
SENATE BILL 5757

State of Washington

58th Legislature

2003 Regular Session

By Senator Benton

Read first time 02/11/2003. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to relevant market area of motorcycle dealers;
2 amending RCW 46.94.010; and adding new sections to chapter 46.94 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 46.94.010 and 1985 c 472 s 3 are each amended to read
5 as follows:

6 As used in this chapter:

7 (1) "Department" means the department of licensing.

8 (2) "Designated family member" means (a) an heir as defined in RCW
9 11.02.005(6) if the motorcycle dealer dies intestate or (b) a legatee
10 or devisee as used in Title 11 RCW if the deceased motorcycle dealer
11 leaves a will. A motorcycle dealer also may name in a notarized
12 statement any person as the designated family member for the purposes
13 of receiving an interest in the motorcycle dealership. Title 11 RCW
14 applies to this chapter. However, in cases of conflict, the notarized
15 inter vivos designation prevails over testamentary and intestate
16 succession. Notarized inter vivos designations under this subsection
17 are not codicils to wills.

18 (3) "Distributor" means a person, whether a resident or
19 nonresident, other than a manufacturer, who sells, leases, or

1 distributes motorcycles to motorcycle dealers, or controls any other
2 person, other than a manufacturer, who sells, leases, or distributes
3 motorcycles to motorcycle dealers.

4 (4) "Distributor branch" means a branch office maintained by the
5 distributor or wholesaler.

6 (5) "Distributor representative" means a representative employed by
7 a distributor or wholesaler for the purpose of selling or promoting the
8 sale or lease of the distributor's or wholesaler's motorcycles to
9 motorcycle dealers, or for the purpose of supervising or contacting
10 dealers.

11 (6) "Factory branch" means a branch office maintained by a
12 manufacturer in order to direct and supervise the representatives of
13 the manufacturer.

14 (7) "Factory representative" means a person employed by a
15 manufacturer for the purpose of making or promoting the sale or lease
16 of the manufacturer's motorcycles to dealers, distributors, or
17 prospective motorcycle dealers.

18 (8) "Franchise" means an oral or written contract, to include a
19 dealer agreement, either expressed or implied, between a franchisor and
20 a motorcycle dealer which purports to fix the legal rights and
21 liabilities between the parties and under which (a) the dealer is
22 granted the right to purchase and resell motorcycles manufactured,
23 distributed, or imported by the franchisor; (b) the dealer's business
24 is associated with the trademark, trade name, commercial symbol, or
25 advertisement designating the franchisor or the products distributed by
26 the franchisor; and (c) the dealer's business relies on the franchisor
27 for a continued supply of motorcycles, parts, and accessories.

28 (9) "Franchisor" means any person who enters into a franchise with
29 a motorcycle dealer.

30 (10) "Manufacturer" means any person, firm, association,
31 corporation, or trust that manufactures or provides assemblies for
32 motorcycles.

33 (11) "Motorcycle" means any motor vehicle which has an unladen
34 weight of less than fifteen hundred pounds, including any parts,
35 accessories, equipment, or special tools designated or intended for use
36 on or with those motor vehicles, and (a) which is self-propelled and
37 capable of use and operation on the public highways and streets; or (b)
38 which is a self-propelled, off-road vehicle, tired or nontired, capable

1 of transporting individuals on or off public highways and streets.
2 "Motorcycle" excludes farm tractors, golf carts, firefighting
3 equipment, any motor vehicle designed solely for industrial purposes,
4 and lawnmowers.

5 (12) "Motorcycle dealer" or "dealer" means a person operating under
6 a dealer agreement or franchise with a franchisor who is engaged
7 regularly in the business of buying, selling, exchanging, offering,
8 brokering, or leasing with an option to purchase new or used
9 motorcycles in the state, with a place of business in the state.

10 (13) "New motorcycle" means a motorcycle that has been sold or
11 transferred to a motorcycle dealer and that has not been used for other
12 than demonstration purposes, and on which the original title has not
13 been issued from the motorcycle dealer. The term includes motorcycles
14 not of the current model year comprising part of the dealer's
15 inventory.

16 (14) "Person" means any natural person, partnership, stock company,
17 corporation, trust, agency, or other legal entity, as well as any
18 individual officers, directors, or other persons in active control of
19 the activities of the entity.

20 (15) "Place of business" means a permanent, enclosed commercial
21 building, situated within the state, and the real property on which it
22 is located, at which the business of a motorcycle dealer, including the
23 display and repair of motorcycles, may be lawfully conducted in
24 accordance with the terms of all applicable laws and in the building
25 the public may contact the motorcycle dealer or his or her employees at
26 all reasonable times.

