

Sections 2 and 3 are essentially identical to Sections 1 and 2 of Engrossed House Bill 99, which I have already signed into law. They are vetoed to avoid double amendments. Section 4 is identical to Section 5 of Engrossed House Bill 99, which I have vetoed and which I am again vetoing.

Sections 13 through 15 create a fifty percent exemption from the B&O tax for new businesses which locate in distressed areas. These sections have an extremely laudable intent. I am firmly committed to bringing new jobs and industry to areas in which there is persistent unemployment resulting from long-term changes in the local economy. Given the state's limited resources, however, it is essential that such efforts are carefully targeted to reach areas with the greatest need. Unfortunately, I do not believe the exemption created in Section 13 through 15 meets this test.

These sections, taken as a whole, are likely to result in substantial loss of revenue to the state without necessarily benefitting truly distressed areas. For example, an existing business could dissolve and reincorporate under a new name or create a wholly owned subsidiary and become eligible for the exemption. Also, Section 15 does not specify how much of a qualifying business is eligible for the exemption. It is, therefore, possible that a new business would qualify for the entire exemption by locating an insignificant operation in a distressed area while the vast majority of its business was located elsewhere in the state in a non-distressed area.

In addition, the fact that a county is considered distressed at any time its unemployment rate exceeds the average, will result in benefits going to businesses in areas with temporary problems instead of being restricted to areas with persistent high joblessness.

For these reasons, I have vetoed Sections 2 through 4 and Sections 13 through 15 of Engrossed Substitute Senate Bill No. 4228.

With the exceptions of Sections 2 through 4 and Sections 13 through 15, which I have vetoed, Engrossed Substitute Senate Bill No. 4228 is approved."

CHAPTER 472

[Engrossed Substitute Senate Bill No. 3333] MOTORCYCLE DEALERS' FRANCHISES

AN ACT Relating to motorcycle dealers' franchises; amending RCW 46.70.101 and 46.70.180; adding a new chapter to Title 46 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. This chapter shall be known as the motorcycle dealers' franchise act.

NEW SECTION. Sec. 2. The legislature recognizes it is in the best public interest for manufacturers and dealers of motorcycles to conduct business with each other in a fair, efficient, and competitive manner. The legislature declares the public interest is best served by dealers being assured of the ability to manage their business enterprises under a contractual obligation with manufacturers where dealers do not experience unreasonable interference, receive adequate allocations of merchandise in a timely manner at competitive prices, and transfer ownership of their business without undue constraints. It is the intent of the legislature to impose a regulatory scheme and to regulate competition in the motorcycle industry to the extent necessary to balance fairness and efficiency. These actions will assure the public that motorcycle dealers will devote their best competitive

efforts and resources to the sale and service of the manufacturer's products which the dealer has been granted the right to sell and service.

***NEW SECTION.** Sec. 3. As used in this chapter:

(1) "Department" means the department of licensing.

(2) "Designated family member" means (a) an heir as defined in RCW 11.02.005(6) if the motorcycle dealer dies intestate or (b) a legatee or devisee as used in Title 11 RCW if the deceased motorcycle dealer leaves a will. ***A motorcycle dealer also may name in a notarized statement any person as the designated family member for the purposes of receiving an interest in the motorcycle dealership. Title 11 RCW applies to this chapter. However, in cases of conflict, the notarized inter vivos designation prevails over testamentary and intestate succession. Notarized inter vivos designations under this subsection are not codicils to wills.***

(3) "Distributor" means a person, whether a resident or nonresident, other than a manufacturer, who sells, leases, or distributes motorcycles to motorcycle dealers, or controls any other person, other than a manufacturer, who sells, leases, or distributes motorcycles to motorcycle dealers.

(4) "Distributor branch" means a branch office maintained by the distributor or wholesaler.

(5) "Distributor representative" means a representative employed by a distributor or wholesaler for the purpose of selling or promoting the sale or lease of the distributor's or wholesaler's motorcycles to motorcycle dealers, or for the purpose of supervising or contacting dealers.

(6) "Factory branch" means a branch office maintained by a manufacturer in order to direct and supervise the representatives of the manufacturer.

