
SENATE BILL 6039

State of Washington 53rd Legislature 1994 Regular Session

By Senators Gaspard, Prince, Vognild, Nelson and Erwin

Read first time 01/10/94. Referred to Committee on Transportation.

1 AN ACT Relating to motor vehicle dealer franchise equity; amending
2 RCW 46.96.120 and 46.96.130; adding new sections to chapter 46.96 RCW;
3 and recodifying RCW 46.96.120 and 46.96.130.

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

5 NEW SECTION. **Sec. 1.** (1) For the purposes of this section, and
6 throughout this chapter, the term "relevant market area" is defined as
7 follows:

8 (a) If the population in the county in which the proposed new or
9 relocated dealership is to be located is four hundred thousand or more,
10 the relevant market area is the geographic area within a radius of
11 eight miles around the proposed site;

12 (b) If the population in the county in which the proposed new or
13 relocated dealership is to be located is less than four hundred
14 thousand, the relevant market area is the geographic area within a
15 radius of sixteen miles around the proposed site.

16 In determining population for this definition, the most recent census
17 by the United States Bureau of Census or the most recent population
18 update, either from the National Planning Data Corporation or other

1 similar recognized source, shall be accumulated for all census tracts
2 either wholly or partially within the relevant market area.

3 (2) Notwithstanding the terms of a franchise and notwithstanding
4 the terms of a waiver, if a manufacturer intends or proposes to enter
5 into a franchise to establish an additional new motor vehicle dealer or
6 to relocate an existing new motor vehicle dealer within or into a
7 relevant market area in which the same line make of motor vehicle is
8 then represented, the manufacturer shall provide at least sixty days
9 advance written notice to the department and to each new motor vehicle
10 dealer of the same line make in the relevant market area, of the
11 manufacturer's intention to establish an additional new motor vehicle
12 dealer or to relocate an existing new motor vehicle dealer within or
13 into the relevant market area. The notice shall be sent by certified
14 mail to each such party and shall include the following information:

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

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

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

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

25 (e) The specific grounds or reasons for the proposed establishment
26 of an additional motor vehicle dealer or relocation of an existing
27 dealer.

28 NEW SECTION. **Sec. 2.** (1) Within thirty days after receipt of the
29 notice under section 1 of this act, or within thirty days after the end
30 of an appeal procedure provided by the manufacturer, whichever is
31 greater, a new motor vehicle dealer so notified or entitled to notice
32 may file a petition with the department protesting the proposed
33 establishment or relocation. The petition shall contain a short
34 statement setting forth the reasons for the dealer's objection to the
35 proposed establishment or relocation. Upon the filing of a protest and
36 the receipt of the filing fee, the department shall promptly notify the
37 manufacturer that a timely protest has been filed and shall request the
38 appointment of an administrative law judge under chapter 34.12 RCW to

1 conduct a hearing. The manufacturer shall not establish or relocate
2 the new motor vehicle dealer until the administrative law judge has
3 held a hearing and has determined that there is good cause for
4 permitting the proposed establishment or relocation. When more than
5 one protest is filed against the establishment or relocation of the
6 same dealer, the administrative law judge shall consolidate the
7 hearings to expedite disposition of the matter.

8 (2) If a manufacturer provides in the franchise agreement or by
9 written statement distributed and provided to its dealers for
10 arbitration under the Washington Arbitration Act, chapter 7.04 RCW, as
11 a mechanism for resolving disputes relating to the establishment of an
12 additional new motor vehicle dealer or the relocation of a new motor
13 vehicle dealer, then the provisions of this section and section 4 of
14 this act relating to hearings by an administrative law judge do not
15 apply, and a dispute regarding the establishment of an additional new
16 motor vehicle dealer or the relocation of an existing new motor vehicle
17 dealer shall be determined in an arbitration proceeding conducted in
18 accordance with the Washington Arbitration Act, chapter 7.04 RCW. The
19 thirty-day period for filing a protest under this section still applies
20 except that the protesting dealer shall file his protest with the
21 manufacturer within thirty days after receipt of the notice under
22 section 1 of this act.

