
SENATE BILL 5407

State of Washington

58th Legislature

2003 Regular Session

By Senators Horn, Prentice, Honeyford and Benton

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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 21 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 twenty miles around the existing, proposed
38 new, 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 thirty 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 forty 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 not less than one hundred eighty days, to
25 comply with the 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 before the effective date of the
7 termination, cancellation, or nonrenewal;

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

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

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

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

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

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

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

31 (a) Dealer cost plus any charges by the manufacturer for
32 distribution, delivery, and taxes, less all allowances paid or credited
33 to the dealer by the manufacturer, of unused, undamaged, and unsold new
34 motorsports vehicles in the dealer's inventory that were acquired from
35 the 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;

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

24 (f) The cost of transporting, handling, packing, and loading of new
25 motorsports vehicles, supplies, parts, accessories, signs, special
26 tools, equipment, and furnishings.

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

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

34 NEW SECTION. **Sec. 9.** PAYMENTS BY MANUFACTURER FOR DEALERSHIP
35 FACILITIES. (1) In the event of a termination, cancellation, or
36 nonrenewal under this chapter, except for termination, cancellation, or

1 nonrenewal under section 7(2) of this act, the manufacturer shall, at
2 the request and option of the dealer, also pay to the dealer:

3 (a) A sum equivalent to rent for the dealer's place of business for
4 the unexpired term of the lease or one year, whichever is less, or such
5 longer term as provided in the franchise, if the dealer is leasing the
6 place of business from a lessor other than the manufacturer; or

7 (b) A sum equivalent to the reasonable rental value of the dealer's
8 place of business for one year or until the facilities are leased or
9 sold, whichever is less, if the dealer owns the place of business.

10 (2) If payment under subsection (1) of this section is made, the
11 manufacturer is entitled to possession and use of the place of business
12 for the period rent is paid subject to the existing lease for the place
13 of business.

14 NEW SECTION. **Sec. 10.** MITIGATION OF DAMAGES. Sections 3 through
15 9 of this act do not relieve a dealer from the obligation to mitigate
16 the dealer's damages upon termination, cancellation, or nonrenewal of
17 the franchise.

18 NEW SECTION. **Sec. 11.** WARRANTY WORK. (1) Each manufacturer shall
19 specify in its franchise agreement, or in a separate written agreement,
20 with each of its dealers licensed in this state, the dealer's
21 obligation to perform warranty work or service on the manufacturer's
22 products. Each manufacturer shall provide each of its dealers with a
23 schedule of compensation to be paid to the dealer for any warranty work
24 or service, including parts, labor, and diagnostic work, required of
25 the dealer by the manufacturer in connection with the manufacturer's
26 products, and for work on and preparation of motorsports vehicles
27 received from the manufacturer. The compensation may not be less than
28 the rates reasonably charged by the dealer for like services and parts
29 to retail customers. The compensation may not be reduced by the
30 manufacturer for any reason or made conditional on an activity outside
31 the performance of warranty work.

32 (2) All claims for warranty work for parts and labor made by
33 dealers under this section must be paid by the manufacturer within
34 thirty days after approval, and must be approved or denied within
35 thirty days of receipt by the manufacturer. Denial of a claim must be
36 in writing with the specific grounds for denial. The manufacturer may

1 audit claims for warranty work and charge the dealer for any
2 unsubstantiated, incorrect, or false claims for a period of one year
3 after payment. However, the manufacturer may audit and charge the
4 dealer for any fraudulent claims during any period for which an action
5 for fraud may be commenced under applicable state law.

6 (3) All claims submitted by dealers on the forms and in the manner
7 specified by the manufacturer must be either approved or disapproved
8 within thirty days after their receipt. The manufacturer shall notify
9 the dealer in writing of a disapproved claim, and shall set forth the
10 reasons why the claim was not approved. A claim not specifically
11 disapproved in writing within thirty days after receipt is approved,
12 and the manufacturer is required to pay that claim within thirty days
13 of receipt of the claim.

14 NEW SECTION. **Sec. 12.** DESIGNATED SUCCESSOR TO FRANCHISE
15 OWNERSHIP. (1) Notwithstanding the terms of a franchise, an owner may
16 appoint a designated successor to succeed to the ownership of the
17 dealer franchise upon the owner's death or incapacity.

