

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1445

Chapter 21, Laws of 2003

58th Legislature
2003 Regular Session

MOTOR VEHICLES--MANUFACTURERS, DEALERS

EFFECTIVE DATE: 7/27/03

Passed by the House March 6, 2003
Yeas 91 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 8, 2003
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved April 16, 2003.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1445** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

April 16, 2003 - 4:09 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1445

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Chandler, Kenney, Fromhold and Clements)

READ FIRST TIME 02/21/03.

1 AN ACT Relating to the relationship between motor vehicle
2 manufacturers and dealers; amending RCW 46.96.020, 46.96.105, and
3 46.96.185; adding new sections to chapter 46.96 RCW; and creating a new
4 section.

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

6 **Sec. 1.** RCW 46.96.020 and 1989 c 415 s 2 are each amended to read
7 as follows:

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

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

14 (2) "New motor vehicle dealer" means a motor vehicle dealer engaged
15 in the business of buying, selling, exchanging, or otherwise dealing in
16 new motor vehicles or new and used motor vehicles at an established
17 place of business, under a franchise, sales and service agreement, or
18 contract with the manufacturer of the new motor vehicles. However, the

1 term "new motor vehicle dealer" does not include a miscellaneous
2 vehicle dealer as defined in RCW 46.70.011(3)(c) or a motorcycle dealer
3 as defined in chapter 46.94 RCW.

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

9 "Franchise" includes an oral or written contract and includes a
10 dealer agreement, either expressed or implied, between a manufacturer
11 and a new motor vehicle dealer that purports to fix the legal rights
12 and liabilities between the parties and under which (a) the dealer is
13 granted the right to purchase and resell motor vehicles manufactured,
14 distributed, or imported by the manufacturer; (b) the dealer's business
15 is associated with the trademark, trade name, commercial symbol, or
16 advertisement designating the franchisor or the products distributed by
17 the manufacturer; and (c) the dealer's business relies on the
18 manufacturer for a continued supply of motor vehicles, parts, and
19 accessories.

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

22 (5) "Designated successor" means:

23 (a) The spouse, biological or adopted child, stepchild, grandchild,
24 parent, brother, or sister of the owner of a new motor vehicle
25 dealership who, in the case of the owner's death, is entitled to
26 inherit the ownership interest in the new motor vehicle dealership
27 under the terms of the owner's will or similar document, and if there
28 is no such will or similar document, then under applicable intestate
29 laws;

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

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

37 (6) "Owner" means a person holding an ownership interest in the

1 business entity operating as a new motor vehicle dealer and who is the
2 designated dealer in the new motor vehicle franchise agreement.

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

5 **Sec. 2.** RCW 46.96.105 and 1998 c 298 s 1 are each amended to read
6 as follows:

7 (1) Each manufacturer shall specify in its franchise agreement, or
8 in a separate written agreement, with each of its dealers licensed in
9 this state, the dealer's obligation to perform warranty work or service
10 on the manufacturer's products. Each manufacturer shall provide each
11 of its dealers with a schedule of compensation to be paid to the dealer
12 for any warranty work or service, including parts, labor, and
13 diagnostic work, required of the dealer by the manufacturer in
14 connection with the manufacturer's products.

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

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

34 **Sec. 3.** RCW 46.96.185 and 2000 c 203 s 1 are each amended to read
35 as follows:

36 (1) Notwithstanding the terms of a franchise agreement, a

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

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

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

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

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

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

37 (f) Compete with a new motor vehicle dealer by acting in the

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

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

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

1 (1)(f)(ii) relieves a manufacturer, distributor, factory branch, or
2 factory representative from complying with RCW 46.96.185(1) (a) through
3 (e);

4 (iii) A manufacturer, distributor, factory branch, or factory
5 representative to own or operate a dealership in conjunction with an
6 independent person in a bona fide business relationship where the
7 independent person: (A) Has made, or within a period of two years from
8 the date of commencement of operation will have made, a significant,
9 bona fide capital investment in the dealership that is subject to loss;
10 (B) has an ownership interest in the dealership; and (C) operates the
11 dealership under a bona fide written agreement with the manufacturer,
12 distributor, factory branch, or factory representative under which he
13 or she will acquire all of the ownership interest in the dealership
14 within a reasonable period of time and under reasonable terms and
15 conditions. The manufacturer, distributor, factory branch, or factory
16 representative has the burden of proof of establishing that the
17 acquisition of the dealership by the independent person was made within
18 a reasonable period of time and under reasonable terms and conditions.
19 The number of dealerships operated under this subsection (1)(f)(iii)
20 may not exceed four percent rounded up to the nearest whole number of
21 a manufacturer's total of new motor vehicle dealer franchises in this
22 state. Nothing in this subsection (1)(f)(iii) relieves a manufacturer,
23 distributor, factory branch, or factory representative from complying
24 with RCW 46.96.185(1) (a) through (e);

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

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

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

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

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

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

1 distributor, if the approval was required under the terms of the new
2 motor vehicle dealer's franchise agreement; or

