

Transcript of public hearing on rulemaking for WAC 308-66-110, Definitions

December 6, 2024

Ellis Starrett (00:15):

Good morning. This is a public hearing for the Washington State Department of Licensing being held to elicit public testimony both oral and written with regard to the proposed modification to WAC 308-66-110, Definitions. This proposal will amend the definition of soliciting and add a new definition for public education.

(00:36):

This hearing is being held at the Highways and Licensing Building located in Downtown Olympia, Washington and on Microsoft Teams in a virtual meeting space. The hearing is being held at 11:00 AM on December 6, 2024. Public notice of this hearing was given by notice number WSR 24-21-149 filed with the Code Reviser's Office on October 22, 2024. Copies of the proposed rules are available at www.dol.wa.gov/about/rules. I also have copies here in the room. The sign-in sheet, your testimony, and any documents you provide are public documents. This rule is proposed pursuant to the provisions of RCW 46.01.110 Rulemaking Authority and RCW 46.70.160 Rules and Regulations.

(01:36):

My name is Ellis Starrett and my title is Rules and Policy Manager and I'm the agency rules coordinator. The director of licensing has designated me to preside over this hearing. Representatives of the Washington State Department of Licensing are present today if there are questions, Beau Perschbacher, Legislative and Policy Director, and Bill Dutra, Business and Professions Policy Advisor, among others.

(02:01):

The procedure today will be as follows: The department is required to make a record of this hearing by stenographic, mechanical, or electronic means. Therefore, we are audio recording this hearing. Anyone wishing to testify today should use the Teams chat window or sign in on the sign-in sheet located at the end of the conference room table down here. I ask you to provide your phone number and email, as well as if you are in favor or opposed to the proposed rule changes.

(02:28):

We will add all of this information to our official sign-in sheet which will be used to call forward individuals for testimony and is later used to ensure hearing participants are notified of rulemaking results and the agency's response to comments. You'll be called to testify in the order in which we collect your information. To assist in preparing the record of this public hearing, individuals testifying today should state their name, who they represent if they are testifying on behalf of others, and whether they support or oppose the proposed rules.

(02:58):

The department has received written comments on these proposed rules. For those wishing to provide written comments here, please email them to rulescoordinator@dol.wa.gov and we will include them in the formal record. If you are in person today, you may also hand them to me. Copies of these written comments will be added to the rulemaking file. Now, we will hear oral statements from those present.

First up is, and I apologize in advance if I butcher anybody's names, Bob Campbell and on deck is Tom Lane. Oh no, sorry. You guys are listed as no testimony. For our yeses, we have Vicki Fabre first and on deck will be Brandon Housekeeper. So Vicki, come up to the podium.

Vicki Fabre (03:55):

Good morning, Ellis, and thank you for the opportunity to speak. My name is Vicki Giles Fabre. I'm the Executive Vice President of Washington State Auto Dealers Association. This is a nonprofit trade association that represents the state's 296 franchise new car and truck dealers that represent over 500 franchises with more than 350 rooftops in 70 communities across this great State of Washington. This year the association is 104 years, and I'm proud to say that I've been a big part in playing a role in working with this organization over 25 years.

(04:43):

My remarks today are in addition to the comments submitted by the association in our letter dated November 26, 2024. I want to give you a little bit about my professional background. I've been in my current position as I said for over 25 years, but prior to that I served as staff to the Washington State Legislature from 1977 to 1999. For my last 13 years with the legislature, I was first the senate coordinator and legal counsel to the Senate Transportation Committee, then staff director of the Legislative Transportation Committee, and that was an umbrella committee that served both House and Senate. These standing committees had jurisdiction over Department of Licensing policy and budget legislation.

(05:30):

So in both working with the legislature and in my current job, I've had a long and I would say storied history drafting and analyzing legislation on numerous topics and disciplines, as well as reviewing the rules that implemented legislation. That also includes the dealer-manufacturer franchise law, multiple amendments to that law, and numerous department of licensing policy, and budget bills, and implementing rules. So, I'm telling you all of this to let you know that I know quite a bit about what is and what is not agency overreach.

