

ESHB 2547 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

ADOPTED 03/02/2010

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

3 "Sec. 1. RCW 46.96.030 and 1989 c 415 s 3 are each amended to read
4 as follows:

5 Notwithstanding the terms of a franchise and notwithstanding the
6 terms of a waiver, no manufacturer may terminate, cancel, or fail to
7 renew a franchise with a new motor vehicle dealer, unless the
8 manufacturer has complied with the notice requirements of RCW 46.96.070
9 and an administrative law judge has determined, if requested in writing
10 by the new motor vehicle dealer within the applicable time period
11 specified in RCW 46.96.070 (1), (2), or (3), after hearing, that there
12 is good cause for the termination, cancellation, or nonrenewal of the
13 franchise and that the manufacturer has acted in good faith, as defined
14 in this chapter, regarding the termination, cancellation, or
15 nonrenewal. Between the time of issuance of the notice required under
16 RCW 46.96.070 and the effective termination, cancellation, or
17 nonrenewal of the franchise under this chapter, the rights, duties, and
18 obligations of the new motor vehicle dealer and the manufacturer under
19 the franchise and this chapter are unaffected, including those under
20 RCW 46.96.200.

21 **Sec. 2.** RCW 46.96.070 and 1989 c 415 s 7 are each amended to read
22 as follows:

23 Before the termination, cancellation, or nonrenewal of a franchise,
24 the manufacturer shall give written notification to both the department
25 and the new motor vehicle dealer. For the purposes of this chapter,
26 the discontinuance of the sale and distribution of a new motor vehicle
27 line, or the constructive discontinuance by material reduction in
28 selection offered, such that continuing to retail the line is no longer
29 economically viable for a dealer is, at the option of the dealer,

1 considered a termination, cancellation, or nonrenewal of a franchise.

2 The notice shall be by certified mail or personally delivered to the
3 new motor vehicle dealer and shall state the intention to terminate,
4 cancel, or not renew the franchise, the reasons for the termination,
5 cancellation, or nonrenewal, and the effective date of the termination,
6 cancellation, or nonrenewal. The notice shall be given:

7 (1) Not less than ninety days before the effective date of the
8 termination, cancellation, or nonrenewal;

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

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

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

20 (c) Conviction of the new motor vehicle dealer, or principal
21 operator of the dealership, of a felony punishable by imprisonment; or

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

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

30 **Sec. 3.** RCW 46.96.090 and 1989 c 415 s 9 are each amended to read
31 as follows:

32 (1) In the event of a termination, cancellation, or nonrenewal
33 under this chapter, except for termination, cancellation, or nonrenewal
34 under RCW 46.96.070(2) or a voluntary termination, cancellation, or
35 nonrenewal initiated by the dealer, the manufacturer shall, at the
36 request and option of the new motor vehicle dealer, also pay to the new
37 motor vehicle dealer the dealer costs for any relocation, substantial

1 alteration, or remodeling of a dealer's facilities required by a
2 manufacturer for the continuance or renewal of a franchise agreement
3 completed within three years of the termination, cancellation, or
4 nonrenewal and:

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

10 (b) A sum equivalent to the reasonable rental value of the new
11 motor vehicle dealership facilities for one year or until the
12 facilities are leased or sold, whichever is less, if the new motor
13 vehicle dealer owns the new motor vehicle dealership facilities.

14 (2) The rental payment required under subsection (1) of this
15 section is only required to the extent that the facilities were used
16 for activities under the franchise and only to the extent the
17 facilities were not leased for unrelated purposes. If the rental
18 payment under subsection (1) of this section is made, the manufacturer
19 is entitled to possession and use of the new motor vehicle dealership
20 facilities for the period rent is paid.

