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HOUSE BILL 2898

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Clibborn and Moscoso

Read first time 01/26/16. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to wholesale vehicle dealers; amending RCW  
2 46.70.023, 46.70.027, 46.70.070, and 46.70.330; reenacting and  
3 amending RCW 46.70.011; and declaring an emergency.

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

5 **Sec. 1.** RCW 46.70.011 and 2010 c 161 s 1130 are each reenacted  
6 and amended to read as follows:

7 As used in this chapter:

8 (1) "Auction" means a transaction conducted by means of exchanges  
9 between an auctioneer and the members of the audience, constituting a  
10 series of oral invitations for offers for the purchase of vehicles  
11 made by the auctioneer, offers to purchase by members of the  
12 audience, and the acceptance of the highest or most favorable offer  
13 to purchase.

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

18 (3) "Buyer's agent" means any person, firm, partnership,  
19 association, limited liability company, limited liability  
20 partnership, or corporation retained or employed by a consumer to  
21 arrange for or to negotiate, or both, the purchase or lease of a new

1 motor vehicle on behalf of the consumer, and who is paid a fee or  
2 receives other compensation from the consumer for its services.

3 (4) "Department" means the department of licensing, which shall  
4 administer and enforce the provisions of this chapter.

5 (5) "Director" means the director of licensing.

6 (6) "Established place of business" means a location meeting the  
7 requirements of RCW 46.70.023(1) at which a vehicle dealer conducts  
8 business in this state.

9 (7) "Listing dealer" means a used mobile home dealer who makes  
10 contracts with sellers who will compensate the dealer for obtaining a  
11 willing purchaser for the seller's mobile home.

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

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

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

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

32 (9) "Motor vehicle" means every vehicle which is self-propelled  
33 and every vehicle which is propelled by electric power obtained from  
34 overhead trolley wires, but not operated upon rails, and which is  
35 required to be registered and titled under this title.

36 (10) "New motor vehicle" means any motor vehicle that is self-  
37 propelled and is required to be registered and titled under this  
38 title, has not been previously titled to a retail purchaser or  
39 lessee, and is not a "used vehicle" as defined under RCW 46.04.660.

1 (11) "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 (12) "Recreational vehicle" means a travel trailer, motor home,  
5 truck camper, or camping trailer that is primarily designed and used  
6 as temporary living quarters, is either self-propelled or mounted on  
7 or drawn by another vehicle, is transient, is not occupied as a  
8 primary residence, and is not immobilized or permanently affixed to a  
9 mobile home lot.

10 (13) "Retail vehicle dealer" means a vehicle dealer who may buy  
11 and sell at both wholesale and retail.

12 (14) "Subagency" means any place of business of a vehicle dealer  
13 within the state, which place is physically and geographically  
14 separated from the principal place of business of the firm or any  
15 place of business of a vehicle dealer within the state, at which  
16 place the firm does business using a name other than the principal  
17 name of the firm, or both.

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

26 (16) "Vehicle" means and includes every device capable of being  
27 moved upon a public highway and in, upon, or by which any persons or  
28 property is or may be transported or drawn upon a public highway,  
29 excepting devices moved by human or animal power or used exclusively  
30 upon stationary rails or tracks.

31 (17) "Vehicle dealer" means any person, firm, association,  
32 corporation, or trust, not excluded by subsection (18) of this  
33 section, engaged in the business of buying, selling, listing,  
34 exchanging, offering, brokering, leasing with an option to purchase,  
35 auctioning, soliciting, or advertising the sale of new or used  
36 vehicles, or arranging or offering or attempting to solicit or  
37 negotiate on behalf of others, a sale, purchase, or exchange of an  
38 interest in new or used motor vehicles, irrespective of whether the  
39 motor vehicles are owned by that person. Vehicle dealers shall be  
40 classified as follows:

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

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

6 (c) A "miscellaneous vehicle dealer" is a vehicle dealer that  
7 deals in motorcycles or vehicles other than motor vehicles or mobile  
8 homes and travel trailers or any combination of such vehicles;

9 (d) A "recreational vehicle dealer" is a vehicle dealer that  
10 deals in travel trailers, motor homes, truck campers, or camping  
11 trailers that are primarily designed and used as temporary living  
12 quarters, are either self-propelled or mounted on or drawn by another  
13 vehicle, are transient, are not occupied as a primary residence, and  
14 are not immobilized or permanently affixed to a mobile home lot.