18 (2) Notwithstanding the terms of a franchise, a designated
19 successor of a deceased or incapacitated owner of a dealer franchise
20 may succeed to the ownership interest of the owner under the existing
21 franchise, if:

22 (a) In the case of a designated successor who meets the definition
23 of a designated successor under section 2(5) of this act, but who is
24 not experienced in the business of a new motorsports vehicle dealer,
25 the person will employ an individual who is qualified and experienced
26 in the business of a new motorsports vehicle dealer to help manage the
27 day-to-day operations of the dealership; or in the case of a designated
28 successor who meets the definition of a designated successor under
29 section 2(5) (b) or (c) of this act, the person is qualified and
30 experienced in the business of a new motorsports vehicle dealer and
31 meets the normal, reasonable, and uniformly applied standards for grant
32 of an application as a dealer by the manufacturer; and

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

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

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

5 (4) A manufacturer may refuse to honor the succession to the
6 ownership of a dealer franchise by a designated successor if the
7 manufacturer establishes that good cause exists for its refusal to
8 honor the succession. If the designated successor of a deceased or
9 incapacitated owner of a dealer franchise fails to meet the
10 requirements set forth in subsection (2)(a), (b), and (c) of this
11 section, good cause for refusing to honor the succession is presumed to
12 exist. If a manufacturer believes that good cause exists for refusing
13 to honor the succession to the ownership of a dealer franchise by a
14 designated successor, the manufacturer shall serve written notice on
15 the designated successor and on the department of its refusal to honor
16 the succession no earlier than sixty days from the date the notice is
17 served. The notice must be served not later than sixty days after the
18 manufacturer's receipt of:

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

21 (b) Any personal or financial information requested by the
22 manufacturer.

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

28 (6) Within twenty days after receipt of the notice, or within
29 twenty days after the end of any appeal procedure provided by the
30 manufacturer, whichever is greater, the designated successor may file
31 a petition with the department protesting the refusal to honor the
32 succession. The petition must contain a short statement setting forth
33 the reasons for the designated successor's protest. Upon the filing of
34 a protest and the receipt of the filing fee, the department shall
35 promptly notify the manufacturer that a timely protest has been filed
36 and shall request the appointment of an administrative law judge under
37 chapter 34.12 RCW to conduct a hearing. The manufacturer may not
38 terminate or otherwise discontinue the existing franchise until the

1 administrative law judge has held a hearing and has determined that
2 there is good cause for refusing to honor the succession. If an appeal
3 is taken, the manufacturer may not terminate or discontinue the
4 franchise until all appeals to a superior court or any appellate court
5 have been completed. Nothing in this section precludes a manufacturer
6 or dealer from petitioning the superior court for a stay or other
7 relief pending judicial review.

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

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

13 (9) The administrative law judge shall conduct a hearing concerning
14 the refusal to the succession as provided in section 5(2) of this act,
15 and all hearing costs must be borne as provided in that subsection. A
16 party to such a hearing aggrieved by the final order of the
17 administrative law judge may appeal as provided and allowed in section
18 5(3) of this act.

19 (10) This section does not preclude the owner of a dealer franchise
20 from designating any person as his or her successor by a written,
21 notarized, and witnessed instrument filed with the manufacturer. In
22 the event of a conflict between this section and such a written
23 instrument that has not been revoked by written notice from the owner
24 to the manufacturer, the written instrument governs.

25 NEW SECTION. **Sec. 13.** RELEVANT MARKET AREA--NEW OR RELOCATED
26 DEALERSHIPS, NOTICE OF. Notwithstanding the terms of a franchise and
27 notwithstanding the terms of a waiver, if a manufacturer intends or
28 proposes to enter into a franchise to establish an additional dealer or
29 to relocate an existing dealer within or into a relevant market area in
30 which the same line make of motorsports vehicle is then represented,
31 the manufacturer shall provide at least sixty days advance written
32 notice to the department and to each dealer of the same line make in
33 the relevant market area, of the manufacturer's intention to establish
34 an additional dealer or to relocate an existing dealer within or into
35 the relevant market area. The notice must be sent by certified mail to
36 each such party and include the following information:

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

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

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

8 (4) The names and addresses, if available, of the owners of and
9 principal investors in the proposed additional or relocated dealership;
10 and

