

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1893

53rd Legislature
1993 Regular Session

Passed by the House March 17, 1993
Yeas 97 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 9, 1993
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1893** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1893

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Zellinsky, Forner, R. Fisher and Kremen)

Read first time 02/26/93.

1 AN ACT Relating to motor vehicle dealers' buyer's agents
2 relationships; amending RCW 46.70.041 and 46.70.180; reenacting and
3 amending RCW 46.70.011; and adding a new section to 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) "Buyer's agent" means any person, firm, partnership,
35 association, or corporation retained or employed by a consumer to
36 arrange for or to negotiate, or both, the purchase of a new motor
37 vehicle on behalf of the consumer, and who is paid a fee or receives
38 other compensation from the consumer for the services.

1 **Sec. 2.** RCW 46.70.041 and 1990 c 250 s 64 are each amended to read
2 as follows:

3 (1) Every application for a vehicle dealer license shall contain
4 the following information to the extent it applies to the applicant:

5 (a) Proof as the department may require concerning the applicant's
6 identity, including but not limited to his fingerprints, the honesty,
7 truthfulness, and good reputation of the applicant for the license, or
8 of the officers of a corporation making the application;

9 (b) The applicant's form and place of organization including if the
10 applicant is a corporation, proof that the corporation is licensed to
11 do business in this state;

12 (c) The qualification and business history of the applicant and any
13 partner, officer, or director;

14 (d) The applicant's financial condition or history including a bank
15 reference and whether the applicant or any partner, officer, or
16 director has ever been adjudged bankrupt or has any unsatisfied
17 judgment in any federal or state court;

18 (e) Whether the applicant has been adjudged guilty of a crime which
19 directly relates to the business for which the license is sought and
20 the time elapsed since the conviction is less than ten years, or has
21 suffered any judgment within the preceding five years in any civil
22 action involving fraud, misrepresentation, or conversion and in the
23 case of a corporation or partnership, all directors, officers, or
24 partners;

25 (f) A business telephone with a listing in the local directory;

26 (g) The name or names of new vehicles the vehicle dealer wishes to
27 sell;

28 (h) The names and addresses of each manufacturer from whom the
29 applicant has received a franchise;

30 (i) Whether the applicant intends to sell used vehicles, and if so,
31 whether he has space available for servicing and repairs;

32 (j) A certificate by a representative of the department, that the
33 applicant's principal place of business and each subagency business
34 location in the state of Washington meets the location requirements as
35 required by this chapter. The certificate shall include proof of the
36 applicant's ownership or lease of the real property where the
37 applicant's principal place of business is established;

38 (k) A copy of a current service agreement with a manufacturer, or
39 distributor for a foreign manufacturer, requiring the applicant, upon

1 demand of any customer receiving a new vehicle warranty to perform or
2 arrange for, within a reasonable distance of his established place of
3 business, the service repair and replacement work required of the
4 manufacturer or distributor by such vehicle warranty. This requirement
5 applies only to applicants seeking to sell, to exchange, to offer, to
6 auction, to solicit, ~~((or))~~ to advertise, or to broker new or current-
7 model vehicles with factory or distributor warranties;

8 (1) The class of vehicles the vehicle dealer will be buying,
9 selling, listing, exchanging, offering, brokering, leasing with an
10 option to purchase, auctioning, soliciting, or advertising, and which
11 classification or classifications the dealer wishes to be designated
12 as;

13 (m) Any other information the department may reasonably require.

14 (2) If the applicant is a manufacturer the application shall
15 contain the following information to the extent it is applicable to the
16 applicant:

17 (a) The name and address of the principal place of business of the
18 applicant and, if different, the name and address of the Washington
19 state representative of the applicant;

20 (b) The name or names under which the applicant will do business in
21 the state of Washington;

22 (c) Evidence that the applicant is authorized to do business in the
23 state of Washington;

24 (d) The name or names of the vehicles that the licensee
25 manufactures;

26 (e) The name or names and address or addresses of each and every
27 distributor, factory branch, and factory representative;

28 (f) The name or names and address or addresses of resident
29 employees or agents to provide service or repairs to vehicles located
30 in the state of Washington only under the terms of any warranty
31 attached to new or unused vehicles manufactured, unless such
32 manufacturer requires warranty service to be performed by all of its
33 dealers pursuant to a current service agreement on file with the
34 department;

35 (g) Any other information the department may reasonably require.

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

38 Each of the following acts or practices is unlawful:

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

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

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

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

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

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

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

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

37 (4) To commit, allow, or ratify any act of "bushing" which is
38 defined as follows: Taking from a prospective buyer of a vehicle a

1 written order or offer to purchase, or a contract document signed by
2 the buyer, which:

3 (a) Is subject to the dealer's, or his authorized representative's
4 future acceptance, and the dealer fails or refuses within forty-eight
5 hours, exclusive of Saturday, Sunday, or legal holiday, and prior to
6 any further negotiations with said buyer, to deliver to the buyer
7 either the dealer's signed acceptance or all copies of the order,
8 offer, or contract document together with any initial payment or
9 security made or given by the buyer, including but not limited to
10 money, check, promissory note, vehicle keys, a trade-in, or certificate
11 of title to a trade-in; or

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

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

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

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

29 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
30 46.37.425.

