
HOUSE BILL 2439

State of Washington 65th Legislature 2018 Regular Session

By Representatives Kirby, Vick, Barkis, Stanford, Ryu, and Haler

Read first time 01/09/18. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to clarifying the relationship between
2 manufacturers and new motor vehicle dealers by providing tools to
3 resolve disparities including expanding compensation for recalled
4 vehicles; amending RCW 46.96.185 and 46.96.260; and adding new
5 sections to chapter 46.96 RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.96
8 RCW to read as follows:

9 (1) A manufacturer shall compensate its new motor vehicle dealers
10 for all labor and parts required by the manufacturer to perform
11 recall repairs at rates no lower than those set in accordance with
12 RCW 46.96.105. If parts or a remedy are not reasonably available to
13 perform a recall service or repair on a used vehicle held for sale by
14 a dealer authorized to sell new vehicles of the same line make within
15 fifteen days of the manufacturer issuing the initial notice of
16 recall, and the manufacturer has issued a stop-sale, do-not-drive, or
17 where the issue identified in the notice of recall could otherwise
18 affect the safe operation of the vehicle, the manufacturer shall
19 compensate the dealer at a rate of at least 1.75 percent of the
20 average trade-in value as indicated in an independent third-party
21 guide for the year, make, model, and mileage of the recalled vehicle,

1 per month, or portion of a month, while the recall or remedy parts
2 are unavailable and the order remains in effect. A stop-sale or do-
3 not-drive is defined as a notification issued by a vehicle
4 manufacturer to its franchised dealerships stating that certain used
5 vehicles in inventory should not be sold or leased, at retail or
6 wholesale, due to a federal safety recall for a defect or a
7 noncompliance, or a federal or California emissions recall.

8 (2) This section applies only to used vehicles subject to safety
9 or emissions recalls pursuant to and recalled in accordance with
10 federal law and regulations adopted thereunder and where a stop-sale,
11 do-not-drive order has been issued, or where the issue identified in
12 the notice of recall could otherwise affect the safe operation of the
13 vehicle. This section further applies only to new motor vehicle
14 dealers holding used vehicles for sale that are a line make that the
15 dealer is franchised to sell or on which the dealer is authorized to
16 perform recall repairs.

17 (3) All reimbursement claims made by new motor vehicle dealers
18 pursuant to this section for recall remedies or repairs, or for
19 compensation where no part or repair is reasonably available and the
20 vehicle is subject to a stop-sale, do-not-drive, or where the issue
21 identified in the notice of recall could otherwise affect the safe
22 operation of the vehicle, is subject to the same limitations and
23 requirements as a warranty reimbursement claim made under RCW
24 46.96.105. Claims shall be either approved or disapproved within
25 thirty days after they are submitted to the manufacturer in the
26 manner and on the forms the manufacturer reasonably prescribes. Any
27 claim not specifically disapproved in writing within thirty days
28 following receipt is approved; and the manufacturer must pay that
29 claim within thirty days of receipt of the claim.

30 (4) A manufacturer may compensate its franchised dealers under a
31 national recall compensation program provided the compensation under
32 the program is equal to or greater than that provided in subsection
33 (1) of this section.

34 (5) A manufacturer may not otherwise recover all or any portion
35 of its costs for compensating its dealers licensed in this state for
36 recalled vehicles, parts, and service either by reduction in the
37 amount due to the dealer or by separate charge, surcharge, or other
38 imposition.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.96
2 RCW to read as follows:

3 Any corporation or association that is primarily owned by or
4 composed of new motor vehicle dealers and that primarily represents
5 the interests of new motor vehicle dealers has standing to file a
6 petition to the department to have a matter handled as an
7 adjudicative proceeding under chapter 34.05 RCW, or as a cause of
8 action with a court of competent jurisdiction for itself or by, for,
9 or on behalf of one or more new motor vehicle dealers for any
10 violation of this chapter or for the determination of any rights
11 created by this chapter and seeking declaratory or injunctive relief.

