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SENATE BILL 6055

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Eide, King, Hobbs, Haugen, Rolfes, Delvin, Fain, Shin, and Conway

Read first time 01/10/12. Referred to Committee on Transportation.

1 AN ACT Relating to changing the expiration date of the current  
2 allowable vehicle documentary service charge; and amending RCW  
3 46.70.180.

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

5 **Sec. 1.** RCW 46.70.180 and 2010 c 161 s 1136 are each amended to  
6 read as follows:

7 Each of the following acts or practices is unlawful:

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

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

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

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

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

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

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

19 (ii) However, an amount not to exceed (~~the applicable amount~~  
20 ~~provided in (iii)(A) and (B) of this subsection (2)(a))~~ one hundred  
21 fifty dollars per vehicle sale or lease may be charged by a dealer to  
22 recover administrative costs for collecting motor vehicle excise taxes,  
23 licensing and registration fees and other agency fees, verifying and  
24 clearing titles, transferring titles, perfecting, releasing, or  
25 satisfying liens or other security interests, and other administrative  
26 and documentary services rendered by a dealer in connection with the  
27 sale or lease of a vehicle and in carrying out the requirements of this  
28 chapter or any other provisions of state law.

29 (~~(iii) A dealer may charge under (a)(ii) of this subsection:~~  
30 ~~(A) As of July 26, 2009, through June 30, 2014, an amount not to~~  
31 ~~exceed one hundred fifty dollars; and~~  
32 ~~(B) As of July 1, 2014, an amount not to exceed fifty dollars.))~~

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

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

1 (ii) The dealer discloses to the purchaser or lessee in writing  
2 that the documentary service fee is a negotiable fee. The disclosure  
3 must be written in a typeface that is at least as large as the typeface  
4 used in the standard text of the document that contains the disclosure  
5 and that is bold faced, capitalized, underlined, or otherwise set out  
6 from the surrounding material so as to be conspicuous. The dealer  
7 shall not represent to the purchaser or lessee that the fee or charge  
8 is required by the state to be paid by either the dealer or prospective  
9 purchaser or lessee;

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

13 (iv) Dealers disclose in any advertisement that a documentary  
14 service fee in an amount (~~(provided in (iv)(A) and (B) of this~~  
15 ~~subsection (2)(b))~~) up to one hundred fifty dollars may be added to the  
16 sale price or the capitalized cost((÷

17 ~~(A) As of July 26, 2009, through June 30, 2014, an amount up to one~~  
18 ~~hundred fifty dollars; and~~

19 ~~(B) As of July 1, 2014, an amount up to fifty dollars)).~~

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

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

31 (4) To commit, allow, or ratify any act of "bushing" which is  
32 defined as follows: Entering into a written contract, written purchase  
33 order or agreement, retail installment sales agreement, note and  
34 security agreement, or written lease agreement, hereinafter  
35 collectively referred to as contract or lease, signed by the  
36 prospective buyer or lessee of a vehicle, which:

37 (a) Is subject to any conditions or the dealer's or his or her  
38 authorized representative's future acceptance, and the dealer fails or

1 refuses within four calendar days, exclusive of Saturday, Sunday, or  
2 legal holiday, and prior to any further negotiations with said buyer or  
3 lessee to inform the buyer or lessee either: (i) That the dealer  
4 unconditionally accepts the contract or lease, having satisfied,  
5 removed, or waived all conditions to acceptance or performance,  
6 including, but not limited to, financing, assignment, or lease  
7 approval; or (ii) that the dealer rejects the contract or lease,  
8 thereby automatically voiding the contract or lease, as long as such  
9 voiding does not negate commercially reasonable contract or lease  
10 provisions pertaining to the return of the subject vehicle and any  
11 physical damage, excessive mileage after the demand for return of the  
12 vehicle, and attorneys' fees authorized by law, and tenders the refund  
13 of any initial payment or security made or given by the buyer or  
14 lessee, including, but not limited to, any down payment, and tenders  
15 return of the trade-in vehicle, key, other trade-in, or certificate of  
16 title to a trade-in. Tender may be conditioned on return of the  
17 subject vehicle if previously delivered to the buyer or lessee.

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

36 When a dealer informs a buyer or lessee under this subsection  
37 (4)(a) regarding the unconditional acceptance or rejection of the

1 contract, lease, or financing by an electronic mail message, the dealer  
2 must also transmit the communication by any additional means;

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 or lessee as part of the purchase price or lease, for any reason  
6 except:

7 (i) Failure to disclose that the vehicle's certificate of title has  
8 been branded for any reason, including, but not limited to, status as  
9 a rebuilt vehicle as provided in RCW 46.12.540 and 46.12.560; or

10 (ii) Substantial physical damage or latent mechanical defect  
11 occurring before the dealer took possession of the vehicle and which  
12 could not have been reasonably discoverable at the time of the taking  
13 of the order, offer, or contract; or

14 (iii) Excessive additional miles or a discrepancy in the mileage.  
15 "Excessive additional miles" means the addition of five hundred miles  
16 or more, as reflected on the vehicle's odometer, between the time the  
17 vehicle was first valued by the dealer for purposes of determining its  
18 trade-in value and the time of actual delivery of the vehicle to the  
19 dealer. "A discrepancy in the mileage" means (A) a discrepancy between  
20 the mileage reflected on the vehicle's odometer and the stated mileage  
21 on the signed odometer statement; or (B) a discrepancy between the  
22 mileage stated on the signed odometer statement and the actual mileage  
23 on the vehicle; or

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

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

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

35 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or  
36 46.37.425.