(06:10):

Over my term as WSADA's executive, the association has made it a goal to develop a really positive partnership and a relationship with the Department of Licensing and to maintain that, and to do that with agency managers like Beau, and Bill, and others who oversee issues and areas that affect the operations of franchise dealers. I would characterize that relationship as generally being very harmonious. I think they would agree with me on that, and it's driven by a common goal of acting in the best interest of the driving public and consumers.

(06:50):

While today, I'm here to express the association's and its franchise dealer members' strong and strident opposition to the proposed amendment to WAC 308-66-110. Nunca, nyet, not, never, no way in any language should this rule take effect. I'm going to tell you why. Starting last spring and up to September of this year, we met with Beau, and Bill, and other DOL staff, including the assigned assistant attorney general who argued the Lucid's group case against DOL regarding dealer licensure to discuss this proposed rule that would allow what we thought at the time be the only manufacturers to educate the public about their vehicles.

(07:44):

At the beginning, at the very beginning of these discussions, I asked the reason for the rule change. I was told that the directive came from the governor's office, the same governor who has consistently since 2014, and recently made it clear that any bill amending the current franchise law that did not allow for EV-only manufacturer direct sales would be vetoed. DOL also offered that the rule change was needed to close a regulatory and statutory gap and was needed to address an evolving auto industry. So, we worked in good faith to reach agreement in areas where we thought DOL was overreaching. The association then officially submitted its changes to the proposed rule on September 17.

(08:36):

The Department of Licensing and its director, Mr. Glasper, I think will contend that these meetings were meaningful, and that there were meaningful exchanges between the parties that resulted in the final draft. I will simply say, I think we were given an opportunity to express our concerns, but that they were check-the-box stakeholder meetings. Even so, we clarified what constitutes public education, not requiring licensure and not including activities specifically prohibited in the statute.

Ellis Starrett (09:08) I just want to ask you to, okay. I apologize for interrupting.

Vicki Fabre (09:11):

In the end, DOL accepted none of our changes. If anything, the rule filed on October 22nd is worse than the first draft that we were given. It is egregious agency overreach. Since its beginning, the Washington State legislature has grappled with many evolutionary business and societal changes and has exercised its constitution-granted authority to enact laws to make those changes. I've seen them in the auto industry, electronic documentary services fees, out-of-state deliveries, EV mandates, rebates and more. Agencies established to implement these laws, wrote the clarifying rules, clarifying and defining the underlying law, but certainly not second guessing what the legislature had not addressed and certainly not trampling on legislative authority and intent.

(10:04):

I'll end with this. I encourage you to read the intent section of the dealer manufacturer licensing law because it is one of the strongest intent sections I think in the RCW, and a violation of these laws is a violation of the act. The rule provides no such protection for consumers, and with protection logically comes oversight in enforcement. DOL has said they have no enforcement authority over Rivian and Lucid because they're not licensed dealers. This rule would not suddenly confirm or re-admit not to have today.

(10:36):

Bottom line, consumers would remain unprotected. There is no need for this rule. Compared to nationwide sales that I looked at just a couple of months ago, Rivian sales are second. Tesla is sixth, and Lucid is 12th. I see them crisscross my neighborhood on a daily basis, which leads me to believe the sales are robust, and that there is no need for a rule on public education.

(11:01):

So, I thank you for your time and consideration. For these reasons, on behalf of Washington's franchise new car and truck dealers, I respectfully asked the Department of Licensing to refrain from adopting post amendments to WAC 308-66-110. Thank you.

Ellis Starrett (11:18):

Thank you so much for advising.

So we have Brandon Housekeeper, and on deck is Jennifer Moran.

Brandon Housekeeper (11:30):

Thank you and good morning. I appreciate the opportunity to come and share public comments. So, my name is Brandon Housekeeper. I'm here on behalf of the Alliance for Automotive Innovation representing manufacturers that produce mostly most sold in the United States and distribute those vehicles through independent dealers under the franchise model recognized here in Washington State.

