, who manufactures or assembles new  
23 and unused motorsports vehicles or remanufactures motorsports vehicles  
24 in whole or in part and further includes the terms:

25 (a) "Distributor," which means a person, firm, association,  
26 corporation, or trust, resident or nonresident, who in whole or in part  
27 offers for sale, sells, or distributes new and unused motorsports  
28 vehicles to vehicle dealers or who maintains factory representatives.

29 (b) "Factory branch," which means a branch office maintained by a  
30 manufacturer for the purpose of selling or offering for sale,  
31 motorsports vehicles to a distributor, wholesaler, or vehicle dealer,  
32 or for directing or supervising in whole or in part factory or  
33 distributor representatives, and further includes a sales promotion  
34 organization, whether a person, firm, or corporation, that is engaged  
35 in promoting the sale of new and unused motorsports vehicles in this  
36 state of a particular brand or make to vehicle dealers.

37 (c) "Factory representative," which means a representative employed

1 by a manufacturer, distributor, or factory branch for the purpose of  
2 making or promoting for the sale of their motorsports vehicles or for  
3 supervising or contracting with their dealers or prospective dealers.

4 (7) "Motorsports vehicle" means a motorcycle as defined in RCW  
5 46.04.330; a moped as defined in RCW 46.04.304; a motor-driven cycle as  
6 defined in RCW 46.04.332; a personal watercraft as defined in RCW  
7 79A.60.010; a snowmobile as defined in RCW 46.10.010; a four-wheel,  
8 all-terrain vehicle; and any other motorsports vehicle defined under  
9 section 20 of this act by the department that is otherwise not subject  
10 to chapter 46.96 RCW.

11 (8) "New motorsports vehicle dealer" or "dealer" means a person  
12 engaged in the business of buying, selling, exchanging, or otherwise  
13 dealing in new motorsports vehicles or new and used motorsports  
14 vehicles at an established place of business under a franchise, sales  
15 and service agreement, or any other contract with a manufacturer of any  
16 one or more types of new motorsports vehicles. The term does not  
17 include a miscellaneous vehicle dealer as defined in RCW 46.70.011.

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

22 (10) "Person" means a natural person, partnership, stock company,  
23 corporation, trust, agency, or any other legal entity, as well as any  
24 individual officers, directors, or other persons in active control of  
25 the activities of the entity.

26 (11) "Place of business" means a permanent, enclosed commercial  
27 building, situated within this state, and the real property on which it  
28 is located, at which the business of a motorsports vehicle dealer,  
29 including the display and repair of motorsports vehicles, may be  
30 lawfully conducted in accordance with the terms of all applicable laws  
31 and at which the public may contact the motorsports vehicle dealer and  
32 employees at all reasonable times.

33 (12) "Relevant market area" is defined as follows:

34 (a) If the population in the county in which the existing, proposed  
35 new, or relocated dealership is located or is to be located is four  
36 hundred thousand or more, the relevant market area is the geographic  
37 area within the radius of ten miles around the existing, proposed new,  
38 or relocated place of business for the dealership;

1 (b) If the population in the county in which the existing, proposed  
2 new, or relocated dealership is to be located is two hundred thousand  
3 or more and less than four hundred thousand, the relevant market area  
4 is the geographic area within a radius of twelve miles around the  
5 existing, proposed new, or relocated place of business for the  
6 dealership;

7 (c) If the population in the county in which the existing, proposed  
8 new, or relocated dealership is to be located is less than two hundred  
9 thousand, the relevant market area is the geographic area within a  
10 radius of twenty miles around the existing, proposed new, or relocated  
11 place of business for the dealership.

12 (d) In determining population for this definition, the most recent  
13 census by the United States Bureau of Census or the most recent  
14 population update, either from the National Planning Data Corporation  
15 or other similar recognized source, will be accumulated for all census  
16 tracts either wholly or partially within the relevant market area.

17 NEW SECTION. **Sec. 3.** TERMINATION, CANCELLATION, NONRENEWAL OF  
18 FRANCHISE RESTRICTED. Notwithstanding the terms of a franchise and  
19 notwithstanding the terms of a waiver, no manufacturer may terminate,  
20 cancel, or fail to renew a franchise with a new motorsports vehicle  
21 dealer, unless the manufacturer has complied with the notice  
22 requirements of section 7 of this act and an administrative law judge  
23 has determined, if requested in writing by the dealer within forty-five  
24 days of receiving a notice from a manufacturer, after hearing, that  
25 there is good cause for the termination, cancellation, or nonrenewal of  
26 the franchise and that the manufacturer has acted in good faith  
27 regarding the termination, cancellation, or nonrenewal.

28 NEW SECTION. **Sec. 4.** DETERMINATION OF GOOD CAUSE, GOOD FAITH--  
29 PETITION, NOTICE, DECISION, APPEAL. A new motorsports vehicle dealer  
30 who has received written notification from the manufacturer of the  
31 manufacturer's intent to terminate, cancel, or not renew the franchise,  
32 may file a petition with the department for a determination as to the  
33 existence of good cause and good faith for the termination,  
34 cancellation, or nonrenewal of a franchise. The petition must contain  
35 a short statement setting forth the reasons for the dealer's objection  
36 to the termination, cancellation, or nonrenewal of the franchise. Upon

1 the filing of the petition and the receipt of the filing fee, the  
2 department shall promptly notify the manufacturer that a timely  
3 petition has been filed and shall request the appointment of an  
4 administrative law judge under chapter 34.12 RCW to conduct a hearing.  
5 The franchise in question continues in full force and effect pending  
6 the administrative law judge's decision. If the decision of the  
7 administrative law judge terminating, canceling, or failing to renew a  
8 dealer's franchise is appealed by a dealer or manufacturer, the  
9 franchise continues in full force and effect until all appeals to a  
10 superior court or any appellate court have been completed. Nothing in  
11 this section precludes a manufacturer or dealer from petitioning the  
12 superior court for a stay or other relief pending judicial review.

