

SSB 6272 - S AMD 501

By Senators Holmquist Newbry, Hewitt, Conway, Mullet

ADOPTED 02/17/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 46.70.045 and 1997 c 432 s 2 are each amended to read
4 as follows:

5 The director may deny a license under this chapter when the
6 application is a subterfuge that conceals the real person in interest
7 whose license has been denied, suspended, or revoked for cause under
8 this chapter and the terms have not been fulfilled or a civil penalty
9 has not been paid, ((or)) the director finds that the application was
10 not filed in good faith, or the issuance of a new license or subagency
11 would cause a manufacturer, distributor, factory branch, or factory
12 representative, or an agent, officer, parent company, wholly or
13 partially owned subsidiary, affiliated entity, or other person
14 controlled by or under common control with a manufacturer, distributor,
15 factory branch, or factory representative, to be in violation of
16 chapter 46.96 RCW. This section does not preclude the department from
17 taking an action against a current licensee.

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

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

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

26 (2) "New motor vehicle dealer" means a motor vehicle dealer engaged
27 in the business of buying, selling, exchanging, or otherwise dealing in
28 new motor vehicles or new and used motor vehicles at an established
29 place of business, under a franchise, sales and service agreement, or

1 contract with the manufacturer of the new motor vehicles. However,
2 (~~the term~~) "new motor vehicle dealer" does not include a
3 miscellaneous vehicle dealer as defined in RCW 46.70.011(~~(+3)~~) (17)(c)
4 or a motorcycle dealer as defined in chapter 46.94 RCW.

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

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

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

23 (5) "Designated successor" means:

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

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

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

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

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

6 (8) "Completed vehicle" means a vehicle that requires no further
7 manufacturing operations to perform its intended function.

8 (9) "Dealer management computer system" means a computer hardware
9 and software system that is owned or leased by a new motor vehicle
10 dealer, including the dealer's use of internet applications, software,
11 or hardware, whether located at an existing dealership facility or
12 provided at a remote location, that provides access to customer records
13 and transactions by a motor vehicle dealer located in this state, and
14 that allows the new motor vehicle dealer timely information in order to
15 sell vehicles, parts, or services through the existing dealership
16 facility.

17 (10) "Dealer management computer system vendor" means a seller or
18 reseller of dealer management computer systems, to the extent that the
19 seller or reseller is engaged in such activities.

20 (11) "Final-stage manufacturer" means a person who purchases an
21 incomplete vehicle from a licensed motor vehicle dealer and performs
22 such manufacturing operations that the incomplete vehicle becomes a
23 completed vehicle.

24 (12) "Incomplete vehicle" means an assemblage consisting of, at a
25 minimum, chassis (including the frame) structure, power train, steering
26 system, suspension system, and braking system, in the state that those
27 systems are to be part of the completed vehicle, but requires further
28 manufacturing operations to become a completed vehicle.

29 (13) "Security breach" means an incident of unauthorized access to
30 and acquisition of records or data containing new motor vehicle dealer
31 or dealer customer information where unauthorized use of the dealer's
32 customer or dealer information has occurred or is reasonably likely to
33 occur or that creates a material risk of harm to the dealer or dealer's
34 customer. Any incident of unauthorized access to and acquisition of
35 records or data containing dealer or dealer customer information, or
36 any incident of disclosure of dealer customer information to one or
37 more third parties that has not been specifically authorized by the
38 dealer or dealer's customer, constitutes a security breach.

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

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

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

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

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

23 (c) The manufacturer provided the new motor vehicle dealer with
24 specific, reasonable goals or reasonable performance standards with
25 which the dealer must comply, together with a suggested timetable or
26 program for attaining those goals or standards, and the new motor
27 vehicle dealer was given a reasonable opportunity, for a period not
28 less than one hundred eighty days, to comply with the goals or
29 standards; and

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

35 (2) If the new motor vehicle dealer claims insufficient allocation,
36 a manufacturer does not have good cause for termination, cancellation,
37 or nonrenewal, unless:

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

6 (b) The manufacturer provides to the new motor vehicle dealer, upon
7 the dealers' request, documentation sufficient to develop a market
8 analysis. This documentation must include, but is not limited to, the
9 allocation of inventory to the dealer and other dealers in the same
10 zone during the period established by the manufacturer, and must not be
11 shared by the dealer with any party not involved in preparing a market
12 analysis or otherwise engaged in the termination proceeding.