(11:49):

We'd like to share with you our concerns and opposition today with the proposed changes being considered in WAC-308-66-110, which modifies the definition of both solicitation and public education. I'll start by broadly saying, we're also disappointed to learn that as manufacturers that utilize the dealer model, that we were not reached out to by the department. We were not notified of the rulemaking proceedings and just learned of these rulemaking proceedings this week.

(12:20):

We'll take ownership that we need to get on the listservs, which certainly aren't working to allow folks to register for. We need to make sure that we do our part to be informed, and yet it gets cleared through legislative work that has been done on these issues that the auto manufacturers have a keen interest in these discussions and were not included, nor are the materials that were considered from the spring through the fall available on the department's website. So we have no history and understanding of what was considered, specifically getting into the rule proposals and the changes that are being proposed.

(13:01):

Regarding the definition of solicitation, the [inaudible 00:13:05] is concerned that the changes to the definition of solicitation could harm our members by prohibiting existing practices that encourage to facilitate the sale and lease of automobiles through their dealer business partners. Current laws draw a bright line around soliciting. If you consider RCW 46.96.185 1G, it makes it

unlawful for a legacy automaker to compete with a new motor vehicle dealer of any make or line by acting in the capacity of a new motor vehicle dealer.

(13:35):

RCW 46.70.011 17 defines vehicle dealer to mean among other things, someone engaged in the business of soliciting the sale of new motor vehicles. Thus, the manufacturer that engages in an activity currently defined in statute of soliciting could be out of compliance. The proposed rule before you would expand the definition of soliciting beyond the clear plain English of statute to exclude or to include existing and possible future practices that promote automobile sales while using undefined and more ambiguous language than the current law.

(14:14):

For example, please consider the following examples and potential impacts this new language fails to consider under the expanded definition. Price of the vehicle-

Speaker 1 (14:23):

[inaudible 00:14:26].

Brandon Housekeeper (14:27):

A manufacturer website can facilitate sales by allowing dealers to post. They know how to price for vehicle that is consumer shopping or broadly speaking. After that, the price and MSRP is unclear that the definition of solicit could be interpreted broadly enough to cover that use for terms of the purchase, to the extent that it covers a warranty or a conditional trade and offer or the financing in manufacture could be in jeopardy.

(14:59):

Under the use of the term perspective financing, manufacturers often have financial finance companies from which consumers can be pre-approved for financing. Manufacturers may also advertise promotional finance rates. Both of these help consumers buy vehicles and should not be prohibited, but it's unclear if that language would allow for it.

(15:21):

Availability of vehicles for purchase. Many manufacturer websites have tools to allow consumers to check available inventories from dealers. This helped consumers and dealers and should not be prohibited, but it's unclear of the impact. Vehicle trade-ins, some manufacturers have shopping tool on their website to allow consumers to get conditional trade-in offers for their vehicle. This is a helpful resource for consumers and should not be prohibited. The changes to the definition of solicit create risk for manufacturers and the dealers that rely on those tools. There is no reason to make these changes.

(15:57):

Regarding the definition of public education. The new definition of public education, the new language appears to be an attempt to facilitate motor vehicle sales directly to consumers by manufacturers that do not distribute vehicles through independent dealers. Auto Innovators is opposed to direct sales of automobiles and opposed to any carve-outs from those franchise code. Public policy should not favor a system in which companies in the same marketplace

ving for the same business of the same consumers compete under different rules. The franchise model has been the law of the land in Washington for many years, and all competitors should follow it.

(16:36):

I just have a couple more points to wrap up. We have been unable to find an instance of the term public education used in either chapter 70 of the RCW or chapter 66 of the Washington Administrative Code. So, it appears that the entire policy proposal is contained in that definition. The definition does not appear to explicitly grant new freedoms to anyone, so its purpose in effect is confusing and ambiguous.

(17:06):

I think given the testimony that we've provided today, it's clear that the rulemaking create more uncertainty and more ambiguity in the rule. We would encourage you to take a step back from the rule that's before you, re-engage with the stakeholders and participants, all of us that should be around the table, consider legislative activities that are ongoing around these topic matters before you adopt this rule. So, we hope that you will oppose the rule and not move forward with it. Thank you.

Ellis Starrett (17:43):

Thank you for your concern. Next one is Jennifer Moran and on deck is Susan Daaga.

