

# FINAL BILL REPORT

## ESSB 6137

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Synopsis as Enacted

**Brief Description:** Clarifying the relationship between manufacturers and new motor vehicle dealers by providing tools to resolve disparities including expanding compensation for recalled vehicles.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators Conway, King, Keiser, Hasegawa and Wilson).

**Senate Committee on Labor & Commerce**  
**House Committee on Business & Financial Services**

**Background:** Regulation of Motor Vehicle Franchise Agreements. The Department of Licensing (DOL) regulates persons who engage in business as new motor vehicle dealers (dealer) and motor vehicle manufacturers (manufacturers). DOL has the authority to issue and deny licenses. Manufacturers maintain a franchise relationship with their dealers, and the responsibilities of each party are delineated in the manufacturers' and dealers' franchise agreements law (franchise law) and the franchise agreement with the parties. State law generally dictates when a manufacturer may own or terminate a dealer's franchise and the compensation a manufacturer must pay a dealer for warranty work.

Prohibited Practices. Dealer franchise law prohibits various practices by manufacturers. For example, a manufacturer is prohibited from taking any adverse action against a dealer by using charge backs or reducing vehicle allocations for sales and service performance within a designated area of primary responsibility unless the area is reasonable in light of proximity to relevant census tracts to the dealership and competing dealerships, highways and road networks, state borders, any natural or man-made barriers, demographics, including economic factors, and buyer behavior information.

Warranty Work. Each manufacturer must specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer must provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products. The schedule of compensation must not be less than the rates charged by the dealer for similar service to retail customers for non-warranty service and repairs, and must not be less than the schedule of compensation for an existing dealer as of a date in 2010.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

All claims for warranty work for parts and labor made by dealers must be submitted to the manufacturer within 90 days of the date the work was performed. All claims submitted must be paid by the manufacturer within 30 days following receipt, provided the claim has been approved by the manufacturer. The manufacturer must notify the dealer in writing of any disapproved claim, and must set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within 30 days following receipt is approved, and the manufacturer is required to pay that claim within 30 days of receipt of the claim. The manufacturer has the right to audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect, or false claims for a period of nine months following payment.

Attorneys Fees for Prevailing Dealer. A dealer injured in the dealer's business by a violation of the franchise law may bring an action in court to recover damages and the costs of the suit, including reasonable attorneys' fees if the dealer prevails.

**Summary:** Used Vehicle Warranty Work & Compensation. A manufacturer must compensate certain new car dealers who have a used vehicle for sale if parts or a remedy is not reasonably available to perform a recall service or repair on the used vehicle within 15 days of the initial notice of recall:

- and the manufacturer has issued a stop-sale or do-not-drive order, or
- the manufacturer has not certified that the issue identified in the notice of recall does not affect the safe operation of the vehicle.

The compensation must be at a prorated rate of at least 1.75 percent of the average trade-in value in an independent third-party guide, per month, while the recall or remedy parts are unavailable and the order remains in effect. The compensation begins on the 15th day after the notice or order was issued and ends on the earlier of the date that the remedy or repair parts are available to the dealer or the dealer sells, trades, or otherwise disposes of the vehicle.

Any claim for recall work reimbursement or recall compensation made by a dealer not specifically disapproved in writing within 30 days following receipt is approved. The manufacturer must pay that claim within 30 days of approval. A manufacturer may not otherwise recover all or any portion of its costs for compensating its dealers for recalled vehicles, parts, and service either by reduction in the amount due to the dealer or by separate charge, surcharge, or other imposition.

Prohibited Actions. The prohibition on adverse action is modified to specify that the designated area contains only areas inside the state of Washington unless specifically approved by the new motor vehicle dealer; and the factor for reasonableness of state borders is removed. In addition to other prohibited actions, a manufacturer, distributor, factory branch, or factory representative, or related entities, may not modify the franchise agreement for any new motor vehicle dealer unless the manufacturer notifies the dealer in writing of its intention to modify the agreement at least 90 days before the effective date of the agreement, stating the specific grounds for the modification, and undertakes the modification in good faith, for good cause, and in a manner that would not adversely and substantially alter the rights, obligations, investment, or return on investment of the franchised new motor vehicle dealer under the existing agreement.

Adjudicative Proceeding, Civil Action, Injunctive Relief, and Treble Damages. A new motor vehicle dealer or an association, primarily owned by the dealers and representing their interests, may bring a petition to DOL for an adjudicative proceeding or a civil suit for damages or to enjoin further violations. The court may increase an award of damages up to an amount not to exceed three times the actual damages sustained for a willful violation. If a petition is filed with DOL, the petition must be accompanied with a filing fee.

**Votes on Final Passage:**

Senate	47	0
House	98	0

**Effective:** June 7, 2018