
SENATE BILL 6173

State of Washington**54th Legislature****1996 Regular Session****By** Senators Haugen and Schow

Read first time 01/08/96. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to motor vehicle dealers; amending RCW 46.70.023,
2 46.70.051, 46.70.120, 46.70.130, and 46.70.180; and creating a new
3 section.

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

5 **Sec. 1.** RCW 46.70.023 and 1995 c 7 s 1 are each amended to read as
6 follows:

7 (1) An "established place of business" requires a permanent,
8 enclosed commercial building located within the state of Washington
9 easily accessible at all reasonable times. ((An established place of
10 business shall have an improved display area of not less than three
11 thousand square feet in or immediately adjoining the building, or a
12 display area large enough to display six or more vehicles of the type
13 the dealer is licensed to sell, whichever area is larger.)) The
14 business of a vehicle dealer((, including the display of vehicles,
15 may)) must be lawfully carried on at an established place of business
16 in accordance with the terms of all applicable building code, zoning,
17 and other land-use regulatory ordinances. A vehicle dealer may display
18 a vehicle for sale only at its established place of business, licensed
19 subagency, or temporary subagency site. The dealer shall keep the

1 building open to the public so that ((they)) the public may contact the
2 vehicle dealer or the dealer's salespersons at all reasonable times.
3 The books, records, and files necessary to conduct the business shall
4 be kept and maintained at that place. The established place of
5 business shall display an exterior sign with the business name and
6 nature of the business, such as auto sales, permanently affixed to the
7 land or building, with letters clearly visible to the major avenue of
8 traffic. ((In no event may)) A room or rooms in a hotel, rooming
9 house, or apartment house building or part of a single or multiple-unit
10 dwelling house may not be considered an "established place of business"
11 unless the ground floor of such a dwelling is devoted principally to
12 and occupied for commercial purposes and the dealer offices are located
13 on the ground floor. A mobile office or mobile home may be used as an
14 office if it is connected to utilities and is set up in accordance with
15 state law. A state-wide trade association representing manufactured
16 housing dealers shall be permitted to use a manufactured home as an
17 office if the office complies with all other applicable building code,
18 zoning, and other land-use regulatory ordinances. This subsection does
19 not apply to auction companies that do not own vehicle inventory or
20 sell vehicles from an auction yard.

21 (2) An auction company shall have office facilities within the
22 state. The books, records, and files necessary to conduct the business
23 shall be maintained at the office facilities. All storage facilities
24 for inventory shall be listed with the department, and shall meet local
25 zoning and land use ordinances. An auction company shall maintain a
26 telecommunications system.

27 (3) Auction companies shall post their vehicle dealer license at
28 each auction where vehicles are offered, and shall provide the
29 department with the address of the auction at least three days before
30 the auction.

31 (4) If a dealer maintains a place of business at more than one
32 location or under more than one name in this state, he or she shall
33 designate one location as the principal place of business of the firm,
34 one name as the principal name of the firm, and all other locations or
35 names as subagencies. A subagency license is required for each and
36 every subagency: PROVIDED, That the department may grant an exception
37 to the subagency requirement in the specific instance where a licensed
38 dealer is unable to locate their used vehicle sales facilities adjacent
39 to or at the established place of business. This exception shall be

1 granted and defined under the promulgation of rules consistent with the
2 Administrative Procedure Act.

3 (5) All vehicle dealers shall maintain ownership or leasehold
4 throughout the license year of the real property from which they do
5 business. The dealer shall provide the department with evidence of
6 ownership or leasehold whenever the ownership changes or the lease is
7 terminated.

8 (6) A subagency shall comply with all requirements of an
9 established place of business, except that subagency records may be
10 kept at the principal place of business designated by the dealer.
11 Auction companies shall comply with the requirements in subsection (2)
12 of this section.

13 (7) A temporary subagency shall meet all local zoning and building
14 codes for the type of merchandising being conducted. The dealer
15 license certificate shall be posted at the location. No other
16 requirements of an established place of business apply to a temporary
17 subagency. Auction companies are not required to obtain a temporary
18 subagency license.

19 (8) A wholesale vehicle dealer shall have office facilities in a
20 commercial building within this state, and all storage facilities for
21 inventory shall be listed with the department, and shall meet local
22 zoning and land use ordinances. A wholesale vehicle dealer shall
23 maintain a telecommunications system. An exterior sign visible from
24 the nearest street shall identify the business name and the nature of
25 business. A wholesale dealer need not maintain a display area as
26 required in this section. When two or more vehicle dealer businesses
27 share a location, all records, office facilities, and inventory, if
28 any, must be physically segregated and clearly identified.