Jennifer Moran (17:54):

Thank you for letting me speak this morning. My name is Jen Moran. I'm the executive manager for Carter Motors, which includes Subaru, Volkswagen, and Acura with dealerships in Seattle, Shoreline, and Lynnwood. I too am here to speak in opposition and ask the department not to adopt the proposed rulemaking.

(18:14):

I was raised in a dealership family with both my brother and my father in dealerships in my hometown in Spokane. Shortly after college, I also started working in dealerships and found my way to Carter Motors just over 17 years ago. One of the things that attracted me to the dealership was a strong commitment of the Carter family to the communities and the customers we serve. While I am fond of a lot of our partners, two, I will highlight our Treehouse For Kids and the Mountains to Sound Greenway.

(18:43):

Treehouse is a not-for-profit that supports youth and foster care by providing funding and resources specific to education, material, and financial needs. Since partnering with them, we have donated over \$645,000. The Mountains to Sound Greenway is a geographic corridor made up of connected ecosystems and communities spanning over 1.5 million acres. Since 2009, we have partnered with them and planted over 235,000 trees with our On the Road to Carbon Neutral campaign and donated over \$2.2 million in the fight against climate change.

(19:22):

I'm here today because I believe the proposed rulemaking will have unintended consequences. The success of a dealership depends on goodwill in the community and customer trust and loyalty. Also, dealers are heavily regulated and must maintain a license and good standing with state agencies in order to continue operating. As a result, dealers are very responsive to customer complaints and concerns. For example, when my dealership receives a complaint from a consumer, we take immediate action to contact them and do our best to resolve the issue before enforcement action takes place.

(20:01):

The system of checks and balances is extremely important for protecting consumers. The department has said the purpose of the rulemaking is to provide clarification of existing laws. In reality though, this rulemaking creates a brand new law and will have unintended negative impacts, most notably providing a loophole for unlicensed businesses to act like dealers and operate showrooms where they promote the sale of vehicles just like dealers, but without any oversight. If you adopt the proposed rule, it would create a Wild West type environment with no accountability to customers or regulators.

(20:40):

Although the intent of this rulemaking may have been to help just a couple of new EV manufacturers, there is nothing stopping legacy manufacturers and really any other business from taking advantage of this loophole in the system that allows a business to act like a dealer without getting a license. Why wouldn't they? In fact, Volkswagen who I represent, recently announced its intention to size up its dealer body and go out alone in the marketing sale of its new Scout vehicle line direct to consumers all across the country. However, the public education rule may provide a path for Volkswagen to proceed with its plans flouting our state's franchise laws, and this would explicitly go against that.

(21:32):

The proposed amendments will immediately undermine the system of safeguards the legislature has set up to regulate the sale of vehicles in Washington, and eventually it will lead to the destruction of that system in its entirety and the numerous benefits it brings, including tax revenue, local ownership, community contributions, employment opportunities, and most importantly consumer protection. For these reasons, we must preserve the current system and the proposed rulemaking should not be adopted. Thank you.

Ellis Starrett (22:08):

Next up is Susan Daaga and on deck is Brian Rhee.

Susan Daaga (22:19):

Thanks for having me. I'm Susan Daaga, getting over a cold. Sorry. I serve as the general counsel for the Washington State Auto Dealers Association, and I am here to speak in opposition to the proposed rulemaking. There is a robust regulatory framework to monitor and enforce laws governing and licensing, governing the licensing and conduct of vehicle dealers not only by DOL but various other bodies as well, including the Department of Revenue, State Attorney General, and the Federal Trade Commission.

(22:50):

Prior to my current position, I worked for several years in private practice assisting dealers in resolving and responding to attorney general complaints, agency actions, and consumer litigation. I've handled dozens, if not hundreds of these matters. If dealers fail to follow state and federal law, there can be serious consequences. For example, a dealer may be subject to investigations or audits by agencies or the attorney general. They may have to pay steep fines. They could get their dealer license revoked, and they may be liable for punitive damages, and attorney's fees, and consumer lawsuits. In extreme cases, there may even be criminal liability.