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

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

18 (1) Upon the termination, cancellation, or nonrenewal of a
19 franchise, the manufacturer shall pay the new motor vehicle dealer, at
20 a minimum:

21 (a) Dealer cost plus any charges by the manufacturer for
22 distribution, delivery, and taxes, less all allowances paid or credited
23 to the dealer by the manufacturer, of unused, undamaged, and unsold new
24 motor vehicles in the new motor vehicle dealer's inventory that were
25 acquired from the manufacturer or another new motor vehicle dealer of
26 the same line make in the ordinary course of business within the
27 previous twelve months;

28 (b) Dealer cost for all unused, undamaged, and unsold supplies,
29 parts, and accessories in original packaging, except that in the case
30 of sheet metal, a comparable substitute for original packaging may be
31 used, if the supply, part, or accessory was acquired from the
32 manufacturer or from another new motor vehicle dealer ceasing
33 operations as a part of the new motor vehicle dealer's initial
34 inventory as long as the supplies, parts, and accessories appear in the
35 manufacturer's current parts catalog, list, or current offering;

36 (c) Dealer cost for all unused, undamaged, and unsold inventory,

1 whether vehicles, parts, or accessories, the purchase of which was
2 required by the manufacturer;

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

9 (e) The fair market value of all equipment, furnishings, and
10 special tools owned or leased by the new motor vehicle dealer that were
11 acquired from the manufacturer or sources approved by the manufacturer
12 and that were recommended or required by the manufacturer and are in
13 good and usable condition, less reasonable wear and tear. However, if
14 the equipment, furnishings, or tools are leased by the new motor
15 vehicle dealer, the manufacturer shall pay the new motor vehicle dealer
16 such amounts that are required by the lessor to terminate the lease
17 under the terms of the lease agreement; and

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

22 To the extent the franchise agreement provides for payment or
23 reimbursement to the new motor vehicle dealer in excess of that
24 specified in this section, the provisions of the franchise agreement
25 shall control.

26 (2)(a) For the nonrenewal or termination of a franchise that is
27 implemented as a result of the sale of assets or stock of the motor
28 vehicle dealer, the party purchasing the assets or stock of the motor
29 vehicle dealer may negotiate for the purchase or other transfer of some
30 or all unused, undamaged, and unsold new motor vehicles in the selling
31 new motor vehicle dealer's inventory that were acquired from the
32 manufacturer or another new motor vehicle dealer of the same line make
33 in the ordinary course of business within the previous twelve months.

34 (b) For the nonrenewal or termination of a franchise that is
35 implemented as a result of the sale of assets or stock of the motor
36 vehicle dealer, this section does not prohibit a manufacturer from
37 negotiating with the purchasing party for the purchase or other
38 transfer of some or all unused, undamaged, and unsold new motor

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

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

8 (3) The manufacturer shall pay the new motor vehicle dealer the
9 sums specified in subsection (1) of this section (a) within ninety days
10 after the termination, cancellation, or nonrenewal of the franchise, if
11 the new motor vehicle dealer has clear title to the property or can
12 provide clear title to the property upon payment by the manufacturer
13 and is in a position to convey that title to the manufacturer, or (b)
14 on the date of delivery of the assets to the manufacturer, whichever is
15 earlier.

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

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

21 (1) In the event of a termination, cancellation, or nonrenewal
22 under this chapter, except for termination, cancellation, or nonrenewal
23 under RCW 46.96.070(2) or a voluntary termination, cancellation, or
24 nonrenewal initiated by the dealer, the manufacturer shall, at the
25 request and option of the new motor vehicle dealer, also pay to the new
26 motor vehicle dealer the dealer costs for any relocation, substantial
27 alteration, or remodeling of a dealer's facilities required by a
28 manufacturer for the granting of a franchise or the continuance or
29 renewal of a franchise agreement completed within three years of the
30 termination, cancellation, or nonrenewal and:

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

36 (b) A sum equivalent to the reasonable rental value of the new

1 motor vehicle dealership facilities for one year or until the
2 facilities are leased or sold, whichever is less, if the new motor
3 vehicle dealer owns the new motor vehicle dealership facilities.