29 (9) A retail vehicle dealer shall be open during normal business
30 hours, maintain office and display facilities in a commercially zoned
31 location or in a location complying with all applicable building and
32 land use ordinances, and maintain a business telephone listing in the
33 local directory. When two or more vehicle dealer businesses share a
34 location, all records, office facilities, and inventory shall be
35 physically segregated and clearly identified.

36 (10) A listing dealer need not have a display area if the dealer
37 does not physically maintain any vehicles for display.

38 (11) A subagency license is not required for a mobile home dealer
39 to display an on-site display model, a consigned mobile home not

1 relocated from its site, or a repossessed mobile home if sales are
2 handled from a principal place of business or subagency. A mobile home
3 dealer shall identify on-site display models, repossessed mobile homes,
4 and those consigned at their sites with a sign that includes the
5 dealer's name and telephone number.

6 (12) Every vehicle dealer shall advise the department of the
7 location of each and every place of business of the firm and the name
8 or names under which the firm is doing business at such location or
9 locations. If any name or location is changed, the dealer shall notify
10 the department of such change within ten days. The license issued by
11 the department shall reflect the name and location of the firm and
12 shall be posted in a conspicuous place at that location by the dealer.

13 (13) A vehicle dealer's license shall upon the death or incapacity
14 of an individual vehicle dealer authorize the personal representative
15 of such dealer, subject to payment of license fees, to continue the
16 business for a period of six months from the date of the death or
17 incapacity.

18 **Sec. 2.** RCW 46.70.051 and 1993 c 307 s 7 are each amended to read
19 as follows:

20 (1) After the application has been filed, the fee paid, and bond
21 posted, if required the department shall, if no denial order is in
22 effect and no proceeding is pending under RCW 46.70.101, issue the
23 appropriate license, which license, in the case of a vehicle dealer,
24 shall designate the classification of the dealer. Nothing prohibits a
25 vehicle dealer from obtaining licenses for more than one
26 classification, and nothing prevents any vehicle dealer from dealing in
27 other classes of vehicles on an isolated basis.

28 (2) An auction company licensed under chapter 18.11 RCW may sell at
29 auction all classifications of vehicles under a motor vehicle dealer's
30 license issued under this chapter including motor vehicles,
31 miscellaneous type vehicles, and mobile homes and travel trailers.

32 (3) At the time the department issues a vehicle dealer license, the
33 department shall provide to the dealer a current, up-to-date vehicle
34 dealer manual setting forth the various statutes and rules applicable
35 to vehicle dealers. In addition, at the time any such license is
36 renewed under RCW 46.70.083, the department shall provide the dealer
37 with any updates or current revisions to the vehicle dealer manual.

1 **Sec. 3.** RCW 46.70.120 and 1990 c 238 s 7 are each amended to read
2 as follows:

3 A dealer shall complete and maintain for a period of at least five
4 years a record of the purchase and sale of all vehicles purchased or
5 sold by him. The records shall consist of:

6 (1) The license and title numbers of the state in which the last
7 license was issued;

8 (2) A description of the vehicle;

9 (3) The name and address of the person from whom purchased;

10 (4) The name of the legal owner, if any;

11 (5) The name and address of the purchaser;

12 (6) If purchased from a dealer, the name, business address, dealer
license number, and resale tax number of the dealer;

13 (7) The price paid for the vehicle and the method of payment;

14 (8) The vehicle odometer disclosure statement given by the seller
to the dealer, and the vehicle odometer disclosure statement given by
17 the dealer to the purchaser;

18 (9) The written agreement to allow a dealer to sell between the
dealer and the consignor, or the listing dealer and the seller;

19 (10) Trust account records of receipts, deposits, and withdrawals;

20 (11) All sale documents, which shall show the full name of dealer
employees involved in the sale; and

21 (12) Any additional information the department may require.

22 However, the department may not require a dealer to collect or retain
the hardback copy of a temporary license permit after the permanent
license plates for a vehicle have been provided to the purchaser, if
the dealer maintains some other copy of the temporary license permit
together with a log of the permits issued.

23 Such records shall be maintained separate ((and apart)) from all
other business records of the dealer ((and shall at all times)).

24 Records older than two years may be kept at a location other than the
dealer's place of business if those records are made available in hard

25 copy for inspection within three calendar days, exclusive of Saturday,
Sunday, or a legal holiday, after a request by the director or the
director's authorized agent. Records kept at the vehicle dealer's

26 place of business must be available for inspection by the director or
((his duty)) the director's authorized agent during normal business

27 hours.

1 Dealers may maintain their recordkeeping and filing systems in
2 accordance with their own particular business needs and practices.
3 Nothing in this chapter requires dealers to maintain their records in
4 any particular order or manner, as long as the records identified in
5 this section are maintained in the dealership's recordkeeping system.