(23:27):

The existence of these checks ensures good business practices and encourages dealers to prioritize consumer protection in all aspects of their operations. I have not seen any type of comparable enforcement action against manufacturers like Rivian and Lucid who have openly flouted state law by operating dealership-like showrooms to solicit customers and promote sales, despite the clear statutory prohibition on manufacturers competing with dealers or acting in the capacity of a dealer in any way.

(23:59):

If adopted, the proposed rulemaking would condone these existing violators and encourage other non-dealer entities to engage in similar or worse conduct. Given the lack of enforcement activity so far and the lack of clarity and safeguards with the proposed rule, it will be extremely difficult to rein in or regulate the activity of these businesses.

(24:21):

DOL has for years fought to protect Washington's prohibition on manufacturers acting in the capacity of dealers or competing with dealers. Most notable is DOL's recent legal battle with Lucid over the denial of Lucid's dealer license application. DOL has consistently argued that Lucid may not obtain a dealer license or act like a dealer in any capacity because that would violate state franchise laws.

(24:46):

A couple of weeks ago, the State Board of Appeals issued an opinion agreeing with your position and affirming the state's prohibition on manufacturers acting as dealers. The court held that the legislature intended to prohibit non-dealer entities from doing the same type of work as dealers, whether formally or informally. The proposed rulemaking would expressly allow non-dealers to do the same type of work as dealers, thereby directly contravening the intent of the legislature.

(25:20):

One of the most common arguments I hear is that companies like Rivian and Lucid are essential to increasing the adoption of electric vehicles in Washington. However, as they say in law school, that argument is a red herring. It's a distraction. Washington is a CARB state. EVs are already here and more EVs are coming in short order. There are numerous EV and hybrid options available from legacy manufacturers and their local dealerships across the state.

(25:46):

Over the past six months, our dealers have helped thousands of Washington consumers buy EVs through the state's EV Instant Rebate Program, which was a huge success and was only possible through the cooperation between dealers and state agencies. So this isn't about EVs, this is about the kind of economy we want to foster, and whether consumer protection and local ownership are the priorities of the department. By adopting this rule, DOL will be green lighting the erosion of local ownership, good paying jobs, and customer service across the state in communities large and small from Seattle, to Lynden and Spokane, to Walla Walla.

(26:23):

Also, letting companies like Rivian and Lucid skirt the established rules are far greater than the benefits they can offer. On the other hand, if you decline to adopt this rule, EV will still be available and you'll also be protecting small businesses and the consumers they serve. For these reasons, I respectfully ask that you oppose the adoption of this rule.

Ellis Starrett (26:44):

Thank you, Susan. Next is Brian Rhee and on deck is Isaac Kastama.

Brian Rhee (26:54):

Morning everyone. My name is Brian Rhee. I'm here representing Rivian. We are in favor of WAC-308-66-110. In the current State of Washington, if a consumer is interested to learn about Rivian vehicles, they are unable to drive the vehicle around in the state. They need to go to either Canada, or to Idaho, or Oregon to even step into a vehicle and drive it around the block.

(27:22):

This rule change allows for consumers in Washington to be able to be educated on the vehicle and the technologies that the Rivian vehicles provide. It is not about the sale of the vehicle. Again, this rule is really focused on education and allowing consumers to make the proper choice when it comes to whatever, either the vehicle they want to purchase or they just want to learn more about EVs in general.

(27:49):

Right now, and we also to be clear, Rivian is not flouting any of the franchise laws as well. We have showrooms in Seattle, and again the purpose of those showrooms is for education. Unfortunately, all the consumer can do is walk into a showroom and just simply see the vehicle. If the consumer actually wants to get into the vehicle to learn about the technology and the features, they cannot. This rule allows for that to allow the consumer to make a well-informed decision. So, we are in support of this rule and we thank you everyone for your time.

Ellis Starrett (28:26):

Next up is Isaac Kastama and on deck is Callie Castillo.

Isaac Kastama (28:32):

Good morning everyone. My name is Isaac Kastama. On behalf of Clean and Prosperous Washington, we've long advocated for advancing state investment and preparedness for electric vehicles, recognizing these strong public policy momentum and priority to encourage sale of ZEV vehicles, and also sensitive to process and technical concerns raised here today. We do

encourage the agency to move forward with clarifying rules, allowing test drives for ZEV manufacturers that do not have a dealer network.