23 (3) The dispute shall be referred for arbitration to such
24 arbitrator as may be agreed upon by the parties to the dispute. If the
25 parties cannot agree upon a single arbitrator within thirty days from
26 the date the protest is filed, the protesting dealer will select an
27 arbitrator, the manufacturer will select an arbitrator, and the two
28 arbitrators will then select a third. If a third arbitrator is not
29 agreed upon within thirty days, any party may apply to the superior
30 court, and the judge of the superior court having jurisdiction will
31 appoint the third arbitrator. The protesting dealer will pay the
32 arbitrator selected by him, and the manufacturer will pay the
33 arbitrator it selected. The expense of the third arbitrator and all
34 other expenses of arbitration will be shared equally by the parties.
35 Attorneys' fees and fees paid to expert witnesses are not expenses of
36 arbitration and will be paid by the person incurring them.

37 (4) Notwithstanding the terms of a franchise or written statement
38 of the manufacturer and notwithstanding the terms of a waiver, the
39 arbitration will take place in the state of Washington in the county

1 where the protesting dealer has his principal place of business.
2 Section 3 of this act applies to a determination made by the arbitrator
3 or arbitrators in determining whether good cause exists for permitting
4 the proposed establishment or relocation of a new motor vehicle dealer,
5 and the manufacturer has the burden of proof to establish that good
6 cause exists for permitting the proposed establishment or relocation.
7 After a hearing has been held, the arbitrator or arbitrators shall
8 render a decision as expeditiously as possible, but in any event not
9 later than one hundred twenty days from the date the arbitrator or
10 arbitrators are selected or appointed. The manufacturer shall not
11 establish or relocate the new motor vehicle dealer until the
12 arbitration hearing has been held and the arbitrator or arbitrators
13 have determined that there is good cause for permitting the proposed
14 establishment or relocation. The written decision of the arbitrator is
15 binding upon the parties unless modified, corrected, or vacated under
16 the Washington Arbitration Act. Any party may appeal the decision of
17 the arbitrator under the Washington Arbitration Act, chapter 7.04 RCW.

18 (5) If the franchise agreement or the manufacturer's written
19 statement distributed and provided to its dealers does not provide for
20 arbitration under the Washington Arbitration Act as a mechanism for
21 resolving disputes relating to the establishment of an additional new
22 motor vehicle dealer or the relocation of a new motor vehicle dealer,
23 then the hearing provisions of this section and section 4 of this act
24 apply. Nothing in this section is intended to preclude a new motor
25 vehicle dealer from electing to use any other dispute resolution
26 mechanism offered by a manufacturer.

27 NEW SECTION. **Sec. 3.** In determining whether good cause exists for
28 permitting the proposed establishment or relocation of a new motor
29 vehicle dealer of the same line make, the administrative law judge
30 shall take into consideration the existing circumstances, including,
31 but not limited to:

32 (1) The extent, nature, and permanency of the investment of both
33 the existing motor vehicle dealers of the same line make in the
34 relevant market area and the proposed additional or relocating new
35 motor vehicle dealer, including obligations reasonably incurred by the
36 existing dealers to perform their obligations under their respective
37 franchises;

1 (2) The growth or decline in population and new motor vehicle
2 registrations during the past five years in the relevant market area;

3 (3) The effect on the consuming public in the relevant market area;

4 (4) The effect on the existing new motor vehicle dealers in the
5 relevant market area, including any adverse financial impact;

6 (5) The reasonably expected or anticipated vehicle market for the
7 relevant market area, including demographic factors such as age of
8 population, income, education, size class preference, product
9 popularity, retail lease transactions, or other factors affecting sales
10 to consumers in the relevant market area;

11 (6) Whether it is injurious or beneficial to the public welfare for
12 an additional new motor vehicle dealer to be established;

13 (7) Whether the new motor vehicle dealers of the same line make in
14 the relevant market area are providing adequate competition and
15 convenient customer care for the motor vehicles of the same line make
16 in the relevant market area, including the adequacy of motor vehicle
17 sales and service facilities, equipment, supply of vehicle parts, and
18 qualified service personnel;

19 (8) Whether the establishment of an additional new motor vehicle
20 dealer would increase competition and be in the public interest;

21 (9) Whether the manufacturer is motivated principally by good faith
22 to establish an additional or new motor vehicle dealer and not by
23 noneconomic considerations;

24 (10) Whether the manufacturer has denied its existing new motor
25 vehicle dealers of the same line make the opportunity for reasonable
26 growth, market expansion, establishment of a subagency, or relocation;

27 (11) Whether the protesting dealer or dealers are in substantial
28 compliance with their dealer agreements or franchises; and

29 (12) Whether the manufacturer has complied with the requirements of
30 sections 1 and 2 of this act.