4 (2) The rental payment required under subsection (1) of this
5 section is only required to the extent that the facilities were used
6 for activities under the franchise and only to the extent the
7 facilities were not leased for unrelated purposes. If the rental
8 payment under subsection (1) of this section is made, the manufacturer
9 is entitled to possession and use of the new motor vehicle dealership
10 facilities for the period rent is paid.

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

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

25 (a) The rates charged by the dealer for nonwarranty service or work
26 for parts means the price paid by the dealer for those parts, including
27 all shipping and other charges, increased by the franchisee's average
28 percentage markup. A dealer must establish and declare the dealer's
29 average percentage markup by submitting to the manufacturer one hundred
30 sequential customer-paid service repair orders or ninety days of
31 customer-paid service repair orders, whichever is less, covering
32 repairs made no more than one hundred eighty days before the
33 submission. A change in a dealer's established average percentage
34 markup takes effect thirty days following the submission. A
35 manufacturer may not require a dealer to establish average percentage
36 markup by another methodology. A manufacturer may not require
37 information that the dealer believes is unduly burdensome or time

1 consuming to provide, including, but not limited to, part-by-part or
2 transaction-by-transaction calculations. In calculating the retail
3 rate customarily charged by the dealer for parts and labor, the
4 following work must not be included in the calculation:

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

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

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

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

13 (v) Tires;

14 (vi) Batteries and light bulbs; and

15 (vii) Vehicle reconditioning.

16 (b) A manufacturer shall compensate a dealer for labor and
17 diagnostic work at the rates charged by the dealer to its retail
18 customers for such work and for any documentation work required by the
19 manufacturer to authorize or verify the work including, but not limited
20 to, photographs, paperwork, and electronic data entry. However, a
21 manufacturer is not required to compensate a dealer more than once for
22 the same documentation work. If a manufacturer can demonstrate that
23 the rates unreasonably exceed those of all other franchised motor
24 vehicle dealers in the same relevant market area offering the same or
25 a competitive motor vehicle line, the manufacturer is not required to
26 honor the rate increase proposed by the dealer. If the manufacturer is
27 not required to honor the rate increase proposed by the dealer, the
28 dealer is entitled to resubmit a new proposed rate for labor and
29 diagnostic work.

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

33 (2) All claims for warranty work for parts and labor made by
34 dealers under this section ~~((shall))~~ must be submitted to the
35 manufacturer within ~~((one year))~~ ninety days of the date the work was
36 performed. All claims submitted must be paid by the manufacturer
37 within thirty days following receipt, provided the claim has been
38 approved by the manufacturer. The manufacturer has the right to audit

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

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

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

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

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

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

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

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

1 (d) Discriminate between new motor vehicle dealers by adopting a
2 method, or changing an existing method, for the allocation, scheduling,
3 or delivery of new motor vehicles, parts, or accessories to its dealers
4 that is not fair, reasonable, and equitable. Upon the request of a
5 dealer, a manufacturer, distributor, factory branch, or factory
6 representative shall disclose in writing to the dealer the method by
7 which new motor vehicles, parts, and accessories are allocated,
8 scheduled, or delivered to its dealers handling the same line or make
9 of vehicles;

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

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

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

32 (i) A manufacturer, distributor, factory branch, or factory
33 representative to own or operate a dealership for a temporary period,
34 not to exceed two years, during the transition from one owner of the
35 dealership to another where the dealership was previously owned by a
36 franchised dealer and is currently for sale to any qualified
37 independent person at a fair and reasonable price. The temporary
38 operation may be extended for one twelve-month period on petition of

1 the temporary operator to the department. The matter will be handled
2 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is
3 a franchisee of the petitioning manufacturer or distributor may
4 intervene and participate in a proceeding under this subsection
5 (1)(g)(i). The temporary operator has the burden of proof to show
6 justification for the extension and a good faith effort to sell the
7 dealership to an independent person at a fair and reasonable price;

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

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

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

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

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

1 (vi) A final-stage manufacturer to own, operate, or control a new
2 motor vehicle dealership; or

3 (vii) A manufacturer that held a vehicle dealer license in this
4 state on January 1, 2014, to own, operate, or control a new motor
5 vehicle dealership that sells new vehicles that are only of that
6 manufacturer's makes or lines and that are not sold new by a licensed
7 independent franchise dealer, or to own, operate, or control or
8 contract with companies that provide finance, leasing, or service for
9 vehicles that are of that manufacturer's makes or lines;