13 NEW SECTION. **Sec. 5.** DETERMINATION OF GOOD CAUSE, GOOD FAITH--  
14 HEARING, DECISION, PROCEDURES--JUDICIAL REVIEW. (1) The administrative  
15 law judge shall conduct the hearing and render a final decision as  
16 expeditiously as possible, but in any event not later than one hundred  
17 eighty days after a petition is filed. If the termination,  
18 cancellation, or nonrenewal is under section 7(2) of this act, the  
19 administrative law judge shall give the proceeding priority  
20 consideration and shall render a final decision not later than sixty  
21 days after a petition is filed.

22 (2) The administrative law judge shall conduct the hearing as an  
23 adjudicative proceeding in accordance with the procedures provided for  
24 in the Administrative Procedure Act, chapter 34.05 RCW. The  
25 administrative law judge shall render the final decision and shall  
26 enter a final order. Except as otherwise provided in RCW 34.05.446 and  
27 34.05.449, all hearing costs must be borne on an equal basis by the  
28 parties to the hearing.

29 (3) A party to a hearing under this chapter may be represented by  
30 counsel. A party to a hearing aggrieved by the final order of the  
31 administrative law judge concerning the termination, cancellation, or  
32 nonrenewal of a franchise may seek judicial review of the order in the  
33 superior court or appellate court in the manner provided for in RCW  
34 34.05.510 through 34.05.598. A petitioner for judicial review need not  
35 exhaust all administrative appeals or administrative review processes  
36 as a prerequisite for seeking judicial review under this section.

1        NEW SECTION.    **Sec. 6.**    GOOD CAUSE, WHAT CONSTITUTES--BURDEN OF  
2    PROOF.    (1) Notwithstanding the terms of a franchise or the terms of a  
3    waiver, and except as otherwise provided in section 7(2) (a) through  
4    (d) of this act, good cause exists for termination, cancellation, or  
5    nonrenewal of a franchise when there is a failure by the dealer to  
6    comply with a provision of the franchise that is both reasonable and of  
7    material significance to the franchise relationship, if the dealer was  
8    notified of the failure within one hundred eighty days after the  
9    manufacturer first acquired knowledge of the failure, and the dealer  
10   did not correct the failure after being requested to do so.

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

16        (a) The dealer was advised, in writing, by the manufacturer of the  
17   failure;

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

20        (c) The manufacturer provided the dealer with specific, reasonable  
21   goals or reasonable performance standards with which the dealer must  
22   comply, together with a suggested timetable or program for attaining  
23   those goals or standards, and the dealer was given a reasonable  
24   opportunity, for a period of at least ninety days, to comply with the  
25   goals or standards; and

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

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

34        NEW SECTION.    **Sec. 7.**    NOTICE OF TERMINATION, CANCELLATION, OR  
35   NONRENEWAL.    Before the termination, cancellation, or nonrenewal of a  
36   franchise, the manufacturer shall give written notification to both the  
37   department and the dealer.    The notice must be by certified mail or

1 personally delivered to the new motorsports vehicle dealer and must  
2 state the intention to terminate, cancel, or not renew the franchise,  
3 the reasons for the termination, cancellation, or nonrenewal, and the  
4 effective date of the termination, cancellation, or nonrenewal. The  
5 notice must be given:

6 (1) Not less than ninety days, which runs concurrently with the  
7 ninety-day period provided in section 6(1)(c) of this act, before the  
8 effective date of the termination, cancellation, or nonrenewal;

9 (2) Not less than fifteen days before the effective date of the  
10 termination, cancellation, or nonrenewal with respect to any of the  
11 following that constitute good cause for termination, cancellation, or  
12 nonrenewal:

13 (a) Insolvency of the dealer or the filing of any petition by or  
14 against the dealer under bankruptcy or receivership law;

15 (b) Failure of the dealer to conduct sales and service operations  
16 during customary business hours for seven consecutive business days,  
17 except for acts of God or circumstances beyond the direct control of  
18 the dealer;

19 (c) Conviction of the dealer, or principal operator of the  
20 dealership, of a felony punishable by imprisonment; or

21 (d) Suspension or revocation of a license that the dealer is  
22 required to have to operate the dealership where the suspension or  
23 revocation is for a period in excess of thirty days;

24 (3) Not less than one hundred eighty days before the effective date  
25 of termination, cancellation, or nonrenewal, where the manufacturer  
26 intends to discontinue sale and distribution of the new motorsports  
27 vehicle line.

