
SUBSTITUTE SENATE BILL 5816

State of Washington 61st Legislature 2009 Regular Session

By Senate Transportation (originally sponsored by Senators Eide, Delvin, King, Jarrett, Sheldon, Berkey, and Hatfield)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to vehicle dealer documentary service fees; and
2 amending RCW 46.70.180.

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

4 **Sec. 1.** RCW 46.70.180 and 2007 c 155 s 2 are each amended to read
5 as follows:

6 Each of the following acts or practices is unlawful:

7 (1) To cause or permit to be advertised, printed, displayed,
8 published, distributed, broadcasted, televised, or disseminated in any
9 manner whatsoever, any statement or representation with regard to the
10 sale, lease, or financing of a vehicle which is false, deceptive, or
11 misleading, including but not limited to the following:

12 (a) That no down payment is required in connection with the sale of
13 a vehicle when a down payment is in fact required, or that a vehicle
14 may be purchased for a smaller down payment than is actually required;

15 (b) That a certain percentage of the sale price of a vehicle may be
16 financed when such financing is not offered in a single document
17 evidencing the entire security transaction;

18 (c) That a certain percentage is the amount of the service charge

1 to be charged for financing, without stating whether this percentage
2 charge is a monthly amount or an amount to be charged per year;

3 (d) That a new vehicle will be sold for a certain amount above or
4 below cost without computing cost as the exact amount of the factory
5 invoice on the specific vehicle to be sold;

6 (e) That a vehicle will be sold upon a monthly payment of a certain
7 amount, without including in the statement the number of payments of
8 that same amount which are required to liquidate the unpaid purchase
9 price.

10 (2)(a) To incorporate within the terms of any purchase and sale or
11 lease agreement any statement or representation with regard to the
12 sale, lease, or financing of a vehicle which is false, deceptive, or
13 misleading, including but not limited to terms that include as an added
14 cost to the selling price or capitalized cost of a vehicle an amount
15 for licensing or transfer of title of that vehicle which is not
16 actually due to the state, unless such amount has in fact been paid by
17 the dealer prior to such sale. However, an amount not to exceed one
18 hundred fifty dollars per vehicle sale or lease may be charged by a
19 dealer to recover administrative costs for collecting motor vehicle
20 excise taxes, licensing and registration fees and other agency fees,
21 verifying and clearing titles, transferring titles, perfecting,
22 releasing, or satisfying liens or other security interests, and other
23 administrative and documentary services rendered by a dealer in
24 connection with the sale or lease of a vehicle and in carrying out the
25 requirements of this chapter or any other provisions of state law.

26 (b) A dealer may charge the documentary service fee in (a) of this
27 subsection under the following conditions:

28 (i) The documentary service fee is disclosed in writing to a
29 prospective purchaser or lessee before the execution of a purchase and
30 sale or lease agreement;

31 (ii) The dealer discloses to the purchaser or lessee in writing
32 that the documentary service fee is ((not represented)) a negotiable
33 fee. The disclosure must be written in a typeface that is at least as
34 large as the typeface used in the standard text of the document that
35 contains the disclosure, and the disclosure must be in bold type,
36 capitalized, underlined, or otherwise set out from surrounding material
37 so as to be conspicuous. The dealer shall not represent to the

1 purchaser or lessee (~~as a~~) that the fee or charge is required by the
2 state to be paid by either the dealer or prospective purchaser or
3 lessee;

4 (iii) The documentary service fee is separately designated from the
5 selling price or capitalized cost of the vehicle and from any other
6 taxes, fees, or charges; and

7 (iv) Dealers disclose in any advertisement that a documentary
8 service fee in an amount up to fifty dollars may be added to the sale
9 price or the capitalized cost.

10 For the purposes of this subsection (2), the term "documentary
11 service fee" means the optional amount charged by a dealer to provide
12 the services specified in (a) of this subsection.

13 (3) To set up, promote, or aid in the promotion of a plan by which
14 vehicles are to be sold or leased to a person for a consideration and
15 upon further consideration that the purchaser or lessee agrees to
16 secure one or more persons to participate in the plan by respectively
17 making a similar purchase and in turn agreeing to secure one or more
18 persons likewise to join in said plan, each purchaser or lessee being
19 given the right to secure money, credits, goods, or something of value,
20 depending upon the number of persons joining the plan.

