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SENATE BILL 5119

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State of Washington

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By Senators A. Smith and Rinehart

Read first time 01/13/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to consumer purchases and leases of motor vehicles;  
2 reenacting and amending RCW 46.70.011; and adding new sections to  
3 chapter 46.70 RCW.

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

5 **Sec. 1.** RCW 46.70.011 and 1989 c 337 s 11 and 1989 c 301 s 1 are  
6 each reenacted and amended to read as follows:

7 As used in this chapter:

8 (1) "Vehicle" means and includes every device capable of being  
9 moved upon a public highway and in, upon, or by which any persons or  
10 property is or may be transported or drawn upon a public highway,  
11 excepting devices moved by human or animal power or used exclusively  
12 upon stationary rails or tracks.

13 (2) "Motor vehicle" means every vehicle which is self-propelled and  
14 every vehicle which is propelled by electric power obtained from  
15 overhead trolley wires, but not operated upon rails, and which is  
16 required to be registered and titled under Title 46 RCW, Motor  
17 Vehicles.

18 (3) "Vehicle dealer" means any person, firm, association,  
19 corporation, or trust, not excluded by subsection (4) of this section,

1 engaged in the business of buying, selling, listing, exchanging,  
2 offering, brokering, leasing with an option to purchase, auctioning,  
3 soliciting, or advertising the sale of new or used vehicles, or  
4 arranging or offering or attempting to solicit or negotiate on behalf  
5 of others, a sale, purchase, or exchange of an interest in new or used  
6 motor vehicles, irrespective of whether the motor vehicles are owned by  
7 that person. Vehicle dealers shall be classified as follows:

8 (a) A "motor vehicle dealer" is a vehicle dealer that deals in new  
9 or used motor vehicles, or both;

10 (b) A "mobile home and travel trailer dealer" is a vehicle dealer  
11 that deals in mobile homes, park trailers, or travel trailers, or more  
12 than one type of these vehicles;

13 (c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals  
14 in motorcycles or vehicles other than motor vehicles or mobile homes  
15 and travel trailers or any combination of such vehicles.

16 (4) The term "vehicle dealer" does not include, nor do the  
17 licensing requirements of RCW 46.70.021 apply to, the following  
18 persons, firms, associations, or corporations:

19 (a) Receivers, trustees, administrators, executors, guardians, or  
20 other persons appointed by, or acting under a judgment or order of, any  
21 court; or

22 (b) Public officers while performing their official duties; or

23 (c) Employees of vehicle dealers who are engaged in the specific  
24 performance of their duties as such employees; or

25 (d) Any person engaged in an isolated sale of a vehicle in which he  
26 is the registered or legal owner, or both, thereof; or

27 (e) Any person, firm, association, corporation, or trust, engaged  
28 in the selling of equipment other than vehicles, subject to  
29 registration, used for agricultural or industrial purposes; or

30 (f) A real estate broker licensed under chapter 18.85 RCW, or his  
31 authorized representative, who, on behalf of the legal or registered  
32 owner of a used mobile home negotiates the purchase, sale, or exchange  
33 of the used mobile home in conjunction with the purchase, sale,  
34 exchange, rental, or lease of the land upon which the used mobile home  
35 is located and the real estate broker is not acting as an agent,  
36 subagent, or representative of a vehicle dealer licensed under this  
37 chapter; or

38 (g) Owners who are also operators of the special highway  
39 construction equipment or of the highway construction equipment for

1 which a vehicle license and display vehicle license number plate is  
2 required as defined in RCW 46.16.010; or

3 (h) Any bank, trust company, savings bank, mutual savings bank,  
4 savings and loan association, credit union, and any parent, subsidiary,  
5 or affiliate thereof, authorized to do business in this state under  
6 state or federal law with respect to the sale or other disposition of  
7 a motor vehicle owned and used in their business; or with respect to  
8 the acquisition and sale or other disposition of a motor vehicle in  
9 which the entity has acquired an interest as a lessor, lessee, or  
10 secured party.

