

RCW 46.93.130 Protest of new or relocated dealership—Hearing—

Arbitration. (1) Within thirty days after receipt of the notice under RCW 46.93.120, or within thirty days after the end of an appeal procedure provided by the manufacturer, whichever is greater, a dealer notified or entitled to notice may file a petition with the department protesting the proposed establishment or relocation. The petition must contain a short statement setting forth the reasons for the dealer's objection to the proposed establishment or relocation. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer may not establish or relocate the dealer until the administrative law judge has held a hearing and administrative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, and has determined that there is good cause for permitting the proposed establishment or relocation. When more than one protest is filed against the establishment or relocation of the same dealer, the administrative law judge shall consolidate the hearings to expedite disposition of the matter.

(2) If a manufacturer provides in the franchise agreement or by written statement distributed and provided to its dealers for arbitration under the Washington Arbitration Act, *chapter 7.04 RCW, as a mechanism for resolving disputes relating to the establishment of an additional new motorsports vehicle dealer or the relocation of a new motorsports vehicle dealer, subsection (1) of this section and RCW 46.93.140 will take precedence and the arbitration provision in the franchise agreement or a written statement is void, unless the manufacturer and dealer agree to use arbitration.

(3) If the manufacturer and dealer agree to use arbitration, the dispute must be referred for arbitration to such arbitrator as may be agreed upon by the parties to the dispute. The thirty-day period for filing a protest under subsection (1) of this section still applies except the protesting dealer shall file the protest with the manufacturer. If the parties cannot agree upon a single arbitrator within thirty days from the date the protest is filed, the protesting dealer will select an arbitrator, the manufacturer will select an arbitrator, and the two arbitrators will then select a third arbitrator. If a third arbitrator is not agreed upon within thirty days, any party may apply to the superior court, and the judge of the superior court having jurisdiction will appoint the third arbitrator. The protesting dealer will pay the arbitrator selected by him or her, and the manufacturer will pay the arbitrator it selected. The expense of the third arbitrator and all other expenses of arbitration will be shared equally by the parties. Attorneys' fees and fees paid to expert witnesses are not expenses of arbitration and will be paid by the person incurring them.

(4) Notwithstanding the terms of a franchise or written statement of the manufacturer and notwithstanding the terms of a waiver, the arbitration will take place in this state in the county where the protesting dealer has its principal place of business. RCW 46.93.140 applies to a determination made by the arbitrator or arbitrators in determining whether good cause exists for permitting the proposed establishment or relocation of a dealer, and the manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation. After a hearing has been held,

the arbitrator or arbitrators shall render a decision as expeditiously as possible, but in any event not later than one hundred twenty days from the date the arbitrator or arbitrators are selected or appointed. The manufacturer may not establish or relocate the new motorsports vehicle dealer until the arbitration hearing has been held and the arbitrator or arbitrators have determined that there is good cause for permitting the proposed establishment or relocation and any judicial appeals under *chapter 7.04 RCW have been completed. The written decision of the arbitrator is binding upon the parties unless modified, corrected, or vacated under the Washington Arbitration Act. Any party may appeal the decision of the arbitrator or arbitrators under the Washington Arbitration Act, *chapter 7.04 RCW. [2003 c 354 § 13.]

***Reviser's note:** Chapter 7.04 RCW was repealed in its entirety by 2005 c 433 § 50, effective January 1, 2006. Cf. chapter 7.04A RCW.