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**SUBSTITUTE SENATE BILL 5122**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators A. Smith and Rinehart)

Read first time 02/18/93.

1 AN ACT Relating to motor vehicle dealers; amending RCW 46.70.070,  
2 46.70.180, and 46.70.190; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** It is the intent of the legislature that the  
5 judicial interpretation of RCW 46.70.180(1) made in Henery v. Robinson,  
6 67 Wash. App. 277 (1992) be modified and that a violation of chapter  
7 19.86 RCW can occur in a private communication that is false,  
8 deceptive, or misleading between a buyer and seller.

9 **Sec. 2.** RCW 46.70.070 and 1989 c 337 s 15 are each amended to read  
10 as follows:

11 (1) Before issuing a vehicle dealer's license, the department shall  
12 require the applicant to file with the department a surety bond in the  
13 amount of:

14 (a) Fifteen thousand dollars for motor vehicle dealers;

15 (b) Thirty thousand dollars for mobile home, park trailer, and  
16 travel trailer dealers: PROVIDED, That if such dealer does not deal in  
17 mobile homes or park trailers such bond shall be fifteen thousand  
18 dollars;

1 (c) Five thousand dollars for miscellaneous dealers,  
2 running to the state, and executed by a surety company authorized to do  
3 business in the state. Such bond shall be approved by the attorney  
4 general as to form and conditioned that the dealer shall conduct his  
5 business in conformity with the provisions of this chapter.

6 Any retail purchaser, consignor who is not a motor vehicle dealer,  
7 or a motor vehicle dealer who has purchased from a wholesale dealer,  
8 who has suffered any loss or damage by reason of breach of any implied  
9 or express warranty or by any act by a dealer which constitutes a  
10 violation of this chapter shall have the right to institute an action  
11 for recovery against such dealer and the surety upon such bond.  
12 However, under this section, motor vehicle dealers who have purchased  
13 from wholesale dealers may only institute actions against wholesale  
14 dealers and their surety bonds. Successive recoveries against said  
15 bond shall be permitted, but the aggregate liability of the surety to  
16 all persons shall in no event exceed the amount of the bond. Upon  
17 exhaustion of the penalty of said bond or cancellation of the bond by  
18 the surety the vehicle dealer license shall automatically be deemed  
19 canceled.

20 (2) The bond for any vehicle dealer licensed or to be licensed  
21 under more than one classification shall be the highest bond required  
22 for any such classification.

23 (3) Vehicle dealers shall maintain a bond for each business  
24 location in this state and bond coverage for all temporary subagencies.

25 **Sec. 3.** RCW 46.70.180 and 1990 c 44 s 14 are each amended to read  
26 as follows:

27 Each of the following acts or practices is unlawful:

28 (1) To communicate, transmit in any manner, or cause or permit to  
29 be advertised, printed, displayed, published, distributed, broadcasted,  
30 televised, or disseminated in any manner whatsoever, any statement or  
31 representation with regard to the sale or financing of a vehicle which  
32 is false, deceptive, or misleading, including but not limited to the  
33 following:

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

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

4 (c) That a certain percentage is the amount of the service charge  
5 to be charged for financing, without stating whether this percentage  
6 charge is a monthly amount or an amount to be charged per year;

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

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

14 (2) To incorporate within the terms of any purchase and sale  
15 agreement any statement or representation with regard to the sale or  
16 financing of a vehicle which is false, deceptive, or misleading,  
17 including but not limited to terms that include as an added cost to the  
18 selling price of a vehicle an amount for licensing or transfer of title  
19 of that vehicle which is not actually due to the state, unless such  
20 amount has in fact been paid by the dealer prior to such sale.

21 (3) To set up, promote, or aid in the promotion of a plan by which  
22 vehicles are to be sold to a person for a consideration and upon  
23 further consideration that the purchaser agrees to secure one or more  
24 persons to participate in the plan by respectively making a similar  
25 purchase and in turn agreeing to secure one or more persons likewise to  
26 join in said plan, each purchaser being given the right to secure  
27 money, credits, goods, or something of value, depending upon the number  
28 of persons joining the plan.

29 (4) To commit, allow, or ratify any act of "bushing" which is  
30 defined as follows: Taking from a prospective buyer of a vehicle a  
31 written order or offer to purchase, or a contract document signed by  
32 the buyer, which:

33 (a) Is subject to the dealer's, or his authorized representative's  
34 future acceptance, and the dealer fails or refuses within forty-eight  
35 hours, exclusive of Saturday, Sunday, or legal holiday, and prior to  
36 any further negotiations with said buyer, to deliver to the buyer  
37 either the dealer's signed acceptance or all copies of the order,  
38 offer, or contract document together with any initial payment or  
39 security made or given by the buyer, including but not limited to

1 money, check, promissory note, vehicle keys, a trade-in, or certificate  
2 of title to a trade-in; or

3 (b) Permits the dealer to renegotiate a dollar amount specified as  
4 trade-in allowance on a vehicle delivered or to be delivered by the  
5 buyer as part of the purchase price, for any reason except substantial  
6 physical damage or latent mechanical defect occurring before the dealer  
7 took possession of the vehicle and which could not have been reasonably  
8 discoverable at the time of the taking of the order, offer, or  
9 contract; or

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

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

17 (6) For any vehicle dealer or vehicle salesman to refuse to  
18 furnish, upon request of a prospective purchaser, the name and address  
19 of the previous registered owner of any used vehicle offered for sale.