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

13 NEW SECTION. **Sec. 14.** PROTEST OF NEW OR RELOCATED DEALERSHIP--
14 HEARING--ARBITRATION. (1) Within thirty days after receipt of the
15 notice under section 13 of this act, or within thirty days after the
16 end of an appeal procedure provided by the manufacturer, whichever is
17 greater, a dealer notified or entitled to notice may file a petition
18 with the department protesting the proposed establishment or
19 relocation. The petition must contain a short statement setting forth
20 the reasons for the dealer's objection to the proposed establishment or
21 relocation. Upon the filing of a protest and the receipt of the filing
22 fee, the department shall promptly notify the manufacturer that a
23 timely protest has been filed and shall request the appointment of an
24 administrative law judge under chapter 34.12 RCW to conduct a hearing.
25 The manufacturer may not establish or relocate the dealer until the
26 administrative law judge has held a hearing and administrative
27 proceeding under the Administrative Procedure Act, chapter 34.05 RCW,
28 and has determined that there is good cause for permitting the proposed
29 establishment or relocation. When more than one protest is filed
30 against the establishment or relocation of the same dealer, the
31 administrative law judge shall consolidate the hearings to expedite
32 disposition of the matter.

33 (2) If a manufacturer provides in the franchise agreement or by
34 written statement distributed and provided to its dealers for
35 arbitration under the Washington Arbitration Act, chapter 7.04 RCW, as
36 a mechanism for resolving disputes relating to the establishment of an
37 additional new motorsports vehicle dealer or the relocation of a new

1 motorsports vehicle dealer, subsection (1) of this section and section
2 15 of this act will take precedence and the arbitration provision in
3 the franchise agreement or a written statement is void, unless the
4 manufacturer and dealer agree to use arbitration.

5 (3) If the manufacturer and dealer agree to use arbitration, the
6 dispute must be referred for arbitration to such arbitrator as may be
7 agreed upon by the parties to the dispute. The thirty-day period for
8 filing a protest under subsection (1) of this section still applies
9 except the protesting dealer shall file the protest with the
10 manufacturer. If the parties cannot agree upon a single arbitrator
11 within thirty days from the date the protest is filed, the protesting
12 dealer will select an arbitrator, the manufacturer will select an
13 arbitrator, and the two arbitrators will then select a third
14 arbitrator. If a third arbitrator is not agreed upon within thirty
15 days, any party may apply to the superior court, and the judge of the
16 superior court having jurisdiction will appoint the third arbitrator.
17 The protesting dealer will pay the arbitrator selected by him or her,
18 and the manufacturer will pay the arbitrator it selected. The expense
19 of the third arbitrator and all other expenses of arbitration will be
20 shared equally by the parties. Attorneys' fees and fees paid to expert
21 witnesses are not expenses of arbitration and will be paid by the
22 person incurring them.

23 (4) Notwithstanding the terms of a franchise or written statement
24 of the manufacturer and notwithstanding the terms of a waiver, the
25 arbitration will take place in this state in the county where the
26 protesting dealer has its principal place of business. Section 15 of
27 this act applies to a determination made by the arbitrator or
28 arbitrators in determining whether good cause exists for permitting the
29 proposed establishment or relocation of a dealer, and the manufacturer
30 has the burden of proof to establish that good cause exists for
31 permitting the proposed establishment or relocation. After a hearing
32 has been held, the arbitrator or arbitrators shall render a decision as
33 expeditiously as possible, but in any event not later than one hundred
34 twenty days from the date the arbitrator or arbitrators are selected or
35 appointed. The manufacturer may not establish or relocate the new
36 motorsports vehicle dealer until the arbitration hearing has been held
37 and the arbitrator or arbitrators have determined that there is good
38 cause for permitting the proposed establishment or relocation and any

1 judicial appeals under chapter 7.04 RCW have been completed. The
2 written decision of the arbitrator is binding upon the parties unless
3 modified, corrected, or vacated under the Washington Arbitration Act.
4 Any party may appeal the decision of the arbitrator or arbitrators
5 under the Washington Arbitration Act, chapter 7.04 RCW.

6 NEW SECTION. **Sec. 15.** FACTORS CONSIDERED BY ADMINISTRATIVE LAW
7 JUDGE. In determining whether good cause exists for permitting the
8 proposed establishment or relocation of a dealer of the same line make,
9 the administrative law judge shall consider the following:

10 (1) The extent, nature, and permanency of the investment of both
11 the existing dealers of the same line make in the relevant market area
12 and the proposed additional or relocating dealer, including obligations
13 reasonably incurred by the existing dealers to perform their
14 obligations under their respective franchises;

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

17 (3) The effect on the consuming public in the relevant market area;

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

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

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

27 (7) Whether the dealers of the same line make in the relevant
28 market area are providing adequate competition and convenient customer
29 care for the motorsports vehicles of the same line make in the relevant
30 market area, including the adequacy of motorsports vehicle sales and
31 service facilities, equipment, supply of vehicle parts, and qualified
32 service personnel;

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

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

1 (10) Whether the manufacturer has denied its existing dealers of
2 the same line make the opportunity for reasonable growth, market
3 expansion, establishment of a subagency, or relocation;

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

6 (12) Whether the manufacturer has complied with the requirements of
7 sections 13 and 14 of this act.