28 NEW SECTION. **Sec. 8.** PAYMENTS BY MANUFACTURER TO DEALER FOR  
29 INVENTORY, EQUIPMENT, ETC. (1) Upon the termination, cancellation, or  
30 nonrenewal of a franchise by the manufacturer under this chapter, the  
31 manufacturer shall pay the dealer, at a minimum:

32 (a) Dealer cost, less all allowances paid or credited to the dealer  
33 by the manufacturer, of unused, undamaged, and unsold new motorsports  
34 vehicles in the dealer's inventory that were acquired from the  
35 manufacturer or another dealer of the same line make;

36 (b) Dealer cost for all unused, undamaged, and unsold supplies,  
37 parts, and accessories in original packaging, except that in the case



1 of sheet metal, a comparable substitute for original packaging may be  
2 used, if the supply, part, or accessory was acquired from the  
3 manufacturer or from another dealer ceasing operations as a part of the  
4 dealer's initial inventory, as long as the supplies, parts, and  
5 accessories appear in the manufacturer's current parts catalog, list,  
6 or current offering;

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

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

16 (e) The fair market value of all special tools owned or leased by  
17 the dealer that were acquired from the manufacturer or persons approved  
18 by the manufacturer, and that were required by the manufacturer, and  
19 are in good and usable condition, less reasonable wear and tear.  
20 However, if the tools are leased by the dealer, the manufacturer shall  
21 pay the dealer such amounts that are required by the lessor to  
22 terminate the lease under the terms of the lease agreement.

23 (2) To the extent the franchise agreement provides for payment or  
24 reimbursement to the dealer in excess of that specified in this  
25 section, the provisions of the franchise agreement will control.

26 (3) The manufacturer shall pay the dealer the sums specified in  
27 subsection (1) of this section within ninety days after the tender of  
28 the property, if the dealer has clear title to the property and is in  
29 a position to convey that title to the manufacturer.

30 NEW SECTION. **Sec. 9.** MITIGATION OF DAMAGES. Sections 3 through  
31 8 of this act do not relieve a dealer from the obligation to mitigate  
32 the dealer's damages upon termination, cancellation, or nonrenewal of  
33 the franchise.

34 NEW SECTION. **Sec. 10.** WARRANTY WORK. (1) Each manufacturer shall  
35 specify in its franchise agreement, or in a separate written agreement,  
36 with each of its dealers licensed in this state, the dealer's

1 obligation to perform warranty work or service on the manufacturer's  
2 products. Each manufacturer shall provide each of its dealers with a  
3 schedule of compensation to be paid to the dealer for any warranty work  
4 or service, including parts, labor, and diagnostic work, required of  
5 the dealer by the manufacturer in connection with the manufacturer's  
6 products, and for work on and preparation of motorsports vehicles  
7 received from the manufacturer. The compensation may not be less than  
8 the rates reasonably charged by the dealer for like services and parts  
9 to retail customers. The compensation may not be reduced by the  
10 manufacturer for any reason or made conditional on an activity outside  
11 the performance of warranty work.

12 (2) All claims for warranty work for parts and labor made by  
13 dealers under this section must be paid by the manufacturer within  
14 thirty days after approval, and must be approved or denied within  
15 thirty days of receipt by the manufacturer. Denial of a claim must be  
16 in writing with the specific grounds for denial. The manufacturer may  
17 audit claims for warranty work and charge the dealer for any  
18 unsubstantiated, incorrect, or false claims for a period of one year  
19 after payment. However, the manufacturer may audit and charge the  
20 dealer for any fraudulent claims during any period for which an action  
21 for fraud may be commenced under applicable state law.

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

30 NEW SECTION. **Sec. 11.** DESIGNATED SUCCESSOR TO FRANCHISE  
31 OWNERSHIP. (1) Notwithstanding the terms of a franchise, an owner may  
32 appoint a designated successor to succeed to the ownership of the  
33 dealer franchise upon the owner's death or incapacity.

34 (2) Notwithstanding the terms of a franchise, a designated  
35 successor of a deceased or incapacitated owner of a dealer franchise  
36 may succeed to the ownership interest of the owner under the existing  
37 franchise, if:

1 (a) In the case of a designated successor who meets the definition  
2 of a designated successor under section 2(5) of this act, but who is  
3 not experienced in the business of a new motorsports vehicle dealer,  
4 the person will employ an individual who is qualified and experienced  
5 in the business of a new motorsports vehicle dealer to help manage the  
6 day-to-day operations of the dealership; or in the case of a designated  
7 successor who meets the definition of a designated successor under  
8 section 2(5) (b) or (c) of this act, the person is qualified and  
9 experienced in the business of a new motorsports vehicle dealer and  
10 meets the normal, reasonable, and uniformly applied standards for grant  
11 of an application as a dealer by the manufacturer; and

12 (b) The designated successor furnishes written notice to the  
13 manufacturer of his or her intention to succeed to the ownership of the  
14 dealership within sixty days after the owner's death or incapacity; and

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

17 (3) The manufacturer may request, and the designated successor  
18 shall promptly provide, such personal and financial information as is  
19 reasonably necessary to determine whether the succession should be  
20 honored.

21 (4) A manufacturer may refuse to honor the succession to the  
22 ownership of a dealer franchise by a designated successor if the  
23 manufacturer establishes that good cause exists for its refusal to  
24 honor the succession. If the designated successor of a deceased or  
25 incapacitated owner of a dealer franchise fails to meet the  
26 requirements set forth in subsection (2)(a), (b), and (c) of this  
27 section, good cause for refusing to honor the succession is presumed to  
28 exist. If a manufacturer believes that good cause exists for refusing  
29 to honor the succession to the ownership of a dealer franchise by a  
30 designated successor, the manufacturer shall serve written notice on  
31 the designated successor and on the department of its refusal to honor  
32 the succession no earlier than sixty days from the date the notice is  
33 served. The notice must be served not later than sixty days after the  
34 manufacturer's receipt of:

35 (a) Notice of the designated successor's intent to succeed to the  
36 ownership interest of the dealer's franchise; or

37 (b) Any personal or financial information requested by the  
38 manufacturer.

