
SUBSTITUTE SENATE BILL 6137

State of Washington

65th Legislature

2018 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Conway, King, Keiser, Hasegawa, and Wilson)

READ FIRST TIME 02/01/18.

1 AN ACT Relating to clarifying the relationship between
2 manufacturers and new motor vehicle dealers by providing tools to
3 resolve disparities including expanding compensation for recalled
4 vehicles; amending RCW 46.96.185 and 46.96.260; and adding new
5 sections to chapter 46.96 RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.96
8 RCW to read as follows:

9 (1) A manufacturer shall compensate its new motor vehicle dealers
10 for all labor and parts required by the manufacturer to perform
11 recall repairs at rates no lower than those set in accordance with
12 RCW 46.96.105. If parts or a remedy are not reasonably available to
13 perform a recall service or repair on a used vehicle held for sale by
14 a dealer authorized to sell new vehicles of the same line make within
15 fifteen days of the manufacturer issuing the initial notice of
16 recall, and the manufacturer has issued a stop-sale, do-not-drive
17 order, or where the issue identified in the notice of recall could
18 otherwise affect the safe operation of the vehicle, commencing on the
19 fifteenth day after the notice or order was issued and ending on the
20 earlier of the date that the remedy or repair parts necessary to
21 resolve the recall, stop-sale, or do-not-drive order are available to

1 the dealer for vehicles in the dealer's inventory or the dealer
2 sells, trades, or otherwise disposes of the vehicle, the manufacturer
3 shall compensate the dealer at a prorated rate of at least 1.75
4 percent of the average trade-in value as indicated in an independent
5 third-party guide for the year, make, model, and mileage of the
6 recalled vehicle, per month, or portion of a month, while the recall
7 or remedy parts are unavailable and the order remains in effect. A
8 manufacturer is not required to compensate a motor vehicle dealer for
9 more than the total trade-in value of the vehicle as established
10 under this section. A stop-sale or do-not-drive order is defined as a
11 notification issued by a vehicle manufacturer to its franchised
12 dealers stating that certain used vehicles in inventory should not be
13 sold or leased, at retail or wholesale, due to a federal safety
14 recall for a defect or a noncompliance, or a federal or California
15 emissions recall.

16 (2) This section applies only to used vehicles subject to safety
17 or emissions recalls pursuant to and recalled in accordance with
18 federal law and regulations adopted thereunder and where a stop-sale,
19 do-not-drive order has been issued, or where the issue identified in
20 the notice of recall could otherwise affect the safe operation of the
21 vehicle. This section further applies only to new motor vehicle
22 dealers holding used vehicles for sale that are a line make that the
23 dealer is franchised to sell or on which the dealer is authorized to
24 perform recall repairs.

25 (3) All reimbursement claims made by new motor vehicle dealers
26 pursuant to this section for recall remedies or repairs, or for
27 compensation where no part or repair is reasonably available and the
28 vehicle is subject to a stop-sale, do-not-drive order, or where the
29 issue identified in the notice of recall could otherwise affect the
30 safe operation of the vehicle, is subject to the same limitations and
31 requirements as a warranty reimbursement claim made under RCW
32 46.96.105. Claims shall be either approved or disapproved within
33 thirty days after they are submitted to the manufacturer in the
34 manner and on the forms the manufacturer reasonably prescribes. A
35 manufacturer shall pay a claim within thirty days following approval.
36 Any claim not specifically disapproved in writing within thirty days
37 following receipt is approved.

38 (4) A manufacturer may compensate its franchised dealers under a
39 national recall compensation program provided the compensation under

1 the program is equal to or greater than that provided in subsection
2 (1) of this section.

3 (5) A manufacturer may not otherwise recover all or any portion
4 of its costs for compensating its dealers licensed in this state for
5 recalled vehicles, parts, and service either by reduction in the
6 amount due to the dealer or by separate charge, surcharge, or other
7 imposition.

