
SENATE BILL 5945

State of Washington

68th Legislature

2024 Regular Session

By Senators Conway and King

Prefiled 01/02/24.

1 AN ACT Relating to manufacturer and new dealer franchise
2 agreements; and amending RCW 46.70.011, 46.70.180, 46.96.010,
3 46.96.105, 46.96.140, 46.96.185, and 46.96.230.

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

5 **Sec. 1.** RCW 46.70.011 and 2016 sp.s. c 26 s 1 are each amended
6 to read as follows:

7 As used in this chapter:

8 (1) "Auction" means a transaction conducted by means of exchanges
9 between an auctioneer and the members of the audience, constituting a
10 series of oral invitations for offers for the purchase of vehicles
11 made by the auctioneer, offers to purchase by members of the
12 audience, and the acceptance of the highest or most favorable offer
13 to purchase.

14 (2) "Auction company" means a sole proprietorship, partnership,
15 corporation, or other legal or commercial entity licensed under
16 chapter 18.11 RCW that only sells or offers to sell vehicles at
17 auction or only arranges or sponsors auctions.

18 (3) "Buyer's agent" means any person, firm, partnership,
19 association, limited liability company, limited liability
20 partnership, or corporation retained or employed by a consumer to
21 arrange for or to negotiate, or both, the purchase or lease of a new

1 motor vehicle on behalf of the consumer, and who is paid a fee or
2 receives other compensation from the consumer for its services.

3 (4) "Department" means the department of licensing, which shall
4 administer and enforce the provisions of this chapter.

5 (5) "Director" means the director of licensing.

6 (6) "Established place of business" means a location meeting the
7 requirements of RCW 46.70.023(1) at which a vehicle dealer conducts
8 business in this state.

9 (7) "Listing dealer" means a used mobile home dealer who makes
10 contracts with sellers who will compensate the dealer for obtaining a
11 willing purchaser for the seller's mobile home.

12 (8) "Manufacturer" means any person, firm, association,
13 corporation, or trust, resident or nonresident, who manufactures or
14 assembles new and unused vehicles or remanufactures vehicles in whole
15 or in part, or who directly or indirectly through one or more
16 intermediaries, controls, is controlled by, or is under the common
17 direction and possesses direct or indirect power to direct or cause
18 the direction of the management and policies of such person, firm,
19 association, corporation, or trust, resident or nonresident, and
20 further includes the terms:

21 (a) "Distributor," which means any person, firm, association,
22 corporation, or trust, resident or nonresident, who in whole or in
23 part offers for sale, sells, or distributes any new and unused
24 vehicle to vehicle dealers or who maintains factory representatives.

25 (b) "Factory branch," which means a branch office maintained by a
26 manufacturer for the purpose of selling or offering for sale,
27 vehicles to a distributor, wholesaler, or vehicle dealer, or for
28 directing or supervising in whole or in part factory or distributor
29 representatives, and further includes any sales promotion
30 organization, whether a person, firm, or corporation, which is
31 engaged in promoting the sale of new and unused vehicles in this
32 state of a particular brand or make to vehicle dealers.

33 (c) "Factory representative," which means a representative
34 employed by a manufacturer, distributor, or factory branch for the
35 purpose of making or promoting for the sale of their vehicles or for
36 supervising or contracting with their dealers or prospective dealers.

37 (9) "Motor vehicle" means every vehicle which is self-propelled
38 and every vehicle which is propelled by electric power obtained from
39 overhead trolley wires, but not operated upon rails, and which is
40 required to be registered and titled under this title.

1 (10) "New motor vehicle" means any motor vehicle that is self-
2 propelled and is required to be registered and titled under this
3 title, has not been previously titled to a retail purchaser or
4 lessee, and is not a "used vehicle" as defined under RCW 46.04.660.

5 (11) "Principal place of business" means that dealer firm's
6 business location in the state, which place the dealer designates as
7 their principal place of business.

8 (12) "Recreational vehicle" means a travel trailer, motor home,
9 truck camper, or camping trailer that is primarily designed and used
10 as temporary living quarters, is either self-propelled or mounted on
11 or drawn by another vehicle, is transient, is not occupied as a
12 primary residence, and is not immobilized or permanently affixed to a
13 mobile home lot.

14 (13) "Retail vehicle dealer" means a vehicle dealer who may buy
15 and sell at both wholesale and retail.

16 (14) "Subagency" means any place of business of a vehicle dealer
17 within the state, which place is physically and geographically
18 separated from the principal place of business of the firm or any
19 place of business of a vehicle dealer within the state, at which
20 place the firm does business using a name other than the principal
21 name of the firm, or both.

22 (15) "Temporary subagency" means a location other than the
23 principal place of business or subagency within the state where a
24 licensed vehicle dealer may secure a license to conduct the business
25 and is licensed for a period of time not to exceed (~~ten~~) 10 days
26 for a specific purpose such as auto shows, shopping center
27 promotions, tent sales, exhibitions, or similar merchandising
28 ventures. No more than six temporary subagency licenses may be issued
29 to a licensee in any (~~twelve-month~~) 12-month period.

30 (16) "Vehicle" means and includes every device capable of being
31 moved upon a public highway and in, upon, or by which any persons or
32 property is or may be transported or drawn upon a public highway,
33 excepting devices moved by human or animal power or used exclusively
34 upon stationary rails or tracks.

35 (17) "Vehicle dealer" means any person, firm, association,
36 corporation, or trust, not excluded by subsection (18) of this
37 section, engaged in the business of buying, selling, listing,
38 exchanging, offering, brokering, leasing with an option to purchase,
39 auctioning, soliciting, or advertising the sale of new or used
40 vehicles, or arranging or offering or attempting to solicit or

1 negotiate on behalf of others, a sale, purchase, or exchange of an
2 interest in new or used motor vehicles, irrespective of whether the
3 motor vehicles are owned by that person. Vehicle dealers shall be
4 classified as follows:

5 (a) A "motor vehicle dealer" is a vehicle dealer that deals in
6 new or used motor vehicles, or both;

7 (b) A "mobile home and travel trailer dealer" is a vehicle dealer
8 that deals in mobile homes, park trailers, or travel trailers, or
9 more than one type of these vehicles;

10 (c) A "miscellaneous vehicle dealer" is a vehicle dealer that
11 deals in motorcycles or vehicles other than motor vehicles or mobile
12 homes and travel trailers or any combination of such vehicles;

13 (d) A "recreational vehicle dealer" is a vehicle dealer that
14 deals in travel trailers, motor homes, truck campers, or camping
15 trailers that are primarily designed and used as temporary living
16 quarters, are either self-propelled or mounted on or drawn by another
17 vehicle, are transient, are not occupied as a primary residence, and
18 are not immobilized or permanently affixed to a mobile home lot.

