

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6039

Chapter 274, Laws of 1994

53rd Legislature
1994 Regular Session

MOTOR VEHICLE DEALER FRANCHISE EQUITY

EFFECTIVE DATE: 6/9/94

Passed by the Senate March 5, 1994
YEAS 37 NAYS 7

JOEL PRITCHARD

President of the Senate

Passed by the House March 1, 1994
YEAS 93 NAYS 3

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved April 1, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6039** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

April 1, 1994 - 2:22 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6039

AS AMENDED BY THE HOUSE

Passed Legislature - 1994 Regular Session

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 October 1, 1994, between manufacturers and new
10 motor vehicle dealers as well as to all future franchises and contracts
11 between manufacturers and new motor vehicle dealers.

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

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

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

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

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

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