6 **Sec. 4.** RCW 46.70.130 and 1973 1st ex.s. c 132 s 16 are each
7 amended to read as follows:

8 (1) Before the execution of a contract or chattel mortgage or the
9 consummation of the sale of any vehicle, the seller must furnish the
10 buyer an itemization in writing signed by the seller separately
11 disclosing to the buyer the finance charge, insurance costs, taxes, and
12 other charges which are paid or to be paid by the buyer.

13 (2) Notwithstanding subsection (1) of this section, an itemization
14 of the various license and title fees paid or to be paid by the buyer,
15 which itemization must be the same as that disclosed on the
16 registration/application for title document issued by the department,
17 may be required only on the title application at the time the
18 application is submitted for title transfer. A vehicle dealer may not
19 be required to separately or individually itemize the license and title
20 fees on any other document, including but not limited to the purchase
21 order and lease agreement. No fee itemization may be required on the
22 temporary permit.

23 **Sec. 5.** RCW 46.70.180 and 1995 c 256 s 26 are each amended to read
24 as follows:

25 Each of the following acts or practices is unlawful:

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

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

34 (b) That a certain percentage of the sale price of a vehicle may be
35 financed when such financing is not offered in a single document
36 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) To incorporate within the terms of any purchase and sale
12 agreement any statement or representation with regard to the sale or
13 financing of a vehicle which is false, deceptive, or misleading,
14 including but not limited to terms that include as an added cost to the
15 selling price of a vehicle an amount for licensing or transfer of title
16 of that vehicle which is not actually due to the state, unless such
17 amount has in fact been paid by the dealer prior to such sale.

18 However, expenses or fees charged by a dealer that are necessary or
19 required to be paid by a dealer to a third party in order to obtain a
20 lien release or a vehicle identification number inspection or
21 verification, or to otherwise clear title to the vehicle, or in order
22 to license or transfer title to a vehicle, do not violate this section.

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

31 (4) To commit, allow, or ratify any act of "bushing" which is
32 defined as follows: Taking from a prospective buyer of a vehicle a
33 written order or offer to purchase, or a contract document signed by
34 the buyer, which:

35 (a) Is subject to the dealer's, or his or her authorized
36 representative's future acceptance, and the dealer fails or refuses
37 within ((forty-eight hours)) three calendar days, exclusive of
38 Saturday, Sunday, or a legal holiday, and prior to any further
39 negotiations with said buyer, either: (i) To deliver to the buyer

1 ((either)) the dealer's signed acceptance, or ((all copies of)) (ii) to
2 void the order, offer, or contract document ((together with)) and
3 tender the return of any initial payment or security made or given by
4 the buyer, including but not limited to money, check, promissory note,
5 vehicle keys, a trade-in, or certificate of title to a trade-in; or

6 (b) Permits the dealer to renegotiate a dollar amount specified as
7 trade-in allowance on a vehicle delivered or to be delivered by the
8 buyer as part of the purchase price, for any reason except:

9 (i) Failure to disclose that the vehicle's certificate of ownership
10 has been branded for any reason, including, but not limited to, status
11 as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075;
12 ((and)) or

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

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

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

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

34 (6) ((For any vehicle dealer or vehicle salesman to refuse to
35 furnish, upon request of a prospective purchaser, the name and address
36 of the previous registered owner of any used vehicle offered for sale.
37 (7))) To commit any other offense under RCW 46.37.423, 46.37.424,
38 or 46.37.425.

1 ((+8)) (7) To commit any offense relating to a dealer's temporary
2 license permit, including but not limited to failure to properly
3 complete each such permit, or the issuance of more than one such permit
4 on any one vehicle unless, however, a lienholder fails to deliver to
5 the dealer, within the required time period, the vehicle title after
6 payment and satisfaction of the lien.

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

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

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

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

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

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

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

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

34 (c) Encourage, aid, abet, or teach a vehicle dealer to sell
35 vehicles through any false, deceptive, or misleading sales or financing
36 practices including but not limited to those practices declared
37 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 of new and unused vehicles
7 sold or distributed by such manufacturer within sixty days after such
8 dealer's order has been received in writing unless caused by inability
9 to deliver because of shortage or curtailment of material, labor,
10 transportation, or utility services, or by any labor or production
11 difficulty, or by any cause beyond the reasonable control of the
12 manufacturer;

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

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

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

31 NEW SECTION. **Sec. 6.** The legislature shall appoint a committee or
32 study group for the purpose of determining whether motor vehicle
33 dealers are being provided with accurate and timely motor vehicle
34 excise tax schedules and information to facilitate the collection of
35 the vehicle excise tax. The committee or study group shall be
36 comprised of representatives from the automotive industry, the
37 department of licensing, and the department of revenue, and shall

1 report its findings to the legislature no later than the 1997
2 legislative session.

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