19 (18) "Vehicle dealer" does not include, nor do the licensing
20 requirements of RCW 46.70.021 apply to, the following persons, firms,
21 associations, or corporations:

22 (a) Receivers, trustees, administrators, executors, guardians, or
23 other persons appointed by, or acting under a judgment or order of,
24 any court; or

25 (b) Public officers while performing their official duties; or

26 (c) Employees of vehicle dealers who are engaged in the specific
27 performance of their duties as such employees; or

28 (d) Any person engaged in an isolated sale of a vehicle in which
29 that person is the registered or legal owner, or both, thereof; or

30 (e) Any person, firm, association, corporation, or trust, engaged
31 in the selling of equipment other than vehicles, subject to
32 registration, used for agricultural or industrial purposes; or

33 (f) A real estate broker licensed under chapter 18.85 RCW, or an
34 affiliated licensee, who, on behalf of another negotiates the
35 purchase, sale, lease, or exchange of a manufactured or mobile home
36 in conjunction with the purchase, sale, exchange, rental, or lease of
37 the land upon which the manufactured or mobile home is, or will be,
38 located; or

39 (g) Owners who are also operators of special highway construction
40 equipment, as defined in RCW 46.04.551, or of the highway

1 construction equipment for which a vehicle license and display
2 vehicle license number plate is required; or

3 (h) Any bank, trust company, savings bank, mutual savings bank,
4 savings and loan association, credit union, and any parent,
5 subsidiary, or affiliate thereof, authorized to do business in this
6 state under state or federal law with respect to the sale or other
7 disposition of a motor vehicle owned and used in their business; or
8 with respect to the acquisition and sale or other disposition of a
9 motor vehicle in which the entity has acquired an interest as a
10 lessor, lessee, or secured party; or

11 (i) Any person who is regularly engaged in the business of
12 acquiring leases or installment contracts by assignment, with respect
13 to the acquisition and sale or other disposition of a motor vehicle
14 in which the person has acquired an interest as a result of the
15 business.

16 (19) "Vehicle salesperson" means any person who for any form of
17 compensation sells, auctions, leases with an option to purchase, or
18 offers to sell or to so lease vehicles on behalf of a vehicle dealer.

19 (20) "Wholesale vehicle dealer" means a vehicle dealer who buys
20 vehicles from or sells vehicles to other Washington licensed vehicle
21 dealers.

22 **Sec. 2.** RCW 46.70.180 and 2022 c 182 s 211 are each amended to
23 read as follows:

24 Each of the following acts or practices is unlawful:

25 (1) To cause or permit to be advertised, printed, displayed,
26 published, distributed, broadcasted, televised, or disseminated in
27 any manner whatsoever, any statement or representation with regard to
28 the sale, lease, or financing of a vehicle which is false, deceptive,
29 or misleading, including but not limited to the following:

30 (a) That no down payment is required in connection with the sale
31 of a vehicle when a down payment is in fact required, or that a
32 vehicle may be purchased for a smaller down payment than is actually
33 required;

34 (b) That a certain percentage of the sale price of a vehicle may
35 be financed when such financing is not offered in a single document
36 evidencing the entire security transaction;

37 (c) That a certain percentage is the amount of the service charge
38 to be charged for financing, without stating whether this percentage
39 charge is a monthly amount or an amount to be charged per year;

1 (d) That a new vehicle will be sold for a certain amount above or
2 below cost without computing cost as the exact amount of the factory
3 invoice on the specific vehicle to be sold;

4 (e) That a vehicle will be sold upon a monthly payment of a
5 certain amount, without including in the statement the number of
6 payments of that same amount which are required to liquidate the
7 unpaid purchase price.

8 (2) (a) (i) To incorporate within the terms of any purchase and
9 sale or lease agreement any statement or representation with regard
10 to the sale, lease, or financing of a vehicle which is false,
11 deceptive, or misleading, including but not limited to terms that
12 include as an added cost to the selling price or capitalized cost of
13 a vehicle an amount for licensing or transfer of title of that
14 vehicle which is not actually due to the state, unless such amount
15 has in fact been paid by the dealer prior to such sale.

16 (ii) However, an amount not to exceed \$200 per vehicle sale or
17 lease may be charged by a dealer to recover administrative costs for
18 collecting motor vehicle excise taxes, licensing and registration
19 fees and other agency fees, verifying and clearing titles,
20 transferring titles, perfecting, releasing, or satisfying liens or
21 other security interests, and other administrative and documentary
22 services rendered by a dealer in connection with the sale or lease of
23 a vehicle and in carrying out the requirements of this chapter or any
24 other provisions of state law.

25 (b) A dealer may charge the documentary service fee in (a) of
26 this subsection under the following conditions:

27 (i) The documentary service fee is disclosed in writing to a
28 prospective purchaser or lessee before the execution of a purchase
29 and sale or lease agreement;

30 (ii) The dealer discloses to the purchaser or lessee in writing
31 that the documentary service fee is a negotiable fee. The disclosure
32 must be written in a typeface that is at least as large as the
33 typeface used in the standard text of the document that contains the
34 disclosure and that is boldfaced, capitalized, underlined, or
35 otherwise set out from the surrounding material so as to be
36 conspicuous. The dealer shall not represent to the purchaser or
37 lessee that the fee or charge is required by the state to be paid by
38 either the dealer or prospective purchaser or lessee;

1 (iii) The documentary service fee is separately designated from
2 the selling price or capitalized cost of the vehicle and from any
3 other taxes, fees, or charges; and

4 (iv) Dealers disclose in any advertisement that a documentary
5 service fee in an amount up to \$200 may be added to the sale price or
6 the capitalized cost.

7 For the purposes of this subsection (2), the term "documentary
8 service fee" means the optional amount charged by a dealer to provide
9 the services specified in (a) of this subsection.

10 (3) To set up, promote, or aid in the promotion of a plan by
11 which vehicles are to be sold or leased to a person for a
12 consideration and upon further consideration that the purchaser or
13 lessee agrees to secure one or more persons to participate in the
14 plan by respectively making a similar purchase and in turn agreeing
15 to secure one or more persons likewise to join in said plan, each
16 purchaser or lessee being given the right to secure money, credits,
17 goods, or something of value, depending upon the number of persons
18 joining the plan.

19 (4) To commit, allow, or ratify any act of "bushing" which is
20 defined as follows: Entering into a written contract, written
21 purchase order or agreement, retail installment sales agreement, note
22 and security agreement, or written lease agreement, hereinafter
23 collectively referred to as contract or lease, signed by the
24 prospective buyer or lessee of a vehicle, which:

25 (a) Is subject to any conditions or the dealer's or his or her
26 authorized representative's future acceptance, and the dealer fails
27 or refuses within the "bushing" period, which is four calendar days,
28 exclusive of Saturday, Sunday, or legal holiday, and prior to any
29 further negotiations with said buyer or lessee to inform the buyer or
30 lessee either: (i) That the dealer unconditionally accepts the
31 contract or lease, having satisfied, removed, or waived all
32 conditions to acceptance or performance, including, but not limited
33 to, financing, assignment, or lease approval; or (ii) that the dealer
34 rejects the contract or lease, thereby automatically voiding the
35 contract or lease, as long as such voiding does not negate
36 commercially reasonable contract or lease provisions pertaining to
37 the return of the subject vehicle and any physical damage, excessive
38 mileage after the demand for return of the vehicle, and attorneys'
39 fees authorized by law, and tenders the refund of any initial payment
40 or security made or given by the buyer or lessee, including, but not

1 limited to, any down payment, and tenders return of the trade-in
2 vehicle, key, other trade-in, or certificate of title to a trade-in.
3 Tender may be conditioned on return of the subject vehicle if
4 previously delivered to the buyer or lessee.