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

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

26 (j)(i) Terminate, cancel, or fail to renew a franchise with a new
27 motor vehicle dealer based upon any of the following events, which do
28 not constitute good cause for termination, cancellation, or nonrenewal
29 under RCW 46.96.060: (A) The fact that the new motor vehicle dealer
30 owns, has an investment in, participates in the management of, or holds
31 a franchise agreement for the sale or service of another make or line
32 of new motor vehicles; (B) the fact that the new motor vehicle dealer
33 has established another make or line of new motor vehicles or service
34 in the same dealership facilities as those of the manufacturer or
35 distributor; (C) that the new motor vehicle dealer has or intends to
36 relocate the manufacturer or distributor's make or line of new motor
37 vehicles or service to an existing dealership facility that is within
38 the relevant market area, as defined in RCW 46.96.140, of the make or

1 line to be relocated, except that, in any nonemergency circumstance,
2 the dealer must give the manufacturer or distributor at least sixty
3 days' notice of his or her intent to relocate and the relocation must
4 comply with RCW 46.96.140 and 46.96.150 for any same make or line
5 facility; or (D) the failure of a franchisee to change the location of
6 the dealership or to make substantial alterations to the use or number
7 of franchises on the dealership premises or facilities.

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

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

30 (l) Require, by contract or otherwise, a new motor vehicle dealer
31 to make a material alteration, expansion, or addition to any dealership
32 facility, unless the required alteration, expansion, or addition is
33 uniformly required of other similarly situated new motor vehicle
34 dealers of the same make or line of vehicles and is reasonable in light
35 of all existing circumstances, including economic conditions. In any
36 proceeding in which a required facility alteration, expansion, or
37 addition is an issue, the manufacturer or distributor has the burden of
38 proof. Except for a program or any renewal or modification of a

1 program that is in effect with one or more new motor vehicle dealers in
2 this state on the effective date of this section, a manufacturer shall
3 not require, coerce, or attempt to coerce any new motor vehicle dealer
4 by program, policy, standard, or otherwise to change the location of
5 the dealership or construct, replace, renovate, or make any substantial
6 changes, alterations, or remodeling to a new motor vehicle dealer's
7 sales or service facilities, except as necessary to comply with health
8 or safety laws or to comply with technology requirements without which
9 a dealer would be unable to service a vehicle the dealer has elected to
10 sell, before the tenth anniversary of the date of issuance of the
11 certificate of occupancy or the manufacturer's approval, whichever is
12 later, from:

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

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

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

37 (n) Condition the sale, transfer, relocation, or renewal of a
38 franchise agreement or condition manufacturer, distributor, factory

1 branch, or factory representative sales, services, or parts incentives
2 upon the manufacturer obtaining site control, including rights to
3 purchase or lease the dealer's facility, or an agreement to make
4 improvements or substantial renovations to a facility. For purposes of
5 this section, a substantial renovation has a gross cost to the dealer
6 in excess of five thousand dollars;

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

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

32 (q) Require, coerce, or attempt to coerce any new motor vehicle
33 dealer by program, policy, facility guide, standard, or otherwise to
34 order or accept delivery of any service or repair appliances,
35 equipment, parts, or accessories, or any other commodity not required
36 by law, which the dealer has not voluntarily ordered or which the
37 dealer does not have the right to return unused for a full refund

1 within ninety days or a longer period as mutually agreed upon by the
2 dealer and manufacturer.

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

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

17 (a) "Actual price" means the price to be paid by the dealer less
18 any incentive paid by the manufacturer, distributor, factory branch, or
19 factory representative, whether paid to the dealer or the ultimate
20 purchaser of the vehicle.

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

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

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

34 (e) "Own" or "ownership" means to hold the beneficial ownership of
35 one percent or more of any class of equity interest in a dealership,
36 whether the interest is that of a shareholder, partner, limited
37 liability company member, or otherwise. To hold an ownership interest

1 means to have possession of, title to, or control of the ownership
2 interest, whether directly or indirectly through a fiduciary, agent, or
3 other intermediary.

4 (4) A violation of this section is deemed to affect the public
5 interest and constitutes an unlawful and unfair practice under chapter
6 19.86 RCW. A person aggrieved by an alleged violation of this section
7 may petition the department to have the matter handled as an
8 adjudicative proceeding under chapter 34.05 RCW.