8 In considering the factors set forth in this section, the
9 administrative law judge shall give the factors equal weight, and in
10 making a determination as to whether good cause exists for permitting
11 the proposed establishment or relocation of a dealer of the same line
12 make, the administrative law judge must find that at least nine of the
13 factors set forth in this section weigh in favor of the manufacturer
14 and in favor of the proposed establishment or relocation of a dealer.

15 NEW SECTION. **Sec. 16.** HEARING--PROCEDURES, COSTS, APPEAL. (1)
16 The manufacturer has the burden of proof to establish that good cause
17 exists for permitting the proposed establishment or relocation.

18 (2) The administrative law judge shall conduct any hearing as
19 provided in section 5(2) of this act and all hearing costs will be
20 borne as provided in that subsection. The administrative law judge
21 shall render the final decision as expeditiously as possible, but in
22 any event not later than one hundred twenty days after a protest is
23 filed. If more than one protest is filed, the one hundred twenty days
24 commences to run from the date the last protest is filed. A party to
25 such a hearing aggrieved by the final order of the administrative law
26 judge may appeal as provided and allowed in section 5(3) of this act.

27 NEW SECTION. **Sec. 17.** EXCEPTIONS. Sections 13 through 16 of this
28 act do not apply:

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

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

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

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

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

9 NEW SECTION. **Sec. 18.** UNFAIR PRACTICES. (1) Notwithstanding the
10 terms of a franchise agreement, a manufacturer, distributor, factory
11 branch, or factory representative, or an agent, officer, parent
12 company, wholly or partially owned subsidiary, affiliated entity, or
13 other person controlled by or under common control with a manufacturer,
14 distributor, factory branch, or factory representative, shall not:

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

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

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

26 (d) Discriminate between dealers by adopting a method, or changing
27 an existing method, for the allocation, scheduling, or delivery of new
28 motorsports vehicles, parts, or accessories to its dealers that is not
29 fair, reasonable, and equitable. Upon the request of a dealer, a
30 manufacturer shall disclose in writing to the dealer the method by
31 which new motorsports vehicles, parts, and accessories are allocated,
32 scheduled, or delivered to its dealers handling the same line or make
33 of vehicles;

34 (e) Give preferential treatment to some dealers over others by
35 refusing or failing to deliver, in reasonable quantities and within a
36 reasonable time after receipt of an order, to a dealer holding a
37 franchise for a line or make of motorsports vehicles sold or

1 distributed by the manufacturer, a new vehicle, parts, or accessories,
2 if the vehicle, parts, or accessories are being delivered to other
3 dealers, or require a dealer to purchase unreasonable advertising
4 displays or other materials, or unreasonably require a dealer to
5 remodel or renovate existing facilities as a prerequisite to receiving
6 a model or series of vehicles;

7 (f) Give preferential treatment in any manner to a dealer in return
8 for the dealer's agreement to sell only the manufacturer's motorsports
9 vehicles and other merchandise. Preferences include, but not
10 exclusively, access to certain model vehicles, color choices for
11 vehicles, training support, advertising assistances, and financial
12 services;

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

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

30 (ii) A manufacturer to own or operate a dealership in conjunction
31 with an independent person in a bona fide business relationship for the
32 purpose of broadening the diversity of its dealer body and enhancing
33 opportunities for qualified persons who are part of a group who have
34 historically been underrepresented in its dealer body, or other
35 qualified persons who lack the resources to purchase a dealership
36 outright, and where the independent person (A) has made a significant,
37 bona fide capital investment in the dealership that is subject to loss;
38 (B) has an ownership interest in the dealership; and (C) operates the

1 dealership under a bona fide written agreement with the manufacturer,
2 distributor, factory branch, or factory representative under which he
3 or she will acquire all of the ownership interest in the dealership
4 within a reasonable period of time and under reasonable terms and
5 conditions. The manufacturer has the burden of proof of establishing
6 that the acquisition of the dealership by the independent person was
7 made within a reasonable period of time and under reasonable terms and
8 conditions;

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

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

1 state, and at least half of those dealers owned and operated two or
2 more dealership facilities in the geographic territory or area covered
3 by their franchise agreements with the manufacturer;