8 (6) Any remedy provided to a new motor vehicle dealer under this
9 section is exclusive and shall not be combined with any other state
10 or federal recall compensation remedy.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.96
12 RCW to read as follows:

13 Any corporation or association that is primarily owned by or
14 composed of new motor vehicle dealers and that primarily represents
15 the interests of new motor vehicle dealers has standing to file a
16 petition to the department to have a matter handled as an
17 adjudicative proceeding under chapter 34.05 RCW, or as a cause of
18 action with a court of competent jurisdiction for itself or by, for,
19 or on behalf of one or more new motor vehicle dealers for any
20 violation of this chapter or for the determination of any rights
21 created by this chapter and seeking declaratory or injunctive relief.
22 If the petition is filed with the department, the petition must be
23 accompanied with a filing fee in accordance with RCW 46.96.210.

24 **Sec. 3.** RCW 46.96.185 and 2014 c 214 s 7 are each amended to
25 read as follows:

26 (1) Notwithstanding the terms of a franchise agreement, a
27 manufacturer, distributor, factory branch, or factory representative,
28 or an agent, officer, parent company, wholly or partially owned
29 subsidiary, affiliated entity, or other person controlled by or under
30 common control with a manufacturer, distributor, factory branch, or
31 factory representative, shall not:

32 (a) Discriminate between new motor vehicle dealers by selling or
33 offering to sell a like vehicle to one dealer at a lower actual price
34 than the actual price offered to another dealer for the same model
35 similarly equipped;

36 (b) Discriminate between new motor vehicle dealers by selling or
37 offering to sell parts or accessories to one dealer at a lower actual
38 price than the actual price offered to another dealer;

1 (c) Discriminate between new motor vehicle dealers by using a
2 promotion plan, marketing plan, or other similar device that results
3 in a lower actual price on vehicles, parts, or accessories being
4 charged to one dealer over another dealer;

5 (d) Discriminate between new motor vehicle dealers by adopting a
6 method, or changing an existing method, for the allocation,
7 scheduling, or delivery of new motor vehicles, parts, or accessories
8 to its dealers that is not fair, reasonable, and equitable. Upon the
9 request of a dealer, a manufacturer, distributor, factory branch, or
10 factory representative shall disclose in writing to the dealer the
11 method by which new motor vehicles, parts, and accessories are
12 allocated, scheduled, or delivered to its dealers handling the same
13 line or make of vehicles;

14 (e) Discriminate against a new motor vehicle dealer by
15 preventing, offsetting, or otherwise impairing the dealer's right to
16 request a documentary service fee on affinity or similar program
17 purchases. This prohibition applies to, but is not limited to, any
18 promotion plan, marketing plan, manufacturer or dealer employee or
19 employee friends or family purchase programs, or similar plans or
20 programs;

21 (f) Give preferential treatment to some new motor vehicle dealers
22 over others by refusing or failing to deliver, in reasonable
23 quantities and within a reasonable time after receipt of an order, to
24 a dealer holding a franchise for a line or make of motor vehicles
25 sold or distributed by the manufacturer, distributor, factory branch,
26 or factory representative, a new vehicle, parts, or accessories, if
27 the vehicle, parts, or accessories are being delivered to other
28 dealers, or require a dealer to purchase unreasonable advertising
29 displays or other materials, or unreasonably require a dealer to
30 remodel or renovate existing facilities as a prerequisite to
31 receiving a model or series of vehicles;

32 (g) Compete with a new motor vehicle dealer of any make or line
33 by acting in the capacity of a new motor vehicle dealer, or by
34 owning, operating, or controlling, whether directly or indirectly, a
35 motor vehicle dealership in this state. It is not, however, a
36 violation of this subsection for:

37 (i) A manufacturer, distributor, factory branch, or factory
38 representative to own or operate a dealership for a temporary period,
39 not to exceed two years, during the transition from one owner of the
40 dealership to another where the dealership was previously owned by a

1 franchised dealer and is currently for sale to any qualified
2 independent person at a fair and reasonable price. The temporary
3 operation may be extended for one twelve-month period on petition of
4 the temporary operator to the department. The matter will be handled
5 as an adjudicative proceeding under chapter 34.05 RCW. A dealer who
6 is a franchisee of the petitioning manufacturer or distributor may
7 intervene and participate in a proceeding under this subsection
8 (1)(g)(i). The temporary operator has the burden of proof to show
9 justification for the extension and a good faith effort to sell the
10 dealership to an independent person at a fair and reasonable price;