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

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

25 However, the new motor vehicle dealer may provide any other new
26 motor vehicle dealer, consumer, or customer data or information
27 specified by the requesting party by timely obtaining and pushing or
28 otherwise furnishing the requested data to the requesting party in a
29 widely accepted file format, such as comma delimited, provided that
30 when a new motor vehicle dealer would otherwise be required to provide
31 direct access to its management computer system under the terms of a
32 consent, authorization, release, novation, franchise, or other contract
33 or agreement, a new motor vehicle dealer that elects to provide data or
34 information through other means may be charged a reasonable initial
35 set-up fee and reasonable processing fee based on the actual
36 incremental costs incurred by the party requesting the data for
37 establishing and implementing the process for the dealer. Any term or

1 provision contained in any consent, authorization, release, novation,
2 franchise, or other contract or agreement that is inconsistent with
3 this subsection is voidable at the option of the new motor vehicle
4 dealer.

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

31 (3) Notwithstanding the terms or conditions of any consent,
32 authorization, release, novation, franchise, or other contract or
33 agreement, a dealer management computer system vendor or any third
34 party acting on behalf of or through any dealer management computer
35 system vendor, having electronic access to consumer or customer data or
36 other information in a computer system utilized by a new motor vehicle
37 dealer, or who has otherwise been provided consumer or customer data or
38 information by the dealer, shall fully indemnify and hold harmless the

1 dealer from whom it has acquired the consumer or customer data or other
2 information from all damages, costs, and expenses incurred by the
3 dealer including, but not limited to, judgments, settlements, fines,
4 penalties, litigation costs, defense costs, court costs, costs related
5 to the disclosure of security breaches, and attorneys' fees arising out
6 of complaints, claims, security breaches, civil or administrative
7 actions, and, to the fullest extent allowable under the law,
8 governmental investigations and prosecutions to the extent caused by
9 the dealer management computer system vendor or any third party acting
10 on behalf of the dealer management computer system vendor's access,
11 storage, maintenance, use, sharing, disclosure, or retention of the
12 dealer's consumer or customer data or other information, or maintenance
13 or services provided to any computer system utilized by the dealer, by
14 the dealer management computer system vendor or third party acting on
15 behalf of or through the dealer management computer system vendor.

16 NEW SECTION. **Sec. 9.** This act applies to all franchises and
17 contracts between manufacturers and new motor vehicle dealers amended,
18 renewed, or entered into after the effective date of this section. For
19 purposes of chapter 46.96 RCW, an agreement between a manufacturer and
20 new motor vehicle dealer entered into after the effective date of this
21 section, addressing any issues governed by chapter 46.96 RCW, is
22 considered an amendment to an existing franchise."

SSB 6272 - S AMD

By Senators Holmquist Newbry, Hewitt, Conway, Mullet

ADOPTED 02/17/2014

23 On page 1, line 2 of the title, after "agreements;" strike the
24 remainder of the title and insert "amending RCW 46.70.045, 46.96.020,
25 46.96.060, 46.96.080, 46.96.090, 46.96.105, and 46.96.185; adding a new
26 section to chapter 46.96 RCW; and creating a new section."

EFFECT: In the event a dealer claims insufficient inventory

allocation and the manufacturer provides documentation for a market analysis, the dealer cannot share the market analysis with others. Specific allocation requirements are deleted.

A new section describes the dealer's obligation to do warranty work on the manufacturer's products and the manufacturer's schedule of compensation to be paid for the work. How rates are established, limitations, and what cannot be included in calculating the retail rate are described.

A manufacturer cannot be required to compensate a dealer more than once for the same documentation.

Claims are to be submitted to the manufacturer within 90 days of the date the work was performed. The manufacturer has 9 months from the time of payment to audit warranty work and to charge the dealer for any unsubstantiated claims.

Adding an exemption for a manufacturer that held a vehicle dealer license in this state on January 1, 2014.

A manufacturer can't require a dealer to remodel sales or service facilities more than once every 10 years. Exceptions are described.

The provision to allow dealers to use alternative sourcing for signage is removed.

A manufacturer cannot require a dealer to accept items the dealer has not ordered and must give the dealer the right to return unused items for a full refund within 90 days.

Regarding the dealer management computer system, a manufacturer is liable for any breaches by the manufacturer, and a dealer management computer system vendor is liable for any breaches by the dealer management computer system vendor.

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