12 **Sec. 3.** RCW 46.96.185 and 2014 c 214 s 7 are each amended to
13 read as follows:

14 (1) Notwithstanding the terms of a franchise agreement, a
15 manufacturer, distributor, factory branch, or factory representative,
16 or an agent, officer, parent company, wholly or partially owned
17 subsidiary, affiliated entity, or other person controlled by or under
18 common control with a manufacturer, distributor, factory branch, or
19 factory representative, shall not:

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

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

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

31 (d) Discriminate between new motor vehicle dealers by adopting a
32 method, or changing an existing method, for the allocation,
33 scheduling, or delivery of new motor vehicles, parts, or accessories
34 to its dealers that is not fair, reasonable, and equitable. Upon the
35 request of a dealer, a manufacturer, distributor, factory branch, or
36 factory representative shall disclose in writing to the dealer the
37 method by which new motor vehicles, parts, and accessories are
38 allocated, scheduled, or delivered to its dealers handling the same
39 line or make of vehicles;

1 (e) Discriminate against a new motor vehicle dealer by
2 preventing, offsetting, or otherwise impairing the dealer's right to
3 request a documentary service fee on affinity or similar program
4 purchases. This prohibition applies to, but is not limited to, any
5 promotion plan, marketing plan, manufacturer or dealer employee or
6 employee friends or family purchase programs, or similar plans or
7 programs;

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

19 (g) Compete with a new motor vehicle dealer of any make or line
20 by acting in the capacity of a new motor vehicle dealer, or by
21 owning, operating, or controlling, whether directly or indirectly, a
22 motor vehicle dealership in this state. It is not, however, a
23 violation of this subsection for:

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

38 (ii) A manufacturer, distributor, factory branch, or factory
39 representative to own or operate a dealership in conjunction with an
40 independent person in a bona fide business relationship for the

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

21 (iii) A manufacturer, distributor, factory branch, or factory
22 representative to own or operate a dealership in conjunction with an
23 independent person in a bona fide business relationship where the
24 independent person: (A) Has made, or within a period of two years
25 from the date of commencement of operation will have made, a
26 significant, bona fide capital investment in the dealership that is
27 subject to loss; (B) has an ownership interest in the dealership; and
28 (C) operates the dealership under a bona fide written agreement with
29 the manufacturer, distributor, factory branch, or factory
30 representative under which he or she will acquire all of the
31 ownership interest in the dealership within a reasonable period of
32 time and under reasonable terms and conditions. The manufacturer,
33 distributor, factory branch, or factory representative has the burden
34 of proof of establishing that the acquisition of the dealership by
35 the independent person was made within a reasonable period of time
36 and under reasonable terms and conditions. The number of dealerships
37 operated under this subsection (1)(g)(iii) may not exceed four
38 percent rounded up to the nearest whole number of a manufacturer's
39 total of new motor vehicle dealer franchises in this state. Nothing
40 in this subsection (1)(g)(iii) relieves a manufacturer, distributor,

1 factory branch, or factory representative from complying with (a)
2 through (f) of this subsection;

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

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

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

31 (vii) A manufacturer that held a vehicle dealer license in this
32 state on January 1, 2014, to own, operate, or control a new motor
33 vehicle dealership that sells new vehicles that are only of that
34 manufacturer's makes or lines and that are not sold new by a licensed
35 independent franchise dealer, or to own, operate, or control or
36 contract with companies that provide finance, leasing, or service for
37 vehicles that are of that manufacturer's makes or lines;

38 (h) Compete with a new motor vehicle dealer by owning, operating,
39 or controlling, whether directly or indirectly, a service facility in
40 this state for the repair or maintenance of motor vehicles under the

1 manufacturer's new car warranty and extended warranty. Nothing in
2 this subsection (1)(h), however, prohibits a manufacturer,
3 distributor, factory branch, or factory representative from owning or
4 operating a service facility for the purpose of providing or
5 performing maintenance, repair, or service work on motor vehicles
6 that are owned by the manufacturer, distributor, factory branch, or
7 factory representative;

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

14 (j)(i) Terminate, cancel, or fail to renew a franchise with a new
15 motor vehicle dealer based upon any of the following events, which do
16 not constitute good cause for termination, cancellation, or
17 nonrenewal under RCW 46.96.060: (A) The fact that the new motor
18 vehicle dealer owns, has an investment in, participates in the
19 management of, or holds a franchise agreement for the sale or service
20 of another make or line of new motor vehicles; (B) the fact that the
21 new motor vehicle dealer has established another make or line of new
22 motor vehicles or service in the same dealership facilities as those
23 of the manufacturer or distributor; (C) that the new motor vehicle
24 dealer has or intends to relocate the manufacturer or distributor's
25 make or line of new motor vehicles or service to an existing
26 dealership facility that is within the relevant market area, as
27 defined in RCW 46.96.140, of the make or line to be relocated, except
28 that, in any nonemergency circumstance, the dealer must give the
29 manufacturer or distributor at least sixty days' notice of his or her
30 intent to relocate and the relocation must comply with RCW 46.96.140
31 and 46.96.150 for any same make or line facility; or (D) the failure
32 of a franchisee to change the location of the dealership or to make
33 substantial alterations to the use or number of franchises on the
34 dealership premises or facilities.