11 (ii) A manufacturer, distributor, factory branch, or factory
12 representative to own or operate a dealership in conjunction with an
13 independent person in a bona fide business relationship for the
14 purpose of broadening the diversity of its dealer body and enhancing
15 opportunities for qualified persons who are part of a group who have
16 historically been underrepresented in its dealer body, or other
17 qualified persons who lack the resources to purchase a dealership
18 outright, and where the independent person: (A) Has made, or within a
19 period of two years from the date of commencement of operation will
20 have made, a significant, bona fide capital investment in the
21 dealership that is subject to loss; (B) has an ownership interest in
22 the dealership; and (C) operates the dealership under a bona fide
23 written agreement with the manufacturer, distributor, factory branch,
24 or factory representative under which he or she will acquire all of
25 the ownership interest in the dealership within a reasonable period
26 of time and under reasonable terms and conditions. The manufacturer,
27 distributor, factory branch, or factory representative has the burden
28 of proof of establishing that the acquisition of the dealership by
29 the independent person was made within a reasonable period of time
30 and under reasonable terms and conditions. Nothing in this subsection
31 (1)(g)(ii) relieves a manufacturer, distributor, factory branch, or
32 factory representative from complying with (a) through (f) of this
33 subsection;

34 (iii) A manufacturer, distributor, factory branch, or factory
35 representative to own or operate a dealership in conjunction with an
36 independent person in a bona fide business relationship where the
37 independent person: (A) Has made, or within a period of two years
38 from the date of commencement of operation will have made, a
39 significant, bona fide capital investment in the dealership that is
40 subject to loss; (B) has an ownership interest in the dealership; and

1 (C) operates the dealership under a bona fide written agreement with
2 the manufacturer, distributor, factory branch, or factory
3 representative under which he or she will acquire all of the
4 ownership interest in the dealership within a reasonable period of
5 time and under reasonable terms and conditions. The manufacturer,
6 distributor, factory branch, or factory representative has the burden
7 of proof of establishing that the acquisition of the dealership by
8 the independent person was made within a reasonable period of time
9 and under reasonable terms and conditions. The number of dealerships
10 operated under this subsection (1)(g)(iii) may not exceed four
11 percent rounded up to the nearest whole number of a manufacturer's
12 total of new motor vehicle dealer franchises in this state. Nothing
13 in this subsection (1)(g)(iii) relieves a manufacturer, distributor,
14 factory branch, or factory representative from complying with (a)
15 through (f) of this subsection;

16 (iv) A truck manufacturer to own, operate, or control a new motor
17 vehicle dealership that sells only trucks of that manufacturer's line
18 make with a gross vehicle weight rating of 12,500 pounds or more, and
19 the truck manufacturer has been continuously engaged in the retail
20 sale of the trucks at least since January 1, 1993;

21 (v) A manufacturer to own, operate, or control a new motor
22 vehicle dealership trading exclusively in a single line make of the
23 manufacturer if (A) the manufacturer does not own, directly or
24 indirectly, in the aggregate, in excess of forty-five percent of the
25 total ownership interest in the dealership, (B) at the time the
26 manufacturer first acquires ownership or assumes operation or control
27 of any such dealership, the distance between any dealership thus
28 owned, operated, or controlled and the nearest new motor vehicle
29 dealership trading in the same line make of vehicle and in which the
30 manufacturer has no ownership or control is not less than fifteen
31 miles and complies with the applicable provisions in the relevant
32 market area sections of this chapter, (C) all of the manufacturer's
33 franchise agreements confer rights on the dealer of that line make to
34 develop and operate within a defined geographic territory or area, as
35 many dealership facilities as the dealer and the manufacturer agree
36 are appropriate, and (D) as of January 1, 2000, the manufacturer had
37 no more than four new motor vehicle dealers of that manufacturer's
38 line make in this state, and at least half of those dealers owned and
39 operated two or more dealership facilities in the geographic

1 territory or area covered by their franchise agreements with the
2 manufacturer;

3 (vi) A final-stage manufacturer to own, operate, or control a new
4 motor vehicle dealership; or