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

6 (6) Within twenty days after receipt of the notice, or within  
7 twenty days after the end of any appeal procedure provided by the  
8 manufacturer, whichever is greater, the designated successor may file  
9 a petition with the department protesting the refusal to honor the  
10 succession. The petition must contain a short statement setting forth  
11 the reasons for the designated successor's protest. Upon the filing of  
12 a protest and the receipt of the filing fee, the department shall  
13 promptly notify the manufacturer that a timely protest has been filed  
14 and shall request the appointment of an administrative law judge under  
15 chapter 34.12 RCW to conduct a hearing. The manufacturer may not  
16 terminate or otherwise discontinue the existing franchise until the  
17 administrative law judge has held a hearing and has determined that  
18 there is good cause for refusing to honor the succession. If an appeal  
19 is taken, the manufacturer may not terminate or discontinue the  
20 franchise until all appeals to a superior court or any appellate court  
21 have been completed. Nothing in this section precludes a manufacturer  
22 or dealer from petitioning the superior court for a stay or other  
23 relief pending judicial review.

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

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

29 (9) The administrative law judge shall conduct a hearing concerning  
30 the refusal to the succession as provided in section 5(2) of this act,  
31 and all hearing costs must be borne as provided in that subsection. A  
32 party to such a hearing aggrieved by the final order of the  
33 administrative law judge may appeal as provided and allowed in section  
34 5(3) of this act.

35 (10) This section does not preclude the owner of a dealer franchise  
36 from designating any person as his or her successor by a written,  
37 notarized, and witnessed instrument filed with the manufacturer. In

1 the event of a conflict between this section and such a written  
2 instrument that has not been revoked by written notice from the owner  
3 to the manufacturer, the written instrument governs.

4 NEW SECTION. **Sec. 12.** RELEVANT MARKET AREA--NEW OR RELOCATED  
5 DEALERSHIPS, NOTICE OF. Notwithstanding the terms of a franchise and  
6 notwithstanding the terms of a waiver, if a manufacturer intends or  
7 proposes to enter into a franchise to establish an additional dealer or  
8 to relocate an existing dealer within or into a relevant market area in  
9 which the same line make of motorsports vehicle is then represented,  
10 the manufacturer shall provide at least ten days advance written notice  
11 to the department and to each dealer of the same line make in the  
12 relevant market area, of the manufacturer's intention to establish an  
13 additional dealer or to relocate an existing dealer within or into the  
14 relevant market area. The notice must be sent by certified mail to  
15 each such party and include the following information:

16 (1) The specific location at which the additional or relocated  
17 dealer will be established;

18 (2) The date on or after which the additional or relocated dealer  
19 intends to commence business at the proposed location;

20 (3) The identity of all dealers who are franchised to sell the same  
21 line make vehicles as the proposed dealer and who have licensed  
22 locations within the relevant market area;

23 (4) The names and addresses, if available, of the owners of and  
24 principal investors in the proposed additional or relocated dealership;  
25 and

26 (5) The specific grounds or reasons for the proposed establishment  
27 of an additional dealer or relocation of an existing dealer.

28 NEW SECTION. **Sec. 13.** PROTEST OF NEW OR RELOCATED DEALERSHIP--  
29 HEARING--ARBITRATION. (1) Within thirty days after receipt of the  
30 notice under section 12 of this act, or within thirty days after the  
31 end of an appeal procedure provided by the manufacturer, whichever is  
32 greater, a dealer notified or entitled to notice may file a petition  
33 with the department protesting the proposed establishment or  
34 relocation. The petition must contain a short statement setting forth  
35 the reasons for the dealer's objection to the proposed establishment or  
36 relocation. Upon the filing of a protest and the receipt of the filing

1 fee, the department shall promptly notify the manufacturer that a  
2 timely protest has been filed and shall request the appointment of an  
3 administrative law judge under chapter 34.12 RCW to conduct a hearing.  
4 The manufacturer may not establish or relocate the dealer until the  
5 administrative law judge has held a hearing and administrative  
6 proceeding under the Administrative Procedure Act, chapter 34.05 RCW,  
7 and has determined that there is good cause for permitting the proposed  
8 establishment or relocation. When more than one protest is filed  
9 against the establishment or relocation of the same dealer, the  
10 administrative law judge shall consolidate the hearings to expedite  
11 disposition of the matter.

12 (2) If a manufacturer provides in the franchise agreement or by  
13 written statement distributed and provided to its dealers for  
14 arbitration under the Washington Arbitration Act, chapter 7.04 RCW, as  
15 a mechanism for resolving disputes relating to the establishment of an  
16 additional new motorsports vehicle dealer or the relocation of a new  
17 motorsports vehicle dealer, subsection (1) of this section and section  
18 14 of this act will take precedence and the arbitration provision in  
19 the franchise agreement or a written statement is void, unless the  
20 manufacturer and dealer agree to use arbitration.

21 (3) If the manufacturer and dealer agree to use arbitration, the  
22 dispute must be referred for arbitration to such arbitrator as may be  
23 agreed upon by the parties to the dispute. The thirty-day period for  
24 filing a protest under subsection (1) of this section still applies  
25 except the protesting dealer shall file the protest with the  
26 manufacturer. If the parties cannot agree upon a single arbitrator  
27 within thirty days from the date the protest is filed, the protesting  
28 dealer will select an arbitrator, the manufacturer will select an  
29 arbitrator, and the two arbitrators will then select a third  
30 arbitrator. If a third arbitrator is not agreed upon within thirty  
31 days, any party may apply to the superior court, and the judge of the  
32 superior court having jurisdiction will appoint the third arbitrator.  
33 The protesting dealer will pay the arbitrator selected by him or her,  
34 and the manufacturer will pay the arbitrator it selected. The expense  
35 of the third arbitrator and all other expenses of arbitration will be  
36 shared equally by the parties. Attorneys' fees and fees paid to expert  
37 witnesses are not expenses of arbitration and will be paid by the  
38 person incurring them.