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

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

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

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

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

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

29 (f) A real estate broker licensed under chapter 18.85 RCW, or an  
30 affiliated licensee, who, on behalf of another negotiates the  
31 purchase, sale, lease, or exchange of a manufactured or mobile home  
32 in conjunction with the purchase, sale, exchange, rental, or lease of  
33 the land upon which the manufactured or mobile home is, or will be,  
34 located; or

35 (g) Owners who are also operators of special highway construction  
36 equipment, as defined in RCW 46.04.551, or of the highway  
37 construction equipment for which a vehicle license and display  
38 vehicle license number plate is required; or

39 (h) Any bank, trust company, savings bank, mutual savings bank,  
40 savings and loan association, credit union, and any parent,

1 subsidiary, or affiliate thereof, authorized to do business in this  
2 state under state or federal law with respect to the sale or other  
3 disposition of a motor vehicle owned and used in their business; or  
4 with respect to the acquisition and sale or other disposition of a  
5 motor vehicle in which the entity has acquired an interest as a  
6 lessor, lessee, or secured party; or

7 (i) Any person who is regularly engaged in the business of  
8 acquiring leases or installment contracts by assignment, with respect  
9 to the acquisition and sale or other disposition of a motor vehicle  
10 in which the person has acquired an interest as a result of the  
11 business.

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

15 ~~((20) "Wholesale vehicle dealer" means a vehicle dealer who buys  
16 and sells other than at retail.))~~

17 **Sec. 2.** RCW 46.70.023 and 1997 c 432 s 1 are each amended to  
18 read as follows:

19 (1) An "established place of business" requires a permanent,  
20 enclosed commercial building located within the state of Washington  
21 easily accessible at all reasonable times. The business of a vehicle  
22 dealer must be lawfully carried on at an established place of  
23 business in accordance with the terms of all applicable building  
24 code, zoning, and other land-use regulatory ordinances. A vehicle  
25 dealer may display a vehicle for sale only at its established place  
26 of business, licensed subagency, or temporary subagency site, except  
27 at auction. The dealer shall keep the building open to the public so  
28 that the public may contact the vehicle dealer or the dealer's  
29 salespersons at all reasonable times. The books, records, and files  
30 necessary to conduct the business shall be kept and maintained at  
31 that place. The established place of business shall display an  
32 exterior sign with the business name and nature of the business, such  
33 as auto sales, permanently affixed to the land or building, with  
34 letters clearly visible to the major avenue of traffic. A room or  
35 rooms in a hotel, rooming house, or apartment house building or part  
36 of a single or multiple-unit dwelling house may not be considered an  
37 "established place of business" unless the ground floor of such a  
38 dwelling is devoted principally to and occupied for commercial  
39 purposes and the dealer offices are located on the ground floor. A

1 mobile office or mobile home may be used as an office if it is  
2 connected to utilities and is set up in accordance with state law. A  
3 statewide trade association representing manufactured housing dealers  
4 shall be permitted to use a manufactured home as an office if the  
5 office complies with all other applicable building code, zoning, and  
6 other land-use regulatory ordinances. This subsection does not apply  
7 to auction companies that do not own vehicle inventory or sell  
8 vehicles from an auction yard.