(28:59):

For most consumers, this is a common sense change that supports their choice and decision-making for a vehicle that is legally sold in Washington State. We appreciate the contributions of manufacturers and auto dealer networks toward making Washington a leading state for electric vehicle adoption is reality. That momentum historically has been driven by one ZEV manufacturer who is exempt from many requirements. We do favor this modest change to existing practice, creating more level playing field in this market segment.

(29:26):

With respect to the broader discussion of direct sales, we do welcome deeper discussion with all stakeholders and look forward to participating as a productive partner in a legislative conversation. With that, thank you.

Ellis Starrett (29:39):

Next up is Callie Castillo, and that is all I have for the in-person folks wishing to testify. So if you do and you have not, please come sign the sign-in sheet. On deck will be virtually Tom Kazunas.

Callie Castillo (29:54):

Thank you. My name is Callie Castillo of Lane Powell, a private law firm. I speak on behalf of the Washington State Auto Dealers Association and their members in opposition to the proposed rulemaking based on my 20 years of experience representing both state agencies and private parties in rulemaking matters.

(30:14):

The department's proposed amendments are fraught with legal and practical problems that if adopted will make the rules vulnerable in legal challenge. The department is essentially overriding the legislature and allowing certain manufacturers to do the type of work that only dealers are currently authorized to engage in with respect to advertising, promotion, and ultimately the sale of vehicles.

(30:37):

Moreover, by creating an expansive definition of unregulated public education activities, the department is also opening the door for interpretive workarounds to the regulatory framework set up by the legislature. The department has indicated that the purpose of this rulemaking is to provide clarity for industry members on allowable activities. There is no evidence developed to date that such clarity is needed. Instead, the department appears to be attempting to create an arbitrary carve out for certain manufacturers to engage in licensed dealer activities. Such allowance will harm vehicle dealers and others, and interfere with their rights that have been established by the legislature.

(31:26):

On behalf of the Washington State Auto Dealers Association, I urge the department to take these problems seriously and forgo the proposed rulemaking. Thank you.

Ellis Starrett (31:40):

Next up is Tom Kazunas virtually. Then again, virtually on deck will be Grace Reamer.

Tom Kazunas (31:49):

Good morning. My name is Tom Kazunas. I'm testifying as a private citizen. I support the proposed change to this legislation for a very basic reason. I have a physical impairment that requires me to test drive any vehicle that I consider for purchase. Eight months ago, I had a hip replaced and it significantly impacted my ability to drive the car I owned at the time. That car was very low to the ground and had sculpted seats, which amplified the discomfort I felt entering, exiting, and even driving the car. So, I needed to replace that car with something that was higher off the ground and had more conventional seating.

(32:30):

I also wanted to buy an electric vehicle. Only after I test drove half a dozen vehicles did I find one that was easy to enter and exit, had comfortable seats, and offered a driving experience that supported rather than aggravate my condition. I could not have chosen the right vehicle without a test drive, so I believe it's critical that all manufacturers be allowed to offer them. Individuals exploring vehicle options should be free to choose to do a test drive regardless of whether it's offered through a dealership or a manufacturer's display location.

(33:05):

Test drives allow consumers to experience a vehicle's performance, capability, comfort, and accessibility directly so that an informed decision can be made while choosing a vehicle. Again, thank you for considering and approving this important change to our state's policies.

Ellis Starrett (33:26):

Thank you, Tom. Next up is virtually Grace Reamer, and on deck again virtually is Cory Fitzgerald.

Grace Reamer (33:35):

Hi, there. Can you hear me okay?

Ellis Starrett (33:37):

Yeah, go ahead.

Grace Reamer (33:38):

Oh, good. Hi, my name is Grace Reamer. I'm coming to you from Burien. I am representing the Seattle Electric Vehicle Association, which has been around since 1980, so we've got a lot of experience. As an electric vehicle owner and advocate, I'd like to share some of my experiences and observations over the past 13 years. It was at the Seattle Auto Show back in November of 2011 that my husband and I found the car we were looking for, all electric with a range of at least a hundred miles to support my husband's commute and also something we could afford.