31 In considering the factors set forth in this section, the
32 administrative law judge shall give the factors equal weight, and in
33 making a determination as to whether good cause exists for permitting
34 the proposed establishment or relocation of a new motor vehicle dealer
35 of the same line make, the administrative law judge must find that at
36 least nine of the factors set forth in this section weigh in favor of
37 the manufacturer and in favor of the proposed establishment or
38 relocation of a new motor vehicle dealer.

1 NEW SECTION. **Sec. 4.** (1) The manufacturer has the burden of proof
2 to establish that good cause exists for permitting the proposed
3 establishment or relocation.

4 (2) The administrative law judge shall conduct any hearing as
5 provided in RCW 46.96.050(2), and all hearing costs shall be borne as
6 provided in that subsection. The administrative law judge shall render
7 the final decision as expeditiously as possible, but in any event not
8 later than one hundred twenty days after a protest is filed. If more
9 than one protest is filed, the one hundred twenty days commences to run
10 from the date the last protest is filed. A party to such a hearing
11 aggrieved by the final order of the administrative law judge may appeal
12 as provided and allowed in RCW 46.96.050(3).

13 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act do not
14 apply:

15 (1) To the sale or transfer of the ownership or assets of an
16 existing new motor vehicle dealer where the transferee proposes to
17 engage in business representing the same line make at the same location
18 or within two miles of that location;

19 (2) To the relocation of an existing new motor vehicle dealer
20 within the dealer's relevant market area, if the relocation is not at
21 a site within eight miles of any new motor vehicle dealer of the same
22 line make;

23 (3) If the proposed new motor vehicle dealer is to be established
24 at or within two miles of a location at which a former new motor
25 vehicle dealer of the same line make had ceased operating within the
26 previous twenty-four months;

27 (4) Where the proposed relocation is two miles or less from the
28 existing location of the relocating new motor vehicle dealer; or

29 (5) Where the proposed relocation is to be further away from all
30 other existing new motor vehicle dealers of the same line make in the
31 relevant market area.

32 NEW SECTION. **Sec. 6.** A manufacturer shall not coerce, threaten,
33 intimidate, or require a new motor vehicle dealer, as a condition to
34 granting or renewing a franchise, to waive, limit, or disclaim a right
35 that the dealer may have to protest the establishment or relocation of
36 another motor vehicle dealer in the relevant market area as provided in
37 section 2 of this act.

1 **Sec. 7.** RCW 46.96.120 and 1989 c 415 s 18 are each amended to read
2 as follows:

3 (1) Notwithstanding the terms of a franchise, a manufacturer shall
4 not unreasonably withhold consent to the sale, transfer, or exchange of
5 a franchise to a qualified buyer who meets the normal, reasonable, and
6 uniformly applied standards established by the manufacturer for the
7 appointment of a new dealer or is capable of being licensed as a new
8 motor vehicle dealer in the state of Washington. A decision or
9 determination made by the administrative law judge as to whether a
10 qualified buyer is capable of being licensed as a new motor vehicle
11 dealer in the state of Washington is not conclusive or determinative of
12 any ultimate determination made by the department of licensing as to
13 the buyer's qualification for a motor vehicle dealer license. A
14 manufacturer's failure to respond in writing to a request for consent
15 under this subsection within sixty days after receipt of a written
16 request on the forms, if any, generally used by the manufacturer
17 containing the information and reasonable promises required by a
18 manufacturer is deemed to be consent to the request. A manufacturer
19 may request, and, if so requested, the applicant for a franchise (a)
20 shall promptly provide such personal and financial information as is
21 reasonably necessary to determine whether the sale, transfer, or
22 exchange should be approved, and (b) shall agree to be bound by all
23 reasonable terms and conditions of the franchise.