5 (vii) A manufacturer that held a vehicle dealer license in this
6 state on January 1, 2014, to own, operate, or control a new motor
7 vehicle dealership that sells new vehicles that are only of that
8 manufacturer's makes or lines and that are not sold new by a licensed
9 independent franchise dealer, or to own, operate, or control or
10 contract with companies that provide finance, leasing, or service for
11 vehicles that are of that manufacturer's makes or lines;

12 (h) Compete with a new motor vehicle dealer by owning, operating,
13 or controlling, whether directly or indirectly, a service facility in
14 this state for the repair or maintenance of motor vehicles under the
15 manufacturer's new car warranty and extended warranty. Nothing in
16 this subsection (1)(h), however, prohibits a manufacturer,
17 distributor, factory branch, or factory representative from owning or
18 operating a service facility for the purpose of providing or
19 performing maintenance, repair, or service work on motor vehicles
20 that are owned by the manufacturer, distributor, factory branch, or
21 factory representative;

22 (i) Use confidential or proprietary information obtained from a
23 new motor vehicle dealer to unfairly compete with the dealer. For
24 purposes of this subsection (1)(i), "confidential or proprietary
25 information" means trade secrets as defined in RCW 19.108.010,
26 business plans, marketing plans or strategies, customer lists,
27 contracts, sales data, revenues, or other financial information;

28 (j)(i) Terminate, cancel, or fail to renew a franchise with a new
29 motor vehicle dealer based upon any of the following events, which do
30 not constitute good cause for termination, cancellation, or
31 nonrenewal under RCW 46.96.060: (A) The fact that the new motor
32 vehicle dealer owns, has an investment in, participates in the
33 management of, or holds a franchise agreement for the sale or service
34 of another make or line of new motor vehicles; (B) the fact that the
35 new motor vehicle dealer has established another make or line of new
36 motor vehicles or service in the same dealership facilities as those
37 of the manufacturer or distributor; (C) that the new motor vehicle
38 dealer has or intends to relocate the manufacturer or distributor's
39 make or line of new motor vehicles or service to an existing
40 dealership facility that is within the relevant market area, as

1 defined in RCW 46.96.140, of the make or line to be relocated, except
2 that, in any nonemergency circumstance, the dealer must give the
3 manufacturer or distributor at least sixty days' notice of his or her
4 intent to relocate and the relocation must comply with RCW 46.96.140
5 and 46.96.150 for any same make or line facility; or (D) the failure
6 of a franchisee to change the location of the dealership or to make
7 substantial alterations to the use or number of franchises on the
8 dealership premises or facilities.

9 (ii) Notwithstanding the limitations of this section, a
10 manufacturer may, for separate consideration, enter into a written
11 contract with a dealer to exclusively sell and service a single make
12 or line of new motor vehicles at a specific facility for a defined
13 period of time. The penalty for breach of the contract must not
14 exceed the amount of consideration paid by the manufacturer plus a
15 reasonable rate of interest;

16 (k) Coerce or attempt to coerce a motor vehicle dealer to refrain
17 from, or prohibit or attempt to prohibit a new motor vehicle dealer
18 from acquiring, owning, having an investment in, participating in the
19 management of, or holding a franchise agreement for the sale or
20 service of another make or line of new motor vehicles or related
21 products, or establishing another make or line of new motor vehicles
22 or service in the same dealership facilities, if the prohibition
23 against acquiring, owning, investing, managing, or holding a
24 franchise for such additional make or line of vehicles or products,
25 or establishing another make or line of new motor vehicles or service
26 in the same dealership facilities, is not supported by reasonable
27 business considerations. The burden of proving that reasonable
28 business considerations support or justify the prohibition against
29 the additional make or line of new motor vehicles or products or
30 nonexclusive facilities is on the manufacturer;

31 (l) Require, by contract or otherwise, a new motor vehicle dealer
32 to make a material alteration, expansion, or addition to any
33 dealership facility, unless the required alteration, expansion, or
34 addition is uniformly required of other similarly situated new motor
35 vehicle dealers of the same make or line of vehicles and is
36 reasonable in light of all existing circumstances, including economic
37 conditions. In any proceeding in which a required facility
38 alteration, expansion, or addition is an issue, the manufacturer or
39 distributor has the burden of proof. Except for a program or any
40 renewal or modification of a program that is in effect with one or

