

2 SSB 6220 - S AMD - 129
3 By Senators Winsley and Prentice

4 ADOPTED 2/14/00

5 Strike everything after the enacting clause and insert the
6 following:

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

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

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

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

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

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

35 (e) Give preferential treatment to some new motor vehicle dealers
36 over others by refusing or failing to deliver, in reasonable quantities

1 and within a reasonable time after receipt of an order, to a dealer
2 holding a franchise for a line or make of motor vehicles sold or
3 distributed by the manufacturer, distributor, factory branch, or
4 factory representative, a new vehicle, parts, or accessories, if the
5 vehicle, parts, or accessories are being delivered to other dealers, or
6 require a dealer to purchase unreasonable advertising displays or other
7 materials, or reasonably require a dealer to remodel or renovate
8 existing facilities as a prerequisite to receiving a model or series of
9 vehicles;

10 (f) Compete with a new motor vehicle dealer by acting in the
11 capacity of a new motor vehicle dealer, or by owning, operating, or
12 controlling, whether directly or indirectly, a motor vehicle dealership
13 in this state. It is not, however, a violation of this subsection for:

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

29 (ii) A manufacturer, distributor, factory branch, or factory
30 representative to own or operate a dealership in conjunction with an
31 independent person in a bona fide business relationship program for the
32 purpose of broadening the diversity of its dealer body and enhancing
33 opportunities for qualified persons who are part of a group who have
34 historically been underrepresented in its dealer body, or other
35 qualified persons who lack the resources to purchase a dealership
36 outright, and where the independent person: (A) Has made a
37 significant, bona fide capital investment in the dealership that is
38 subject to loss; (B) has an ownership interest in the dealership; and
39 (C) operates the dealership under a bona fide written agreement with

1 the manufacturer, distributor, factory branch, or factory
2 representative under which he or she will acquire all of the ownership
3 interest in the dealership within a reasonable period of time and under
4 reasonable terms and conditions. The manufacturer, distributor,
5 factory branch, or factory representative has the burden of proof of
6 establishing that the acquisition of the dealership by the independent
7 person under the program was made within a reasonable period of time
8 and under reasonable terms and conditions;

9 (iii) A manufacturer, distributor, factory branch, or factory
10 representative to own or operate a dealership in conjunction with an
11 independent person in a bona fide business relationship where the
12 independent person: (A) Has made a significant, bona fide capital
13 investment in the dealership that is subject to loss; (B) has an
14 ownership interest in the dealership; and (C) operates the dealership
15 under a bona fide written agreement with the manufacturer, distributor,
16 factory branch, or factory representative under which he or she will
17 acquire all of the ownership interest in the dealership within a
18 reasonable period of time and under reasonable terms and conditions.
19 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)(iii)
24 may not exceed two percent of the total of new motor vehicle dealer
25 franchises per manufacturer in this state;

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

31 (v) A manufacturer to own, operate, or control a new motor vehicle
32 dealership trading exclusively in a single line make of the
33 manufacturer if (A) the manufacturer's ownership interest is no more
34 than forty-five percent of the total ownership, (B) at the time the
35 manufacturer first acquires an ownership interest or assumes operation,
36 the distance between any dealership thus owned or operated and the
37 nearest unaffiliated motor vehicle dealership trading in the same line
38 make is not less than fifteen miles, (C) during the period of
39 ownership, the manufacturer of the line make has no more than five

1 motor vehicle franchise agreements governing the line make in effect in
2 this state, and (D) the manufacturer has been continuously engaged, at
3 least since January 1, 1993, in the retail sale of motor vehicles of
4 its own line make through the dealership;

5 (g) Compete with a new motor vehicle dealer by owning, operating,
6 or controlling, whether directly or indirectly, a service facility in
7 this state for the repair or maintenance of motor vehicles. Nothing in
8 this subsection (1)(g), however, prohibits a manufacturer, distributor,
9 factory branch, or factory representative from owning or operating a
10 service facility for the purpose of providing or performing
11 maintenance, repair, or service work on motor vehicles that are owned
12 by the manufacturer, distributor, factory branch, or factory
13 representative;

14 (h) Disclose, misappropriate, or unfairly use confidential or
15 proprietary information obtained from an entity or person having a
16 franchise agreement or franchise relationship with the manufacturer,
17 distributor, factory branch, or factory representative. Confidential
18 or proprietary information obtained from a franchisee is a valuable
19 trade secret and may not be used by the manufacturer or distributor in
20 a manner that is detrimental or disadvantageous to the franchisee,
21 including but not limited to competing with the franchisee. For
22 purposes of this section, the term "confidential or proprietary
23 information" means trade secrets as defined in RCW 19.108.010, business
24 plans, marketing plans or strategies, customer lists, contracts, sales
25 data, revenues or other financial information, forecasts, or any other
26 information that is designated as confidential, or, if disclosed
27 orally, is identified as confidential or proprietary at the time of
28 disclosure.

29 (2) Subsection (1)(a), (b), and (c) of this section do not apply to
30 sales to a motor vehicle dealer: (a) For resale to a federal, state,
31 or local government agency; (b) where the vehicles will be sold or
32 donated for use in a program of driver's education; (c) where the sale
33 is made under a manufacturer's bona fide promotional program offering
34 sales incentives or rebates; (d) where the sale of parts or accessories
35 is under a manufacturer's bona fide quantity discount program; or (e)
36 where the sale is made under a manufacturer's bona fide fleet vehicle
37 discount program. For purposes of this subsection, "fleet" means a
38 group of fifteen or more new motor vehicles purchased or leased by a
39 dealer at one time under a single purchase or lease agreement for use

1 as part of a fleet, and where the dealer has been assigned a fleet
2 identifier code by the department of licensing.

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

4 (a) "Actual price" means the price to be paid by the dealer less
5 any incentive paid by the manufacturer, distributor, factory branch, or
6 factory representative, whether paid to the dealer or the ultimate
7 purchaser of the vehicle.

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

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

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

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

28 (4) A violation of this section is deemed to affect the public
29 interest and constitutes an unlawful and unfair practice under chapter
30 19.86 RCW. A new motor vehicle dealer having a franchise with a
31 manufacturer or distributor, who is alleged to have violated any
32 provision of this section, may bring an action under chapter 7.04 RCW
33 against that manufacturer or distributor to restrain and prevent the
34 doing of any act prohibited in this section or declared to be unlawful
35 and to recover any damages sustained by reason of the manufacturer's or
36 distributor's violation, together with the costs of the suit, including
37 reasonable attorneys' fees."

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4 In line 2 of the title, after "manufacturers;" strike the remainder
5 of the title and insert "and adding a new section to chapter 46.96
6 RCW."

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