(7) "Factory representative" means a person employed by a manufacturer for the purpose of making or promoting the sale or lease of the manufacturer's motorcycles to dealers, distributors, or prospective motorcycle dealers.

(8) "Franchise" means a *n oral or* written contract , ***to include a dealer agreement, either expressed or implied,*** between a franchisor and a motorcycle dealer which purports to fix the legal rights and liabilities between the parties and under which (a) the dealer is granted the right to purchase and resell motorcycles manufactured, distributed, or imported by the franchisor; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the franchisor; and (c) the dealer's business relies on the franchisor for a continued supply of motorcycles, parts, and accessories.

(9) "Franchisor" means any person who enters into a franchise with a motorcycle dealer.

(10) "Manufacturer" means any person, firm, association, corporation, or trust that manufactures or provides assemblies for motorcycles.

(11) "Motorcycle" means any motor vehicle which has an unladen weight of less than fifteen hundred pounds, including any parts, accessories, equipment, or special tools designated or intended for use on or with those motor vehicles, and (a) which is self-propelled and capable of use and operation on the public highways and streets; or (b) which is a self-propelled, off-road vehicle, tired or nontired, capable of transporting individuals on or off public highways and streets. "Motorcycle" excludes farm tractors, golf carts, firefighting equipment, any motor vehicle designed solely for industrial purposes, and lawnmowers.

(12) "Motorcycle dealer" or "dealer" means a person operating under a dealer agreement or franchise with a franchisor who is engaged regularly in the business of buying, selling, exchanging, offering, brokering, or leasing with an option to purchase new or used motorcycles in the state, with a place of business in the state.

(13) "New motorcycle" means a motorcycle that has been sold or transferred to a motorcycle dealer and that has not been used for other than demonstration purposes, and on which the original title has not been issued from the motorcycle dealer. The term includes motorcycles not of the current model year comprising part of the dealer's inventory.

(14) "Person" means any natural person, partnership, stock company, corporation, trust, agency, or other legal entity, as well as any individual officers, directors, or other persons in active control of the activities of the entity.

(15) "Place of business" means a permanent, enclosed commercial building, situated within the state, and the real property on which it is located, at which the business of a motorcycle dealer, including the display and repair of motorcycles, may be lawfully conducted in accordance with the terms of all applicable laws and in the building the public may contact the motorcycle dealer or his or her employees at all reasonable times.

(16) "Relevant market area" means a ten-mile radius around a proposed place of business.

*Sec. 3 was partially vetoed, see message at end of chapter.

***NEW SECTION.** Sec. 4. Acts or conduct described in this section constitute prohibited trade practices that cannot be waived. It is a prohibited trade practice for a franchisor or its manufacturers, distributors, subsidiaries, or other agents:

(1) To require, coerce or attempt to require, or coerce, either directly or indirectly, any motorcycle dealer to:

(a) Accept, buy, or order any motorcycle, part or accessory, or any other commodity or service not voluntarily ordered, or requested, **or to buy, order, or pay anything of value for such items in order to obtain any motorcycle part, accessory, or other commodity which has been voluntarily ordered or requested;**

(b) Order or accept delivery of any motorcycle with special features, accessories, or equipment not included in the list price of the motorcycle as advertised by the manufacturer, except items which have been voluntarily requested or ordered by the dealer, and except items required by law;

(c) Enter into any agreement or understanding resulting in a reduction of the dealer's allocation of motorcycles for reasons other than reduced production levels causing uniformly and proportionally applied reductions to all dealers;

(d) Enter into any agreement or sales promotion program by threatening to terminate the franchise of the dealer;

(e) Refrain from participation in the management, investment, acquisition, or sale of any other related product or product line of motor vehicles, parts, or accessories;

(f) Enter into any agreement violating this chapter; or

(g) Enter into an agreement by which the franchisor, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative can directly solicit the dealer's customers.