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

35 (9) For a dealer, salesman, or mobile home manufacturer, having
36 taken an instrument or cash "on deposit" from a purchaser prior to the
37 delivery of the bargained-for vehicle, to commingle said "on deposit"
38 funds with assets of the dealer, salesman, or mobile home manufacturer
39 instead of holding said "on deposit" funds as trustee in a separate

1 trust account until the purchaser has taken delivery of the bargained-
2 for vehicle. Failure, immediately upon receipt, to endorse "on
3 deposit" instruments to such a trust account, or to set aside "on
4 deposit" cash for deposit in such trust account, and failure to deposit
5 such instruments or cash in such trust account by the close of banking
6 hours on the day following receipt thereof, shall be evidence of intent
7 to commit this unlawful practice: PROVIDED, HOWEVER, That a motor
8 vehicle dealer may keep a separate trust account which equals his
9 customary total customer deposits for vehicles for future delivery.

10 (10) For a dealer or manufacturer to fail to comply with the
11 obligations of any written warranty or guarantee given by the dealer or
12 manufacturer requiring the furnishing of goods and services or repairs
13 within a reasonable period of time, or to fail to furnish to a
14 purchaser, all parts which attach to the manufactured unit including
15 but not limited to the undercarriage, and all items specified in the
16 terms of a sales agreement signed by the seller and buyer.

17 (11) For a vehicle dealer to pay to or receive from any person,
18 firm, partnership, association, or corporation acting, either directly
19 or through a subsidiary, as a buyer's agent for consumers, any
20 compensation, fee, gratuity, or reward in connection with the purchase
21 or sale of a new motor vehicle.

22 (12) For a buyer's agent acting directly or through a subsidiary to
23 pay to or to receive from any motor vehicle dealer any compensation,
24 fee, gratuity, or reward in connection with the purchase or sale of a
25 new motor vehicle.

26 (13) For a buyer's agent to arrange for or to negotiate the
27 purchase, or both, of a new motor vehicle through an out-of-state
28 dealer without disclosing in writing to the customer that the new
29 vehicle would not be subject to chapter 19.118 RCW.

30 (14) Being a manufacturer, other than a motorcycle manufacturer
31 governed by chapter 46.94 RCW, to:

32 (a) Coerce or attempt to coerce any vehicle dealer to order or
33 accept delivery of any vehicle or vehicles, parts or accessories, or
34 any other commodities which have not been voluntarily ordered by the
35 vehicle dealer: PROVIDED, That recommendation, endorsement,
36 exposition, persuasion, urging, or argument are not deemed to
37 constitute coercion;

38 (b) Cancel or fail to renew the franchise or selling agreement of
39 any vehicle dealer doing business in this state without fairly

1 compensating the dealer at a fair going business value for his capital
2 investment which shall include but not be limited to tools, equipment,
3 and parts inventory possessed by the dealer on the day he is notified
4 of such cancellation or termination and which are still within the
5 dealer's possession on the day the cancellation or termination is
6 effective, if: (i) The capital investment has been entered into with
7 reasonable and prudent business judgment for the purpose of fulfilling
8 the franchise; and (ii) said cancellation or nonrenewal was not done in
9 good faith. Good faith is defined as the duty of each party to any
10 franchise to act in a fair and equitable manner towards each other, so
11 as to guarantee one party freedom from coercion, intimidation, or
12 threats of coercion or intimidation from the other party: PROVIDED,
13 That recommendation, endorsement, exposition, persuasion, urging, or
14 argument are not deemed to constitute a lack of good faith.

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

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

22 (e) Refuse to deliver any vehicle publicly advertised for immediate
23 delivery to any duly licensed vehicle dealer having a franchise or
24 contractual agreement for the retail sale of new and unused vehicles
25 sold or distributed by such manufacturer within sixty days after such
26 dealer's order has been received in writing unless caused by inability
27 to deliver because of shortage or curtailment of material, labor,
28 transportation, or utility services, or by any labor or production
29 difficulty, or by any cause beyond the reasonable control of the
30 manufacturer;

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

36 Nothing in this section may be construed to impair the obligations
37 of a contract or to prevent a manufacturer, distributor,
38 representative, or any other person, whether or not licensed under this
39 chapter, from requiring performance of a written contract entered into

1 with any licensee hereunder, nor does the requirement of such
2 performance constitute a violation of any of the provisions of this
3 section if any such contract or the terms thereof requiring
4 performance, have been freely entered into and executed between the
5 contracting parties. This paragraph and subsection (11)(b) of this
6 section do not apply to new motor vehicle manufacturers governed by
7 chapter 46.96 RCW.

8 (~~(12)~~) (15) Unlawful transfer of an ownership interest in a motor
9 vehicle as defined in RCW 19.116.050.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 46.70 RCW
11 to read as follows:

12 The regulation of buyers' agents is a matter affecting the public
13 interest for the purpose of applying chapter 19.86 RCW. Activities of
14 buyers' agents prohibited under RCW 46.70.180 (11), (12), or (13) are
15 not reasonable in relation to the development and preservation of
16 business. A violation of RCW 46.70.180 (11), (12), or (13) constitutes
17 an unfair or deceptive act or practice in trade or commerce for the
18 purpose of applying chapter 19.86 RCW.

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