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

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

19 (j) Directly or indirectly contact or solicit a dealer's customers
20 by any means who have purchased or have contacted the dealer regarding
21 a purchase of a motorsports vehicle or any parts, equipment, or
22 accessories for a motorsports vehicle, except for providing the
23 customer with safety information relating to the purchaser's
24 motorsports vehicle, parts, equipment, or accessories;

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

31 (l) Coerce, threaten, intimidate, or require, either directly or
32 indirectly, a dealer to enter into any agreement that violates this
33 chapter;

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

1 (n) Prevent or attempt to prevent a dealer from making reasonable
2 changes in the capital structure of a dealership or the means by which
3 the dealership is financed if the dealer meets the reasonable, written,
4 and uniformly applied capital requirements determined by the
5 manufacturer;

6 (o) Unreasonably require the dealer to change the location or
7 require any substantial alterations to the place of business;

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

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

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

34 (s) Unfairly prevent or attempt to prevent a dealer from receiving
35 reasonable compensation for the value of a motorsports vehicle;

36 (t) Fail to pay to a dealer, within a reasonable time after receipt
37 of a valid claim, a payment agreed to be made by the manufacturer on

1 grounds that a new motorsports vehicle, or a prior year's model, is in
2 the dealer's inventory at the time of introduction of new model
3 motorsports vehicles;

4 (u) Deny a dealer the right of free association with any other
5 dealer for any lawful purpose;

6 (v) Charge increased prices without having given written notice to
7 the dealer at least fifteen days before the effective date of the price
8 increases;

9 (w) Permit factory authorized warranty service to be performed upon
10 motorsports vehicles or accessories by persons other than their
11 franchised dealers;

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

21 (y) Pay directly or indirectly in the form of cash, merchandise, or
22 any other compensation to an employ of the dealer;

23 (z) Require or coerce a dealer to grant a manufacturer a right of
24 first refusal or other preference to purchase the dealer's franchise or
25 place of business, or both.

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

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

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

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

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

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

22 (4) A violation of this section is deemed to affect the public
23 interest and constitutes an unlawful and unfair practice under chapter
24 19.86 RCW. A person aggrieved by an alleged violation of this section
25 may petition the department to have the matter handled as an
26 adjudicative proceeding under chapter 34.05 RCW.

27 NEW SECTION. **Sec. 19.** SALE, TRANSFER, OR EXCHANGE OF FRANCHISE.

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

1 to the request. A manufacturer may request, and, if so requested, the
2 applicant for a franchise (a) shall promptly provide such personal and
3 financial information as is reasonably necessary to determine whether
4 the sale, transfer, or exchange should be approved, and (b) shall agree
5 to be bound by all reasonable terms and conditions of the franchise.

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

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

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

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

1 (6) The administrative law judge shall conduct a hearing and render
2 a final decision as expeditiously as possible, but in any event not
3 later than one hundred twenty days after a protest is filed. Only the
4 selling, transferring, or exchanging dealer and the manufacturer may be
5 parties to the hearing.

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

13 NEW SECTION. **Sec. 20.** PETITION AND HEARING FILING FEES, COSTS,
14 SECURITY. The department shall determine and establish the amount of
15 the filing fees required in sections 4, 12, 14, and 19 of this act.
16 The fees must be set in accordance with RCW 43.24.086.

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

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

32 NEW SECTION. **Sec. 21.** DEPARTMENT DEFINING ADDITIONAL MOTORSPORTS
33 VEHICLES. The department shall determine through rule making under the
34 Administrative Procedure Act any motorsports vehicles not already
35 defined in section 2(7) of this act as of the effective date of this
36 act, that are manufactured after the effective date of this act.

1 NEW SECTION. **Sec. 22.** ENFORCEMENT. A person injured by a
2 violation of this chapter may bring a civil action in a court of
3 competent jurisdiction within this state to enjoin further violations
4 or to recover damages. The prevailing party in any administrative or
5 civil action under this chapter shall be awarded reasonable attorneys'
6 fees and costs.

7 NEW SECTION. **Sec. 23.** SEVERABILITY. If any provision of this act
8 or its application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 24.** CAPTIONS. Captions used in this chapter
12 are not part of the law.

13 NEW SECTION. **Sec. 25.** Sections 1 through 24 of this act
14 constitute a new chapter in Title 46 RCW.

15 NEW SECTION. **Sec. 26.** The following acts or parts of acts are
16 each repealed:

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

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