5 The provisions of this subsection (4)(a) do not impair,
6 prejudice, or abrogate the rights of a dealer to assert a claim
7 against the buyer or lessee for misrepresentation or breach of
8 contract and to exercise all remedies available at law or in equity,
9 including those under chapter 62A.9A RCW, if the dealer, bank, or
10 other lender or leasing company discovers that approval of the
11 contract or financing or approval of the lease was based upon
12 material misrepresentations made by the buyer or lessee, including,
13 but not limited to, misrepresentations regarding income, employment,
14 or debt of the buyer or lessee, as long as the dealer, or his or her
15 staff, has not, with knowledge of the material misrepresentation,
16 aided, assisted, encouraged, or participated, directly or indirectly,
17 in the misrepresentation. A dealer shall not be in violation of this
18 subsection (4)(a) if the buyer or lessee made a material
19 misrepresentation to the dealer, as long as the dealer, or his or her
20 staff, has not, with knowledge of the material misrepresentation,
21 aided, assisted, encouraged, or participated, directly or indirectly,
22 in the misrepresentation.

23 A dealer may inform a buyer or lessee under this subsection
24 (4)(a) regarding the unconditional acceptance or rejection of the
25 contract, lease, or financing by sending an email message to the
26 buyer's or lessee's supplied email address, by phone call, by leaving
27 a voice message or sending a text message to a phone number provided
28 by the buyer or lessee, by in-person oral communication, by mailing a
29 letter by first-class mail if the buyer or lessee expresses a
30 preference for a letter or declines to provide an email address and a
31 phone number capable of receiving a free text message, or by another
32 means agreed to by the buyer or lessee or approved by the department,
33 effective upon the execution, mailing, or sending of the
34 communication and before expiration of the "bushing" period;

35 (b) Permits the dealer to renegotiate a dollar amount specified
36 as trade-in allowance on a vehicle delivered or to be delivered by
37 the buyer or lessee as part of the purchase price or lease, for any
38 reason except:

39 (i) Failure to disclose that the vehicle's certificate of title
40 has been branded for any reason, including, but not limited to,

1 status as a rebuilt vehicle as provided in RCW 46.12.540 and
2 46.12.560; or

3 (ii) Substantial physical damage or latent mechanical defect
4 occurring before the dealer took possession of the vehicle and which
5 could not have been reasonably discoverable at the time of the taking
6 of the order, offer, or contract; or

7 (iii) Excessive additional miles or a discrepancy in the mileage.
8 "Excessive additional miles" means the addition of 500 miles or more,
9 as reflected on the vehicle's odometer, between the time the vehicle
10 was first valued by the dealer for purposes of determining its trade-
11 in value and the time of actual delivery of the vehicle to the
12 dealer. "A discrepancy in the mileage" means (A) a discrepancy
13 between the mileage reflected on the vehicle's odometer and the
14 stated mileage on the signed odometer statement; or (B) a discrepancy
15 between the mileage stated on the signed odometer statement and the
16 actual mileage on the vehicle; or

17 (c) Fails to comply with the obligation of any written warranty
18 or guarantee given by the dealer requiring the furnishing of services
19 or repairs within a reasonable time.

20 (5) To commit any offense relating to odometers, as such offenses
21 are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A
22 violation of this subsection is a class C felony punishable under
23 chapter 9A.20 RCW.

24 (6) For any vehicle dealer or vehicle salesperson to refuse to
25 furnish, upon request of a prospective purchaser or lessee, for
26 vehicles previously registered to a business or governmental entity,
27 the name and address of the business or governmental entity.

28 (7) To commit any other offense under RCW 46.37.423, 46.37.424,
29 or 46.37.425.

30 (8) To commit any offense relating to a dealer's temporary
31 license permit, including but not limited to failure to properly
32 complete each such permit, or the issuance of more than one such
33 permit on any one vehicle. However, a dealer may issue a second
34 temporary permit on a vehicle if the following conditions are met:

35 (a) The lienholder fails to deliver the vehicle title to the
36 dealer within the required time period;

37 (b) The dealer has satisfied the lien; and

38 (c) The dealer has proof that payment of the lien was made within
39 two calendar days, exclusive of Saturday, Sunday, or a legal holiday,
40 after the sales contract has been executed by all parties and all

1 conditions and contingencies in the sales contract have been met or
2 otherwise satisfied.

3 (9) For a dealer, salesperson, or mobile home manufacturer,
4 having taken an instrument or cash "on deposit" from a purchaser or
5 lessee prior to the delivery of the bargained-for vehicle, to
6 commingle the "on deposit" funds with assets of the dealer,
7 salesperson, or mobile home manufacturer instead of holding the "on
8 deposit" funds as trustee in a separate trust account until the
9 purchaser or lessee has taken delivery of the bargained-for vehicle.
10 Delivery of a manufactured home shall be deemed to occur in
11 accordance with RCW 46.70.135(5). Failure, immediately upon receipt,
12 to endorse "on deposit" instruments to such a trust account, or to
13 set aside "on deposit" cash for deposit in such trust account, and
14 failure to deposit such instruments or cash in such trust account by
15 the close of banking hours on the day following receipt thereof,
16 shall be evidence of intent to commit this unlawful practice:
17 PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate
18 trust account which equals his or her customary total customer
19 deposits for vehicles for future delivery. For purposes of this
20 section, "on deposit" funds received from a purchaser of a
21 manufactured home means those funds that a seller requires a
22 purchaser to advance before ordering the manufactured home, but does
23 not include any loan proceeds or moneys that might have been paid on
24 an installment contract.

25 (10) For a dealer or manufacturer to fail to comply with the
26 obligations of any written warranty or guarantee given by the dealer
27 or manufacturer requiring the furnishing of goods and services or
28 repairs within a reasonable period of time, or to fail to furnish to
29 a purchaser or lessee, all parts which attach to the manufactured
30 unit including but not limited to the undercarriage, and all items
31 specified in the terms of a sales or lease agreement signed by the
32 seller and buyer or lessee.

33 (11) For a vehicle dealer to pay to or receive from any person,
34 firm, partnership, association, or corporation acting, either
35 directly or through a subsidiary, as a buyer's agent for consumers,
36 any compensation, fee, purchase moneys or funds that have been
37 deposited into or withdrawn out of any account controlled or used by
38 any buyer's agent, gratuity, or reward in connection with the
39 purchase, sale, or lease of a new motor vehicle.

