

# SENATE BILL REPORT

## ESSB 6272

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As Passed Senate, February 17, 2014

**Title:** An act relating to manufacturer and new motor vehicle dealer franchise agreements.

**Brief Description:** Concerning manufacturer and new motor vehicle dealer franchise agreements.

**Sponsors:** Senate Committee on Commerce & Labor (originally sponsored by Senators Hewitt, Conway, Holmquist Newbry, King, Fain, Hobbs, Hasegawa, Cleveland, Rolfes, Hill, Rivers, Dammeier, Keiser, Kohl-Welles and Angel).

**Brief History:**

**Committee Activity:** Commerce & Labor: 1/29/14, 2/07/14 [DPS, w/oRec].  
Passed Senate: 2/17/14, 47-0.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** That Substitute Senate Bill No. 6272 be substituted therefor, and the substitute bill do pass.

Signed by Senators Holmquist Newbry, Chair; Conway, Ranking Member; Hasegawa, Hewitt, King and Kohl-Welles.

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

Signed by Senator Braun, Vice Chair.

**Staff:** Edith Rice (786-7444)

**Background:** The Legislature has recognized that the distribution and sale of motor vehicles vitally affect the economy of the state and that the maintenance of fair competition among dealers is in the public interest. The Legislature has also recognized that there is a substantial disparity in bargaining power between automobile manufacturers and their dealers. As a result it is necessary to regulate the relationship between manufacturers and dealers doing business in the state, fairly and efficiently.

The director of the Department of Licensing (DOL) may deny a vehicle dealer license if the application is a subterfuge concealing the real person in interest who's license is not in good standing or the director finds that the application was not filed in good faith.

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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.*

A good cause standard is set in statute for a manufacturer to terminate a franchise agreement. This can be a failure of the new motor vehicle dealer to comply with reasonable performance standards determined by the manufacturer in accordance with uniformly applied criteria and other stated factors. Failure to substantially comply with manufacturer's performance standards not due to economic factors beyond the dealers control is one such factor.

The manufacturer's obligation to pay certain costs to the dealer upon termination or nonrenewal of a franchise are listed in statute. These must be paid within 90 days after termination if the dealer has clear title to the property.

Manufacturers must specify the dealer's obligation to do warranty work on the manufacturer's products, and provide a schedule of compensation to be paid to the dealer. The manner by which a dealer must establish rates for warranty service including the average percentage markup requires documentation, is described in statute, and must be submitted to the manufacturer. A manufacturer cannot require a dealer to use another methodology to establish average percentage markup. A manufacturer must compensate a dealer for labor and diagnostic work at the same rates charged by the dealer to retail customers. The manufacturer has the right to audit claims for warranty work and to charge the dealer for incorrect claims for one year following payment.

Manufacturers cannot discriminate between new motor vehicle dealers in pricing or allocation of vehicles, parts, or accessories. Manufacturers cannot terminate a franchise with a dealer without good cause. A manufacturer cannot require a dealer to make modifications to a dealership facility it does not require of other dealers.

**Summary of Engrossed Substitute Bill:** The director of DOL may deny a vehicle dealer license if the issuance of a new license would cause a manufacturer to be in violation of state law regarding manufacturers and dealers franchise agreements.

New definitions are provided for completed vehicle, dealer management computer system, dealer management computer system vendor, final-stage manufacturer, incomplete vehicle, and security breach.

If a dealer claims insufficient allocation a manufacturer does not have good cause for termination of a franchise unless the manufacturer provided a dealer with sufficient inventory of vehicles to meet performance standards, and the manufacturer provides documentation to the dealer sufficient to develop a market analysis. The dealer cannot share information provided from the manufacturer regarding allocations with any other party who is not involved in the termination proceeding.

Costs payable to the dealer upon the termination of the franchise must be paid within 90 days after termination or on the date of delivery of the assets to the manufacturer, whichever is earlier. Costs must be paid by the manufacturer to the dealer for manufacturer-required relocation or remodeling of a dealer's facilities for the granting of a franchise, if completed within three years of the termination.

The kinds of work which cannot be included in calculating the retail rate customarily charged by the dealer for parts and labor, are described. The manufacturer must pay the cost of

additional documentation it requires of the dealer to verify work, but is not required to compensate a dealer more than once for the same documentation. Claims for warranty work must be submitted to the manufacturer within 90 days. The manufacturer may audit warranty work claims for nine months following payment.

A manufacturer cannot compete with a dealer of any make or line by acting as a dealer or owning a dealership with some exceptions. A new exception is if they are a final stage manufacturer or a manufacturer that held a dealer license on January 1, 2014, selling new vehicles of that manufacturer's makes or line, not sold new by a licensed independent franchise. A manufacturer can also contract for financing, leasing, and servicing its own makes and lines of vehicles.

A manufacturer cannot require a dealer to relocate or remodel its facilities more than once every ten years unless it is to comply with health or safety laws or to comply with technology requirements.

A manufacturer cannot prevent a dealer from purchasing like kind materials from a vendor the dealer chooses if the goods are to be supplied by a vendor designated by the manufacturer. Dealers do not gain additional intellectual property rights nor are they permitted to erect signs not in conformance with manufacturer guidelines.

A manufacturer cannot require a dealer to accept services, parts, or accessories the dealer has not ordered without the right to return them unused for a full refund.

Dealers are not required to provide to manufacturers, direct access to its computer system, but may choose to provide information through other means.

Manufacturers are liable for any computer system data breach caused by the manufacturer. Dealer management computer system vendors are liable for any computer system data breach caused by the dealer management computer system vendors.

Provisions in this act apply to franchises and contracts between manufacturers and new motor vehicle dealers in existence on or after the effective date of this act. An agreement entered into after the effective date of this act is considered an amendment to an existing franchise.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:**

PRO: There needs to be a better balance between dealerships and auto manufacturers. Dealerships provide a stable network of jobs and services to the state. Many dealerships have direct experience with issues underscored by this bill. This includes conflicting market

areas, dealership remodels, and signage. We need fair compensation for our warranty work. We are getting increased pressure from manufacturers. Poor performance is not at issue here, but day-to-day operations are. Allocation of cars affects all dealers.

CON: We still have many issues to resolve. The provisions in this bill seem to be an effort to protect dealers who are performing poorly. We are required to use the same criteria for all dealers. Manufacturers would be responsible for dealer costs, even for voluntary termination of the franchise. Poor performance and inadequate allocation are not necessarily tied together. Let us bargain with dealers. We need to keep the 12-month timeframe for audits. We are okay with local sourcing, but brand identification is important.

**Persons Testifying:** PRO: Bryan Imai, Scott Hazlegrove, WA State Auto Dealers Assn.; Gary Gilchrist, Gilchrist Chevrolet; Jon Creedon, Vancouver Ford; Bill McCurley, McCurley Integrity Dealerships.

CON: Amy Brink, Curt Augustine, Alliance of Automobile Manufacturers; Hal Lennox, General Motors; Matthew Erwin, Mazda North American Operations; Ross Good, Chrysler Group, LLC; Trent House, Global Automakers.