(2) To terminate, refuse to renew, fail to extend, or fail to renew any franchise without good cause. Good cause includes but is not limited to:

(a) The amount of business transacted by the dealer as compared to the amount of business available to the dealer;

(b) The investment necessarily made and obligations necessarily incurred by the dealer in the performance of the franchise;

(c) The degree of the dealer's investment, including but not limited to the dealer's purchase or lease of real property for the dealership, the training given to the dealer's employees, and the amount of equipment purchased for the dealership;

(d) The adequacy of the dealer's new motorcycle sales and service facilities, equipment, and parts;

(e) The qualifications and performance of the management, sales, and service personnel to provide the consumer with reasonably good service and care of new motorcycles;

(f) The failure of the dealer to substantially comply in good faith with the reasonable requirements of the franchise;

(g) The adequacy of the franchisor's actual quantities delivered of motorcycles, parts, and accessories compared to quantities promised by the franchisor;

(h) The effect on the retail motorcycle business and the consuming public in the dealer's market area;

(i) Whether the dealer has exercised prudent business judgment.

The dealer shall be notified, in writing, not less than ninety days before termination or nonrenewal with reasons for the actions. If the termination or nonrenewal is based on termination or discontinuance of the product line, the dealer shall be notified not less than one hundred eighty days prior to

termination or nonrenewal. All existing franchises shall continue operation under a newly appointed distributor upon the termination of an existing distributor unless a mutual agreement of termination is filed between the new distributor and the affected dealer.

(3) To require a change in capital structure, or means of financing, if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer, franchisor, or distributor;

(4) To prevent or attempt to prevent a dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed if the dealer meets the reasonable, written, and uniformly applied capital requirements determined by the manufacturer, franchisor, or distributor;

(5) To unreasonably require a change in the location of the dealership or any substantial alterations to the place of business;

(6) To condition renewal or extension of the franchise on substantial renovation of the existing place of business or on the construction, purchase, acquisition, or lease of a new place of business unless written notice is first provided one hundred eighty days prior to the date of renewal or extension and the franchisor demonstrates the reasonableness of the requested actions. The franchisor shall agree to supply the dealer with an adequate quantity of motorcycles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial renovation, construction, acquisition, or lease of a new place of business;

(7) To adopt, establish, or implement a plan or system, or to modify an existing plan or system, for the distribution or allocation of motorcycles which is arbitrary, in bad faith, or unconscionable and which damages the dealer or the dealer's customers;

(8) To fail or refuse to disclose to the dealer, after written request, the basis upon which new motorcycles of the same line are currently or will in the future be allocated or distributed to dealers;

(9) To fail or refuse to disclose to dealers, after written request, the total number of new motorcycles of a given model which the manufacturer, franchisor, or distributor has sold during the current model year within the dealer's marketing district, zone, or region;

(10) To refuse or fail to deliver any motorcycle, part, or accessory in reasonable quantities, and within a reasonable time after receipt of the order from the dealer, that is specifically advertised as being immediately available. It is not a prohibited trade practice when the failure to deliver is caused by an act of God, strike, material shortage, or other cause over which the manufacturer, distributor, or franchisor has no control;

(11) To offer a renewal, replacement, or succeeding franchise containing terms substantially modifying the sales and service obligations or capital requirements of the motorcycle dealer, other than as provided for in this chapter;

(12) To sell or lease or offer to sell or lease to a dealer a new motorcycle, including any motorcycle under a sales promotion plan, at a lower price than offered or sold to another similarly situated dealer for the same model, except where the dealer is offered, sold, or leased a new motorcycle at a discount in exchange for providing valuable services to the franchisor, manufacturer, or distributor and except in those instances where a dealer orders motorcycles in sufficient numbers to qualify for volume discounts and as long as discounts are available to all dealers;

(13) To prevent, attempt to prevent, or unreasonably disapprove any motorcycle dealer from changing executive management control of the dealer's motorcycle business, unless the change results in control by a person not of good moral character or who does not meet the manufacturer, distributor, or franchisor's existing and reasonable, written, and uniformly applied capital standards. The dealer shall be given written notice of the reasons for rejection within thirty days of receipt of notice from the dealer of a proposed change;