21 **Sec. 4.** RCW 46.96.105 and 2003 c 21 s 2 are each amended to read
22 as follows:

23 (1) Each manufacturer shall specify in its franchise agreement, or
24 in a separate written agreement, with each of its dealers licensed in
25 this state, the dealer's obligation to perform warranty work or service
26 on the manufacturer's products. Each manufacturer shall provide each
27 of its dealers with a schedule of compensation to be paid to the dealer
28 for any warranty work or service, including parts, labor, and
29 diagnostic work, required of the dealer by the manufacturer in
30 connection with the manufacturer's products. The schedule of
31 compensation must not be less than the rates charged by the dealer for
32 similar service to retail customers for nonwarranty service and
33 repairs, and must not be less than the schedule of compensation for an
34 existing dealer as of the effective date of this section.

35 (a) The rates charged by the dealer for nonwarranty service or work
36 for parts means the price paid by the dealer for those parts, including
37 all shipping and other charges, increased by the franchisee's average

1 percentage markup. A dealer must establish and declare the dealer's
2 average percentage markup by submitting to the manufacturer one hundred
3 sequential customer-paid service repair orders or ninety days of
4 customer-paid service repair orders, whichever is less, covering
5 repairs made no more than one hundred eighty days before the
6 submission. A change in a dealer's established average percentage
7 markup takes effect thirty days following the submission. A
8 manufacturer may not require a dealer to establish average percentage
9 markup by another methodology. A manufacturer may not require
10 information that the dealer believes is unduly burdensome or time
11 consuming to provide, including, but not limited to, part-by-part or
12 transaction-by-transaction calculations.

13 (b) A manufacturer shall compensate a dealer for labor and
14 diagnostic work at the rates charged by the dealer to its retail
15 customers for such work. If a manufacturer can demonstrate that the
16 rates unreasonably exceed those of all other franchised motor vehicle
17 dealers in the same relevant market area offering the same or a
18 competitive motor vehicle line, the manufacturer is not required to
19 honor the rate increase proposed by the dealer. If the manufacturer is
20 not required to honor the rate increase proposed by the dealer, the
21 dealer is entitled to resubmit a new proposed rate for labor and
22 diagnostic work.

23 (c) A dealer may not be granted an increase in the average
24 percentage markup or labor and diagnostic work rate more than twice in
25 one calendar year.

26 (2) All claims for warranty work for parts and labor made by
27 dealers under this section shall be submitted to the manufacturer
28 within one year of the date the work was performed. All claims
29 submitted must be paid by the manufacturer within thirty days following
30 receipt, provided the claim has been approved by the manufacturer. The
31 manufacturer has the right to audit claims for warranty work and to
32 charge the dealer for any unsubstantiated, incorrect, or false claims
33 for a period of one year following payment. However, the manufacturer
34 may audit and charge the dealer for any fraudulent claims during any
35 period for which an action for fraud may be commenced under applicable
36 state law.

37 (3) All claims submitted by dealers on the forms and in the manner
38 specified by the manufacturer shall be either approved or disapproved

1 within thirty days following their receipt. The manufacturer shall
2 notify the dealer in writing of any disapproved claim, and shall set
3 forth the reasons why the claim was not approved. Any claim not
4 specifically disapproved in writing within thirty days following
5 receipt is approved, and the manufacturer is required to pay that claim
6 within thirty days of receipt of the claim.

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

11 **Sec. 5.** RCW 46.96.110 and 1989 c 415 s 11 are each amended to read
12 as follows:

13 (1) Notwithstanding the terms of a franchise, (a) an owner may
14 appoint a designated successor to succeed to the ownership of the new
15 motor vehicle dealer franchise upon the owner's death or incapacity, or
16 (b) if an owner who has owned the franchise for not less than five
17 consecutive years, the owner may appoint a designated successor to be
18 effective on a date of the owner's choosing that is prior to the
19 owner's death or disability.

