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**SUBSTITUTE SENATE BILL 5388**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Parlette, Murray, Swecker, Carrell, King, Tom, Kohl-Welles, and Franklin)

READ FIRST TIME 02/09/09.

1       AN ACT Relating to motor vehicle dealer disclosure of damage and  
2 repairs in the sale of new motor vehicles; and amending RCW 46.70.180.

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

4       **Sec. 1.** RCW 46.70.180 and 2007 c 155 s 2 are each amended to read  
5 as follows:

6       Each of the following acts or practices is unlawful:

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

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

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

18       (c) That a certain percentage is the amount of the service charge

1 to be charged for financing, without stating whether this percentage  
2 charge is a monthly amount or an amount to be charged per year;

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

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

10 (2)(a) To incorporate within the terms of any purchase and sale or  
11 lease agreement any statement or representation with regard to the  
12 sale, lease, or financing of a vehicle which is false, deceptive, or  
13 misleading, including but not limited to terms that include as an added  
14 cost to the selling price or capitalized cost of a vehicle an amount  
15 for licensing or transfer of title of that vehicle which is not  
16 actually due to the state, unless such amount has in fact been paid by  
17 the dealer prior to such sale. However, an amount not to exceed fifty  
18 dollars per vehicle sale or lease may be charged by a dealer to recover  
19 administrative costs for collecting motor vehicle excise taxes,  
20 licensing and registration fees and other agency fees, verifying and  
21 clearing titles, transferring titles, perfecting, releasing, or  
22 satisfying liens or other security interests, and other administrative  
23 and documentary services rendered by a dealer in connection with the  
24 sale or lease of a vehicle and in carrying out the requirements of this  
25 chapter or any other provisions of state law.

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

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

31 (ii) The documentary service fee is not represented to the  
32 purchaser or lessee as a fee or charge required by the state to be paid  
33 by either the dealer or prospective purchaser or lessee;

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

37 (iv) Dealers disclose in any advertisement that a documentary

1 service fee in an amount up to fifty dollars may be added to the sale  
2 price or the capitalized cost.

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

6 (3) To set up, promote, or aid in the promotion of a plan by which  
7 vehicles are to be sold or leased to a person for a consideration and  
8 upon further consideration that the purchaser or lessee agrees to  
9 secure one or more persons to participate in the plan by respectively  
10 making a similar purchase and in turn agreeing to secure one or more  
11 persons likewise to join in said plan, each purchaser or lessee being  
12 given the right to secure money, credits, goods, or something of value,  
13 depending upon the number of persons joining the plan.

14 (4) To commit, allow, or ratify any act of "bushing" which is  
15 defined as follows: Entering into a written contract, written purchase  
16 order or agreement, retail installment sales agreement, note and  
17 security agreement, or written lease agreement, hereinafter  
18 collectively referred to as contract or lease, signed by the  
19 prospective buyer or lessee of a vehicle, which:

20 (a) Is subject to any conditions or the dealer's or his or her  
21 authorized representative's future acceptance, and the dealer fails or  
22 refuses within four calendar days, exclusive of Saturday, Sunday, or  
23 legal holiday, and prior to any further negotiations with said buyer or  
24 lessee to inform the buyer or lessee either: (i) That the dealer  
25 unconditionally accepts the contract or lease, having satisfied,  
26 removed, or waived all conditions to acceptance or performance,  
27 including, but not limited to, financing, assignment, or lease  
28 approval; or (ii) that the dealer rejects the contract or lease,  
29 thereby automatically voiding the contract or lease, as long as such  
30 voiding does not negate commercially reasonable contract or lease  
31 provisions pertaining to the return of the subject vehicle and any  
32 physical damage, excessive mileage after the demand for return of the  
33 vehicle, and attorneys' fees authorized by law, and tenders the refund  
34 of any initial payment or security made or given by the buyer or  
35 lessee, including, but not limited to, any down payment, and tenders  
36 return of the trade-in vehicle, key, other trade-in, or certificate of  
37 title to a trade-in. Tender may be conditioned on return of the  
38 subject vehicle if previously delivered to the buyer or lessee.