35 (ii) Notwithstanding the limitations of this section, a
36 manufacturer may, for separate consideration, enter into a written
37 contract with a dealer to exclusively sell and service a single make
38 or line of new motor vehicles at a specific facility for a defined
39 period of time. The penalty for breach of the contract must not

1 exceed the amount of consideration paid by the manufacturer plus a
2 reasonable rate of interest;

3 (k) 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
7 service of another make or line of new motor vehicles or related
8 products, or establishing another make or line of new motor vehicles
9 or service in the same dealership facilities, if the prohibition
10 against acquiring, owning, investing, managing, or holding a
11 franchise for such additional make or line of vehicles or products,
12 or establishing another make or line of new motor vehicles or service
13 in the same dealership facilities, is not supported by reasonable
14 business considerations. The burden of proving that reasonable
15 business considerations support or justify the prohibition against
16 the additional make or line of new motor vehicles or products or
17 nonexclusive facilities is on the manufacturer;

18 (l) Require, by contract or otherwise, a new motor vehicle dealer
19 to make a material alteration, expansion, or addition to any
20 dealership facility, unless the required alteration, expansion, or
21 addition is uniformly required of other similarly situated new motor
22 vehicle dealers of the same make or line of vehicles and is
23 reasonable in light of all existing circumstances, including economic
24 conditions. In any proceeding in which a required facility
25 alteration, expansion, or addition is an issue, the manufacturer or
26 distributor has the burden of proof. Except for a program or any
27 renewal or modification of a program that is in effect with one or
28 more new motor vehicle dealers in this state on June 12, 2014, a
29 manufacturer shall not require, coerce, or attempt to coerce any new
30 motor vehicle dealer by program, policy, standard, or otherwise to
31 change the location of the dealership or construct, replace,
32 renovate, or make any substantial changes, alterations, or remodeling
33 to a new motor vehicle dealer's sales or service facilities, except
34 as necessary to comply with health or safety laws or to comply with
35 technology requirements without which a dealer would be unable to
36 service a vehicle the dealer has elected to sell, before the tenth
37 anniversary of the date of issuance of the certificate of occupancy
38 or the manufacturer's approval, whichever is later, from:

39 (i) The date construction of the dealership at that location was
40 completed if the construction was in substantial compliance with

1 standards or plans provided by a manufacturer, distributor, or
2 representative or through a subsidiary or agent of the manufacturer,
3 distributor, or representative; or

4 (ii) The date a prior change, alteration, or remodel of the
5 dealership at that location was completed if the construction was in
6 substantial compliance with standards or plans provided by a
7 manufacturer, distributor, or representative or through a subsidiary
8 or agent of the manufacturer, distributor, or representative;

9 (m) Prevent or attempt to prevent by contract or otherwise any
10 new motor vehicle dealer from changing the executive management of a
11 new motor vehicle dealer unless the manufacturer or distributor,
12 having the burden of proof, can show that a proposed change of
13 executive management will result in executive management by a person
14 or persons who are not of good moral character or who do not meet
15 reasonable, preexisting, and equitably applied standards of the
16 manufacturer or distributor. If a manufacturer or distributor rejects
17 a proposed change in the executive management, the manufacturer or
18 distributor shall give written notice of its reasons to the dealer
19 within sixty days after receiving written notice from the dealer of
20 the proposed change and all related information reasonably requested
21 by the manufacturer or distributor, or the change in executive
22 management must be considered approved;

23 (n) Condition the sale, transfer, relocation, or renewal of a
24 franchise agreement or condition manufacturer, distributor, factory
25 branch, or factory representative sales, services, or parts
26 incentives upon the manufacturer obtaining site control, including
27 rights to purchase or lease the dealer's facility, or an agreement to
28 make improvements or substantial renovations to a facility. For
29 purposes of this section, a substantial renovation has a gross cost
30 to the dealer in excess of five thousand dollars;

31 (o) Fail to provide to a new motor vehicle dealer purchasing or
32 leasing building materials or other facility improvements the right
33 to purchase or lease franchisor image elements of like kind and
34 quality from an alternative vendor selected by the dealer if the
35 goods or services are to be supplied by a vendor selected,
36 identified, or designated by the manufacturer or distributor. If the
37 vendor selected by the manufacturer or distributor is the only
38 available vendor of like kind and quality materials, the new motor
39 vehicle dealer must be given the opportunity to purchase the
40 franchisor image elements at a price substantially similar to the