20 (2) Notwithstanding the terms of a franchise, a designated
21 successor (~~(of a deceased or incapacitated owner of a new motor vehicle~~
22 ~~dealer franchise)) described under subsection (1) of this section may
23 succeed to the ownership interest of the owner under the existing
24 franchise, if:~~

25 (a) In the case of a designated successor who meets the definition
26 of a designated successor under RCW 46.96.020(5)(a), but who is not
27 experienced in the business of a new motor vehicle dealer, the person
28 will employ an individual who is qualified and experienced in the
29 business of a new motor vehicle dealer to help manage the day-to-day
30 operations of the motor vehicle dealership; or in the case of a
31 designated successor who meets the definition of a designated successor
32 under RCW 46.96.020(5) (b) or (c), the person is qualified and
33 experienced in the business of a new motor vehicle dealer and meets the
34 normal, reasonable, and uniformly applied standards for grant of an
35 application as a new motor vehicle dealer by the manufacturer; and

36 (b) The designated successor furnishes written notice to the
37 manufacturer of his or her intention to succeed to the ownership of the

1 new motor vehicle dealership within sixty days after the owner's death
2 or incapacity, or if the appointment is under subsection (1)(b) of this
3 section, at least thirty days before the designated successor's
4 proposed succession; and

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

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

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

25 (a) Notice of the designated successor's intent to succeed to the
26 ownership interest of the new motor vehicle dealer's franchise; or

27 (b) Any personal or financial information requested by the
28 manufacturer.

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

34 (6) Within twenty days after receipt of the notice or within twenty
35 days after the end of any appeal procedure provided by the
36 manufacturer, whichever is greater, the designated successor may file
37 a petition with the department protesting the refusal to honor the
38 succession. The petition shall contain a short statement setting forth

1 the reasons for the designated successor's protest. Upon the filing of
2 a protest and the receipt of the filing fee, the department shall
3 promptly notify the manufacturer that a timely protest has been filed
4 and shall request the appointment of an administrative law judge under
5 chapter 34.12 RCW to conduct a hearing. The manufacturer shall not
6 terminate or otherwise discontinue the existing franchise until the
7 administrative law judge has held a hearing and has determined that
8 there is good cause for refusing to honor the succession. If an appeal
9 is taken, the manufacturer shall not terminate or discontinue the
10 franchise until the appeal to superior court is finally determined or
11 until the expiration of one hundred eighty days from the date of
12 issuance of the administrative law judge's written decision, whichever
13 is less. Nothing in this section precludes a manufacturer or dealer
14 from petitioning the superior court for a stay or other relief pending
15 judicial review.

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

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

21 (9) The administrative law judge shall conduct any hearing
22 concerning the refusal to the succession as provided in RCW
23 46.96.050(2) and all hearing costs shall be borne as provided in that
24 subsection. A party to such a hearing aggrieved by the final order of
25 the administrative law judge may appeal as provided and allowed in RCW
26 46.96.050(3).

27 (10) This section does not preclude the owner of a new motor
28 vehicle dealer franchise from designating any person as his or her
29 successor by a written, notarized, and witnessed instrument filed with
30 the manufacturer. In the event of a conflict between such a written
31 instrument that has not been revoked by written notice from the owner
32 to the manufacturer and this section, the written instrument governs.

33 **Sec. 6.** RCW 46.96.185 and 2003 c 21 s 3 are each amended to read
34 as follows:

35 (1) Notwithstanding the terms of a franchise agreement, a
36 manufacturer, distributor, factory branch, or factory representative,
37 or an agent, officer, parent company, wholly or partially owned

1 subsidiary, affiliated entity, or other person controlled by or under
2 common control with a manufacturer, distributor, factory branch, or
3 factory representative, shall not:

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

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

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

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

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

30 (f) Give preferential treatment to some new motor vehicle dealers
31 over others by refusing or failing to deliver, in reasonable quantities
32 and within a reasonable time after receipt of an order, to a dealer
33 holding a franchise for a line or make of motor vehicles sold or
34 distributed by the manufacturer, distributor, factory branch, or
35 factory representative, a new vehicle, parts, or accessories, if the
36 vehicle, parts, or accessories are being delivered to other dealers, or
37 require a dealer to purchase unreasonable advertising displays or other

1 materials, or unreasonably require a dealer to remodel or renovate
2 existing facilities as a prerequisite to receiving a model or series of
3 vehicles;

