
SENATE BILL 6082

State of Washington

66th Legislature

2020 Regular Session

By Senators Carlyle, Mullet, and Braun

Prefiled 12/17/19.

1 AN ACT Relating to manufacturers of electric vehicles; and
2 amending RCW 46.96.185.

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

4 **Sec. 1.** 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

1 in a lower actual price on vehicles, parts, or accessories being
2 charged to one dealer over another dealer;

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

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

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

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

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

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

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

32 (iii) 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 where the
35 independent person: (A) Has made, or within a period of two years
36 from the date of commencement of operation will have 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
40 the manufacturer, distributor, factory branch, or factory

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

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

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

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

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

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

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

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

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

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

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

30 (l) Require, by contract or otherwise, a new motor vehicle dealer
31 to make a material alteration, expansion, or addition to any
32 dealership facility, unless the required alteration, expansion, or
33 addition is uniformly required of other similarly situated new motor
34 vehicle dealers of the same make or line of vehicles and is
35 reasonable in light of all existing circumstances, including economic
36 conditions. In any proceeding in which a required facility
37 alteration, expansion, or addition is an issue, the manufacturer or
38 distributor has the burden of proof. Except for a program or any
39 renewal or modification of a program that is in effect with one or
40 more new motor vehicle dealers in this state on June 12, 2014, a

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

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

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

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

35 (n) Condition the sale, transfer, relocation, or renewal of a
36 franchise agreement or condition manufacturer, distributor, factory
37 branch, or factory representative sales, services, or parts
38 incentives upon the manufacturer obtaining site control, including
39 rights to purchase or lease the dealer's facility, or an agreement to
40 make improvements or substantial renovations to a facility. For

1 purposes of this section, a substantial renovation has a gross cost
2 to the dealer in excess of five thousand dollars;

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

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

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

39 (r) Modify the franchise agreement for any new motor vehicle
40 dealer unless the manufacturer notifies the dealer in writing of its

1 intention to modify the agreement at least ninety days before the
2 effective date thereof, stating the specific grounds for the
3 modification, and undertakes the modification in good faith, for good
4 cause, and in a manner that would not adversely and substantially
5 alter the rights, obligations, investment, or return on investment of
6 the franchised new motor vehicle dealer under the existing agreement.

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

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

21 (a) "Actual price" means the price to be paid by the dealer less
22 any incentive paid by the manufacturer, distributor, factory branch,
23 or factory representative, whether paid to the dealer or the ultimate
24 purchaser of the vehicle.

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

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

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

39 (e) "Own" or "ownership" means to hold the beneficial ownership
40 of one percent or more of any class of equity interest in a

1 dealership, whether the interest is that of a shareholder, partner,
2 limited liability company member, or otherwise. To hold an ownership
3 interest means to have possession of, title to, or control of the
4 ownership interest, whether directly or indirectly through a
5 fiduciary, agent, or other intermediary.

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

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