1 (4) Notwithstanding the terms of a franchise or written statement  
2 of the manufacturer and notwithstanding the terms of a waiver, the  
3 arbitration will take place in this state in the county where the  
4 protesting dealer has its principal place of business. Section 14 of  
5 this act applies to a determination made by the arbitrator or  
6 arbitrators in determining whether good cause exists for permitting the  
7 proposed establishment or relocation of a dealer, and the manufacturer  
8 has the burden of proof to establish that good cause exists for  
9 permitting the proposed establishment or relocation. After a hearing  
10 has been held, the arbitrator or arbitrators shall render a decision as  
11 expeditiously as possible, but in any event not later than one hundred  
12 twenty days from the date the arbitrator or arbitrators are selected or  
13 appointed. The manufacturer may not establish or relocate the new  
14 motorsports vehicle dealer until the arbitration hearing has been held  
15 and the arbitrator or arbitrators have determined that there is good  
16 cause for permitting the proposed establishment or relocation and any  
17 judicial appeals under chapter 7.04 RCW have been completed. The  
18 written decision of the arbitrator is binding upon the parties unless  
19 modified, corrected, or vacated under the Washington Arbitration Act.  
20 Any party may appeal the decision of the arbitrator or arbitrators  
21 under the Washington Arbitration Act, chapter 7.04 RCW.

22 NEW SECTION. **Sec. 14.** FACTORS CONSIDERED BY ADMINISTRATIVE LAW  
23 JUDGE. In determining whether good cause exists for permitting the  
24 proposed establishment or relocation of a dealer of the same line make,  
25 the factors that the administrative law judge shall consider must  
26 include, but are not limited to the following:

27 (1) The extent, nature, and permanency of the investment of both  
28 the existing dealers of the same line make in the relevant market area  
29 and the proposed additional or relocating dealer, including obligations  
30 reasonably incurred by the existing dealers to perform their  
31 obligations under their respective franchises;

32 (2) The growth or decline in population and new motorsports vehicle  
33 registrations during the past five years in the relevant market area;

34 (3) The effect on the consuming public;

35 (4) The effect on the existing dealers in the relevant market area,  
36 including any adverse financial impact;

1 (5) The reasonably expected or anticipated vehicle market for the  
2 relevant market area, including demographic factors such as age of  
3 population, income, education, size class preference, product  
4 popularity, retail lease transactions, or other factors affecting sales  
5 to consumers in the relevant market area;

6 (6) Whether it is injurious or beneficial to the public welfare for  
7 an additional dealership to be established;

8 (7) Whether the dealers of the same line make in the relevant  
9 market area are providing adequate competition and convenient customer  
10 care for the motorsports vehicles of the same line make in the relevant  
11 market area, including the adequacy of motorsports vehicle sales and  
12 service facilities, equipment, supply of vehicle parts, and qualified  
13 service personnel;

14 (8) Whether the establishment of an additional dealer would  
15 increase competition and be in the public interest;

16 (9) Whether the manufacturer is motivated principally by good faith  
17 to establish an additional or new dealer and not by noneconomic  
18 considerations;

19 (10) Whether the manufacturer has denied its existing dealers of  
20 the same line make the opportunity for reasonable growth, market  
21 expansion, or relocation;

22 (11) Whether the protesting dealer or dealers are in substantial  
23 compliance with their dealer agreements or franchises; and

24 (12) Whether the manufacturer has complied with the requirements of  
25 sections 12 and 13 of this act.

26 NEW SECTION. **Sec. 15.** HEARING--PROCEDURES, COSTS, APPEAL. (1)

27 The manufacturer has the burden of proof to establish that good cause  
28 exists for permitting the proposed establishment or relocation.

29 (2) The administrative law judge shall conduct any hearing as  
30 provided in section 5(2) of this act and all hearing costs will be  
31 borne as provided in that subsection. The administrative law judge  
32 shall render the final decision as expeditiously as possible, but in  
33 any event not later than one hundred twenty days after a protest is  
34 filed. If more than one protest is filed, the one hundred twenty days  
35 commences to run from the date the last protest is filed. A party to  
36 such a hearing aggrieved by the final order of the administrative law  
37 judge may appeal as provided and allowed in section 5(3) of this act.



1        NEW SECTION.    **Sec. 16.**    EXCEPTIONS.    Sections 12 through 15 of this  
2 act do not apply:

3        (1) To the sale or transfer of the ownership or assets of an  
4 existing dealer where the transferee proposes to engage in business  
5 representing the same line make at the same location or within two  
6 miles of that location;

7        (2) To the relocation of an existing dealer within the dealer's  
8 relevant market area, if the relocation is not at a site within eight  
9 miles of any dealer of the same line make;

10       (3) If the proposed dealer is to be established at or within two  
11 miles of a location at which a former dealer of the same line make had  
12 ceased operating within the previous twenty-four months;

13       (4) Where the proposed relocation is two miles or less from the  
14 existing location of the relocating dealer; or

15       (5) Where the proposed relocation is to be further away from all  
16 other existing dealers of the same line make in the relevant market  
17 area.