1 capitalized lease costs of the elements. This subsection (1)(o) must
2 not be construed to allow a new motor vehicle dealer or vendor to
3 gain additional intellectual property rights they are not otherwise
4 entitled to or to impair or eliminate the intellectual property
5 rights of the manufacturer or distributor or to permit a new motor
6 vehicle dealer to erect or maintain signs that do not conform to the
7 reasonable intellectual property usage guidelines of the manufacturer
8 or distributor;

9 (p) Take any adverse action against a new motor vehicle dealer
10 including, but not limited to, charge backs or reducing vehicle
11 allocations, for sales and service performance within a designated
12 area of primary responsibility unless that area is reasonable in
13 light of proximity to relevant census tracts to the dealership and
14 competing dealerships, highways and road networks, state borders, any
15 natural or man-made barriers, demographics, including economic
16 factors, ~~((and))~~ buyer behavior information, and contains only areas
17 inside the state of Washington unless specifically approved by the
18 new motor vehicle dealer; ((or))

19 (q) Require, coerce, or attempt to coerce any new motor vehicle
20 dealer by program, policy, facility guide, standard, or otherwise to
21 order or accept delivery of any service or repair appliances,
22 equipment, parts, or accessories, or any other commodity not required
23 by law, which the dealer has not voluntarily ordered or which the
24 dealer does not have the right to return unused for a full refund
25 within ninety days or a longer period as mutually agreed upon by the
26 dealer and manufacturer; or

27 (r) Modify the franchise agreement for any new motor vehicle
28 dealer unless the manufacturer notifies the dealer in writing of its
29 intention to modify the agreement at least ninety days before the
30 effective date thereof, stating the specific grounds for the
31 modification, and undertakes the modification in good faith, for good
32 cause, and in a manner that would not adversely and substantially
33 alter the rights, obligations, investment, or return on investment of
34 the franchised new motor vehicle dealer under the existing agreement.

35 (2) Subsection (1)(a), (b), and (c) of this section do not apply
36 to sales to a motor vehicle dealer: (a) For resale to a federal,
37 state, or local government agency; (b) where the vehicles will be
38 sold or donated for use in a program of driver's education; (c) where
39 the sale is made under a manufacturer's bona fide promotional program
40 offering sales incentives or rebates; (d) where the sale of parts or

1 accessories is under a manufacturer's bona fide quantity discount
2 program; or (e) where the sale is made under a manufacturer's bona
3 fide fleet vehicle discount program. For purposes of this subsection,
4 "fleet" means a group of fifteen or more new motor vehicles purchased
5 or leased by a dealer at one time under a single purchase or lease
6 agreement for use as part of a fleet, and where the dealer has been
7 assigned a fleet identifier code by the department of licensing.

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

9 (a) "Actual price" means the price to be paid by the dealer less
10 any incentive paid by the manufacturer, distributor, factory branch,
11 or factory representative, whether paid to the dealer or the ultimate
12 purchaser of the vehicle.

13 (b) "Control" or "controlling" means (i) the possession of, title
14 to, or control of ten percent or more of the voting equity interest
15 in a person, whether directly or indirectly through a fiduciary,
16 agent, or other intermediary, or (ii) the possession, direct or
17 indirect, of the power to direct or cause the direction of the
18 management or policies of a person, whether through the ownership of
19 voting securities, through director control, by contract, or
20 otherwise, except as expressly provided under the franchise
21 agreement.

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

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

27 (e) "Own" or "ownership" means to hold the beneficial ownership
28 of one percent or more of any class of equity interest in a
29 dealership, whether the interest is that of a shareholder, partner,
30 limited liability company member, or otherwise. To hold an ownership
31 interest means to have possession of, title to, or control of the
32 ownership interest, whether directly or indirectly through a
33 fiduciary, agent, or other intermediary.

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

1 **Sec. 4.** RCW 46.96.260 and 2010 c 178 s 11 are each amended to
2 read as follows:

3 A new motor vehicle dealer who is injured in his or her business
4 or property by a violation of this chapter may bring a civil action
5 in the superior court to enjoin further violations, recover the
6 actual damages sustained by the dealer, or both, together with the
7 costs of the suit, including reasonable attorneys' fees if the new
8 motor vehicle dealer prevails. In addition, the court may, in its
9 discretion, increase the award of damages up to an amount not to
10 exceed three times the actual damages sustained. The new motor
11 vehicle dealer may bring a civil action in district court to recover
12 his or her actual damages, except for damages that exceed the amount
13 specified in RCW 3.66.020, and the costs of the suit, including
14 reasonable attorneys' fees. The district court may, in its
15 discretion, increase the award of damages up to an amount not to
16 exceed three times the actual damages sustained.

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