(34:10):

At the time, the only EV being marketed with enough range was the Tesla Model S, and it was way out of our price range and not even available for another year. At the auto show, we spotted a new model called Coda with 125-mile range and affordable price tag. We learned that it was manufactured in California but that we couldn't test drive it here. So we ended up flying down to San Jose, staying with friends that we had there and borrowing their car so that we could go and test drive that Coda. We had no experience at all with driving electric, so we needed to learn what to expect on the road. We were suitably impressed with that test drive, and so we ordered the car on the spot.

(34:51):

Now, I know that I never would've made the decision to buy our first electric car without the ability to test drive it first. The vast majority of drivers do not have the ability to fly to another state so they can learn about this new, efficient, sustainable technology firsthand. Now, I'm also a retired employee of Tesla Motors. I spent seven years providing test drives for drivers interested in switching to electric. In all of that time, I had only one customer who went ahead and bought a car without doing a test drive first.

(35:25):

Some customers need more than one test drive or an overnight test drive before they have enough experience and information to make the decision to go electric. It is an absolute essential necessity to experience the electric field, to experience the one pedal driving, the regenerative braking that is provided by the motor, and then the silent and smooth ride of an electric vehicle in order to understand the benefits of this technology. I find it inconceivable why just one EV manufacturer is allowed to provide this essential service while all others are barred from doing so in Washington.

(36:02):

In fact, I can't tell you how many times I have heard from dismayed drivers who don't understand why they can't test drive an EV in Washington. With the Seattle Electric Vehicle Association, we do a lot of outreach events and education, and we hear this all the time from people. Consumers want to compare makes and models to make the best buying decisions for their families, and we find they are outraged when they learn they can't do that here.

(36:31):

Since Tesla first started selling cars in Washington 15 years ago, they have proven that manufacturers can provide the best test drives. There's absolutely no reason why other EV manufacturers should be restricted from providing this essential consumer service. Please update Washington's test drive rules to help consumers make the best choices. Thank you.

Ellis Starrett (36:54):

Thank you, Grace. Okay. Next up virtually is Cory Fitzgerald, and on deck also virtually is Brad Brotherton.

Cory Fitzgerald (37:04):

Good afternoon. I'm Cory Fitzgerald. I own two franchise Chevrolet dealerships, Country and OK Chevrolet in Eastern Washington. I appreciate the opportunity to speak out against this proposed new rule. One of the largest issues I see with the rule change is it invites fly-by-night EV dealers to create demand without having the broader dealer network. As Grace was just talking, she bought a Coda. What happened to that? They're bankrupt and went out of business.

(37:28):

When these EV manufacturers go out of business, the customers are left high and dry. More EV manufacturers have failed and succeeded, and this risk is being put on the consumer. Allowing manufacturers to provide public education could encourage Washington residents to purchase online and out of state increasing their risk. This loophole for unlicensed businesses to act like dealers and provide dealer-like activities is extremely risky to our consumers. These are not vacuums that we are selling. They're complicated machines operated at high speeds with our families inside.

(38:01):

Washington dealers are extremely regulated providing safeguards to our consumers. Brand new vehicles sold by unestablished automakers are going to need recalls and repairs. The newer, the worst issues may be. A low price or a shiny new feature shown in a manufacturer showroom, possibly a China-based EV manufacturer could encourage a consumer to make a risky purchase. Washington DOL will have no ability to rein in or regulate these unlicensed dealers, and this rule should not be passed, a change this significant should be made by the legislature.

(38:32):

The Washington legislature has consistently seen the safety and value provided to consumers by the dealer network. Dealers provide a valuable service to our consumers and our communities, and the risk of this rule is too great to put them at risk. This new rule allows manufacturers to engage in dealership-like activities such as sales and advertising without any of the consumer protections. As a Washingtonian myself, I care deeply about the safety and security of all consumers, and I urge you to stop this rule. Thank you.

