

# HOUSE BILL REPORT

## HB 2898

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**As Reported by House Committee On:**  
Business & Financial Services

**Title:** An act relating to wholesale vehicle dealers.

**Brief Description:** Concerning wholesale vehicle dealers.

**Sponsors:** Representatives Clibborn and Moscoso.

**Brief History:**

**Committee Activity:**

Business & Financial Services: 2/2/16, 2/3/16 [DPS].

**Brief Summary of Substitute Bill**

- Requires wholesale vehicle dealers to purchase vehicles from or sell vehicles to other dealers licensed by the Department of Licensing.

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### HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Stanford, Vice Chair; Vick, Ranking Minority Member; McCabe, Assistant Ranking Minority Member; Blake, Dye, Hurst, Kochmar, Ryu and Santos.

**Staff:** Peter Clodfelter (786-7127)

**Background:**

The Department of Licensing (DOL) is responsible for licensing all motor vehicle dealers operating in Washington. A "vehicle dealer" is defined as a person, business, or trust that is engaged in the business of buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising the sale of new or used vehicles, or arranging or offering or attempting to solicit or negotiate on behalf of others, a sale, purchase, or exchange of an interest in new or used motor vehicles, irrespective of whether the motor vehicles are owned by that person.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

With certain exceptions, a person selling more than four vehicles per year that are registered to the person must have a vehicle dealer license. And a person selling any vehicles not registered to the person must have a vehicle dealer license. In addition to the license requirement, vehicle dealers must file a surety bond with the DOL. Generally, the surety bond must be in the amount of \$30,000.

*Classification of Vehicle Dealers.* Within the broad category of "vehicle dealers" are several subcategories of vehicle dealers. The license fee for each type of vehicle dealer license is \$975, except for each "subagency" of a vehicle dealer, which is a \$100 license fee. The classifications are:

- A "motor vehicle dealer" is a vehicle dealer that deals in new or used motor vehicles.
- A "retail vehicle dealer" is a vehicle dealer that may buy and sell vehicles at both wholesale and retail.
- A "wholesale vehicle dealer" is a vehicle dealer that buys and sells other than at retail.
- A "mobile home and travel trailer dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers.
- A "miscellaneous vehicle dealer" is a vehicle dealer that deals in motorcycles or vehicles other than motor vehicles or mobile homes and travel trailers. (\$5,000 surety bond instead of \$30,000 surety bond).
- A "subagency" is any place of business of a vehicle dealer within the state, which is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the state, at which place the firm does business using a name other than the principal name of the firm, or both.

*Requirements Specific to Vehicle Dealers.* The business of a vehicle dealer must be lawfully carried on at an established place of business in accordance with the terms of all applicable building code, zoning, and other land-use regulatory ordinances. An established place of business is a permanent, enclosed commercial building located in Washington that is easily accessible at all reasonable times. A vehicle dealer may only display a vehicle for sale at the vehicle dealer's established place of business, licensed subagency, or temporary subagency site, except at auction.

Further, a vehicle dealer must keep the building open to the public so that the public may contact the vehicle dealer or the vehicle dealer's salespersons at all reasonable times (at least 10:00 a.m. to 4:00 p.m.). The books, records, and files necessary to conduct the business must be kept and maintained at that place. A vehicle dealer's established place of business must display an exterior sign with the business name and nature of the business, such as auto sales, permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. If a vehicle dealer maintains a place of business at more than one location or under more than one name in Washington, the vehicle dealer must designate one location as the principal place of business of the firm, one name as the principal name of the firm, and all other locations or names as subagencies. A subagency license is required for each subagency.

*Requirements Specific to Wholesale Vehicle Dealers.* Wholesale vehicle dealers must have office facilities in a commercial building within Washington. However, wholesale vehicle dealers are not required to maintain normal business hours or have a phone book listing, like other vehicle dealers. All storage facilities for inventory must be listed with the DOL and

comply with local land use ordinances. A wholesale vehicle dealer must maintain a telecommunications system. An exterior sign visible from the nearest street must identify the wholesale vehicle dealer's business name and the nature of business. If a wholesale vehicle dealer and another vehicle dealer or dealers businesses share a location, all records, office facilities, and inventory, if any, must be physically segregated and clearly identified.