21 (4) To commit, allow, or ratify any act of "bushing" which is
22 defined as follows: Entering into a written contract, written purchase
23 order or agreement, retail installment sales agreement, note and
24 security agreement, or written lease agreement, hereinafter
25 collectively referred to as contract or lease, signed by the
26 prospective buyer or lessee of a vehicle, which:

27 (a) Is subject to any conditions or the dealer's or his or her
28 authorized representative's future acceptance, and the dealer fails or
29 refuses within four calendar days, exclusive of Saturday, Sunday, or
30 legal holiday, and prior to any further negotiations with said buyer or
31 lessee to inform the buyer or lessee either: (i) That the dealer
32 unconditionally accepts the contract or lease, having satisfied,
33 removed, or waived all conditions to acceptance or performance,
34 including, but not limited to, financing, assignment, or lease
35 approval; or (ii) that the dealer rejects the contract or lease,
36 thereby automatically voiding the contract or lease, as long as such
37 voiding does not negate commercially reasonable contract or lease
38 provisions pertaining to the return of the subject vehicle and any

1 physical damage, excessive mileage after the demand for return of the
2 vehicle, and attorneys' fees authorized by law, and tenders the refund
3 of any initial payment or security made or given by the buyer or
4 lessee, including, but not limited to, any down payment, and tenders
5 return of the trade-in vehicle, key, other trade-in, or certificate of
6 title to a trade-in. Tender may be conditioned on return of the
7 subject vehicle if previously delivered to the buyer or lessee.

8 The provisions of this subsection (4)(a) do not impair, prejudice,
9 or abrogate the rights of a dealer to assert a claim against the buyer
10 or lessee for misrepresentation or breach of contract and to exercise
11 all remedies available at law or in equity, including those under
12 chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing
13 company discovers that approval of the contract or financing or
14 approval of the lease was based upon material misrepresentations made
15 by the buyer or lessee, including, but not limited to,
16 misrepresentations regarding income, employment, or debt of the buyer
17 or lessee, as long as the dealer, or his or her staff, has not, with
18 knowledge of the material misrepresentation, aided, assisted,
19 encouraged, or participated, directly or indirectly, in the
20 misrepresentation. A dealer shall not be in violation of this
21 subsection (4)(a) if the buyer or lessee made a material
22 misrepresentation to the dealer, as long as the dealer, or his or her
23 staff, has not, with knowledge of the material misrepresentation,
24 aided, assisted, encouraged, or participated, directly or indirectly,
25 in the misrepresentation.

26 When a dealer informs a buyer or lessee under this subsection
27 (4)(a) regarding the unconditional acceptance or rejection of the
28 contract, lease, or financing by an electronic mail message, the dealer
29 must also transmit the communication by any additional means;

30 (b) Permits the dealer to renegotiate a dollar amount specified as
31 trade-in allowance on a vehicle delivered or to be delivered by the
32 buyer or lessee as part of the purchase price or lease, for any reason
33 except:

34 (i) Failure to disclose that the vehicle's certificate of ownership
35 has been branded for any reason, including, but not limited to, status
36 as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

37 (ii) Substantial physical damage or latent mechanical defect

1 occurring before the dealer took possession of the vehicle and which
2 could not have been reasonably discoverable at the time of the taking
3 of the order, offer, or contract; or

4 (iii) Excessive additional miles or a discrepancy in the mileage.
5 "Excessive additional miles" means the addition of five hundred miles
6 or more, as reflected on the vehicle's odometer, between the time the
7 vehicle was first valued by the dealer for purposes of determining its
8 trade-in value and the time of actual delivery of the vehicle to the
9 dealer. "A discrepancy in the mileage" means (A) a discrepancy between
10 the mileage reflected on the vehicle's odometer and the stated mileage
11 on the signed odometer statement; or (B) a discrepancy between the
12 mileage stated on the signed odometer statement and the actual mileage
13 on the vehicle; or

14 (c) Fails to comply with the obligation of any written warranty or
15 guarantee given by the dealer requiring the furnishing of services or
16 repairs within a reasonable time.

17 (5) To commit any offense relating to odometers, as such offenses
18 are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A
19 violation of this subsection is a class C felony punishable under
20 chapter 9A.20 RCW.

21 (6) For any vehicle dealer or vehicle salesperson to refuse to
22 furnish, upon request of a prospective purchaser or lessee, for
23 vehicles previously registered to a business or governmental entity,
24 the name and address of the business or governmental entity.