9 (2) An auction company shall have office facilities within the  
10 state. The books, records, and files necessary to conduct the  
11 business shall be maintained at the office facilities. All storage  
12 facilities for inventory shall be listed with the department, and  
13 shall meet local zoning and land use ordinances. An auction company  
14 shall maintain a telecommunications system.

15 (3) Auction companies shall post their vehicle dealer license at  
16 each auction where vehicles are offered, and shall provide the  
17 department with the address of the auction at least three days before  
18 the auction.

19 (4) If a dealer maintains a place of business at more than one  
20 location or under more than one name in this state, he or she shall  
21 designate one location as the principal place of business of the  
22 firm, one name as the principal name of the firm, and all other  
23 locations or names as subagencies. A subagency license is required  
24 for each and every subagency: PROVIDED, That the department may grant  
25 an exception to the subagency requirement in the specific instance  
26 where a licensed dealer is unable to locate their used vehicle sales  
27 facilities adjacent to or at the established place of business. This  
28 exception shall be granted and defined under the promulgation of  
29 rules consistent with the administrative procedure act.

30 (5) All vehicle dealers shall maintain ownership or leasehold  
31 throughout the license year of the real property from which they do  
32 business. The dealer shall provide the department with evidence of  
33 ownership or leasehold whenever the ownership changes or the lease is  
34 terminated.

35 (6) A subagency shall comply with all requirements of an  
36 established place of business, except that subagency records may be  
37 kept at the principal place of business designated by the dealer.  
38 Auction companies shall comply with the requirements in subsection  
39 (2) of this section.

1 (7) A temporary subagency shall meet all local zoning and  
2 building codes for the type of merchandising being conducted. The  
3 dealer license certificate shall be posted at the location. No other  
4 requirements of an established place of business apply to a temporary  
5 subagency. Auction companies are not required to obtain a temporary  
6 subagency license.

7 ~~(8) ((A wholesale vehicle dealer shall have office facilities in  
8 a commercial building within this state, and all storage facilities  
9 for inventory shall be listed with the department, and shall meet  
10 local zoning and land use ordinances. A wholesale vehicle dealer  
11 shall maintain a telecommunications system. An exterior sign visible  
12 from the nearest street shall identify the business name and the  
13 nature of business. When two or more vehicle dealer businesses share  
14 a location, all records, office facilities, and inventory, if any,  
15 must be physically segregated and clearly identified.~~

16 ~~(9))~~ A retail vehicle dealer shall be open during normal  
17 business hours, maintain office and display facilities in a  
18 commercially zoned location or in a location complying with all  
19 applicable building and land use ordinances, and maintain a business  
20 telephone listing in the local directory. When two or more vehicle  
21 dealer businesses share a location, all records, office facilities,  
22 and inventory shall be physically segregated and clearly identified.

23 ~~((+10))~~ (9) A subagency license is not required for a mobile  
24 home dealer to display an on-site display model, a consigned mobile  
25 home not relocated from its site, or a repossessed mobile home if  
26 sales are handled from a principal place of business or subagency. A  
27 mobile home dealer shall identify on-site display models, repossessed  
28 mobile homes, and those consigned at their sites with a sign that  
29 includes the dealer's name and telephone number.

30 ~~((+11))~~ (10) Every vehicle dealer shall advise the department of  
31 the location of each and every place of business of the firm and the  
32 name or names under which the firm is doing business at such location  
33 or locations. If any name or location is changed, the dealer shall  
34 notify the department of such change within ten days. The license  
35 issued by the department shall reflect the name and location of the  
36 firm and shall be posted in a conspicuous place at that location by  
37 the dealer.

38 ~~((+12))~~ (11) A vehicle dealer's license shall upon the death or  
39 incapacity of an individual vehicle dealer authorize the personal  
40 representative of such dealer, subject to payment of license fees, to

1 continue the business for a period of six months from the date of the  
2 death or incapacity.