20 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or  
21 46.37.425.

22 (8) To commit any offense relating to a dealer's temporary license  
23 permit, including but not limited to failure to properly complete each  
24 such permit, or the issuance of more than one such permit on any one  
25 vehicle.

26 (9) For a dealer, salesman, or mobile home manufacturer, having  
27 taken an instrument or cash "on deposit" from a purchaser prior to the  
28 delivery of the bargained-for vehicle, to commingle said "on deposit"  
29 funds with assets of the dealer, salesman, or mobile home manufacturer  
30 instead of holding said "on deposit" funds as trustee in a separate  
31 trust account until the purchaser has taken delivery of the bargained-  
32 for vehicle. Failure, immediately upon receipt, to endorse "on  
33 deposit" instruments to such a trust account, or to set aside "on  
34 deposit" cash for deposit in such trust account, and failure to deposit  
35 such instruments or cash in such trust account by the close of banking  
36 hours on the day following receipt thereof, shall be evidence of intent  
37 to commit this unlawful practice: PROVIDED, HOWEVER, That a motor  
38 vehicle dealer may keep a separate trust account which equals his  
39 customary total customer deposits for vehicles for future delivery.

1 (10) For a dealer or manufacturer to fail to comply with the  
2 obligations of the implied warranties of merchantability or fitness for  
3 a particular purpose or any written warranty or guarantee given by the  
4 dealer or manufacturer requiring the furnishing of goods and services  
5 or repairs within a reasonable period of time, or to fail to furnish to  
6 a purchaser, all parts which attach to the manufactured unit including  
7 but not limited to the undercarriage, and all items specified in the  
8 terms of a sales agreement signed by the seller and buyer.

9 (11) Being a manufacturer, other than a motorcycle manufacturer  
10 governed by chapter 46.94 RCW, to:

11 (a) Coerce or attempt to coerce any vehicle dealer to order or  
12 accept delivery of any vehicle or vehicles, parts or accessories, or  
13 any other commodities which have not been voluntarily ordered by the  
14 vehicle dealer: PROVIDED, That recommendation, endorsement,  
15 exposition, persuasion, urging, or argument are not deemed to  
16 constitute coercion;

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

33 (c) Encourage, aid, abet, or teach a vehicle dealer to sell  
34 vehicles through any false, deceptive, or misleading sales or financing  
35 practices including but not limited to those practices declared  
36 unlawful in this section;

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

1 (e) Refuse to deliver any vehicle publicly advertised for immediate  
2 delivery to any duly licensed vehicle dealer having a franchise or  
3 contractual agreement for the retail sale of new and unused vehicles  
4 sold or distributed by such manufacturer within sixty days after such  
5 dealer's order has been received in writing unless caused by inability  
6 to deliver because of shortage or curtailment of material, labor,  
7 transportation, or utility services, or by any labor or production  
8 difficulty, or by any cause beyond the reasonable control of the  
9 manufacturer;

10 (f) To provide under the terms of any warranty that a purchaser of  
11 any new or unused vehicle that has been sold, distributed for sale, or  
12 transferred into this state for resale by the vehicle manufacturer may  
13 only make any warranty claim on any item included as an integral part  
14 of the vehicle against the manufacturer of that item.

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

26 (12) Unlawful transfer of an ownership interest in a motor vehicle  
27 as defined in RCW 19.116.050.

28 **Sec. 4.** RCW 46.70.190 and 1989 c 415 s 21 are each amended to read  
29 as follows:

30 Any person who is injured in his business or property by a  
31 violation of this chapter, or any person so injured because he refuses  
32 to accede to a proposal for an arrangement which, if consummated, would  
33 be in violation of this chapter, may bring a civil action in the  
34 superior court to enjoin further violations, to recover the actual  
35 damages sustained by him together with the costs of the suit, including  
36 a reasonable attorney's fee.

37 If a new motor vehicle dealer recovers a judgment or has a claim  
38 dismissed with prejudice against a manufacturer under RCW 46.96.040 or

1 46.96.050(3) or this section, the new motor vehicle dealer is precluded  
2 from pursuing that same claim or recovering judgment for that same  
3 claim against the same manufacturer under the federal Automobile Dealer  
4 Franchise Act, 15 U.S.C. Sections 1221 through 1225, but only to the  
5 extent that the damages recovered by or denied to the new motor vehicle  
6 dealer are the same as the damages being sought under the federal  
7 Automobile Dealer Franchise Act. Likewise, if a new motor vehicle  
8 dealer recovers a judgment or has a claim dismissed with prejudice  
9 against a manufacturer under the federal Automobile Dealer Franchise  
10 Act, the dealer is precluded from pursuing that same claim or  
11 recovering judgment for that same claim against the same manufacturer  
12 under this chapter, but only to the extent that the damages recovered  
13 by or denied to the dealer are the same as the damages being sought  
14 under this chapter.

15 A civil action brought in the superior court pursuant to the  
16 provisions of this section must be filed no later than (~~one year~~) two  
17 years following the alleged violation of this chapter.

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