25 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
26 46.37.425.

27 (8) To commit any offense relating to a dealer's temporary license
28 permit, including but not limited to failure to properly complete each
29 such permit, or the issuance of more than one such permit on any one
30 vehicle. However, a dealer may issue a second temporary permit on a
31 vehicle if the following conditions are met:

32 (a) The lienholder fails to deliver the vehicle title to the dealer
33 within the required time period;

34 (b) The dealer has satisfied the lien; and

35 (c) The dealer has proof that payment of the lien was made within
36 two calendar days, exclusive of Saturday, Sunday, or a legal holiday,
37 after the sales contract has been executed by all parties and all

1 conditions and contingencies in the sales contract have been met or
2 otherwise satisfied.

3 (9) For a dealer, salesperson, or mobile home manufacturer, having
4 taken an instrument or cash "on deposit" from a purchaser or lessee
5 prior to the delivery of the bargained-for vehicle, to commingle the
6 "on deposit" funds with assets of the dealer, salesperson, or mobile
7 home manufacturer instead of holding the "on deposit" funds as trustee
8 in a separate trust account until the purchaser or lessee has taken
9 delivery of the bargained-for vehicle. Delivery of a manufactured home
10 shall be deemed to occur in accordance with RCW 46.70.135(5). Failure,
11 immediately upon receipt, to endorse "on deposit" instruments to such
12 a trust account, or to set aside "on deposit" cash for deposit in such
13 trust account, and failure to deposit such instruments or cash in such
14 trust account by the close of banking hours on the day following
15 receipt thereof, shall be evidence of intent to commit this unlawful
16 practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a
17 separate trust account which equals his or her customary total customer
18 deposits for vehicles for future delivery. For purposes of this
19 section, "on deposit" funds received from a purchaser of a manufactured
20 home means those funds that a seller requires a purchaser to advance
21 before ordering the manufactured home, but does not include any loan
22 proceeds or moneys that might have been paid on an installment
23 contract.

24 (10) For a dealer or manufacturer to fail to comply with the
25 obligations of any written warranty or guarantee given by the dealer or
26 manufacturer requiring the furnishing of goods and services or repairs
27 within a reasonable period of time, or to fail to furnish to a
28 purchaser or lessee, all parts which attach to the manufactured unit
29 including but not limited to the undercarriage, and all items specified
30 in the terms of a sales or lease agreement signed by the seller and
31 buyer or lessee.

32 (11) For a vehicle dealer to pay to or receive from any person,
33 firm, partnership, association, or corporation acting, either directly
34 or through a subsidiary, as a buyer's agent for consumers, any
35 compensation, fee, purchase moneys or funds that have been deposited
36 into or withdrawn out of any account controlled or used by any buyer's
37 agent, gratuity, or reward in connection with the purchase, sale, or
38 lease of a new motor vehicle.

1 (12) For a buyer's agent, acting directly or through a subsidiary,
2 to pay to or to receive from any motor vehicle dealer any compensation,
3 fee, gratuity, or reward in connection with the purchase, sale, or
4 lease of a new motor vehicle. In addition, it is unlawful for any
5 buyer's agent to engage in any of the following acts on behalf of or in
6 the name of the consumer:

7 (a) Receiving or paying any purchase moneys or funds into or out of
8 any account controlled or used by any buyer's agent;

9 (b) Signing any vehicle purchase orders, sales contracts, leases,
10 odometer statements, or title documents, or having the name of the
11 buyer's agent appear on the vehicle purchase order, sales contract,
12 lease, or title; or

13 (c) Signing any other documentation relating to the purchase, sale,
14 lease, or transfer of any new motor vehicle.

15 It is unlawful for a buyer's agent to use a power of attorney
16 obtained from the consumer to accomplish or effect the purchase, sale,
17 lease, or transfer of ownership documents of any new motor vehicle by
18 any means which would otherwise be prohibited under (a) through (c) of
19 this subsection. However, the buyer's agent may use a power of
20 attorney for physical delivery of motor vehicle license plates to the
21 consumer.

22 Further, it is unlawful for a buyer's agent to engage in any false,
23 deceptive, or misleading advertising, disseminated in any manner
24 whatsoever, including but not limited to making any claim or statement
25 that the buyer's agent offers, obtains, or guarantees the lowest price
26 on any motor vehicle or words to similar effect.