4 ((+f+)) (g) Compete with a new motor vehicle dealer of any make or
5 line by acting in the capacity of a new motor vehicle dealer, or by
6 owning, operating, or controlling, whether directly or indirectly, a
7 motor vehicle dealership in this state. It is not, however, a
8 violation of this subsection for:

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

23 (ii) A manufacturer, distributor, factory branch, or factory
24 representative to own or operate a dealership in conjunction with an
25 independent person in a bona fide business relationship for the purpose
26 of broadening the diversity of its dealer body and enhancing
27 opportunities for qualified persons who are part of a group who have
28 historically been underrepresented in its dealer body, or other
29 qualified persons who lack the resources to purchase a dealership
30 outright, and where the independent person: (A) Has made, or within a
31 period of two years from the date of commencement of operation will
32 have made, a significant, bona fide capital investment in the
33 dealership that is subject to loss; (B) has an ownership interest in
34 the dealership; and (C) operates the dealership under a bona fide
35 written agreement with the manufacturer, distributor, factory branch,
36 or factory representative under which he or she will acquire all of the
37 ownership interest in the dealership within a reasonable period of time
38 and under reasonable terms and conditions. The manufacturer,

1 distributor, factory branch, or factory representative has the burden
2 of proof of establishing that the acquisition of the dealership by the
3 independent person was made within a reasonable period of time and
4 under reasonable terms and conditions. Nothing in this subsection
5 (1)((+f+)) (g)(ii) relieves a manufacturer, distributor, factory
6 branch, or factory representative from complying with ((RCW
7 ~~46.96.185(1+)~~) (a) through ((+e+)) (f) of this subsection;

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

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

35 (v) A manufacturer to own, operate, or control a new motor vehicle
36 dealership trading exclusively in a single line make of the
37 manufacturer if (A) the manufacturer does not own, directly or
38 indirectly, in the aggregate, in excess of forty-five percent of the

1 total ownership interest in the dealership, (B) at the time the
2 manufacturer first acquires ownership or assumes operation or control
3 of any such dealership, the distance between any dealership thus owned,
4 operated, or controlled and the nearest new motor vehicle dealership
5 trading in the same line make of vehicle and in which the manufacturer
6 has no ownership or control is not less than fifteen miles and complies
7 with the applicable provisions in the relevant market area sections of
8 this chapter, (C) all of the manufacturer's franchise agreements confer
9 rights on the dealer of that line make to develop and operate within a
10 defined geographic territory or area, as many dealership facilities as
11 the dealer and the manufacturer agree are appropriate, and (D) as of
12 January 1, 2000, the manufacturer had no more than four new motor
13 vehicle dealers of that manufacturer's line make in this state, and at
14 least half of those dealers owned and operated two or more dealership
15 facilities in the geographic territory or area covered by their
16 franchise agreements with the manufacturer;

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

27 ~~((h))~~ (i) Use confidential or proprietary information obtained
28 from a new motor vehicle dealer to unfairly compete with the dealer.
29 For purposes of this subsection (1)~~((h))~~ (i), "confidential or
30 proprietary information" means trade secrets as defined in RCW
31 19.108.010, business plans, marketing plans or strategies, customer
32 lists, contracts, sales data, revenues, or other financial information;

33 ~~((i))~~ (j)(i) Terminate, cancel, or fail to renew a franchise with
34 a new motor vehicle dealer based upon any of the following events,
35 which do not constitute good cause for termination, cancellation, or
36 nonrenewal under RCW 46.96.060: (A) The fact that the new motor
37 vehicle dealer owns, has an investment in, participates in the
38 management of, or holds a franchise agreement for the sale or service