1 (12) For a buyer's agent, acting directly or through a
2 subsidiary, to pay to or to receive from any motor vehicle dealer any
3 compensation, fee, gratuity, or reward in connection with the
4 purchase, sale, or lease of a new motor vehicle. In addition, it is
5 unlawful for any buyer's agent to engage in any of the following acts
6 on behalf of or in the name of the consumer:

7 (a) Receiving or paying any purchase moneys or funds into or out
8 of any account controlled or used by any buyer's agent;

9 (b) Signing any vehicle purchase orders, sales contracts, leases,
10 odometer statements, or title documents, or having the name of the
11 buyer's agent appear on the vehicle purchase order, sales contract,
12 lease, or title; or

13 (c) Signing any other documentation relating to the purchase,
14 sale, lease, or transfer of any new motor vehicle.

15 It is unlawful for a buyer's agent to use a power of attorney
16 obtained from the consumer to accomplish or effect the purchase,
17 sale, lease, or transfer of ownership documents of any new motor
18 vehicle by any means which would otherwise be prohibited under (a)
19 through (c) of this subsection. However, the buyer's agent may use a
20 power of attorney for physical delivery of motor vehicle license
21 plates to the consumer.

22 Further, it is unlawful for a buyer's agent to engage in any
23 false, deceptive, or misleading advertising, disseminated in any
24 manner whatsoever, including but not limited to making any claim or
25 statement that the buyer's agent offers, obtains, or guarantees the
26 lowest price on any motor vehicle or words to similar effect.

27 (13) For a buyer's agent to arrange for or to negotiate the
28 purchase, or both, of a new motor vehicle through an out-of-state
29 dealer without disclosing in writing to the customer that the new
30 vehicle would not be subject to chapter 19.118 RCW. This subsection
31 also applies to leased vehicles. In addition, it is unlawful for any
32 buyer's agent to fail to have a written agreement with the customer
33 that: (a) Sets forth the terms of the parties' agreement; (b)
34 discloses to the customer the total amount of any fees or other
35 compensation being paid by the customer to the buyer's agent for the
36 agent's services; and (c) further discloses whether the fee or any
37 portion of the fee is refundable.

38 (14) Being a manufacturer, other than a motorcycle manufacturer
39 governed by chapter 46.93 RCW, to:

1 (a) Coerce or attempt to coerce any vehicle dealer to order or
2 accept delivery of any vehicle or vehicles, parts or accessories, or
3 any other commodities which have not been voluntarily ordered by the
4 vehicle dealer: PROVIDED, That recommendation, endorsement,
5 exposition, persuasion, urging, or argument are not deemed to
6 constitute coercion;

7 (b) Cancel or fail to renew the franchise or selling agreement of
8 any vehicle dealer doing business in this state without fairly
9 compensating the dealer at a fair going business value for his or her
10 capital investment which shall include but not be limited to tools,
11 equipment, and parts inventory possessed by the dealer on the day he
12 or she is notified of such cancellation or termination and which are
13 still within the dealer's possession on the day the cancellation or
14 termination is effective, if: (i) The capital investment has been
15 entered into with reasonable and prudent business judgment for the
16 purpose of fulfilling the franchise; and (ii) the cancellation or
17 nonrenewal was not done in good faith. Good faith is defined as the
18 duty of each party to any franchise to act in a fair and equitable
19 manner towards each other, so as to guarantee one party freedom from
20 coercion, intimidation, or threats of coercion or intimidation from
21 the other party: PROVIDED, That recommendation, endorsement,
22 exposition, persuasion, urging, or argument are not deemed to
23 constitute a lack of good faith;

24 (c) Encourage, aid, abet, or teach a vehicle dealer to sell or
25 lease vehicles through any false, deceptive, or misleading sales or
26 financing practices including but not limited to those practices
27 declared unlawful in this section;

28 (d) Coerce or attempt to coerce a vehicle dealer to engage in any
29 practice forbidden in this section by either threats of actual
30 cancellation or failure to renew the dealer's franchise agreement;

31 (e) Refuse to deliver any vehicle publicly advertised for
32 immediate delivery to any duly licensed vehicle dealer having a
33 franchise or contractual agreement for the retail sale or lease of
34 new and unused vehicles sold or distributed by such manufacturer
35 within sixty days after such dealer's order has been received in
36 writing unless caused by inability to deliver because of shortage or
37 curtailment of material, labor, transportation, or utility services,
38 or by any labor or production difficulty, or by any cause beyond the
39 reasonable control of the manufacturer;

1 (f) (~~To provide~~) Provide under the terms of any warranty that a
2 purchaser or lessee of any new or unused vehicle that has been sold
3 or leased, distributed for sale or lease, or transferred into this
4 state for resale or lease by the vehicle manufacturer may only make
5 any warranty claim on any item included as an integral part of the
6 vehicle against the manufacturer of that item;

7 (g) Offer to a consumer a subscription service for any motor
8 vehicle feature that utilizes components and hardware already
9 installed on the motor vehicle at the time of purchase or lease and
10 would function after activation without ongoing cost to or support by
11 the dealer, manufacturer, distributor, or a third-party service
12 provider.

13 (i) This subsection does not apply to navigation system updates,
14 satellite radio, roadside assistance, software-dependent driver
15 assistance or driver automation features, and vehicle-connected
16 services that rely on cellular or other data networks for continued
17 operation.

18 (ii) As used in this subsection:

19 (A) "Motor vehicle feature" means any convenience or safety
20 function included on the motor vehicle, such as heated seats or
21 driver assistance, that typically is offered to a consumer as an
22 upgrade at the time of purchase or lease of the motor vehicle.

23 (B) "Subscription service" means a service provided in exchange
24 for a recurring payment including, but not limited to, a weekly,
25 monthly, or annual payment charged to and made by a consumer, but
26 does not include a consumer's reoccurring payment made pursuant to a
27 conditional sales contract or lease contract.

28 Nothing in this section may be construed to impair the
29 obligations of a contract or to prevent a manufacturer, distributor,
30 representative, or any other person, whether or not licensed under
31 this chapter, from requiring performance of a written contract
32 entered into with any licensee hereunder, nor does the requirement of
33 such performance constitute a violation of any of the provisions of
34 this section if any such contract or the terms thereof requiring
35 performance, have been freely entered into and executed between the
36 contracting parties. This paragraph and subsection (14)(b) of this
37 section do not apply to new motor vehicle manufacturers governed by
38 chapter 46.96 RCW.

39 (15) Unlawful transfer of an ownership interest in a motor
40 vehicle as defined in RCW 19.116.050.

1 (16) To knowingly and intentionally engage in collusion with a
2 registered owner of a vehicle to repossess and return or resell the
3 vehicle to the registered owner in an attempt to avoid a suspended
4 license impound under chapter 46.55 RCW. However, compliance with
5 chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise
6 disposing of the vehicle, including providing redemption rights to
7 the debtor, is not a violation of this section.

