

# SENATE BILL REPORT

## ESSB 6137

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As Passed Senate, February 13, 2018

**Title:** An act relating to clarifying the relationship between manufacturers and new motor vehicle dealers by providing tools to resolve disparities including expanding compensation for recalled vehicles.

**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).

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/29/18, 1/31/18 [DPS, w/oRec].

**Floor Activity:**

Passed Senate: 2/13/18, 47-0.

**Brief Summary of Engrossed First Substitute Bill**

- Requires a manufacturer to compensate its new motor vehicle dealers for labor and parts required to perform recall repairs and to pay compensation while parts are not reasonably available at a rate of at least 1.75 percent of the average trade-in value per month and prorated for a partial month.
- Modified prohibitions on adverse action to specify that the designated area contains only areas inside the state of Washington unless specifically approved by the new motor vehicle dealer.
- Requires a manufacturer to give notice and act in good faith when modifying a franchise agreement.
- Permits a new motor vehicle dealers association standing to file a petition in an adjudicative proceeding, or as a civil cause of action.
- Allows injunctive relief and treble damages for a willful violation of the franchise law.

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**SENATE COMMITTEE ON LABOR & COMMERCE**

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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.*

**Majority Report:** That Substitute Senate Bill No. 6137 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Hasegawa, Vice Chair; Conway, Kuderer and Saldaña.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Braun and King.

**Staff:** Susan Jones (786-7404)

**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.

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 of Engrossed First Substitute Bill:** Used Vehicle Warranty Work & Compensation. A manufacturer must compensate its new motor vehicle dealers for all labor and parts required to perform recall repairs. If parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by a dealer authorized to sell new vehicles of the same line make within 15 days of the manufacturer issuing the initial notice of recall, and the manufacturer has issued a stop-sale, do-not-drive order, or where the manufacturer has not certified that the issue identified in the notice of recall does not affect the safe operation of the vehicle, commencing on the 15th day after the notice or order was issued and ending on the earlier of the date that the remedy or repair parts necessary to resolve the order are available to the dealer for vehicles in the dealer's inventory or the dealer sells, trades, or otherwise disposes of the vehicle, the manufacturer must compensate the dealer at a prorated rate of at least 1.75 percent of the average trade-in value as indicated in an independent third-party guide of the recalled vehicle, per month, or portion of a month, while the recall or remedy parts are unavailable and the order remains in effect. A manufacturer is not required to compensate for more than the total trade-in value or for vehicles purchased at auction after the order date. A stop-sale or do-not-drive is defined. This applies only to new motor vehicle dealers holding used vehicles for sale that are a line make that the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This addresses recalls in many ways. We have been meeting with stakeholders and continue to work on the bill.

This incorporates many provisions. It provides recall compensation; allows associations to represent members; and incentivizes manufacturers to comply with the law. The bill ensures fair relationships between manufacturers and dealers. Today's cars are complex. Federal law requires compensation for new car recalls at 1 percent but this is not required for used cars. Used cars depreciate much faster. The 1.75 percent compensates for depreciation, interest, and storage costs. A JD Power report shows greater than 1.75 percent. If manufacturers violate the law, they often reject claims and only end up paying what they owe. Dealers either cannot afford to sue or fear retaliation. Having a penalty gives manufacturers some skin in the game.

CON: We agree there should be recall compensation for used vehicles. New autos are at 1 percent per month. No state has 1.75 percent. We would also like it to start at 30 days. Dealers' records show average sales are in 45 days. Treble damages are usually for egregious behaviors, not normal lawsuits. We do not understand the out of state issue. Both parties, with their lawyers, agree to the franchise agreement. With recent legislative changes, the balance of power is shifting. At the end of the day, this will hurt consumers.

We appreciate the open dialogue and help of members. There are a number of provisions that go beyond the national framework. There is association standing in common law with a four or five part test. This is not good public policy to have association standing in statute for one industry.

**Persons Testifying:** PRO: Senator Steve Conway, Prime Sponsor; Scott Hazlegrove, Washington State Auto Dealers Association; Heidi Pehl, I-5 Toyota; Bryan Imai, Washington State Auto Dealers Association.

CON: Ryan Spiller, Alliance of Auto Manufacturers; Michael Transue, Global Automakers.

**Persons Signed In To Testify But Not Testifying:** No one.