1 of another make or line of new motor vehicles(~~(, or)~~); (B) the fact
2 that the new motor vehicle dealer has established another make or line
3 of new motor vehicles or service in the same dealership facilities as
4 those of the manufacturer or distributor (~~with the prior written~~
5 ~~approval of the manufacturer or distributor, if the approval was~~
6 ~~required under the terms of the new motor vehicle dealer's franchise~~
7 ~~agreement~~); (C) that the new motor vehicle dealer has or intends to
8 relocate the manufacturer or distributor's make or line of new motor
9 vehicles or service to an existing dealership facility that is within
10 the relevant market area, as defined in RCW 46.96.140, of the make or
11 line to be relocated, except that, in any nonemergency circumstance,
12 the dealer must give the manufacturer or distributor at least sixty
13 days' notice of his or her intent to relocate; or (D) the failure of a
14 franchisee to change the location of the dealership or to make
15 substantial alterations to the use or number of franchises on the
16 dealership premises or facilities.

17 (ii) Notwithstanding the limitations of this section, a
18 manufacturer may, for separate consideration, enter into a written
19 contract with a dealer to exclusively sell and service a single make or
20 line of new motor vehicles at a specific facility for a defined period
21 of time. The penalty for breach of the contract must not exceed the
22 amount of consideration paid by the manufacturer plus a reasonable rate
23 of interest; (~~or~~

24 +j)) (k) Coerce or attempt to coerce a motor vehicle dealer to
25 refrain from, or prohibit or attempt to prohibit a new motor vehicle
26 dealer from acquiring, owning, having an investment in, participating
27 in the management of, or holding a franchise agreement for the sale or
28 service of another make or line of new motor vehicles or related
29 products, or establishing another make or line of new motor vehicles or
30 service in the same dealership facilities, if the prohibition against
31 acquiring, owning, investing, managing, or holding a franchise for such
32 additional make or line of vehicles or products, or establishing
33 another make or line of new motor vehicles or service in the same
34 dealership facilities, is not supported by reasonable business
35 considerations. The burden of proving that reasonable business
36 considerations support or justify the prohibition against the
37 additional make or line of new motor vehicles or products or
38 nonexclusive facilities is on the manufacturer;

1 (l) Require, by contract or otherwise, a new motor vehicle dealer
2 to make a material alteration, expansion, or addition to any dealership
3 facility, unless the required alteration, expansion, or addition is
4 uniformly required of other similarly situated new motor vehicle
5 dealers of the same make or line of vehicles and is reasonable in light
6 of all existing circumstances, including economic conditions. In any
7 proceeding in which a required facility alteration, expansion, or
8 addition is an issue, the manufacturer or distributor has the burden of
9 proof;

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

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

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

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

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

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

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

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

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

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

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

1 **Sec. 7.** RCW 46.96.200 and 1994 c 274 s 7 are each amended to read
2 as follows:

3 (1) Notwithstanding the terms of a franchise, a manufacturer shall
4 not (~~unreasonably~~) withhold consent to the sale, transfer, or
5 exchange of a franchise to a qualified buyer who meets the normal,
6 reasonable, and uniformly applied standards established by the
7 manufacturer for the appointment of a new dealer who does not already
8 hold a franchise with the manufacturer or is capable of being licensed
9 as a new motor vehicle dealer in the state of Washington. A decision
10 or determination made by the administrative law judge as to whether a
11 qualified buyer is capable of being licensed as a new motor vehicle
12 dealer in the state of Washington is not conclusive or determinative of
13 any ultimate determination made by the department of licensing as to
14 the buyer's qualification for a motor vehicle dealer license. A
15 manufacturer's failure to respond in writing to a request for consent
16 under this subsection within sixty days after receipt of a written
17 request on the forms, if any, generally used by the manufacturer
18 containing the information and reasonable promises required by a
19 manufacturer is deemed to be consent to the request. A manufacturer
20 may request, and, if so requested, the applicant for a franchise (a)
21 shall promptly provide such personal and financial information as is
22 reasonably necessary to determine whether the sale, transfer, or
23 exchange should be approved, and (b) shall agree to be bound by all
24 reasonable terms and conditions of the franchise.