8 (17)(a) For a dealer to enter into a new motor vehicle sales
9 contract without disclosing in writing to a buyer of the new motor
10 vehicle, or to a dealer in the case of an unregistered motor vehicle,
11 any known damage and repair to the new motor vehicle if the damage
12 exceeds five percent of the manufacturer's suggested retail price as
13 calculated at the dealer's authorized warranty rate for labor and
14 parts, or \$1,000, whichever amount is greater. A manufacturer or new
15 motor vehicle dealer is not required to disclose to a dealer or buyer
16 that glass, tires, bumpers, or cosmetic parts of a new motor vehicle
17 were damaged at any time if the damaged item has been replaced with
18 original or comparable equipment. A replaced part is not part of the
19 cumulative damage required to be disclosed under this subsection.

20 (b) A manufacturer is required to provide the same disclosure to
21 a dealer of any known damage or repair as required in (a) of this
22 subsection.

23 (c) If disclosure of any known damage or repair is not required
24 under this section, a buyer may not revoke or rescind a sales
25 contract due to the fact that the new motor vehicle was damaged and
26 repaired before completion of the sale.

27 (d) As used in this section:

28 (i) "Cosmetic parts" means parts that are attached by and can be
29 replaced in total through the use of screws, bolts, or other
30 fasteners without the use of welding or thermal cutting, and includes
31 windshields, bumpers, hoods, or trim panels.

32 (ii) "Manufacturer's suggested retail price" means the retail
33 price of the new motor vehicle suggested by the manufacturer, and
34 includes the retail delivered price suggested by the manufacturer for
35 each accessory or item of optional equipment physically attached to
36 the new motor vehicle at the time of delivery to the new motor
37 vehicle dealer that is not included within the retail price suggested
38 by the manufacturer for the new motor vehicle.

39 (18) To take reservations, dictate the selling price, or
40 negotiate binding terms of sale or leasing of a new motor vehicle

1 directly between the manufacturer, factory branch, distributor, or
2 distributor branch and retail buyers or lessees including, but not
3 limited to, agreements on price, trade-in value, or other substantive
4 terms of sale or leasing of new vehicles, or otherwise if the new
5 motor vehicle will be delivered for sale or lease in Washington.

6 **Sec. 3.** RCW 46.96.010 and 1989 c 415 s 1 are each amended to
7 read as follows:

8 The legislature finds and declares that the distribution and sale
9 of motor vehicles in this state vitally affect the general economy of
10 the state and the public interest and public welfare, that provision
11 for warranty service to motor vehicles is of substantial concern to
12 the people of this state, that the maintenance of fair competition
13 among dealers and others is in the public interest, and that the
14 maintenance of strong and sound dealerships is essential to provide
15 continuing and necessary reliable services to the consuming public in
16 this state and to provide stable employment to the citizens of this
17 state. The legislature further finds that there is a substantial
18 disparity in bargaining power between automobile manufacturers and
19 their dealers, and that in order to promote the public interest and
20 the public welfare, and in the exercise of its police power, it is
21 necessary to regulate the relationship between motor vehicle dealers
22 and motor vehicle manufacturers, importers, distributors, and their
23 representatives doing business in this state, not only for the
24 protection of dealers but also for the benefit (~~for~~) of the public
25 in assuring the continued availability and servicing of automobiles
26 sold to the public.

27 The legislature recognizes it is in the best interest for
28 manufacturers and dealers of motor vehicles to conduct business with
29 each other in a fair, efficient, and competitive manner. The
30 legislature declares the public interest is best served by dealers
31 being assured of the ability to manage their business enterprises
32 under a contractual obligation with manufacturers where dealers do
33 not experience unreasonable interference and are assured of the
34 ability to transfer ownership of their business without undue
35 constraints. It is the intent of the legislature to impose a
36 regulatory scheme and to regulate competition in the motor vehicle
37 industry to the extent necessary to balance fairness and efficiency.
38 These actions will permit motor vehicle dealers to better serve
39 consumers (~~and allow dealers to~~), and devote their best competitive

1 efforts and resources to the sale and (~~services~~) service of the
2 manufacturer's products to consumers, and provide fair compensation
3 for work performed in all departments of the business.

4 **Sec. 4.** RCW 46.96.105 and 2014 c 214 s 6 are each amended to
5 read as follows:

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

18 (a) The rates charged by the dealer for nonwarranty service or
19 work for parts means the price paid by the dealer for those parts,
20 including all shipping and other charges, increased by the
21 franchisee's average percentage markup. If a manufacturer or
22 distributor furnishes or arranges the order or distribution of a part
23 or component to a new motor vehicle dealer at no or reduced cost to
24 use in performing repairs, the manufacturer or distributor shall
25 compensate the dealer for the part or component in the same manner as
26 warranty parts compensation under this section by compensating the
27 dealer the retail parts rate on the wholesale cost for the part or
28 component as listed in the manufacturer's or distributor's price
29 schedule, minus the wholesale cost for the part or component. A
30 manufacturer shall not establish or implement a special part or
31 component number for parts used in predelivery, dealer preparation,
32 warranty, service contract, certified preowned warranty, recall,
33 campaign service, authorized goodwill, or maintenance-only
34 applications if it results in lower compensation to the dealer than
35 as calculated in this section. A dealer must establish and declare
36 the dealer's average percentage markup by submitting to the
37 manufacturer (~~one hundred~~) 100 sequential customer-paid service
38 repair orders or ninety days of customer-paid service repair orders,
39 whichever is less, covering repairs made no more than (~~one hundred~~

1 ~~eighty~~) 180 days before the submission. A change in a dealer's
2 established average percentage markup takes effect (~~(thirty)~~) 30 days
3 following the submission. A manufacturer may not require a dealer to
4 establish average percentage markup by another methodology. A
5 manufacturer may not require information that the dealer believes is
6 unduly burdensome or time-consuming to provide, including, but not
7 limited to, part-by-part or transaction-by-transaction calculations.
8 In calculating the retail rate customarily charged by the dealer for
9 parts and labor, the following work must not be included in the
10 calculation:

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

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

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

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

19 (v) Tires;

20 (vi) Batteries and light bulbs; and

21 (vii) Vehicle reconditioning.

22 (b) A manufacturer shall compensate a dealer for labor and
23 diagnostic work at (~~the rates charged by the dealer to its retail~~
24 ~~customers for such work~~) a rate determined by dividing the total
25 customer labor charges for qualifying nonwarranty repairs in the
26 repair orders submitted under this section by the total number of
27 hours that would be allowed for the repairs if the repairs were made
28 under the manufacturer's, importer's, or distributor's time
29 allowances used in compensating the dealer for warranty work and for
30 any documentation work required by the manufacturer to authorize or
31 verify the work including, but not limited to, photographs,
32 paperwork, and electronic data entry. However, a manufacturer is not
33 required to compensate a dealer more than once for the same
34 documentation work. If a manufacturer can demonstrate that the rates
35 unreasonably exceed those of all other franchised motor vehicle
36 dealers in the same relevant market area offering the same or a
37 competitive motor vehicle line, the manufacturer is not required to
38 honor the rate increase proposed by the dealer. If the manufacturer
39 is not required to honor the rate increase proposed by the dealer,

1 the dealer is entitled to resubmit a new proposed rate for labor and
2 diagnostic work.