3 (j) Coerce or attempt to coerce a motor vehicle dealer to refrain
4 from, or prohibit or attempt to prohibit a new motor vehicle dealer
5 from acquiring, owning, having an investment in, participating in the
6 management of, or holding a franchise agreement for the sale or service
7 of another make or line of new motor vehicles or related products, or
8 establishing another make or line of new motor vehicles or service in
9 the same dealership facilities, if the prohibition against acquiring,
10 owning, investing, managing, or holding a franchise for such additional
11 make or line of vehicles or products, or establishing another make or
12 line of new motor vehicles or service in the same dealership
13 facilities, is not supported by reasonable business considerations.
14 The burden of proving that reasonable business considerations support
15 or justify the prohibition against the additional make or line of new
16 motor vehicles or products or nonexclusive facilities is on the
17 manufacturer.

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

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

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

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

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

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

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

11 (e) "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. 4.** A new section is added to chapter 46.96 RCW
24 to read as follows:

25 **Right of First Refusal.** (1) In the event of a proposed sale or
26 transfer of a new motor vehicle dealership involving the transfer or
27 sale of more than fifty percent of the ownership interest in, or more
28 than fifty percent of the assets of, the dealership at the time of the
29 transfer or sale, where the franchise agreement for the dealership
30 contains a right of first refusal in favor of the manufacturer or
31 distributor, then notwithstanding the terms of the franchise agreement,
32 the manufacturer or distributor must be permitted to exercise a right
33 of first refusal to acquire the dealership only if all of the following
34 requirements are met:

35 (a) The manufacturer or distributor sends by certified mail, return
36 receipt requested, or delivers by personal service, notice of its
37 intent to exercise its right of first refusal within the lesser of (i)

1 forty-five days of receipt of the completed proposal for the proposed
2 sale or transfer, or (ii) the time period specified in the dealership's
3 franchise agreement; and

4 (b) The exercise of the right of first refusal will result in the
5 motor vehicle dealer receiving consideration, terms, and conditions
6 that are equal to or better than that for which the dealer has
7 contracted in connection with the proposed transaction.

8 (2) Notwithstanding subsection (1) of this section, the
9 manufacturer's or distributor's right of first refusal does not apply
10 to transfer of a dealership under RCW 46.96.110, and does not apply to
11 a proposed transaction involving any of the following purchasers or
12 transferees:

13 (a) A purchaser or transferee who has been preapproved by the
14 manufacturer or distributor with respect to the transaction;

15 (b) A family member or members, including the spouse, biological or
16 adopted child, stepchild, grandchild, spouse of a child or grandchild,
17 brother, sister, or parent of the dealer-operator, or one or more of
18 the dealership's owners;

19 (c) A manager continuously employed by the motor vehicle dealer in
20 the dealership during the previous three years who is otherwise
21 qualified as a dealer-operator by meeting the reasonable and uniformly
22 applied standards for approval of an application as a new motor vehicle
23 dealer-operator by the manufacturer;

24 (d) A partnership, corporation, limited liability company, or other
25 entity controlled by any of the family members, identified in (b) of
26 this subsection, of the dealer-operator; or

27 (e) A trust established or to be established for the purpose of
28 allowing the new motor vehicle dealer to continue to qualify as such
29 under the manufacturer's or distributor's standards, or provides for
30 the succession of the franchise agreement to designated family members
31 identified in (b) of this subsection, or qualified management
32 identified in (c) of this subsection, in the event of the death or
33 incapacity of the dealer-operator or its principal owner or owners.

34 (3) As a condition to the manufacturer or distributor exercising
35 its right of first refusal, the manufacturer or distributor shall pay
36 the reasonable expenses, including attorneys' fees, incurred by the
37 dealer's proposed purchaser or transferee in negotiating, and
38 undertaking any action to consummate, the contract for the proposed

1 sale of the dealership up to the time of the manufacturer's or
2 distributor's exercise of that right. In addition, the manufacturer or
3 distributor shall pay any fees and expenses of the motor vehicle dealer
4 arising on and after the date the manufacturer or distributor gives
5 notice of the exercise of its right of first refusal, and incurred by
6 the motor vehicle dealer as a result of alterations to documents, or
7 additional appraisals, valuations, or financial analyses caused or
8 required of the dealer by the manufacturer or distributor to consummate
9 the contract for the sale of the dealership to the manufacturer's or
10 distributor's proposed transferee, that would not have been incurred
11 but for the manufacturer's or distributor's exercise of its right of
12 first refusal. These expenses and fees must be paid by the
13 manufacturer or distributor to the dealer and to the dealer's proposed
14 purchaser or transferee on or before the closing date of the sale of
15 the dealership to the manufacturer or distributor if the party entitled
16 to reimbursement has submitted or caused to be submitted to the
17 manufacturer or distributor, an accounting of these expenses and fees
18 within thirty days after receipt of the manufacturer's or distributor's
19 written request for the accounting. A manufacturer or distributor may
20 request the accounting before exercising its right of first refusal.