18       NEW SECTION.    **Sec. 17.**    UNFAIR PRACTICES.    (1) Notwithstanding the  
19 terms of a franchise agreement, a manufacturer, distributor, factory  
20 branch, or factory representative, or an agent, officer, parent  
21 company, wholly or partially owned subsidiary, affiliated entity, or  
22 other person controlled by or under common control with a manufacturer,  
23 distributor, factory branch, or factory representative, shall not:

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

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

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

35       (d) Discriminate between dealers by adopting a method, or changing  
36 an existing method, for the allocation, scheduling, or delivery of new  
37 motorsports vehicles, parts, or accessories to its dealers that is not

1 fair, reasonable, and equitable. Upon the request of a dealer, a  
2 manufacturer shall disclose in writing to the dealer the method by  
3 which new motorsports vehicles, parts, and accessories are allocated,  
4 scheduled, or delivered to its dealers handling the same line or make  
5 of vehicles;

6 (e) Give preferential treatment to some dealers over others by  
7 refusing or failing to deliver, in reasonable quantities and within a  
8 reasonable time after receipt of an order, to a dealer holding a  
9 franchise for a line or make of motorsports vehicles sold or  
10 distributed by the manufacturer, a new vehicle, parts, or accessories,  
11 if the vehicle, parts, or accessories are being delivered to other  
12 dealers, or require a dealer to purchase unreasonable advertising  
13 displays or other materials, or unreasonably require a dealer to  
14 remodel or renovate existing facilities as a prerequisite to receiving  
15 a model or series of vehicles;

16 (f) Compete with a dealer by acting in the capacity of a dealer, or  
17 by owning, operating, or controlling, whether directly or indirectly,  
18 a dealership in this state. It is not, however, a violation of this  
19 subsection for:

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

33 (ii) A manufacturer to own or operate a dealership in conjunction  
34 with an independent person in a bona fide business relationship for the  
35 purpose of broadening the diversity of its dealer body and enhancing  
36 opportunities for qualified persons who are part of a group who have  
37 historically been underrepresented in its dealer body, or other  
38 qualified persons who lack the resources to purchase a dealership

1 outright, and where the independent person (A) has made a significant,  
2 bona fide capital investment in the dealership that is subject to loss;  
3 (B) has an ownership interest in the dealership; and (C) operates the  
4 dealership under a bona fide written agreement with the manufacturer,  
5 distributor, factory branch, or factory representative under which he  
6 or she will acquire all of the ownership interest in the dealership  
7 within a reasonable period of time and under reasonable terms and  
8 conditions. The manufacturer has the burden of proof of establishing  
9 that the acquisition of the dealership by the independent person was  
10 made within a reasonable period of time and under reasonable terms and  
11 conditions;

12 (iii) A manufacturer to own or operate a dealership in conjunction  
13 with an independent person in a bona fide business relationship where  
14 the independent person (A) has made a significant, bona fide capital  
15 investment in the dealership that is subject to loss; (B) has an  
16 ownership interest in the dealership; and (C) operates the dealership  
17 under a bona fide written agreement with the manufacturer under which  
18 he or she will acquire all of the ownership interest in the dealership  
19 within a reasonable period of time and under reasonable terms and  
20 conditions. The manufacture has the burden of proof of establishing  
21 that the acquisition of the dealership by the independent person was  
22 made within a reasonable period of time and under reasonable terms and  
23 conditions. The number of dealerships operated under this subsection  
24 (1)(f)(iii) may not exceed four percent rounded up to the nearest whole  
25 number of a manufacturer's total of dealer franchises in this state;

26 (iv) A manufacturer to own, operate, or control a dealership  
27 trading exclusively in a single line make of the manufacturer if (A)  
28 the manufacturer does not own, directly or indirectly, in the  
29 aggregate, in excess of forty-five percent of the total ownership  
30 interest in the dealership; (B) at the time the manufacturer first  
31 acquires ownership or assumes operation or control of any such  
32 dealership, the distance between any dealership thus owned, operated,  
33 or controlled and the nearest dealership trading in the same line make  
34 of vehicle and in which the manufacturer has no ownership or control  
35 complies with the applicable provisions in the relevant market area  
36 sections of this chapter; (C) all of the manufacturer's franchise  
37 agreements confer rights on the dealer of that line make to develop and  
38 operate within a defined geographic territory or area, as many

1 dealership facilities as the dealer and the manufacturer agree are  
2 appropriate; and (D) the manufacturer had no more than four new  
3 motorsports vehicle dealers of that manufacturer's line make in this  
4 state, and at least half of those dealers owned and operated two or  
5 more dealership facilities in the geographic territory or area covered  
6 by their franchise agreements with the manufacturer;

7 (g) Compete with a dealer by owning, operating, or controlling,  
8 whether directly or indirectly, a service facility in this state for  
9 the repair or maintenance of motorsports vehicles under the  
10 manufacturer's new motorsports vehicle warranty and extended warranty.  
11 Nothing in this subsection (1)(g), however, prohibits a manufacturer  
12 from owning or operating a service facility for the purpose of  
13 providing or performing maintenance, repair, or service work on  
14 motorsports vehicles that are owned by the manufacturer;

15 (h) Use confidential or proprietary information obtained from a  
16 dealer to unfairly compete with the dealer without the prior written  
17 consent of the dealer. For purposes of this subsection (1)(h),  
18 "confidential or proprietary information" means trade secrets as  
19 defined in RCW 19.108.010, business plans, marketing plans or  
20 strategies, customer lists, contracts, sales data, revenues, or other  
21 financial information;