11 (5) "Vehicle salesperson" means any person who for any form of  
12 compensation sells, auctions, leases with an option to purchase, or  
13 offers to sell or to so lease vehicles on behalf of a vehicle dealer.

14 (6) "Department" means the department of licensing, which shall  
15 administer and enforce the provisions of this chapter.

16 (7) "Director" means the director of licensing.

17 (8) "Manufacturer" means any person, firm, association,  
18 corporation, or trust, resident or nonresident, who manufactures or  
19 assembles new and unused vehicles or remanufactures vehicles in whole  
20 or in part and further includes the terms:

21 (a) "Distributor," which means any person, firm, association,  
22 corporation, or trust, resident or nonresident, who in whole or in part  
23 offers for sale, sells, or distributes any new and unused vehicle to  
24 vehicle dealers or who maintains factory representatives.

25 (b) "Factory branch," which means a branch office maintained by a  
26 manufacturer for the purpose of selling or offering for sale, vehicles  
27 to a distributor, wholesaler, or vehicle dealer, or for directing or  
28 supervising in whole or in part factory or distributor representatives,  
29 and further includes any sales promotion organization, whether a  
30 person, firm, or corporation, which is engaged in promoting the sale of  
31 new and unused vehicles in this state of a particular brand or make to  
32 vehicle dealers.

33 (c) "Factory representative," which means a representative employed  
34 by a manufacturer, distributor, or factory branch for the purpose of  
35 making or promoting for the sale of their vehicles or for supervising  
36 or contracting with their dealers or prospective dealers.

37 (9) "Established place of business" means a location meeting the  
38 requirements of RCW 46.70.023(1) at which a vehicle dealer conducts  
39 business in this state.

1 (10) "Principal place of business" means that dealer firm's  
2 business location in the state, which place the dealer designates as  
3 their principal place of business.

4 (11) "Subagency" means any place of business of a vehicle dealer  
5 within the state, which place is physically and geographically  
6 separated from the principal place of business of the firm or any place  
7 of business of a vehicle dealer within the state, at which place the  
8 firm does business using a name other than the principal name of the  
9 firm, or both.

10 (12) "Temporary subagency" means a location other than the  
11 principal place of business or subagency within the state where a  
12 licensed vehicle dealer may secure a license to conduct the business  
13 and is licensed for a period of time not to exceed ten days for a  
14 specific purpose such as auto shows, shopping center promotions, tent  
15 sales, exhibitions, or similar merchandising ventures. No more than  
16 six temporary subagency licenses may be issued to a licensee in any  
17 twelve-month period.

18 (13) "Wholesale vehicle dealer" means a vehicle dealer who buys and  
19 sells other than at retail.

20 (14) "Retail vehicle dealer" means a vehicle dealer who may buy and  
21 sell at both wholesale and retail.

22 (15) "Listing dealer" means a used mobile home dealer who makes  
23 contracts with sellers who will compensate the dealer for obtaining a  
24 willing purchaser for the seller's mobile home.

25 (16) "Auction" means a transaction conducted by means of exchanges  
26 between an auctioneer and the members of the audience, constituting a  
27 series of oral invitations for offers for the purchase of vehicles made  
28 by the auctioneer, offers to purchase by members of the audience, and  
29 the acceptance of the highest or most favorable offer to purchase.

30 (17) "Auction company" means a sole proprietorship, partnership,  
31 corporation, or other legal or commercial entity licensed under chapter  
32 18.11 RCW that only sells or offers to sell vehicles at auction or only  
33 arranges or sponsors auctions.

34 (18) "Consumer" means a person who purchases or leases a motor  
35 vehicle that is normally used for personal or household purposes.

36 NEW SECTION. Sec. 2. (1) A consumer may rescind the purchase or  
37 lease of a new or used motor vehicle from a motor vehicle dealer until  
38 midnight of the third business day following the consummation of the

1 transaction or the delivery of the notification and rescission forms  
2 required in section 5 of this act, whichever is later, by notifying the  
3 seller or lessor of his or her intention to rescind. In no case may  
4 more than seven business days elapse following the consummation of the  
5 transaction or the delivery of the notification and rescission forms  
6 required in section 5 of this act, whichever is later, before the motor  
7 vehicle is returned. If the motor vehicle is not returned within seven  
8 business days, the purchaser or lessee loses rescission rights under  
9 sections 2 through 10 of this act.