(14) To reject, prevent, or attempt to prevent any person from selling or transferring a controlling interest to any other person unless the buyer or transferee does not qualify under appropriate state law as a licensed dealer, is not of good moral character, does not meet the manufacturer, distributor, or franchisor's existing and reasonable, written, and uniformly applied capital standards, or does not meet the written and uniformly applied manufacturer, distributor, or franchisor business experience standards for the market area. The dealer shall be given written notice setting forth the reasons for rejection of the proposed sale or transfer within thirty days of notice by the dealer of the sale or transfer;

(15) To fail to hold harmless and indemnify any motorcycle dealer against losses, including lawsuits and court costs, arising from: (a) The manufacture or performance of any motorcycle, part, or accessory if the lawsuit involves representations by the manufacturer, distributor, or franchisor on the manufacture or performance of a motorcycle without negligence on the part of the motorcycle dealer; (b) damage to merchandise in transit where the manufacturer, distributor, or franchisor specifies the carrier; (c) the manufacturer, distributor, or franchisor's failure to jointly defend product liability suits concerning the motorcycle, part, or accessory provided to the dealer; or (d) any other act performed by the manufacturer, distributor, or franchisor;

(16) To unfairly prevent or attempt to prevent a motorcycle dealer from receiving reasonable compensation for the value of a motorcycle;

(17) To release confidential information provided by the motorcycle dealer to the manufacturer, distributor, or franchisor without the written prior consent of the dealer;

(18) To fail to pay to a motorcycle dealer, within a reasonable time following receipt of a valid claim, any payment agreed to be made by the manufacturer, distributor, or franchisor on grounds that a new motorcycle, or a prior year's model, is in the dealer's inventory at the time of introduction of new model motorcycles;

(19) To deny any dealer the right of free association with any other dealer for any lawful purpose;

(20) To artificially and intentionally create a shortage of any motorcycle make, model, or series that results in the inequitable distribution of the make, model, or series to dealers;

(21) To charge increased prices without having given written notice to the dealers at least fifteen days prior to the effective date of the price increases;

(22) To permit factory authorized warranty service to be performed upon motorcycles or accessories by persons other than their franchised motorcycle dealers;

(23) To unreasonably interfere with a dealer's performance under the franchise agreement's sale quota by withholding sufficient deliveries of motorcycles; or

(24) To own, operate, or control any motorcycle dealer or place of business selling at retail in the state.

*Sec. 4 was partially vetoed, see message at end of chapter.

***NEW SECTION.** Sec. 5. (1) The manufacturer, distributor, or franchisor shall not prevent, attempt to prevent, refuse to give effect to, attempt to refuse to give effect to, or in any way hinder the succession to the ownership, management, control, or continuance of a dealer's motorcycle business by a designated family member upon the death or incapacity of the dealer, except as otherwise provided in this chapter.

(2) A designated family member, at his or her discretion, may succeed the dealer in ownership or management control under the existing agreement. The designated family member shall provide notice to the franchisor, in writing, of the intention to succeed to the franchise within one hundred twenty days after the dealer's death or incapacity. The designated family member shall agree to be bound by the terms of the original franchise. The designated family member shall meet the reasonable, written, and uniformly applied conditions applied by the franchisor under the existing franchise.

(3) A designated family member may only be rejected for succession on reasonable grounds. The franchisor shall provide written notice to the designated family member within sixty days of receipt of notice of the intention to succeed. The notice shall state the specific grounds for refusal, termination, or nonrenewal of the franchise and shall not take effect less

than ninety days after receipt of the notice by the designated family member. If notice is not served within the designated time period, the franchise shall continue in effect with the designated family member.

(4) The designated family member may appeal to the appropriate court within ninety days of receipt of notice of refusal, termination, or nonrenewal. The franchisor has the burden of proving reasonable grounds. A designated family member prevailing in such action shall recover reasonable costs and attorney's fees.

(5) A dealer may designate any person as the recipient of the franchise by making a notarized statement in accordance with section 3(2) of this act. The statement shall be filed with the franchisor. The statement shall be controlling and binding on all heirs and testamentary successors. The recipient shall agree to be bound by the terms of the original franchise. The recipient shall meet the reasonable, written, and uniformly applied conditions applied by the franchisor under the existing franchise.

*Sec. 5 was partially vetoed, see message at end of chapter.