1 more new motor vehicle dealers in this state on June 12, 2014, a
2 manufacturer shall not require, coerce, or attempt to coerce any new
3 motor vehicle dealer by program, policy, standard, or otherwise to
4 change the location of the dealership or construct, replace,
5 renovate, or make any substantial changes, alterations, or remodeling
6 to a new motor vehicle dealer's sales or service facilities, except
7 as necessary to comply with health or safety laws or to comply with
8 technology requirements without which a dealer would be unable to
9 service a vehicle the dealer has elected to sell, before the tenth
10 anniversary of the date of issuance of the certificate of occupancy
11 or the manufacturer's approval, whichever is later, from:

12 (i) The date construction of the dealership at that location was
13 completed if the construction was in substantial compliance with
14 standards or plans provided by a manufacturer, distributor, or
15 representative or through a subsidiary or agent of the manufacturer,
16 distributor, or representative; or

17 (ii) The date a prior change, alteration, or remodel of the
18 dealership at that location was completed if the construction was in
19 substantial compliance with standards or plans provided by a
20 manufacturer, distributor, or representative or through a subsidiary
21 or agent of the manufacturer, distributor, or representative;

22 (m) Prevent or attempt to prevent by contract or otherwise any
23 new motor vehicle dealer from changing the executive management of a
24 new motor vehicle dealer unless the manufacturer or distributor,
25 having the burden of proof, can show that a proposed change of
26 executive management will result in executive management by a person
27 or persons who are not of good moral character or who do not meet
28 reasonable, preexisting, and equitably applied standards of the
29 manufacturer or distributor. If a manufacturer or distributor rejects
30 a proposed change in the executive management, the manufacturer or
31 distributor shall give written notice of its reasons to the dealer
32 within sixty days after receiving written notice from the dealer of
33 the proposed change and all related information reasonably requested
34 by the manufacturer or distributor, or the change in executive
35 management must be considered approved;

36 (n) Condition the sale, transfer, relocation, or renewal of a
37 franchise agreement or condition manufacturer, distributor, factory
38 branch, or factory representative sales, services, or parts
39 incentives upon the manufacturer obtaining site control, including
40 rights to purchase or lease the dealer's facility, or an agreement to

1 make improvements or substantial renovations to a facility. For
2 purposes of this section, a substantial renovation has a gross cost
3 to the dealer in excess of five thousand dollars;

4 (o) Fail to provide to a new motor vehicle dealer purchasing or
5 leasing building materials or other facility improvements the right
6 to purchase or lease franchisor image elements of like kind and
7 quality from an alternative vendor selected by the dealer if the
8 goods or services are to be supplied by a vendor selected,
9 identified, or designated by the manufacturer or distributor. If the
10 vendor selected by the manufacturer or distributor is the only
11 available vendor of like kind and quality materials, the new motor
12 vehicle dealer must be given the opportunity to purchase the
13 franchisor image elements at a price substantially similar to the
14 capitalized lease costs of the elements. This subsection (1)(o) must
15 not be construed to allow a new motor vehicle dealer or vendor to
16 gain additional intellectual property rights they are not otherwise
17 entitled to or to impair or eliminate the intellectual property
18 rights of the manufacturer or distributor or to permit a new motor
19 vehicle dealer to erect or maintain signs that do not conform to the
20 reasonable intellectual property usage guidelines of the manufacturer
21 or distributor;

22 (p) Take any adverse action against a new motor vehicle dealer
23 including, but not limited to, charge backs or reducing vehicle
24 allocations, for sales and service performance within a designated
25 area of primary responsibility unless that area is reasonable in
26 light of proximity to relevant census tracts to the dealership and
27 competing dealerships, highways and road networks, state borders, any
28 natural or man-made barriers, demographics, including economic
29 factors, ~~((and))~~ buyer behavior information, and contains only areas
30 inside the state of Washington unless specifically approved by the
31 new motor vehicle dealer; ((or))