21 (4) As a further condition to the exercise of its right of first
22 refusal, a manufacturer or distributor shall assume and guarantee the
23 lease or shall acquire the real property on which the motor vehicle
24 franchise is conducted. Unless otherwise agreed to by the dealer and
25 manufacturer or distributor, the lease terms or the real property
26 acquisition terms must be the same as those on which the lease or
27 property was to be transferred or sold to the dealer's proposed
28 purchaser or transferee.

29 (5) If the selling dealer has disclosed to the proposed purchaser
30 or transferee, in writing, the existence of the manufacturer's or
31 distributor's right of first refusal, then the selling dealer has no
32 liability to the proposed purchaser or transferee for a claim for
33 damages resulting from the manufacturer or distributor exercising its
34 right of first refusal. If the existence of the manufacturer's or
35 distributor's right of first refusal was disclosed by the selling
36 dealer to the proposed purchaser or transferee, in writing, before or
37 at the time of execution of the purchase and sale or transfer
38 agreement, the manufacturer or distributor shall indemnify, hold

1 harmless, and defend the selling dealer from and against any and all
2 claims, damages, losses, actions, or causes of action asserted by the
3 dealer's proposed purchaser or transferee against the selling dealer
4 arising from the manufacturer's or distributor's exercise of its right
5 of first refusal, and has the right, under this section, to file a
6 motion on behalf of the dealer to dismiss the actions or causes of
7 action asserted by the dealer's proposed purchaser or transferee.

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

10 **Manufacturer Incentive Programs.** (1) A manufacturer or distributor
11 shall pay a motor vehicle dealer's claim for payment or other
12 compensation due under a manufacturer incentive program within thirty
13 days after approval of the claim. A claim that is not disapproved or
14 disallowed within thirty days after the manufacturer or distributor
15 receives the claim is deemed automatically approved. If the motor
16 vehicle dealer's claim is not approved, the manufacturer or distributor
17 shall provide the dealer with written notice of the reasons for the
18 disapproval at the time notice of disapproval is given.

19 (2) A manufacturer may not deny a claim based solely on a motor
20 vehicle dealer's incidental failure to comply with a specific claim-
21 processing requirement that results in a clerical error or other
22 administrative technicality.

23 (3) Notwithstanding the terms of a franchise agreement or other
24 contract with a manufacturer or distributor, a motor vehicle dealer has
25 one year after the expiration of a manufacturer or distributor
26 incentive program to submit a claim for payment or compensation under
27 the program.

28 (4) Notwithstanding the terms of a franchise agreement or other
29 contract with a dealer and except as provided in subsection (5) of this
30 section, after the expiration of one year after the date of payment of
31 a claim under a manufacturer or distributor incentive program, a
32 manufacturer or distributor may not:

33 (a) Charge back to a motor vehicle dealer, whether directly or
34 indirectly, the amount of a claim that has been approved and paid by
35 the manufacturer or distributor under an incentive program;

36 (b) Charge back to a motor vehicle dealer, whether directly or

1 indirectly, the cash value of a prize or other thing of value awarded
2 to the dealer under an incentive program; or

3 (c) Audit the records of a motor vehicle dealer to determine
4 compliance with the terms of an incentive program. Where, however, a
5 manufacturer or distributor has reasonable grounds to believe that the
6 dealer committed fraud with respect to the incentive program, the
7 manufacturer or distributor may audit the dealer for a fraudulent claim
8 during any period for which an action for fraud may be commenced under
9 applicable state law.

10 (5) Notwithstanding subsection (4)(a) and (b) of this section, a
11 manufacturer or distributor may make charge-backs to a motor vehicle
12 dealer if, after completion of an audit of the dealer's records, the
13 manufacturer or distributor can show, by a preponderance of the
14 evidence, that (a) the claim was intentionally false or fraudulent at
15 the time it was submitted to the manufacturer or distributor, or (b)
16 with respect to a claim under a service incentive program, the repair
17 work was improperly performed in a substandard manner or was
18 unnecessary to correct a defective condition.

19 NEW SECTION. **Sec. 6.** A new section is added to chapter 46.96 RCW
20 to read as follows:

21 **Venue.** Notwithstanding the provisions of a franchise agreement or
22 other provision of law to the contrary, the venue for a cause of
23 action, claim, lawsuit, administrative hearing or proceeding,
24 arbitration, or mediation, whether arising under this chapter or
25 otherwise, in which the parties or litigants are a manufacturer or
26 distributor and one or more motor vehicle dealers, is the state of
27 Washington. It is the public policy of this state that venue provided
28 for in this section may not be modified or waived in any contract or
29 other agreement, and any provision contained in a franchise agreement
30 that requires arbitration or litigation to be conducted outside the
31 state of Washington is void and unenforceable.

32 This section does not apply to a voluntary dispute resolution
33 procedure that is not binding on the dealer.

34 NEW SECTION. **Sec. 7.** Captions used in this act are not part of

1 the law.

Passed by the House March 6, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.