27 (13) For a buyer's agent to arrange for or to negotiate the
28 purchase, or both, of a new motor vehicle through an out-of-state
29 dealer without disclosing in writing to the customer that the new
30 vehicle would not be subject to chapter 19.118 RCW. This subsection
31 also applies to leased vehicles. In addition, it is unlawful for any
32 buyer's agent to fail to have a written agreement with the customer
33 that: (a) Sets forth the terms of the parties' agreement; (b)
34 discloses to the customer the total amount of any fees or other
35 compensation being paid by the customer to the buyer's agent for the
36 agent's services; and (c) further discloses whether the fee or any
37 portion of the fee is refundable.

1 (14) Being a manufacturer, other than a motorcycle manufacturer
2 governed by chapter 46.93 RCW, to:

3 (a) Coerce or attempt to coerce any vehicle dealer to order or
4 accept delivery of any vehicle or vehicles, parts or accessories, or
5 any other commodities which have not been voluntarily ordered by the
6 vehicle dealer: PROVIDED, That recommendation, endorsement,
7 exposition, persuasion, urging, or argument are not deemed to
8 constitute coercion;

9 (b) Cancel or fail to renew the franchise or selling agreement of
10 any vehicle dealer doing business in this state without fairly
11 compensating the dealer at a fair going business value for his or her
12 capital investment which shall include but not be limited to tools,
13 equipment, and parts inventory possessed by the dealer on the day he or
14 she is notified of such cancellation or termination and which are still
15 within the dealer's possession on the day the cancellation or
16 termination is effective, if: (i) The capital investment has been
17 entered into with reasonable and prudent business judgment for the
18 purpose of fulfilling the franchise; and (ii) the cancellation or
19 nonrenewal was not done in good faith. Good faith is defined as the
20 duty of each party to any franchise to act in a fair and equitable
21 manner towards each other, so as to guarantee one party freedom from
22 coercion, intimidation, or threats of coercion or intimidation from the
23 other party: PROVIDED, That recommendation, endorsement, exposition,
24 persuasion, urging, or argument are not deemed to constitute a lack of
25 good faith;

26 (c) Encourage, aid, abet, or teach a vehicle dealer to sell or
27 lease vehicles through any false, deceptive, or misleading sales or
28 financing practices including but not limited to those practices
29 declared unlawful in this section;

30 (d) Coerce or attempt to coerce a vehicle dealer to engage in any
31 practice forbidden in this section by either threats of actual
32 cancellation or failure to renew the dealer's franchise agreement;

33 (e) Refuse to deliver any vehicle publicly advertised for immediate
34 delivery to any duly licensed vehicle dealer having a franchise or
35 contractual agreement for the retail sale or lease of new and unused
36 vehicles sold or distributed by such manufacturer within sixty days
37 after such dealer's order has been received in writing unless caused by
38 inability to deliver because of shortage or curtailment of material,

1 labor, transportation, or utility services, or by any labor or
2 production difficulty, or by any cause beyond the reasonable control of
3 the manufacturer;

4 (f) To provide under the terms of any warranty that a purchaser or
5 lessee of any new or unused vehicle that has been sold or leased,
6 distributed for sale or lease, or transferred into this state for
7 resale or lease by the vehicle manufacturer may only make any warranty
8 claim on any item included as an integral part of the vehicle against
9 the manufacturer of that item.

10 Nothing in this section may be construed to impair the obligations
11 of a contract or to prevent a manufacturer, distributor,
12 representative, or any other person, whether or not licensed under this
13 chapter, from requiring performance of a written contract entered into
14 with any licensee hereunder, nor does the requirement of such
15 performance constitute a violation of any of the provisions of this
16 section if any such contract or the terms thereof requiring
17 performance, have been freely entered into and executed between the
18 contracting parties. This paragraph and subsection (14)(b) of this
19 section do not apply to new motor vehicle manufacturers governed by
20 chapter 46.96 RCW.

21 (15) Unlawful transfer of an ownership interest in a motor vehicle
22 as defined in RCW 19.116.050.

23 (16) To knowingly and intentionally engage in collusion with a
24 registered owner of a vehicle to repossess and return or resell the
25 vehicle to the registered owner in an attempt to avoid a suspended
26 license impound under chapter 46.55 RCW. However, compliance with
27 chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise
28 disposing of the vehicle, including providing redemption rights to the
29 debtor, is not a violation of this section.

--- END ---