24 (2) If a manufacturer refuses to approve the sale, transfer, or
25 exchange of a franchise, the manufacturer shall serve written notice on
26 the applicant, the transferring, selling, or exchanging new motor
27 vehicle dealer, and the department of its refusal to approve the
28 transfer of the franchise no later than sixty days after the date the
29 manufacturer receives the written request from the new motor vehicle
30 dealer. If the manufacturer has requested personal or financial
31 information from the applicant under subsection (1) of this section,
32 the notice shall be served not later than sixty days after the receipt
33 of all of such documents. Service of all notices under this section
34 shall be made by personal service or by certified mail, return receipt
35 requested.

36 (3) The notice in subsection (2) of this section shall state the
37 specific grounds for the refusal to approve the sale, transfer, or
38 exchange of the franchise.

1 (4) Within twenty days after receipt of the notice of refusal to
2 approve the sale, transfer, or exchange of the franchise by the
3 transferring new motor vehicle dealer, the new motor vehicle dealer may
4 file a petition with the department to protest the refusal to approve
5 the sale, transfer, or exchange. The petition shall contain a short
6 statement setting forth the reasons for the dealer's protest. Upon the
7 filing of a protest and the receipt of the filing fee, the department
8 shall promptly notify the manufacturer that a timely protest has been
9 filed, and the department shall arrange for a hearing with an
10 administrative law judge as the presiding officer to determine if the
11 manufacturer unreasonably withheld consent to the sale, transfer, or
12 exchange of the franchise.

13 (5) In determining whether the manufacturer unreasonably withheld
14 its approval to the sale, transfer, or exchange, the manufacturer has
15 the burden of proof that it acted reasonably. A manufacturer's refusal
16 to accept or approve a proposed buyer who otherwise meets the normal,
17 reasonable, and uniformly applied standards established by the
18 manufacturer for the appointment of a new dealer, or who otherwise is
19 capable of being licensed as a new motor vehicle dealer in the state of
20 Washington, is presumed to be unreasonable.

21 (6) The administrative law judge shall conduct a hearing and render
22 a final decision as expeditiously as possible, but in any event not
23 later than one hundred twenty days after a protest is filed. Only the
24 selling, transferring, or exchanging new motor vehicle dealer and the
25 manufacturer may be parties to the hearing.

26 (7) The administrative law judge shall conduct any hearing as
27 provided in RCW 46.96.050(2), and all hearing costs shall be borne as
28 provided in that subsection. Only the manufacturer and the selling,
29 transferring, or exchanging new motor vehicle dealer may appeal the
30 final order of the administrative law judge as provided in RCW
31 46.96.050(3).

32 (8) This section and RCW 46.96.030 through 46.96.110 apply to all
33 franchises and contracts existing on July 23, 1989, between
34 manufacturers and new motor vehicle dealers as well as to all future
35 franchises and contracts between manufacturers and new motor vehicle
36 dealers.

37 (9) Sections 1 through 6 of this act apply to all franchises and
38 contracts existing on the effective date of this act, between
39 manufacturers and new motor vehicle dealers as well as to all future

1 franchises and contracts between manufacturers and new motor vehicle
2 dealers.

3 **Sec. 8.** RCW 46.96.130 and 1989 c 415 s 19 are each amended to read
4 as follows:

5 The department shall determine and establish the amount of the
6 filing fee required in RCW 46.96.040, 46.96.110, section 2 of this act,
7 and 46.96.120 (as recodified by section 9 of this act). The fees shall
8 be set in accordance with RCW 43.24.086.

9 The department may also require the petitioning or protesting party
10 to give security, in such sum as the department deems proper but not in
11 any event to exceed one thousand dollars, for the payment of such costs
12 as may be incurred in conducting the hearing as required under this
13 chapter. The security may be given in the form of a bond or
14 stipulation or other undertaking with one or more sureties.

15 At the conclusion of the hearing, the department shall assess, in
16 equal shares, each of the parties to the hearing for the cost of
17 conducting the hearing. Upon receipt of payment of the costs, the
18 department shall refund and return to the petitioning party such excess
19 funds, if any, initially posted by the party as security for the
20 hearing costs. If the petitioning party provided security in the form
21 of a bond or other undertaking with one or more sureties, the bond or
22 other undertaking shall then be exonerated and the surety or sureties
23 under it discharged.

24 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act are each
25 added to chapter 46.96 RCW. RCW 46.96.120 and 46.96.130, as amended by
26 this act, are recodified to follow sections 1 through 6 of this act
27 within that chapter.

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