37 (8) To commit any offense relating to a dealer's temporary license  
38 permit, including but not limited to failure to properly complete each

1 such permit, or the issuance of more than one such permit on any one  
2 vehicle. However, a dealer may issue a second temporary permit on a  
3 vehicle if the following conditions are met:

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

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

7 (c) The dealer has proof that payment of the lien was made within  
8 two calendar days, exclusive of Saturday, Sunday, or a legal holiday,  
9 after the sales contract has been executed by all parties and all  
10 conditions and contingencies in the sales contract have been met or  
11 otherwise satisfied.

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

33 (10) For a dealer or manufacturer to fail to comply with the  
34 obligations of any written warranty or guarantee given by the dealer or  
35 manufacturer requiring the furnishing of goods and services or repairs  
36 within a reasonable period of time, or to fail to furnish to a  
37 purchaser or lessee, all parts which attach to the manufactured unit

1 including but not limited to the undercarriage, and all items specified  
2 in the terms of a sales or lease agreement signed by the seller and  
3 buyer or lessee.

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

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

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

19 (b) Signing any vehicle purchase orders, sales contracts, leases,  
20 odometer statements, or title documents, or having the name of the  
21 buyer's agent appear on the vehicle purchase order, sales contract,  
22 lease, or title; or

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

25 It is unlawful for a buyer's agent to use a power of attorney  
26 obtained from the consumer to accomplish or effect the purchase, sale,  
27 lease, or transfer of ownership documents of any new motor vehicle by  
28 any means which would otherwise be prohibited under (a) through (c) of  
29 this subsection. However, the buyer's agent may use a power of  
30 attorney for physical delivery of motor vehicle license plates to the  
31 consumer.

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

37 (13) For a buyer's agent to arrange for or to negotiate the  
38 purchase, or both, of a new motor vehicle through an out-of-state

1 dealer without disclosing in writing to the customer that the new  
2 vehicle would not be subject to chapter 19.118 RCW. This subsection  
3 also applies to leased vehicles. In addition, it is unlawful for any  
4 buyer's agent to fail to have a written agreement with the customer  
5 that: (a) Sets forth the terms of the parties' agreement; (b)  
6 discloses to the customer the total amount of any fees or other  
7 compensation being paid by the customer to the buyer's agent for the  
8 agent's services; and (c) further discloses whether the fee or any  
9 portion of the fee is refundable.

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

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

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

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

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

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

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

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

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

32 (16) To knowingly and intentionally engage in collusion with a  
33 registered owner of a vehicle to repossess and return or resell the  
34 vehicle to the registered owner in an attempt to avoid a suspended  
35 license impound under chapter 46.55 RCW. However, compliance with  
36 chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise  
37 disposing of the vehicle, including providing redemption rights to the  
38 debtor, is not a violation of this section.

1 (17)(a) For a dealer to enter into a new motor vehicle sales  
2 contract without disclosing in writing to a buyer of the new motor  
3 vehicle, or to a dealer in the case of an unregistered motor vehicle,  
4 any known damage and repair to the new motor vehicle if the damage  
5 exceeds five percent of the manufacturer's suggested retail price as  
6 calculated at the dealer's authorized warranty rate for labor and  
7 parts, or one thousand dollars, whichever amount is greater. A  
8 manufacturer or new motor vehicle dealer is not required to disclose to  
9 a dealer or buyer that glass, tires, bumpers, or cosmetic parts of a  
10 new motor vehicle were damaged at any time if the damaged item has been  
11 replaced with original or comparable equipment. A replaced part is not  
12 part of the cumulative damage required to be disclosed under this  
13 subsection.

14 (b) A manufacturer is required to provide the same disclosure to a  
15 dealer of any known damage or repair as required in (a) of this  
16 subsection.

17 (c) If disclosure of any known damage or repair is not required  
18 under this section, a buyer may not revoke or rescind a sales contract  
19 due to the fact that the new motor vehicle was damaged and repaired  
20 before completion of the sale.

21 (d) As used in this section:

22 (i) "Cosmetic parts" means parts that are attached by and can be  
23 replaced in total through the use of screws, bolts, or other fasteners  
24 without the use of welding or thermal cutting, and includes  
25 windshields, bumpers, hoods, or trim panels.

26 (ii) "Manufacturer's suggested retail price" means the retail price  
27 of the new motor vehicle suggested by the manufacturer, and includes  
28 the retail delivered price suggested by the manufacturer for each  
29 accessory or item of optional equipment physically attached to the new  
30 motor vehicle at the time of delivery to the new motor vehicle dealer  
31 that is not included within the retail price suggested by the  
32 manufacturer for the new motor vehicle.

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