3 (c) A dealer may not be granted an increase in the average
4 percentage markup or labor and diagnostic work rate more than once in
5 one calendar year.

6 (2) All claims for warranty work for parts and labor made by
7 dealers under this section must be submitted to the manufacturer
8 within (~~ninety~~) 90 days of the date the work was performed. All
9 claims submitted must be paid by the manufacturer within (~~thirty~~)
10 30 days following receipt, provided the claim has been approved by
11 the manufacturer. The manufacturer has the right to audit claims for
12 warranty work and to charge the dealer for any unsubstantiated,
13 incorrect, or false claims for a period of nine months following
14 payment. However, the manufacturer may audit and charge the dealer
15 for any fraudulent claims during any period for which an action for
16 fraud may be commenced under applicable state law.

17 (3) All claims submitted by dealers on the forms and in the
18 manner specified by the manufacturer shall be either approved or
19 disapproved within (~~thirty~~) 30 days following their receipt. The
20 manufacturer shall notify the dealer in writing of any disapproved
21 claim, and shall set forth the reasons why the claim was not
22 approved. Any claim not specifically disapproved in writing within
23 (~~thirty~~) 30 days following receipt is approved, and the
24 manufacturer is required to pay that claim within (~~thirty~~) 30 days
25 of receipt of the claim.

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

30 **Sec. 5.** RCW 46.96.140 and 1994 c 274 s 1 are each amended to
31 read as follows:

32 (1) For the purposes of this section, and throughout this
33 chapter, the term "relevant market area" is defined as follows:

34 (a) If the population in the county in which the proposed new or
35 relocated dealership is to be located is (~~four hundred thousand~~)
36 400,000 or more, the relevant market area is the geographic area
37 within a radius of (~~eight~~) 10 miles around the proposed site;

38 (b) If the population in the county in which the proposed new or
39 relocated dealership is to be located is (~~two hundred thousand~~)

1 200,000 or more and less than (~~four hundred thousand~~) 400,000, the
2 relevant market area is the geographic area within a radius of
3 (~~twelve~~) 12 miles around the proposed site;

4 (c) If the population in the county in which the proposed new or
5 relocated dealership is to be located is less than (~~two hundred~~
6 ~~thousand~~) 200,000, the relevant market area is the geographic area
7 within a radius of (~~sixteen~~) 16 miles around the proposed site.

8 In determining population for this definition, the most recent census
9 by the United States Bureau of Census or the most recent population
10 update, either from the National Planning Data Corporation or other
11 similar recognized source, shall be accumulated for all census tracts
12 either wholly or partially within the relevant market area.

13 (2) For the purpose of RCW 46.96.140 through 46.96.180, the term
14 "motor vehicle dealer" does not include dealerships who exclusively
15 market vehicles 19,000 pounds gross vehicle weight and above.

16 (3) Notwithstanding the terms of a franchise and notwithstanding
17 the terms of a waiver, if a manufacturer intends or proposes to enter
18 into a franchise to establish an additional new motor vehicle dealer
19 or to relocate an existing new motor vehicle dealer within or into a
20 relevant market area in which the same line make of motor vehicle is
21 then represented, the manufacturer shall provide at least (~~sixty~~)
22 60 days advance written notice to the department and to each new
23 motor vehicle dealer of the same line make in the relevant market
24 area, of the manufacturer's intention to establish an additional new
25 motor vehicle dealer or to relocate an existing new motor vehicle
26 dealer within or into the relevant market area. The notice shall be
27 sent by certified mail to each such party and shall include the
28 following information:

29 (a) The specific location at which the additional or relocated
30 motor vehicle dealer will be established;

31 (b) The date on or after which the additional or relocated motor
32 vehicle dealer intends to commence business at the proposed location;

33 (c) The identity of all motor vehicle dealers who are franchised
34 to sell the same line make vehicles as the proposed dealer and who
35 have licensed locations within the relevant market area;

36 (d) The names and addresses, if available, of the owners of and
37 principal investors in the proposed additional or relocated motor
38 vehicle dealership; and

1 (e) The specific grounds or reasons for the proposed
2 establishment of an additional motor vehicle dealer or relocation of
3 an existing dealer.

4 **Sec. 6.** RCW 46.96.185 and 2018 c 296 s 2 are each amended to
5 read as follows:

6 (1) Notwithstanding the terms of a franchise agreement, a
7 manufacturer, distributor, factory branch, or factory representative,
8 or an agent, officer, parent company, wholly or partially owned
9 subsidiary, affiliated entity, or other person controlled by or under
10 common control with a manufacturer, distributor, factory branch, or
11 factory representative, shall not:

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

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

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

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

32 (e) Discriminate against a new motor vehicle dealer by
33 preventing, offsetting, or otherwise impairing the dealer's right to
34 request a documentary service fee on affinity or similar program
35 purchases. This prohibition applies to, but is not limited to, any
36 promotion plan, marketing plan, manufacturer or dealer employee or
37 employee friends or family purchase programs, or similar plans or
38 programs;

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

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

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

32 (ii) A manufacturer, distributor, factory branch, or factory
33 representative to own or operate a dealership in conjunction with an
34 independent person in a bona fide business relationship for the
35 purpose of broadening the diversity of its dealer body and enhancing
36 opportunities for qualified persons who are part of a group who have
37 historically been underrepresented in its dealer body or who
38 represent overburdened communities as defined in RCW 70A.02.010, or
39 other qualified persons who lack the resources to purchase a
40 dealership outright, and where the independent person: (A) Has made,

1 or within a period of two years from the date of commencement of
2 operation will have made, a significant, bona fide capital investment
3 in the dealership that is subject to loss; (B) has an ownership
4 interest in the dealership; and (C) operates the dealership under a
5 bona fide written agreement with the manufacturer, distributor,
6 factory branch, or factory representative under which he or she will
7 acquire all of the ownership interest in the dealership within a
8 reasonable period of time and under reasonable terms and conditions.
9 The manufacturer, distributor, factory branch, or factory
10 representative has the burden of proof of establishing that the
11 acquisition of the dealership by the independent person was made
12 within a reasonable period of time and under reasonable terms and
13 conditions. Nothing in this subsection (1)(g)(ii) relieves a
14 manufacturer, distributor, factory branch, or factory representative
15 from complying with (a) through (f) of this subsection;

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

38 (iv) A truck manufacturer to own, operate, or control a new motor
39 vehicle dealership that sells only trucks of that manufacturer's line
40 make with a gross vehicle weight rating of 12,500 pounds or more, and

1 the truck manufacturer has been continuously engaged in the retail
2 sale of the trucks at least since January 1, 1993;