***NEW SECTION. Sec. 6. (1) A person desiring to enter into a franchise establishing or relocating a motorcycle dealer shall notify, in writing, each existing franchised dealer of the same manufacturer, distributor, or franchisor, in the relevant market area of its intention to establish or relocate a dealer. Within one hundred twenty days of receiving the notice, or within one hundred twenty days after the end of any appeal period procedure provided by the person, whichever is later, any existing franchised dealer to whom the person is required to give notice under this subsection may file an action in the superior court of the county in which the existing franchise dealer's place of business is located, challenging the proposed establishment or relocation of the dealership within the relevant market area.**

(2) Authority to enter into a franchise establishing or relocating a dealer shall only be granted by the manufacturer, distributor, or franchisor proving just cause. Just cause includes but is not limited to:

(a) The amount of business transacted by existing dealers when compared with the amount of business available to them;

(b) The degree of the dealer's investment, including but not limited to the dealer's purchase or lease of real property for the dealership, the training given to the dealer's employees, and the amount of equipment purchased for the dealership;

(c) The effect of the proposed franchise on the retail motorcycle business in the relevant market area;

(d) Whether it is injurious to the public welfare for the proposed dealer to be established or relocated;

(e) Whether the existing dealers are providing adequate customer care for the motorcycles sold, including the adequacy of motorcycle service facilities;

(f) Whether the existing dealers are receiving vehicles and parts in quantities promised by the manufacturer, factory branch, distributor, or franchisor, and on what volume of promised quantities existing dealers based their investment and scope of operations;

(g) The effect on the retail motorcycle business and the consuming public in the relevant market area; and

(h) Injury to the public welfare if the proposed establishment or relocation is allowed.

For the purposes of this subsection, the reopening of a dealer's place of business that has been closed for less than six months at the original location is not the establishment or relocation of a dealer.

(3) Except for test marketing, a franchisor shall offer a new motorcycle model, line, or product for resale to all dealers and require that all similarly situated dealers meet the same conditions for marketing the new model, line, or product.

(4) Each new or renewed franchise with an individual franchisor, occurring on or after the effective date of this act, shall include all motorcycle models, types, or products which are under separate franchises between that individual franchisor and dealer.

*Sec. 6 was vetoed, see message at end of chapter.

***NEW SECTION.** *Sec. 7. (1) Upon the termination or nonrenewal of a franchise, the dealer shall be paid fair and reasonable compensation by the franchisor for:*

(a) All new motorcycle inventory, including new motorcycles not of the current model year, purchased from the manufacturer, distributor, or franchisor that has not been materially altered, damaged, or driven more than fifty miles;

(b) All new, rebuilt, or used parts and accessories received from the manufacturer, distributor, or franchisor;

(c) Equipment, furnishings, and signs purchased from the manufacturer, distributor, or franchisor; and

(d) Special tools purchased from the manufacturer, distributor, or franchisor.

Compensation shall not be less than the current prices charged by the manufacturer, distributor, or franchisor for the new, rebuilt, or used items specified in (a) and (b) of this subsection or the fair market value for items specified in (c) and (d) of this subsection.

(2) In the event of termination or nonrenewal of the franchise by the franchisor without good cause, the franchisor shall pay the dealer, at the dealer's election, fair and reasonable compensation for the value of the dealership within six months of the effective date of the termination or nonrenewal. Compensation shall include, but not exclusively, all items listed in subsection (1) of this section, any real and personal property associated with

the place of business, and business good will. The dealer has a responsibility to mitigate damages.

(3) Subsections (1) and (2) of this section do not apply if the dealer has acted illegally or fraudulently in the procurement of the franchise, or has acted illegally or fraudulently in the operation of the franchise.

*Sec. 7 was vetoed, see message at end of chapter.

***NEW SECTION.** Sec. 8. (1) The manufacturer, distributor, or franchisor shall compensate the dealer for labor, parts, and other expenses incurred to comply with the manufacturer, distributor, or franchisor's warranty agreements, and for work and services performed in connection with delivery and preparation of motorcycles received from the manufacturer, distributor, or franchisor. *The compensation shall not be less than the rates reasonably charged by the dealer for like services and parts to retail customers.*

(2) All claims for compensation made by the dealer shall be paid within thirty days after approval and shall be approved or disapproved within thirty days of their receipt by the manufacturer, distributor, or franchisor. Any denial of claim shall be in writing and shall set forth the specific grounds for denial.