*Actions to Recover Damages.* Vehicle dealers are accountable for the dealer's employees, sales personnel, and managerial personnel while in the performance of their official duties. A dealer is subject to penalties for violations of law and rules by employees and other personnel. A retail purchaser, consignor who is not a motor vehicle dealer, or a motor vehicle dealer who has purchased from a wholesale dealer, who has suffered a loss or damage by reason of any act by a dealer, salesperson, manager, or other employee of a dealership may institute an action for recovery against the dealer and the dealer's surety bond.

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**Summary of Substitute Bill:**

A requirement is added that wholesale vehicle dealers must purchase vehicles from or sell vehicles to other dealers licensed by the Department of Licensing (DOL).

**Substitute Bill Compared to Original Bill:**

The "wholesale vehicle dealer" subcategory of licensed vehicle dealers is restored. Also restored are the specific requirements related to wholesale vehicle dealer office facilities, storage facilities, telecommunications equipment, signage, and shared locations, along with additional references to wholesale vehicle dealers. The requirement that a consignor not be a vehicle dealer in order to institute an action for recovery against another dealer and the other dealer's surety bond is restored.

A requirement is added that wholesale vehicle dealers must purchase vehicles from or sell vehicles to other dealers licensed by the DOL.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 3, 2016.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) The elimination of the wholesale vehicle dealer license is a response to abuse of states' wholesale vehicle dealer licensing statutes. Recently, the State of Indiana realized many nonresidents were acquiring Indiana wholesale vehicle dealer licenses through an Internet website acting as an intermediary between the licensing authority and the licensee.

Although structured so that the letter of Indiana's law was met, many of these nonresidents were able to obtain Indiana vehicle dealer licenses despite never intending to or actually purchasing or selling vehicles in Indiana. Under authority of these licenses, nonresident vehicle dealers could gain access to various auctions and vehicle sales across the United States that are restricted to licensed dealers. The problem is that some of these nonresidents do not follow the rules and sell cars that should not be sold, fail to follow through with vehicle titles, or sell cars recently used to commit crimes. And further, because the sales occurred outside of Indiana, Indiana lacked jurisdiction over the nonresident vehicle dealers. Indiana responded by eliminating the wholesale vehicle dealer license category. This scheme is now under way in Washington. In one week, recently, 180 wholesale vehicle dealer licenses were sold in Wilbur, Washington. This is also happening out of Moses Lake and Everett, Washington. The DOL reports an 800 percent increase in wholesale vehicle licenses issued. The Federal Bureau of Investigation and the Drug Enforcement Agency have both contacted the DOL regarding specific vehicles that were connected to crimes and that were subsequently sold by Washington licensed wholesale vehicle dealers before the vehicles were located by authorities. The DOL considered rulemaking to address the issue, but the DOL, in consultation with the Office of the Attorney General, determined that these wholesale vehicle dealers are currently complying with the letter of the law so a change in statute is necessary. Once a vehicle leaves the state, the DOL loses jurisdiction. Eliminating this license category effects a small number of legitimate operators in Washington, who should be made whole if negatively impacted by the legislation. Proponents are open to suggestions for how else to approach solving this issue. The emergency clause in the bill would stop people from purchasing more licenses in the 90 days it would take for the bill to become effective.

(Opposed) None.

(Other) Washington licensed retail vehicle dealers acknowledge the problem described by the bill's proponents, but suggest a different approach. There are many legitimate wholesale vehicle dealers that benefit other vehicle dealers. Although some of these existing licensed wholesale dealers will likely convert to a retail vehicle dealer license, which also allows the dealer to sell vehicles at wholesale and is the same license fee, not all wholesalers will have the resources necessary to comply with the increased commercial office and business hours requirements. There is a proposed amendment that would restore the wholesale vehicle dealer license category but limit the issuance of wholesale vehicle dealer licenses to people actually doing business in Washington to ensure that the DOL has tools to regulate licensees. This would protect legitimate actors while excluding bad actors.

**Persons Testifying:** (In support) Rick Jensen, Dealers Auto Auction Northwest; and Anthony Sermanti, Department of Licensing;

(Other) Scott Hazelgrove, Washington State Auto Dealers Association

**Persons Signed In To Testify But Not Testifying:** None.