3 (v) A manufacturer to own, operate, or control a new motor
4 vehicle dealership trading exclusively in a single line make of the
5 manufacturer if (A) the manufacturer does not own, directly or
6 indirectly, in the aggregate, in excess of (~~forty-five~~) 45 percent
7 of the total ownership interest in the dealership, (B) at the time
8 the manufacturer first acquires ownership or assumes operation or
9 control of any such dealership, the distance between any dealership
10 thus owned, operated, or controlled and the nearest new motor vehicle
11 dealership trading in the same line make of vehicle and in which the
12 manufacturer has no ownership or control is not less than (~~fifteen~~)
13 15 miles and complies with the applicable provisions in the relevant
14 market area sections of this chapter, (C) all of the manufacturer's
15 franchise agreements confer rights on the dealer of that line make to
16 develop and operate within a defined geographic territory or area, as
17 many dealership facilities as the dealer and the manufacturer agree
18 are appropriate, and (D) as of January 1, 2000, the manufacturer had
19 no more than four new motor vehicle dealers of that manufacturer's
20 line make in this state, and at least half of those dealers owned and
21 operated two or more dealership facilities in the geographic
22 territory or area covered by their franchise agreements with the
23 manufacturer;

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

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

33 (h) Compete with a new motor vehicle dealer by owning, operating,
34 or controlling, whether directly or indirectly, a service facility in
35 this state for the repair or maintenance of motor vehicles under the
36 manufacturer's new car warranty and extended warranty. Nothing in
37 this subsection (1)(h), however, prohibits a manufacturer,
38 distributor, factory branch, or factory representative from owning or
39 operating a service facility for the purpose of providing or
40 performing maintenance, repair, or service work on motor vehicles

1 that are owned by the manufacturer, distributor, factory branch, or
2 factory representative;

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

9 (j)(i) Terminate, cancel, or fail to renew a franchise with a new
10 motor vehicle dealer based upon any of the following events, which do
11 not constitute good cause for termination, cancellation, or
12 nonrenewal under RCW 46.96.060: (A) The fact that the new motor
13 vehicle dealer owns, has an investment in, participates in the
14 management of, or holds a franchise agreement for the sale or service
15 of another make or line of new motor vehicles; (B) the fact that the
16 new motor vehicle dealer has established another make or line of new
17 motor vehicles or service in the same dealership facilities as those
18 of the manufacturer or distributor; (C) that the new motor vehicle
19 dealer has or intends to relocate the manufacturer or distributor's
20 make or line of new motor vehicles or service to an existing
21 dealership facility that is within the relevant market area, as
22 defined in RCW 46.96.140, of the make or line to be relocated, except
23 that, in any nonemergency circumstance, the dealer must give the
24 manufacturer or distributor at least (~~sixty~~) 60 days' notice of his
25 or her intent to relocate and the relocation must comply with RCW
26 46.96.140 and 46.96.150 for any same make or line facility; or (D)
27 the failure of a franchisee to change the location of the dealership
28 or to make substantial alterations to the use or number of franchises
29 on the dealership premises or facilities.

30 (ii) Notwithstanding the limitations of this section, a
31 manufacturer may, for separate consideration, enter into a written
32 contract with a dealer to exclusively sell and service a single make
33 or line of new motor vehicles at a specific facility for a defined
34 period of time. The penalty for breach of the contract must not
35 exceed the amount of consideration paid by the manufacturer plus a
36 reasonable rate of interest;

37 (k) Coerce or attempt to coerce a motor vehicle dealer to refrain
38 from, or prohibit or attempt to prohibit a new motor vehicle dealer
39 from acquiring, owning, having an investment in, participating in the
40 management of, or holding a franchise agreement for the sale or

1 service of another make or line of new motor vehicles or related
2 products, or establishing another make or line of new motor vehicles
3 or service in the same dealership facilities, if the prohibition
4 against acquiring, owning, investing, managing, or holding a
5 franchise for such additional make or line of vehicles or products,
6 or establishing another make or line of new motor vehicles or service
7 in the same dealership facilities, is not supported by reasonable
8 business considerations. The burden of proving that reasonable
9 business considerations support or justify the prohibition against
10 the additional make or line of new motor vehicles or products or
11 nonexclusive facilities is on the manufacturer;

12 (l) Require, by contract or otherwise, a new motor vehicle dealer
13 to make a material alteration, expansion, or addition to any
14 dealership facility, unless the required alteration, expansion, or
15 addition is uniformly required of other similarly situated new motor
16 vehicle dealers of the same make or line of vehicles and is
17 reasonable in light of all existing circumstances, including economic
18 conditions. In any proceeding in which a required facility
19 alteration, expansion, or addition is an issue, the manufacturer or
20 distributor has the burden of proof. Except for a program or any
21 renewal or modification of a program that is in effect with one or
22 more new motor vehicle dealers in this state on June 12, 2014, a
23 manufacturer shall not require, coerce, or attempt to coerce any new
24 motor vehicle dealer by program, policy, standard, or otherwise to
25 change the location of the dealership or construct, replace,
26 renovate, or make any substantial changes, alterations, or remodeling
27 to a new motor vehicle dealer's sales or service facilities, except
28 as necessary to comply with health or safety laws or to comply with
29 technology requirements without which a dealer would be unable to
30 service a vehicle the dealer has elected to sell, before the
31 (~~tenth~~) 10th anniversary of the date of issuance of the certificate
32 of occupancy or the manufacturer's approval, whichever is later,
33 from:

34 (i) The date construction of the dealership at that location was
35 completed if the construction was in substantial compliance with
36 standards or plans provided by a manufacturer, distributor, or
37 representative or through a subsidiary or agent of the manufacturer,
38 distributor, or representative; or

39 (ii) The date a prior change, alteration, or remodel of the
40 dealership at that location was completed if the construction was in

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

4 (m) Prevent or attempt to prevent by contract or otherwise any
5 new motor vehicle dealer from changing the executive management of a
6 new motor vehicle dealer unless the manufacturer or distributor,
7 having the burden of proof, can show that a proposed change of
8 executive management will result in executive management by a person
9 or persons who are not of good moral character or who do not meet
10 reasonable, preexisting, and equitably applied standards of the
11 manufacturer or distributor. If a manufacturer or distributor rejects
12 a proposed change in the executive management, the manufacturer or
13 distributor shall give written notice of its reasons to the dealer
14 within (~~sixty~~) 60 days after receiving written notice from the
15 dealer of the proposed change and all related information reasonably
16 requested by the manufacturer or distributor, or the change in
17 executive management must be considered approved;

18 (n) Condition the sale, transfer, relocation, or renewal of a
19 franchise agreement or condition manufacturer, distributor, factory
20 branch, or factory representative sales, services, or parts
21 incentives upon the manufacturer obtaining site control, including
22 rights to purchase or lease the dealer's facility, or an agreement to
23 make improvements or substantial renovations to a facility. For
24 purposes of this section, a substantial renovation has a gross cost
25 to the dealer in excess of (~~five thousand dollars~~) \$5,000;

26 (o) Fail to provide to a new motor vehicle dealer purchasing or
27 leasing building materials or other facility improvements the right
28 to purchase or lease franchisor image elements of like kind and
29 quality from an alternative vendor selected by the dealer if the
30 goods or services are to be supplied by a vendor selected,
31 identified, or designated by the manufacturer or distributor. If the
32 vendor selected by the manufacturer or distributor is the only
33 available vendor of like kind and quality materials, the new motor
34 vehicle dealer must be given the opportunity to purchase the
35 franchisor image elements at a price substantially similar to the
36 capitalized lease costs of the elements. This subsection (1)(o) must
37 not be construed to allow a new motor vehicle dealer or vendor to
38 gain additional intellectual property rights they are not otherwise
39 entitled to or to impair or eliminate the intellectual property
40 rights of the manufacturer or distributor or to permit a new motor