(3) A claim that has been approved and paid shall not be charged back to the dealer unless it is established the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim.

*Sec. 8 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 9. No manufacturer, distributor, or franchisor shall require or coerce any dealer to sell, assign, or transfer a retail sales installment contract, or require the dealer to act as an agent for any manufacturer, distributor, or franchisor in the securing of a promissory note, a security agreement given in connection with the sale of a motorcycle, or securing of a policy of insurance for a motorcycle. The manufacturer, distributor, or franchisor may not condition delivery of motorcycles, parts, or accessories upon the dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies.

***NEW SECTION.** Sec. 10. Any person injured by a violation of this chapter may bring a civil action in a court of competent jurisdiction to enjoin further violations or to recover damages. *Injunctive relief may be granted in an action brought under this chapter without the dealer being required to post a bond if, in the opinion of the court, there exists a likelihood the dealer may prevail upon the merits.*

*Sec. 10 was partially vetoed, see message at end of chapter.

***NEW SECTION. Sec. 11.** *Except as otherwise provided in this chapter, any civil action under this chapter shall be brought within four years after discovery by the aggrieved party of the facts constituting a violation of this chapter.*

**Sec. 11 was vetoed, see message at end of chapter.*

***Sec. 12. Section 11, chapter 74, Laws of 1967 ex. sess. as last amended by section 5, chapter 152, Laws of 1981 and RCW 46.70.101 are each amended to read as follows:**

The director may by order deny, suspend, or revoke the license of any vehicle dealer, vehicle manufacturer, or vehicle salesman or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if he finds that the order is in the public interest and that the applicant or licensee:

(1) In the case of a vehicle dealer:

(a) The applicant or licensee, or any partner, officer, director, owner of ten percent or more of the assets of the firm, or managing employee:

(i) Was the holder of a license issued pursuant to this chapter, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid;

(ii) Has been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed since the adjudication is less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, adjudged guilty shall mean in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended;

(iii) Has knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto, or in any matter under investigation by the department;

(iv) Does not have an established place of business as defined in this chapter;

(v) Employs an unlicensed salesman or one whose license has been denied, revoked within the last year, or is currently suspended, the terms of which have not been fulfilled;

(vi) Refuses to allow representatives or agents of the department to inspect during normal business hours all books, records, and files maintained within this state;

(vii) Sells, exchanges, offers, brokers, auctions, solicits, or advertises a new or current model vehicle to which a factory new vehicle warranty attaches and fails to have a valid, written service agreement as required by this

chapter, or having such agreement refuses to honor the terms of such agreement within a reasonable time or repudiates the same;

(viii) Is insolvent, either in the sense that his liabilities exceed his assets, or in the sense that he cannot meet his obligations as they mature;

(ix) Fails to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after such assessment becomes final;

(x) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183.

(b) The applicant or licensee, or any partner, officer, director, owner of ten percent of the assets of the firm, or any employee or agent:

(i) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(ii) Has defrauded or attempted to defraud the state, or a political subdivision thereof of any taxes or fees in connection with the sale or transfer of a vehicle;

(iii) Has forged the signature of the registered or legal owner on a certificate of title;

(iv) Has purchased, sold, disposed of, or has in his possession any vehicle which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(v) Has wilfully failed to deliver to a purchaser a certificate of ownership to a vehicle which he has sold;

(vi) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates and manufacturer license plates;

(vii) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices; or

(viii) Has engaged in practices inimical to the health or safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction or safety of vehicles;

(c) The licensee or any partner, officer, director, or owner of ten percent or more of the assets of the firm holds or has held any such position in any other vehicle dealership licensed pursuant to this chapter which is subject to final proceedings under this section.