25 (2) If a manufacturer refuses to approve the sale, transfer, or
26 exchange of a franchise, the manufacturer shall serve written notice on
27 the applicant, the transferring, selling, or exchanging new motor
28 vehicle dealer, and the department of its refusal to approve the
29 transfer of the franchise no later than sixty days after the date the
30 manufacturer receives the written request from the new motor vehicle
31 dealer. If the manufacturer has requested personal or financial
32 information from the applicant under subsection (1) of this section,
33 the notice shall be served not later than sixty days after the receipt
34 of all of such documents. Service of all notices under this section
35 shall be made by personal service or by certified mail, return receipt
36 requested.

37 (3) The notice in subsection (2) of this section shall state the

1 specific grounds for the refusal to approve the sale, transfer, or
2 exchange of the franchise.

3 (4) Within twenty days after receipt of the notice of refusal to
4 approve the sale, transfer, or exchange of the franchise by the
5 transferring new motor vehicle dealer, the new motor vehicle dealer may
6 file a petition with the department to protest the refusal to approve
7 the sale, transfer, or exchange. The petition shall contain a short
8 statement setting forth the reasons for the dealer's protest. Upon the
9 filing of a protest and the receipt of the filing fee, the department
10 shall promptly notify the manufacturer that a timely protest has been
11 filed, and the department shall arrange for a hearing with an
12 administrative law judge as the presiding officer to determine if the
13 manufacturer unreasonably withheld consent to the sale, transfer, or
14 exchange of the franchise.

15 ~~((In determining whether the manufacturer unreasonably withheld
16 its approval to the sale, transfer, or exchange, the manufacturer has
17 the burden of proof that it acted reasonably. A manufacturer's refusal
18 to accept or approve a proposed buyer who otherwise meets the normal,
19 reasonable, and uniformly applied standards established by the
20 manufacturer for the appointment of a new dealer, or who otherwise is
21 capable of being licensed as a new motor vehicle dealer in the state of
22 Washington, is presumed to be unreasonable.~~

23 ~~(6))~~ The administrative law judge shall conduct a hearing and
24 render a final decision as expeditiously as possible, but in any event
25 not later than one hundred twenty days after a protest is filed. Only
26 the selling, transferring, or exchanging new motor vehicle dealer and
27 the manufacturer may be parties to the hearing.

28 ~~((7))~~ (6) The administrative law judge shall conduct any hearing
29 as provided in RCW 46.96.050(2), and all hearing costs shall be borne
30 as provided in that subsection. Only the manufacturer and the selling,
31 transferring, or exchanging new motor vehicle dealer may appeal the
32 final order of the administrative law judge as provided in RCW
33 46.96.050(3).

34 ~~((8))~~ (7) This section and RCW 46.96.030 through 46.96.110 apply
35 to all franchises and contracts existing on July 23, 1989, between
36 manufacturers and new motor vehicle dealers as well as to all future
37 franchises and contracts between manufacturers and new motor vehicle
38 dealers.

1 ~~((9))~~ (8) RCW 46.96.140 through 46.96.190 apply to all franchises
2 and contracts existing on October 1, 1994, between manufacturers and
3 new motor vehicle dealers as well as to all future franchises and
4 contracts between manufacturers and new motor vehicle dealers.

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

7 (1) In the event of a termination, cancellation, or nonrenewal
8 under this chapter, except for a termination, cancellation, or
9 nonrenewal under RCW 46.96.070(2), or a voluntary termination,
10 cancellation, or nonrenewal initiated by the dealer, the manufacturer
11 shall, at the request and option of the new motor vehicle dealer, also
12 pay to the new motor vehicle dealer the fair market value of the motor
13 vehicle dealer's goodwill for the make or line as of the date
14 immediately preceding any communication to the public or dealer
15 regarding termination. To the extent the franchise agreement provides
16 for the payment or reimbursement to the new motor vehicle dealer in
17 excess of the value specified in this section, the provisions of the
18 franchise agreement control.

19 (2) The manufacturer shall pay the new motor vehicle dealer the
20 value specified in subsection (1) of this section within ninety days
21 after the date of termination.