3 **Sec. 3.** RCW 46.70.027 and 2011 c 171 s 90 are each amended to  
4 read as follows:

5 A vehicle dealer is accountable for the dealer's employees, sales  
6 personnel, and managerial personnel while in the performance of their  
7 official duties. Any violations of this chapter or applicable  
8 provisions of chapter 46.12 or 46.16A RCW committed by any of these  
9 employees subjects the dealer to license penalties prescribed under  
10 RCW 46.70.101. A retail purchaser((~~τ~~)) or consignor ((~~who is not a~~  
11 ~~motor vehicle dealer, or a motor vehicle dealer who has purchased~~  
12 ~~from a wholesale dealer,~~)) who has suffered a loss or damage by  
13 reason of any act by a dealer, salesperson, managerial person, or  
14 other employee of a dealership, that constitutes a violation of this  
15 chapter or applicable provisions of chapter 46.12 or 46.16A RCW may  
16 institute an action for recovery against the dealer and the surety  
17 bond as set forth in RCW 46.70.070. ((~~However, under this section,~~  
18 ~~motor vehicle dealers who have purchased from wholesale dealers may~~  
19 ~~only institute actions against wholesale dealers and their surety~~  
20 ~~bonds.~~))

21 **Sec. 4.** RCW 46.70.070 and 2001 c 272 s 13 are each amended to  
22 read as follows:

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

26 (a) Thirty thousand dollars for motor vehicle dealers;

27 (b) Thirty thousand dollars for mobile home, park trailer, and  
28 travel trailer dealers;

29 (c) Five thousand dollars for miscellaneous dealers,  
30 running to the state, and executed by a surety company authorized to  
31 do business in the state. Such bond shall be approved by the attorney  
32 general as to form and conditioned that the dealer shall conduct his  
33 or her business in conformity with the provisions of this chapter.

34 Any retail purchaser((~~τ~~)) or consignor ((~~who is not a motor~~  
35 ~~vehicle dealer, or a motor vehicle dealer who has purchased from,~~  
36 ~~sold to, or otherwise transacted business with a wholesale dealer,~~))  
37 who has suffered any loss or damage by reason of any act by a dealer  
38 which constitutes a violation of this chapter shall have the right to



1 institute an action for recovery against such dealer and the surety  
2 upon such bond. (~~However, under this section, motor vehicle dealers~~  
3 ~~who have purchased from, sold to, or otherwise transacted business~~  
4 ~~with wholesale dealers may only institute actions against wholesale~~  
5 ~~dealers and their surety bonds.~~) Successive recoveries against said  
6 bond shall be permitted, but the aggregate liability of the surety to  
7 all persons shall in no event exceed the amount of the bond. Upon  
8 exhaustion of the penalty of said bond or cancellation of the bond by  
9 the surety the vehicle dealer license shall automatically be deemed  
10 canceled.

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

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

17 **Sec. 5.** RCW 46.70.330 and 1998 c 282 s 2 are each amended to  
18 read as follows:

19 (1) A wholesale motor vehicle auction dealer is a motor vehicle  
20 dealer that may:

21 (a) Sell any classification of motor vehicle;

22 (b) Sell only to motor vehicle dealers and vehicle wreckers  
23 licensed under this title (~~46-RCW~~) by the state of Washington or  
24 licensed by any other state; or

25 (c) Sell a motor vehicle belonging to the United States  
26 government, the state of Washington, or a political subdivision to  
27 nonlicensed persons as may be required by the contracting public  
28 agency. However, a publicly owned "wrecked vehicle" as defined in RCW  
29 46.80.010 may be sold to motor vehicle dealers and vehicle wreckers  
30 licensed under this title (~~46-RCW~~) by the state of Washington or  
31 licensed by any other state.

32 (2) If the wholesale motor vehicle auction dealer knows that a  
33 vehicle is a "wrecked vehicle" as defined by RCW 46.80.010, the  
34 dealer must disclose this fact on the bill of sale.

35 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
36 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes  
2 effect immediately.

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