Ellis Starrett (38:59):

Thank you, Cory. Next up virtually is Brad Brotherton, and then we do not have any other virtual folks wishing to testify.

Brad Brotherton (39:10):

Great. Good morning. Thank you for the opportunity to speak to you this morning. My name is Brad Brotherton, and I own and operate Brotherton Cadillac, Buick, GMC in Renton and Brotherton Cadillac Northwest in Shoreline. I'm speaking today in opposition to the rulemaking and ask the department not to adopt the proposed amendments.

(39:26):

I'm a fourth-generation car dealer. My great-grandfather and grandfather served customers in Walla Walla. My dad bought and built a dealership in Downtown Seattle. I'm now following in their footsteps. I'm proud of the legacy of the Brotherton dealerships and the support we provide

to the communities that we serve. I'm here today because I'm concerned about the impact of the department's rulemaking will have on the current system that governs the retail sale of vehicles in our state.

(39:52):

As dealers, we advertise our products, display them in showrooms and on dealership lots, accompany consumers on test drives, answer their questions about vehicle features and specifications. All those activities are part of the sales process. In order to engage in that activity, we must get a special dealer license from your department, which includes background checks, financial checks, and ongoing legal compliance. For the average consumer, purchasing a vehicle is one of the most significant financial decisions they will ever make.

(40:22):

In order to protect consumers in that process, there are numerous legal requirements that dealers must follow. For example, we must provide specific dealership disclosures and disclaimers anytime we advertise or promote a vehicle. We must be careful and document any representations or promises we make during that process about a vehicle's condition and performance. We must obtain special license plates for the vehicles that we use in our business, and we must obtain demonstration permits for consumers to test drive.

(40:53):

The proposed rulemaking seeks to create a new term called public education that would allow non-dealers to engage in these activities without getting a license or following any of these requirements. When you hear the phrase public education, you might think of a library, or a school, or even a museum. However, those parties who will benefit from the adoption of this rule do not run non-profit libraries or museums. They operate for-profit businesses that sell vehicles just like a dealership does. The showrooms that would be legalized under the new rule don't exist to educate the public. They exist to advertise and solicit customers to buy vehicles the same way dealerships do.

(41:42):

Under the proposed rules, the unlicensed dealers would be acting as dealers in all but name. There's an old saying, "If it walks like a duck, if it quacks like a duck, it's most certainly a duck." There's an abundance of information online about every kind of vehicle in the market. You can look under the hood, inside the car, learn about the specs, pricing, read reviews, watch videos, showing you how everything operates. Showrooms are not required for public education. Public education can occur online and has for many years.

(42:16):

The new rule is not to benefit of the public for education. It is to benefit the manufacturer who wants a loophole in the system to allow them to act as car dealers without being subject to any of the legal or regulatory requirements of a dealer. However, those legal and regulatory requirements are what keep the system in check and protect consumers. Without these regulations, the system will fall apart and so will your department's ability to regulate it. For those reasons, I ask you to decline to adopt this proposed rulemaking. Thank you for your time.

Ellis Starrett (42:52):

Thank you for your testimony, Brad.

It looks like we do have one person who has joined us virtually on the phone. The number is 206-747-9890. Unmute yourself and let us know if you would like to testify today.

Ellis Starrett (43:10):

I'll assist just in case. Okay. It might be that they didn't give access to their microphone. I'm going to go ahead and ask the individual on the phone. If you are wishing to testify, you can leave the meeting and come back in. Just when your device asks you if you're wishing, if you want to allow access to your microphone, you have to allow the access.

Speaker 13 (43:36):

I just entered, and I don't wish to testify.

Ellis Starrett (43:39):

Okay. Thank you so much. Is there anyone else in the room that's wishing to testify that hasn't had the opportunity? No one else online? Just want to make sure, give everyone that opportunity. Thank you for your comments. The department will prepare a concise, explanatory statement, which will among other things, summarize all the oral and written comments received regarding the proposed rules and respond to them by category or subject matter.

(44:17):

Copies of the concise explanatory statement will be forwarded to all those who have made oral or written comments where you've provided your contact information. This hearing is adjourned. Will you please stop the recording? [inaudible 00:44:34].