27 (16) "Relevant market area" (~~((means a ten-mile radius around a~~
28 ~~proposed place of business))~~) is defined as follows:

29 (a) If the population in the county in which the proposed new or
30 relocated dealership is to be located is four hundred thousand or more,
31 the relevant market area is the geographic area within a radius of
32 eight miles around the proposed site;

33 (b) If the population in the county in which the proposed new or
34 relocated dealership is to be located is two hundred thousand or more
35 and less than four hundred thousand, the relevant market area is the
36 geographic area within a radius of twelve miles around the proposed
37 site;

1 (c) If the population in the county in which the proposed new or
2 relocated dealership is to be located is less than two hundred
3 thousand, the relevant market area is the geographic area within a
4 radius of sixteen miles around the proposed site.

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

10 NEW SECTION. Sec. 2. A new section is added to chapter 46.94 RCW
11 to read as follows:

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

24 (1) The specific location at which the additional or relocated
25 motorcycle dealer will be established;

26 (2) The date on or after which the additional or relocated
27 motorcycle dealer intends to commence business at the proposed
28 location;

29 (3) The identity of all motorcycle dealers who are franchised to
30 sell the same line make motorcycles as the proposed dealer and who have
31 licensed locations within the relevant market area;

32 (4) The names and addresses, if available, of the owners of and
33 principal investors in the proposed additional or relocated motorcycle
34 dealership; and

35 (5) The specific grounds or reasons for the proposed establishment
36 of an additional motorcycle dealer or relocation of an existing dealer.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.94 RCW
2 to read as follows:

3 (1) Within thirty days after receipt of the notice under section 2
4 of this act, or within thirty days after the end of an appeal procedure
5 provided by the manufacturer, whichever is greater, a new motorcycle
6 dealer so notified or entitled to notice may file a petition with the
7 department protesting the proposed establishment or relocation. The
8 petition must contain a short statement setting forth the reasons for
9 the dealer's objection to the proposed establishment or relocation.
10 Upon the filing of a protest and the receipt of the filing fee, the
11 department shall promptly notify the manufacturer that a timely protest
12 has been filed and shall request the appointment of an administrative
13 law judge under chapter 34.12 RCW to conduct a hearing. The
14 manufacturer shall not establish or relocate the new motorcycle dealer
15 until the administrative law judge has held a hearing and has
16 determined that there is good cause for permitting the proposed
17 establishment or relocation. When more than one protest is filed
18 against the establishment or relocation of the same dealer, the
19 administrative law judge shall consolidate the hearings to expedite
20 disposition of the matter.

21 (2) If a manufacturer provides in the franchise agreement or by
22 written statement distributed and provided to its dealers for
23 arbitration under the Washington Arbitration Act, chapter 7.04 RCW, as
24 a mechanism for resolving disputes relating to the establishment of an
25 additional new motorcycle dealer or the relocation of a new motorcycle
26 dealer, then the provisions of this section and RCW 46.96.170 relating
27 to hearings by an administrative law judge do not apply, and a dispute
28 regarding the establishment of an additional new motorcycle dealer or
29 the relocation of an existing new motorcycle dealer must be determined
30 in an arbitration proceeding conducted in accordance with the
31 Washington Arbitration Act, chapter 7.04 RCW. The thirty-day period
32 for filing a protest under this section still applies except that the
33 protesting dealer shall file the protest with the manufacturer within
34 thirty days after receipt of the notice under section 2 of this act.

35 (3) The dispute will be referred for arbitration to such arbitrator
36 as may be agreed upon by the parties to the dispute. If the parties
37 cannot agree upon a single arbitrator within thirty days from the date
38 the protest is filed, the protesting dealer will select an arbitrator,

1 the manufacturer will select an arbitrator, and the two arbitrators
2 will then select a third. If a third arbitrator is not agreed upon
3 within thirty days, any party may apply to the superior court, and the
4 judge of the superior court having jurisdiction will appoint the third
5 arbitrator. The protesting dealer will pay the arbitrator selected by
6 him or her, and the manufacturer will pay the arbitrator it selected.
7 The expense of the third arbitrator and all other expenses of
8 arbitration will be shared equally by the parties. Attorneys' fees and
9 fees paid to expert witnesses are not expenses of arbitration and will
10 be paid by the person incurring them.