32 (q) Require, coerce, or attempt to coerce any new motor vehicle
33 dealer by program, policy, facility guide, standard, or otherwise to
34 order or accept delivery of any service or repair appliances,
35 equipment, parts, or accessories, or any other commodity not required
36 by law, which the dealer has not voluntarily ordered or which the
37 dealer does not have the right to return unused for a full refund
38 within ninety days or a longer period as mutually agreed upon by the
39 dealer and manufacturer; or

1 (r) Modify the franchise agreement for any new motor vehicle
2 dealer unless the manufacturer notifies the dealer in writing of its
3 intention to modify the agreement at least ninety days before the
4 effective date thereof, stating the specific grounds for the
5 modification, and undertakes the modification in good faith, for good
6 cause, and in a manner that would not adversely and substantially
7 alter the rights, obligations, investment, or return on investment of
8 the franchised new motor vehicle dealer under the existing agreement.

9 (2) Subsection (1)(a), (b), and (c) of this section do not apply
10 to sales to a motor vehicle dealer: (a) For resale to a federal,
11 state, or local government agency; (b) where the vehicles will be
12 sold or donated for use in a program of driver's education; (c) where
13 the sale is made under a manufacturer's bona fide promotional program
14 offering sales incentives or rebates; (d) where the sale of parts or
15 accessories is under a manufacturer's bona fide quantity discount
16 program; or (e) where the sale is made under a manufacturer's bona
17 fide fleet vehicle discount program. For purposes of this subsection,
18 "fleet" means a group of fifteen or more new motor vehicles purchased
19 or leased by a dealer at one time under a single purchase or lease
20 agreement for use as part of a fleet, and where the dealer has been
21 assigned a fleet identifier code by the department of licensing.

22 (3) The following definitions apply to this section:

23 (a) "Actual price" means the price to be paid by the dealer less
24 any incentive paid by the manufacturer, distributor, factory branch,
25 or factory representative, whether paid to the dealer or the ultimate
26 purchaser of the vehicle.

27 (b) "Control" or "controlling" means (i) the possession of, title
28 to, or control of ten percent or more of the voting equity interest
29 in a person, whether directly or indirectly through a fiduciary,
30 agent, or other intermediary, or (ii) the possession, direct or
31 indirect, of the power to direct or cause the direction of the
32 management or policies of a person, whether through the ownership of
33 voting securities, through director control, by contract, or
34 otherwise, except as expressly provided under the franchise
35 agreement.

36 (c) "Motor vehicles" does not include trucks that are 14,001
37 pounds gross vehicle weight and above or recreational vehicles as
38 defined in RCW 43.22.335.

39 (d) "Operate" means to manage a dealership, whether directly or
40 indirectly.

1 (e) "Own" or "ownership" means to hold the beneficial ownership
2 of one percent or more of any class of equity interest in a
3 dealership, whether the interest is that of a shareholder, partner,
4 limited liability company member, or otherwise. To hold an ownership
5 interest means to have possession of, title to, or control of the
6 ownership interest, whether directly or indirectly through a
7 fiduciary, agent, or other intermediary.

8 (4) A violation of this section is deemed to affect the public
9 interest and constitutes an unlawful and unfair practice under
10 chapter 19.86 RCW. A person aggrieved by an alleged violation of this
11 section may petition the department to have the matter handled as an
12 adjudicative proceeding under chapter 34.05 RCW.

13 **Sec. 4.** RCW 46.96.260 and 2010 c 178 s 11 are each amended to
14 read as follows:

15 A new motor vehicle dealer who is injured in his or her business
16 or property by a violation of this chapter may bring a civil action
17 in the superior court to enjoin further violations, recover the
18 actual damages sustained by the dealer, or both, together with the
19 costs of the suit, including reasonable attorneys' fees if the new
20 motor vehicle dealer prevails. In addition, the court may, in its
21 discretion, increase the award of damages up to an amount not to
22 exceed three times the actual damages sustained. The new motor
23 vehicle dealer may bring a civil action in district court to recover
24 his or her actual damages, except for damages that exceed the amount
25 specified in RCW 3.66.020, and the costs of the suit, including
26 reasonable attorneys' fees. The district court may, in its
27 discretion, increase the award of damages up to an amount not to
28 exceed three times the actual damages sustained.

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