(2) In the case of a vehicle salesman:

(a) Was the holder, or was a partner in a partnership or was an officer, director, or owner involved in the management of a corporation which was the holder, of a license issued pursuant to this chapter which was revoked for cause and never reissued, or was suspended and the terms of the suspension had not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid;

(b) Has been adjudged guilty of a crime which directly relates to the business of a vehicle salesman and the time elapsed since the conviction is

less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purpose of this section, the term adjudged guilty means, in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the imposition of sentence is deferred or the penalty is suspended;

(c) Has knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto or in any matter under investigation by the department;

(d) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(e) Has defrauded or attempted to defraud the state or a political subdivision thereof, of any taxes or fees in connection with the sale or transfer of a vehicle;

(f) Has forged the signature of the registered or legal owner on a certificate of title;

(g) Has purchased, sold, disposed of, or has in his possession, any vehicle which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(h) Has wilfully failed to deliver to a purchaser a certificate of ownership to a vehicle which he has sold;

(i) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(j) Fails to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after such assessment becomes final;

(k) Converts or appropriates, whether temporarily or permanently, property or funds belonging to a customer, dealer, or manufacturer, without the consent of the owner of such property or funds.

(3) In the case of a manufacturer, or any partner, officer, director, or majority shareholder:

(a) Was or is the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid;

(b) Has knowingly or with reason to know, made a false statement of a material fact in his application for license, or any data attached thereto, or in any matter under investigation by the department;

(c) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(d) Has defrauded or attempted to defraud the state or a political subdivision thereof, of any taxes or fees in connection with the sale or transfer of a vehicle;

(e) Has purchased, sold, disposed of, or has in his possession, any vehicle which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(f) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates and manufacturer license plates;

(g) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(h) Sells or distributes in this state or transfers into this state for resale, any new or unused vehicle to which a warranty attaches or has attached and refuses to honor the terms of such warranty within a reasonable time or repudiates the same;

(i) Fails to maintain one or more resident employees or agents to provide service or repairs to vehicles located within the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured and which are or have been sold or distributed in this state or transferred into this state for resale unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(j) Fails to reimburse within a reasonable time any vehicle dealer within the state of Washington, other than a motorcycle dealer governed by chapter 46.-- RCW (sections 1 through 11 of this 1985 act), who in good faith incurs reasonable obligations in giving effect to warranties that attach or have attached to any new or unused vehicle sold or distributed in this state or transferred into this state for resale by any such manufacturer;

(k) Engaged in practices inimical to the health and safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles;

(l) Is insolvent either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature;

(m) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183.

*Sec. 12 was vetoed, see message at end of chapter.

Sec. 13. Section 16, chapter 74, Laws of 1967 ex. sess. as last amended by section 6, chapter 152, Laws of 1981 and RCW 46.70.180 are each amended to read as follows:

Each of the following acts or practices is hereby declared unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale or financing of

a vehicle which is false, deceptive, or misleading, including but not limited to the following:

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

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

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

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

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

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

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

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer of a vehicle a written order or offer to purchase, or a contract document signed by the buyer, which:

(a) Is subject to the dealer's, or his authorized representative's future acceptance, and the dealer fails or refuses within forty-eight hours, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer, to deliver to the buyer either the dealer's signed acceptance or all copies of the order, offer, or contract document together with any initial payment or security made or given by the buyer, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer as

part of the purchase price, for any reason except substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

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

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570.

(6) For any vehicle dealer or vehicle salesman to refuse to furnish, upon request of a prospective purchaser, the name and address of the previous registered owner of any used vehicle offered for sale.

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

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle.

(9) For a dealer, salesman, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser prior to the delivery of the bargained-for vehicle, to commingle said "on deposit" funds with assets of the dealer, salesman, or mobile home manufacturer instead of holding said "on deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his customary total customer deposits for vehicles for future delivery.

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

(11) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.— RCW (sections 1 through 11 of this 1985 act), to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer:

PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

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

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

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

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

(f) To provide under the terms of any warranty that a purchaser of any new or unused vehicle that has been sold, distributed for sale, or transferred into this state for resale by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. Sections 1 through 11 of this act shall constitute a new chapter in Title 46 RCW.

Passed the Senate April 24, 1985.

Passed the House April 16, 1985.

Approved by the Governor May 21, 1985, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State May 21, 1985.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without approval as to certain sections, Substitute Senate Bill No. 3333, entitled:

"AN ACT Relating to motorcycle franchises."