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

31 (5) If the franchise agreement or the manufacturer's written
32 statement distributed and provided to its dealers does not provide for
33 arbitration under the Washington Arbitration Act as a mechanism for
34 resolving disputes relating to the establishment of an additional new
35 motorcycle dealer or the relocation of a new motorcycle dealer, then
36 the hearing provisions of this section and section 5 of this act apply.
37 Nothing in this section is intended to preclude a new motorcycle dealer

1 from electing to use any other dispute resolution mechanism offered by
2 a manufacturer.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 46.94 RCW
4 to read as follows:

5 In determining whether good cause exists for permitting the
6 proposed establishment or relocation of a new motorcycle dealer of the
7 same line make, the administrative law judge shall take into
8 consideration the existing circumstances, including, but not limited
9 to:

10 (1) The extent, nature, and permanency of the investment of both
11 the existing motorcycle dealers of the same line make in the relevant
12 market area and the proposed additional or relocating new motorcycle
13 dealer, including obligations reasonably incurred by the existing
14 dealers to perform their obligations under their respective franchises;

15 (2) The growth or decline in population and new motorcycle
16 registrations during the past five years in the relevant market area;

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

18 (4) The effect on the existing new motorcycle dealers in the
19 relevant market area, including any adverse financial impact;

20 (5) The reasonably expected or anticipated motorcycle market for
21 the relevant market area, including demographic factors such as age of
22 population, income, education, size class preference, product
23 popularity, retail lease transactions, or other factors affecting sales
24 to consumers in the relevant market area;

25 (6) Whether it is injurious or beneficial to the public welfare for
26 an additional new motorcycle dealer to be established;

27 (7) Whether the new motorcycle dealers of the same line make in the
28 relevant market area are providing adequate competition and convenient
29 customer care for the motorcycles of the same line make in the relevant
30 market area, including the adequacy of motorcycle sales and service
31 facilities, equipment, supply of parts, and qualified service
32 personnel;

33 (8) Whether the establishment of an additional new motorcycle
34 dealer would increase competition and be in the public interest;

35 (9) Whether the manufacturer is motivated principally by good faith
36 to establish an additional or new motorcycle dealer and not by
37 noneconomic considerations;

1 (10) Whether the manufacturer has denied its existing new
2 motorcycle dealers of the same line make the opportunity for reasonable
3 growth, market expansion, establishment of a subagency, or relocation;

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

6 (12) Whether the manufacturer has complied with the requirements of
7 sections 2 and 3 of this act.

8 In considering the factors set forth in this section, the
9 administrative law judge shall give the factors equal weight, and in
10 making a determination as to whether good cause exists for permitting
11 the proposed establishment or relocation of a new motorcycle dealer of
12 the same line make, the administrative law judge must find that at
13 least nine of the factors set forth in this section weigh in favor of
14 the manufacturer and in favor of the proposed establishment or
15 relocation of a new motorcycle dealer.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.94 RCW
17 to read as follows:

18 (1) The manufacturer has the burden of proof to establish that good
19 cause exists for permitting the proposed establishment or relocation.

20 (2) The administrative law judge shall conduct any hearing as
21 provided in RCW 46.96.050(2), and all hearing costs will be borne as
22 provided in that subsection. The administrative law judge shall render
23 the final decision as expeditiously as possible, but in any event not
24 later than one hundred twenty days after a protest is filed. If more
25 than one protest is filed, the one hundred twenty days commences to run
26 from the date the last protest is filed. A party to such a hearing
27 aggrieved by the final order of the administrative law judge may appeal
28 as provided and allowed in RCW 46.96.050(3).

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 46.94 RCW
30 to read as follows:

31 Sections 2 through 5 of this act do not apply:

32 (1) To the sale or transfer of the ownership or assets of an
33 existing new motorcycle dealer where the transferee proposes to engage
34 in business representing the same line make at the same location or
35 within two miles of that location;

- 1 (2) To the relocation of an existing new motorcycle dealer within
2 the dealer's relevant market area if the relocation is not at a site
3 within eight miles of any new motorcycle dealer of the same line make;
4 (3) If the proposed new motorcycle dealer is to be established at
5 or within two miles of a location at which a former new motorcycle
6 dealer of the same line make had ceased operating within the previous
7 twenty-four months;
8 (4) Where the proposed relocation is two miles or less from the
9 existing location of the relocating new motorcycle dealer; or
10 (5) Where the proposed relocation is to be further away from all
11 other existing new motorcycle dealers of the same line make in the
12 relevant market area.

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