22 (i) Coerce, threaten, intimidate, or require, either directly or  
23 indirectly, a dealer to accept, buy, or order any motorsports vehicle,  
24 part, or accessory, or any other commodity or service not voluntarily  
25 ordered, or requested, or to buy, order, or pay anything of value for  
26 such items in order to obtain a motorsports vehicle, part, accessory,  
27 or other commodity that has been voluntarily ordered or requested;

28 (j) Coerce, threaten, intimidate, or require, either directly or  
29 indirectly, a dealer to enter into any agreement that violates this  
30 chapter;

31 (k) Require a change in capital structure or means of financing for  
32 the dealership if the dealer at all times meets the reasonable,  
33 written, and uniformly applied capital standards determined by the  
34 manufacturer;

35 (l) Prevent or attempt to prevent a dealer from making reasonable  
36 changes in the capital structure of a dealership or the means by which  
37 the dealership is financed if the dealer meets the reasonable, written,

1 and uniformly applied capital requirements determined by the  
2 manufacturer;

3 (m) Unreasonably require the dealer to change the location or  
4 require any substantial alterations to the place of business;

5 (n) Condition a renewal or extension of the franchise on the  
6 dealer's substantial renovation of the existing place of business or on  
7 the construction, purchase, acquisition, or re-lease of a new place of  
8 business unless written notice is first provided one hundred eighty  
9 days before the date of renewal or extension and the manufacturer  
10 demonstrates the reasonableness of the requested actions. The  
11 manufacturer shall agree to supply the dealer with an adequate quantity  
12 of motorsports vehicles, parts, and accessories to meet the sales level  
13 necessary to support the overhead resulting from substantial  
14 construction, acquisition, or lease of a new place of business;

15 (o) Coerce, threaten, intimidate, or require, either directly or  
16 indirectly, a dealer to order or accept delivery of a motorsports  
17 vehicle with special features, accessories, or equipment not included  
18 in the list price of the vehicle as advertised by the manufacturer,  
19 except items that have been voluntarily requested or ordered by the  
20 dealer, and except items required by law;

21 (p) Fail to hold harmless and indemnify a dealer against losses,  
22 including lawsuits and court costs, arising from: (i) The manufacture  
23 or performance of a motorsports vehicle, part, or accessory if the  
24 lawsuit involves representations by the manufacturer on the manufacture  
25 or performance of a motorsports vehicle without negligence on the part  
26 of the dealer; (ii) damage to merchandise in transit where the  
27 manufacturer specifies the carrier; (iii) the manufacturer's failure to  
28 jointly defend product liability suits concerning the motorsports  
29 vehicle, part, or accessory provided to the dealer; or (iv) any other  
30 act performed by the manufacturer;

31 (q) Unfairly prevent or attempt to prevent a dealer from receiving  
32 reasonable compensation for the value of a motorsports vehicle;

33 (r) Fail to pay to a dealer, within a reasonable time after receipt  
34 of a valid claim, a payment agreed to be made by the manufacturer on  
35 grounds that a new motorsports vehicle, or a prior year's model, is in  
36 the dealer's inventory at the time of introduction of new model  
37 motorsports vehicles;

1 (s) Deny a dealer the right of free association with any other  
2 dealer for any lawful purpose;

3 (t) Charge increased prices without having given written notice to  
4 the dealer at least fifteen days before the effective date of the price  
5 increases;

6 (u) Permit factory authorized warranty service to be performed upon  
7 motorsports vehicles or accessories by persons other than their  
8 franchised dealers;

9 (v) Require or coerce a dealer to sell, assign, or transfer a  
10 retail sales installment contract, or require the dealer to act as an  
11 agent for a manufacturer, in the securing of a promissory note, a  
12 security agreement given in connection with the sale of a motorsports  
13 vehicle, or securing of a policy of insurance for a motorsports  
14 vehicle. The manufacturer may not condition delivery of any  
15 motorsports vehicle, parts, or accessories upon the dealer's  
16 assignment, sale, or other transfer of sales installment contracts to  
17 specific finance companies;

18 (w) Require or coerce a dealer to grant a manufacturer a right of  
19 first refusal or other preference to purchase the dealer's franchise or  
20 place of business, or both.

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

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

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

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

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

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

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

23 NEW SECTION. **Sec. 18.** SALE, TRANSFER, OR EXCHANGE OF FRANCHISE.

24 (1) Notwithstanding the terms of a franchise, a manufacturer may not  
25 unreasonably withhold consent to the sale, transfer, or exchange of a  
26 franchise to a qualified buyer who meets the normal, reasonable, and  
27 uniformly applied standards established by the manufacturer for the  
28 appointment of a dealer or is capable of being approved by the  
29 department as a dealer in this state. A manufacturer's failure to  
30 respond in writing to a request for consent under this subsection  
31 within sixty days after receipt of a written request on the forms, if  
32 any, generally used by the manufacturer containing the information and  
33 reasonable promises required by a manufacturer, is deemed to be consent  
34 to the request. A manufacturer may request, and, if so requested, the  
35 applicant for a franchise (a) shall promptly provide such personal and  
36 financial information as is reasonably necessary to determine whether

1 the sale, transfer, or exchange should be approved, and (b) shall agree  
2 to be bound by all reasonable terms and conditions of the franchise.