This bill would establish a very detailed regulatory system for the business relationship between manufacturers and the dealers of motorcycles, all terrain vehicles, snowmobiles, and any motor vehicle weighing less than 1,500 pounds. The activities of both the manufacturer and dealer would continue to be regulated under RCW 46-.70. The bill is held by its proponents as being necessary to end certain practices on the part of motorcycle manufacturers.

I believe that motorcycle manufacturers have been, at times, heavy-handed in their relationships with dealers. Nonetheless, government should be extremely careful about substituting statutory regulation for matters normally decided between the parties of a commercial transaction.

In general, government should not interfere with business transactions except to protect the consuming public from dangerous, anti-competitive, or fraudulent activities. The alleged actions leading to the measure at hand do not directly affect the consuming public but rather the practices of one business with respect to another. It appears that many of these practices result from vigorous competition within the motorcycle industry.

Some of the provisions of Engrossed Substitute Senate Bill No. 3333 are reasonable standards for any business transaction. Other provisions place unreasonable restrictions on the ability of one party to engage in normal business activity. Others are clearly anti-competitive and would deny the public the benefits of a full, competitive market. For example, entry of new dealers in major urban markets would be virtually prohibited by this bill due to language giving dealers a ten mile radius marketing area. It also restricts warranty work to dealerships and prohibits manufacturers from owning or operating dealerships. All of these provisions, and others like them, restrict competition and would lead to higher prices for the consumers.

The bill also prohibits a manufacturer from reducing a dealer's allocations of motorcycles for poor sales performances, from denying a transfer or succession of dealership to another person except under extremely restricted conditions, and from initiating certain sales promotions which require dealer participation.

In summary, the bill places extraordinary restrictions on one type of business entity for the benefit of another. The public does not benefit from these restrictions and may, in fact, be adversely affected by reduced competition, higher prices and poor service.

The bill also would require manufacturers to purchase back all of a dealer's new or prior year "new" motorcycle inventory which had not been driven over fifty miles, all new, used and rebuilt parts, etc., at a price not less than current prices charged.

This section would apply even where the dealer voluntarily chose to go out of business. This language puts the business risk almost totally on the manufacturer.

While this bill contains many provisions such as those described above which are not in the interests of the public, there are also desirable provisions which provide reasonable standards for any business relationship. To preserve these positive provisions, I have decided to approve this measure with the exception of a number of sections.

In making these vetoes, I have attempted to establish a balance between the interest of the dealers, manufacturers and the consumers. The consumer is best served by leaving room for competition between dealers and bargaining power on both sides between dealers and manufacturers in establishing franchise agreements.

For the above reasons, I have vetoed the following Sections: 3(2) in part, 3(8) in part, 3(16), 4(1)(a) in part, 4(1)(b), 4(1)(c), 4(1)(g), 4(7), 4(11), 4(17), 4(18), 4(20), 4(21), 4(22), 4(24), 5(4), 5(5), 6, 7, 8(1) in part, 8(2) in part, 10 in part, 11 and 12.

With the exception of the above vetoes, Substitute Senate Bill No. 3333 is approved."

CHAPTER 473

[Engrossed Substitute House Bill No. 101]

GROCERY STORE PROMOTIONAL CONTESTS OF CHANCE

AN ACT Relating to lotteries and promotional contests; and amending RCW 9.46.020 and 9.46.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 139, Laws of 1981 as amended by section 1, chapter 207, Laws of 1984 and RCW 9.46.020 are each amended to read as follows:

(1) "Amusement game" means a game played for entertainment in which:

- (a) The contestant actively participate;;
- (b) The outcome depends in a material degree upon the skill of the contestant;
- (c) Only merchandise prizes are awarded;
- (d) The outcome is not in the control of the operator;
- (e) The wagers are placed, the winners are determined, and a distribution of prizes or property is made in the presence of all persons placing wagers at such game; and
- (f) Said game is conducted or operated by any agricultural fair, person, association, or organization in such manner and at such locations as may be authorized by rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended.

Cake walks as commonly known and fish ponds as commonly known shall be treated as amusement games for all purposes under this chapter.