1 vehicle dealer to erect or maintain signs that do not conform to the
2 reasonable intellectual property usage guidelines of the manufacturer
3 or distributor;

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

14 (q) Require, coerce, or attempt to coerce any new motor vehicle
15 dealer by program, policy, facility guide, standard, or otherwise to
16 order or accept delivery of any service or repair appliances,
17 equipment, parts, or accessories, or any other commodity not required
18 by law, which the dealer has not voluntarily ordered or which the
19 dealer does not have the right to return unused for a full refund
20 within (~~ninety~~) 90 days or a longer period as mutually agreed upon
21 by the dealer and manufacturer; (~~or~~)

22 (r) Modify the franchise agreement for any new motor vehicle
23 dealer unless the manufacturer notifies the dealer in writing of its
24 intention to modify the agreement at least (~~ninety~~) 90 days before
25 the effective date thereof, stating the specific grounds for the
26 modification, and undertakes the modification in good faith, for good
27 cause, and in a manner that would not adversely and substantially
28 alter the rights, obligations, investment, or return on investment of
29 the franchised new motor vehicle dealer under the existing agreement;
30 or

31 (s) Implement a program or policy that encourages or requires the
32 franchisee to install direct current fast charging stations, unless
33 all of the following are satisfied:

34 (i) If the program or policy requires public access to the direct
35 current fast charging stations, the franchisor shall reimburse the
36 dealer for one-half of the cost to install and maintain the stations
37 if the dealer pays the franchisor half of the net income generated
38 from the ongoing use of the stations;

39 (ii) The program or policy may not encourage or require the
40 franchisee to install direct current fast charging stations at its

1 dealership location if the franchisee can obtain access to direct
2 current fast charging stations that satisfy the program or policy
3 within a reasonable distance, with a minimum of five miles, of the
4 franchisee's dealership location;

5 (iii) The program or policy must be reasonable in light of all
6 existing circumstances including, but not limited to, local
7 conditions, supply constraints, time constraints, advancements in
8 vehicular technology, and electric grid integration; and

9 (iv) The program or policy must allow a new motor vehicle dealer
10 the right to purchase or lease goods or services of like kind and
11 quality from an alternative vendor selected by the dealer if the
12 goods or services are to be supplied by a vendor selected,
13 identified, or designated by the manufacturer or distributor.

14 (2) Subsection (1)(a), (b), and (c) of this section do not apply
15 to sales to a motor vehicle dealer: (a) For resale to a federal,
16 state, or local government agency; (b) where the vehicles will be
17 sold or donated for use in a program of driver's education; (c) where
18 the sale is made under a manufacturer's bona fide promotional program
19 offering sales incentives or rebates; (d) where the sale of parts or
20 accessories is under a manufacturer's bona fide quantity discount
21 program; or (e) where the sale is made under a manufacturer's bona
22 fide fleet vehicle discount program. For purposes of this subsection,
23 "fleet" means a group of (~~fifteen~~) 15 or more new motor vehicles
24 purchased or leased by a dealer at one time under a single purchase
25 or lease agreement for use as part of a fleet, and where the dealer
26 has been assigned a fleet identifier code by the department of
27 licensing.

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

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

33 (b) "Control" or "controlling" means (i) the possession of, title
34 to, or control of ten percent or more of the voting equity interest
35 in a person, whether directly or indirectly through a fiduciary,
36 agent, or other intermediary, or (ii) the possession, direct or
37 indirect, of the power to direct or cause the direction of the
38 management or policies of a person, whether through the ownership of
39 voting securities, through director control, by contract, or

1 otherwise, except as expressly provided under the franchise
2 agreement.

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

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

8 (e) "Own" or "ownership" means to hold the beneficial ownership
9 of one percent or more of any class of equity interest in a
10 dealership, whether the interest is that of a shareholder, partner,
11 limited liability company member, or otherwise. To hold an ownership
12 interest means to have possession of, title to, or control of the
13 ownership interest, whether directly or indirectly through a
14 fiduciary, agent, or other intermediary.

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

20 **Sec. 7.** RCW 46.96.230 and 2003 c 21 s 5 are each amended to read
21 as follows:

22 (1) A manufacturer or distributor shall pay a motor vehicle
23 dealer's claim for payment or other compensation due under a
24 manufacturer incentive program within (~~(thirty)~~) 30 days after
25 approval of the claim. A claim that is not disapproved or disallowed
26 within (~~(thirty)~~) 30 days after the manufacturer or distributor
27 receives the claim is deemed automatically approved. If the motor
28 vehicle dealer's claim is not approved, the manufacturer or
29 distributor shall provide the dealer with written notice of the
30 reasons for the disapproval at the time notice of disapproval is
31 given.

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

36 (3) A manufacturer may not implement an incentive program that
37 does not provide an equal opportunity for all motor vehicle dealers
38 to qualify based on consideration of dealership location and sales
39 volume, predetermines the price of a vehicle, limits eligibility

1 based on nonvehicle product penetration, or requires use of specific
2 software or service vendors to qualify.

3 (4) Notwithstanding the terms of a franchise agreement or other
4 contract with a manufacturer or distributor, a motor vehicle dealer
5 has one year after the expiration of a manufacturer or distributor
6 incentive program to submit a claim for payment or compensation under
7 the program.

8 ~~((4))~~ (5) Notwithstanding the terms of a franchise agreement or
9 other contract with a dealer and except as provided in subsection
10 ~~((5))~~ (6) of this section, after the expiration of one year after
11 the date of payment of a claim under a manufacturer or distributor
12 incentive program, a manufacturer or distributor may not:

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

16 (b) Charge back to a motor vehicle dealer, whether directly or
17 indirectly, the cash value of a prize or other thing of value awarded
18 to the dealer under an incentive program; or

19 (c) Audit the records of a motor vehicle dealer to determine
20 compliance with the terms of an incentive program. Where, however, a
21 manufacturer or distributor has reasonable grounds to believe that
22 the dealer committed fraud with respect to the incentive program, the
23 manufacturer or distributor may audit the dealer for a fraudulent
24 claim during any period for which an action for fraud may be
25 commenced under applicable state law.

26 ~~((5))~~ (6) Notwithstanding subsection ~~((4))~~ (5)(a) and (b) of
27 this section, a manufacturer or distributor may make charge-backs to
28 a motor vehicle dealer if, after completion of an audit of the
29 dealer's records, the manufacturer or distributor can show, by a
30 preponderance of the evidence, that (a) the claim was intentionally
31 false or fraudulent at the time it was submitted to the manufacturer
32 or distributor, or (b) with respect to a claim under a service
33 incentive program, the repair work was improperly performed in a
34 substandard manner or was unnecessary to correct a defective
35 condition.

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