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

24 A manufacturer shall, upon demand, indemnify and hold harmless any
25 existing or former franchisee and the franchisee's successors and
26 assigns from any and all damages sustained and attorneys' fees and
27 other expenses reasonably incurred by the franchisee that result from
28 or relate to any claim made or asserted by a third party against the
29 franchisee to the extent the claim results from any of the following:

30 (1) The condition, characteristics, manufacture, assembly, or
31 design of any vehicle, parts, accessories, tools, or equipment, or the
32 selection or combination of parts or components manufactured or
33 distributed by the manufacturer or distributor;

34 (2) Service systems, procedures, or methods that the franchisor
35 required or recommended the franchisee to use;

1 (3) Improper use by the manufacturer, its assignees, contractors,
2 representatives, or licensees of nonpublic personal information
3 obtained from a franchisee concerning any consumer, customer, or
4 employee of the franchisee; or

5 (4) Any act or omission of the manufacturer or distributor for
6 which the franchisee would have a claim for contribution or indemnity
7 under applicable law or under the franchise, irrespective of any prior
8 termination or expiration of the franchise.

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

11 A manufacturer may not take or threaten to take any adverse action
12 against a new motor vehicle dealer, including charge backs, reducing
13 vehicle allocations, or terminating or threatening to terminate a
14 franchise, because the dealer sold or leased a vehicle to a customer
15 who exported the vehicle to a foreign country or who resold the
16 vehicle, unless the manufacturer or distributor definitively proves
17 that the dealer knew or reasonably should have known that the customer
18 intended to export or resell the vehicle. A manufacturer or
19 distributor shall, upon demand, indemnify, hold harmless, and defend
20 any existing or former franchisee or franchisee's successors or assigns
21 from any and all claims asserted, or damages sustained and attorneys'
22 fees and other expenses reasonably incurred by the franchisee that
23 result from or relate to any claim made or asserted, by a third party
24 against the franchisee for any policy, program, or other behavior
25 suggested by the manufacturer for sales of vehicles to parties that
26 intend to export a vehicle purchased from the franchisee.

27 NEW SECTION. **Sec. 11.** A new section is added to chapter 46.96 RCW
28 to read as follows:

29 A new motor vehicle dealer who is injured in his or her business or
30 property by a violation of this chapter may bring a civil action in the
31 superior court to recover the actual damages sustained by the dealer,
32 together with the costs of the suit, including reasonable attorneys'
33 fees if the new motor vehicle dealer prevails. The new motor vehicle
34 dealer may bring a civil action in district court to recover his or her
35 actual damages, except for damages that exceed the amount specified in

1 RCW 3.66.020, and the costs of the suit, including reasonable
2 attorneys' fees.

3 NEW SECTION. **Sec. 12.** A new section is added to chapter 46.96 RCW
4 to read as follows:

5 A manufacturer or distributor shall not enter into an agreement or
6 understanding with a new motor vehicle dealer that requires the dealer
7 to waive any provisions of this chapter. However, a dealer may, by
8 written contract and for valuable and reasonable separate
9 consideration, waive, limit, or disclaim a manufacturer's obligations
10 or a dealer's rights under RCW 46.96.080, 46.96.090, 46.96.105,
11 46.96.140, and 46.96.150, if the contract sets forth the specific
12 provisions of this chapter that are waived, limited, or disclaimed. A
13 manufacturer shall not coerce, threaten, intimidate, or require a new
14 motor vehicle dealer, as a condition to granting or renewing a
15 franchise, to enter into such an agreement or understanding.

16 NEW SECTION. **Sec. 13.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected."

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By Committee on Labor, Commerce & Consumer Protection

ADOPTED 03/02/2010

20 On page 1, line 2 of the title, after "manufacturers;" strike the
21 remainder of the title and insert "amending RCW 46.96.030, 46.96.070,
22 46.96.090, 46.96.105, 46.96.110, 46.96.185, and 46.96.200; and adding
23 new sections to chapter 46.96 RCW."

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