10 (2) To rescind the purchase or lease of a new or used motor vehicle  
11 under this section:

12 (a) The motor vehicle shall have fewer than two hundred miles of  
13 additional mileage from what existed on the date of the purchase or  
14 lease agreement or the delivery of the notification and rescission  
15 forms required in section 5 of this act, whichever is later, and have  
16 no damage, other than normal wear and tear, that was not present upon  
17 original delivery of the motor vehicle to the consumer; and

18 (b) The consumer shall exercise the right to rescind by delivering  
19 either written notification or the motor vehicle to the seller or  
20 lessor and paying a rescission fee equal to one percent of the purchase  
21 price or fifty dollars, whichever is more. The consumer may require  
22 the seller or lessor to deduct the rescission fee from any refund of  
23 money on the purchase or lease price of the motor vehicle or any refund  
24 made under section 3 of this act.

25 (3) In an action brought under sections 2 through 10 of this act,  
26 a seller or lessor may raise as an affirmative defense that the motor  
27 vehicle has damage other than normal wear and tear that was not present  
28 upon delivery to the consumer.

29 NEW SECTION. **Sec. 3.** Except as provided in section 4 of this act,  
30 upon notification of rescission and delivery of the motor vehicle by  
31 the consumer to the seller or lessor, within ten days the seller or  
32 lessor shall return all moneys and all trade-in vehicles or other  
33 property given as a down payment, collateral, or otherwise, and shall  
34 cancel and nullify any financing or security interest.

35 NEW SECTION. **Sec. 4.** Upon proof that the trade-in vehicle is not  
36 available because title has been transferred before the time of  
37 notification, the seller or lessor shall pay the buyer or lessee an

1 amount of money equal to the amount credited for the trade-in. The  
2 seller or lessor may deduct reasonable expenditures for repair or  
3 improvements to a trade-in vehicle.

4 NEW SECTION. **Sec. 5.** (1) Sellers and lessors of motor vehicles  
5 shall provide to all purchasers and lessees clear and conspicuous  
6 notification of the rights in sections 2 through 10 of this act.  
7 Notification shall be in at least twelve-point type.

8 (2) Sellers and lessors of motor vehicles shall provide to all  
9 purchasers and lessees a form with clear and understandable  
10 instructions for rescinding the sale or lease of the motor vehicle.

11 NEW SECTION. **Sec. 6.** Any agreement entered into by a consumer for  
12 the purchase of a new motor vehicle that waives, limits, or disclaims  
13 the rights set forth in sections 2 through 10 of this act shall be void  
14 as contrary to public policy.

15 NEW SECTION. **Sec. 7.** The attorney general shall adopt rules,  
16 including the necessary forms, for the implementation of sections 2  
17 through 10 of this act.

18 NEW SECTION. **Sec. 8.** The legislature finds that the practices  
19 covered by sections 2 through 10 of this act are matters vitally  
20 affecting the public interest for the purpose of applying the consumer  
21 protection act, chapter 19.86 RCW. Violations of sections 2 through 10  
22 of this act are not reasonable in relation to the development and  
23 preservation of business. A violation of sections 2 through 10 of this  
24 act is an unfair or deceptive act in trade or commerce and an unfair  
25 method of competition for the purpose of applying chapter 19.86 RCW.

26 NEW SECTION. **Sec. 9.** Nothing in sections 2 through 8 of this act  
27 limits the consumer from pursuing other rights or remedies under any  
28 other law.

29 NEW SECTION. **Sec. 10.** Sections 2 through 9 of this act do not  
30 apply to motor vehicle sales at auctions.

31 NEW SECTION. **Sec. 11.** Sections 2 through 10 of this act are each  
32 added to chapter 46.70 RCW.

1        NEW SECTION.    **Sec. 12.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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