3 (2) If a manufacturer refuses to approve the sale, transfer, or  
4 exchange of a franchise, the manufacturer shall serve written notice on  
5 the applicant, the transferring, selling, or exchanging dealer, and the  
6 department, of its refusal to approve the transfer of the franchise no  
7 later than sixty days after the date the manufacturer receives the  
8 written request from the dealer. If the manufacturer has requested  
9 personal or financial information from the applicant under subsection  
10 (1) of this section, the notice must be served not later than sixty  
11 days after the receipt of all of such documents. Service of all  
12 notices under this section must be made by personal service or by  
13 certified mail, return receipt requested.

14 (3) The notice in subsection (2) of this section must state the  
15 specific grounds for the refusal to approve the sale, transfer, or  
16 exchange of the franchise.

17 (4) Within twenty days after receipt of the notice of refusal to  
18 approve the sale, transfer, or exchange of the franchise by the  
19 transferring dealer, the dealer may file a petition with the department  
20 to protest the refusal to approve the sale, transfer, or exchange. The  
21 petition must contain a short statement setting forth the reasons for  
22 the dealer's protest. Upon the filing of a protest and the receipt of  
23 the filing fee, the department shall promptly notify the manufacturer  
24 that a timely protest has been filed, and the department shall arrange  
25 for a hearing with an administrative law judge as the presiding officer  
26 to determine if the manufacturer unreasonably withheld consent to the  
27 sale, transfer, or exchange of the franchise.

28 (5) In determining whether the manufacturer unreasonably withheld  
29 its approval to the sale, transfer, or exchange, the manufacturer has  
30 the burden of proof that it acted reasonably. A manufacturer's refusal  
31 to accept or approve a proposed buyer who otherwise meets the normal,  
32 reasonable, and uniformly applied standards established by the  
33 manufacturer for the appointment of a new dealer, or who otherwise is  
34 capable of operating as a dealer in this state, is presumed to be  
35 unreasonable.

36 (6) The administrative law judge shall conduct a hearing and render  
37 a final decision as expeditiously as possible, but in any event not



1 later than one hundred twenty days after a protest is filed. Only the  
2 selling, transferring, or exchanging dealer and the manufacturer may be  
3 parties to the hearing.

4 (7) The administrative law judge shall conduct any hearing as  
5 provided in section 5(2) of this act, and all hearing costs must be  
6 borne as provided in that subsection. Only the manufacturer and the  
7 selling, transferring, or exchanging dealer may appeal the final order  
8 of the administrative law judge to the superior court or the appellate  
9 court as provided in the Administrative Procedure Act, chapter 34.05  
10 RCW.

11 NEW SECTION. **Sec. 19.** PETITION AND HEARING FILING FEES, COSTS,  
12 SECURITY. The department shall determine and establish the amount of  
13 the filing fees required in sections 4, 11, 13, and 18 of this act.  
14 The fees must be set in accordance with RCW 43.24.086.

15 The department may also require the petitioning or protesting party  
16 to give security, in such sum as the department deems proper but not to  
17 exceed one thousand dollars, for the payment of such costs as may be  
18 incurred in conducting the hearing as required under this chapter. The  
19 security may be given in the form of a bond or stipulation or other  
20 undertaking with one or more sureties.

21 At the conclusion of the hearing, the department shall assess, in  
22 equal shares, each of the parties to the hearing for the cost of  
23 conducting the hearing. Upon receipt of payment of the costs, the  
24 department shall refund and return to the petitioning party any excess  
25 funds initially posted by the party as security for the hearing costs.  
26 If the petitioning party provided security in the form of a bond or  
27 other undertaking with one or more sureties, the bond or other  
28 undertaking will then be exonerated and the surety or sureties under it  
29 discharged.

30 NEW SECTION. **Sec. 20.** DEPARTMENT DEFINING ADDITIONAL MOTORSPORTS  
31 VEHICLES. The department shall determine through rule making under the  
32 Administrative Procedure Act any motorsports vehicles not already  
33 defined in section 2(7) of this act as of the effective date of this  
34 act, that are manufactured after the effective date of this act.

1        NEW SECTION.   **Sec. 21.**   SEVERABILITY.   If any provision of this act  
2   or its application to any person or circumstance is held invalid, the  
3   remainder of the act or the application of the provision to other  
4   persons or circumstances is not affected.

5        NEW SECTION.   **Sec. 22.**   CAPTIONS.   Captions used in this chapter  
6   are not part of the law.

7        NEW SECTION.   **Sec. 23.**   Sections 1 through 22 of this act  
8   constitute a new chapter in Title 46 RCW.

9        NEW SECTION.   **Sec. 24.**   The following acts or parts of acts are  
10   each repealed:

- 11        (1) RCW 46.94.001 (Short title) and 1985 c 472 s 1;
- 12        (2) RCW 46.94.005 (Legislative intent) and 1985 c 472 s 2;
- 13        (3) RCW 46.94.010 (Definitions) and 1985 c 472 s 3;
- 14        (4) RCW 46.94.020 (Prohibited trade practices) and 1985 c 472 s 4;
- 15        (5) RCW 46.94.030 (Succession to business by designated family  
16   member) and 1985 c 472 s 5;
- 17        (6) RCW 46.94.040 (Compensation for warranty, delivery, preparation  
18   expenses) and 1985 c 472 s 8;
- 19        (7) RCW 46.94.050 (Prohibited financial practices) and 1985 c 472  
20   s 9;
- 21        (8) RCW 46.94.060 (Civil remedies) and 1985 c 472 s 10; and
- 22        (9) RCW 46.94.900 (Severability--1985 c 472) and 1985 c 472 s 14.

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