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**SUBSTITUTE SENATE BILL 6039**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senate Committee on Transportation (originally sponsored by Senators Gaspard, Prince, Vognild, Nelson and Erwin)

Read first time 01/28/94.

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 two hundred thousand or more  
14 and less than four hundred thousand, the relevant market area is the  
15 geographic area within a radius of twelve miles around the proposed  
16 site;

17 (c) If the population in the county in which the proposed new or  
18 relocated dealership is to be located is less than two hundred

1 thousand, the relevant market area is the geographic area within a  
2 radius of sixteen miles around the proposed site.

3 In determining population for this definition, the most recent census  
4 by the United States Bureau of Census or the most recent population  
5 update, either from the National Planning Data Corporation or other  
6 similar recognized source, shall be accumulated for all census tracts  
7 either wholly or partially within the relevant market area.

8 (2) For the purpose of sections 1 through 5 of this act, the term  
9 "motor vehicle dealer" does not include dealerships who exclusively  
10 market vehicles 19,000 pounds gross vehicle weight and above.

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

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

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

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

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

33 (e) The specific grounds or reasons for the proposed establishment  
34 of an additional motor vehicle dealer or relocation of an existing  
35 dealer.

36 NEW SECTION. **Sec. 2.** (1) Within thirty days after receipt of the  
37 notice under section 1 of this act, or within thirty days after the end  
38 of an appeal procedure provided by the manufacturer, whichever is

1 greater, a new motor vehicle dealer so notified or entitled to notice  
2 may file a petition with the department protesting the proposed  
3 establishment or relocation. The petition shall contain a short  
4 statement setting forth the reasons for the dealer's objection to the  
5 proposed establishment or relocation. Upon the filing of a protest and  
6 the receipt of the filing fee, the department shall promptly notify the  
7 manufacturer that a timely protest has been filed and shall request the  
8 appointment of an administrative law judge under chapter 34.12 RCW to  
9 conduct a hearing. The manufacturer shall not establish or relocate  
10 the new motor vehicle dealer until the administrative law judge has  
11 held a hearing and has determined that there is good cause for  
12 permitting the proposed establishment or relocation. When more than  
13 one protest is filed against the establishment or relocation of the  
14 same dealer, the administrative law judge shall consolidate the  
15 hearings to expedite disposition of the matter.

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

31 (3) The dispute shall be referred for arbitration to such  
32 arbitrator as may be agreed upon by the parties to the dispute. If the  
33 parties cannot agree upon a single arbitrator within thirty days from  
34 the date the protest is filed, the protesting dealer will select an  
35 arbitrator, the manufacturer will select an arbitrator, and the two  
36 arbitrators will then select a third. If a third arbitrator is not  
37 agreed upon within thirty days, any party may apply to the superior  
38 court, and the judge of the superior court having jurisdiction will  
39 appoint the third arbitrator. The protesting dealer will pay the

1 arbitrator selected by him, and the manufacturer will pay the  
2 arbitrator it selected. The expense of the third arbitrator and all  
3 other expenses of arbitration will be shared equally by the parties.  
4 Attorneys' fees and fees paid to expert witnesses are not expenses of  
5 arbitration and will be paid by the person incurring them.

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

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

35 NEW SECTION. **Sec. 3.** In determining whether good cause exists for  
36 permitting the proposed establishment or relocation of a new motor  
37 vehicle dealer of the same line make, the administrative law judge

1 shall take into consideration the existing circumstances, including,  
2 but not limited to:

3 (1) The extent, nature, and permanency of the investment of both  
4 the existing motor vehicle dealers of the same line make in the  
5 relevant market area and the proposed additional or relocating new  
6 motor vehicle dealer, including obligations reasonably incurred by the  
7 existing dealers to perform their obligations under their respective  
8 franchises;

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

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

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

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

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

21 (7) Whether the new motor vehicle dealers of the same line make in  
22 the relevant market area are providing adequate competition and  
23 convenient customer care for the motor vehicles of the same line make  
24 in the relevant market area, including the adequacy of motor vehicle  
25 sales and service facilities, equipment, supply of vehicle parts, and  
26 qualified service personnel;

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

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

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

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

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

1 In considering the factors set forth in this section, the  
2 administrative law judge shall give the factors equal weight, and in  
3 making a determination as to whether good cause exists for permitting  
4 the proposed establishment or relocation of a new motor vehicle dealer  
5 of the same line make, the administrative law judge must find that at  
6 least nine of the factors set forth in this section weigh in favor of  
7 the manufacturer and in favor of the proposed establishment or  
8 relocation of a new motor vehicle dealer.

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

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

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

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

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

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

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

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

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

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

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

33 (2) If a manufacturer refuses to approve the sale, transfer, or  
34 exchange of a franchise, the manufacturer shall serve written notice on  
35 the applicant, the transferring, selling, or exchanging new motor  
36 vehicle dealer, and the department of its refusal to approve the  
37 transfer of the franchise no later than sixty days after the date the

1 manufacturer receives the written request from the new motor vehicle  
2 dealer. If the manufacturer has requested personal or financial  
3 information from the applicant under subsection (1) of this section,  
4 the notice shall be served not later than sixty days after the receipt  
5 of all of such documents. Service of all notices under this section  
6 shall be made by personal service or by certified mail, return receipt  
7 requested.

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

11 (4) Within twenty days after receipt of the notice of refusal to  
12 approve the sale, transfer, or exchange of the franchise by the  
13 transferring new motor vehicle dealer, the new motor vehicle dealer may  
14 file a petition with the department to protest the refusal to approve  
15 the sale, transfer, or exchange. The petition shall contain a short  
16 statement setting forth the reasons for the dealer's protest. Upon the  
17 filing of a protest and the receipt of the filing fee, the department  
18 shall promptly notify the manufacturer that a timely protest has been  
19 filed, and the department shall arrange for a hearing with an  
20 administrative law judge as the presiding officer to determine if the  
21 manufacturer unreasonably withheld consent to the sale, transfer, or  
22 exchange of the franchise.

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

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

36 (7) The administrative law judge shall conduct any hearing as  
37 provided in RCW 46.96.050(2), and all hearing costs shall be borne as  
38 provided in that subsection. Only the manufacturer and the selling,  
39 transferring, or exchanging new motor vehicle dealer may appeal the



1 final order of the administrative law judge as provided in RCW  
2 46.96.050(3).

3 (8) This section and RCW 46.96.030 through 46.96.110 apply to all  
4 franchises and contracts existing on July 23, 1989, between  
5 manufacturers and new motor vehicle dealers as well as to all future  
6 franchises and contracts between manufacturers and new motor vehicle  
7 dealers.

8 (9) Sections 1 through 6 of this act apply to all franchises and  
9 contracts existing on the effective date of this act, between  
10 manufacturers and new motor vehicle dealers as well as to all future  
11 franchises and contracts between manufacturers and new motor vehicle  
12 dealers.

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

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

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

25 At the conclusion of the hearing, the department shall assess, in  
26 equal shares, each of the parties to the hearing for the cost of  
27 conducting the hearing. Upon receipt of payment of the costs, the  
28 department shall refund and return to the petitioning party such excess  
29 funds, if any, initially posted by the party as security for the  
30 hearing costs. If the petitioning party provided security in the form  
31 of a bond or other undertaking with one or more sureties, the bond or  
32 other undertaking shall then be exonerated and the surety or sureties  
33 under it discharged.

34 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act are each  
35 added to chapter 46.96 RCW. RCW 46.96.120 and 46.96.130, as amended by

1 this act, are recodified to follow sections 1 through 6 of this act  
2 within that chapter.

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