1       The provisions of this subsection (4)(a) do not impair, prejudice,  
2 or abrogate the rights of a dealer to assert a claim against the buyer  
3 or lessee for misrepresentation or breach of contract and to exercise  
4 all remedies available at law or in equity, including those under  
5 chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing  
6 company discovers that approval of the contract or financing or  
7 approval of the lease was based upon material misrepresentations made  
8 by the buyer or lessee, including, but not limited to,  
9 misrepresentations regarding income, employment, or debt of the buyer  
10 or lessee, as long as the dealer, or his or her staff, has not, with  
11 knowledge of the material misrepresentation, aided, assisted,  
12 encouraged, or participated, directly or indirectly, in the  
13 misrepresentation. A dealer shall not be in violation of this  
14 subsection (4)(a) if the buyer or lessee made a material  
15 misrepresentation to the dealer, as long as the dealer, or his or her  
16 staff, has not, with knowledge of the material misrepresentation,  
17 aided, assisted, encouraged, or participated, directly or indirectly,  
18 in the misrepresentation.

19       When a dealer informs a buyer or lessee under this subsection  
20 (4)(a) regarding the unconditional acceptance or rejection of the  
21 contract, lease, or financing by an electronic mail message, the dealer  
22 must also transmit the communication by any additional means;

23       (b) Permits the dealer to renegotiate a dollar amount specified as  
24 trade-in allowance on a vehicle delivered or to be delivered by the  
25 buyer or lessee as part of the purchase price or lease, for any reason  
26 except:

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

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

34       (iii) Excessive additional miles or a discrepancy in the mileage.  
35 "Excessive additional miles" means the addition of five hundred miles  
36 or more, as reflected on the vehicle's odometer, between the time the  
37 vehicle was first valued by the dealer for purposes of determining its  
38 trade-in value and the time of actual delivery of the vehicle to the

1 dealer. "A discrepancy in the mileage" means (A) a discrepancy between  
2 the mileage reflected on the vehicle's odometer and the stated mileage  
3 on the signed odometer statement; or (B) a discrepancy between the  
4 mileage stated on the signed odometer statement and the actual mileage  
5 on the vehicle; or

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

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

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

17 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or  
18 46.37.425.

19 (8) To commit any offense relating to a dealer's temporary license  
20 permit, including but not limited to failure to properly complete each  
21 such permit, or the issuance of more than one such permit on any one  
22 vehicle. However, a dealer may issue a second temporary permit on a  
23 vehicle if the following conditions are met:

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

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

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

32 (9) For a dealer, salesperson, or mobile home manufacturer, having  
33 taken an instrument or cash "on deposit" from a purchaser or lessee  
34 prior to the delivery of the bargained-for vehicle, to commingle the  
35 "on deposit" funds with assets of the dealer, salesperson, or mobile  
36 home manufacturer instead of holding the "on deposit" funds as trustee  
37 in a separate trust account until the purchaser or lessee has taken  
38 delivery of the bargained-for vehicle. Delivery of a manufactured home

1 shall be deemed to occur in accordance with RCW 46.70.135(5). Failure,  
2 immediately upon receipt, to endorse "on deposit" instruments to such  
3 a trust account, or to set aside "on deposit" cash for deposit in such  
4 trust account, and failure to deposit such instruments or cash in such  
5 trust account by the close of banking hours on the day following  
6 receipt thereof, shall be evidence of intent to commit this unlawful  
7 practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a  
8 separate trust account which equals his or her customary total customer  
9 deposits for vehicles for future delivery. For purposes of this  
10 section, "on deposit" funds received from a purchaser of a manufactured  
11 home means those funds that a seller requires a purchaser to advance  
12 before ordering the manufactured home, but does not include any loan  
13 proceeds or moneys that might have been paid on an installment  
14 contract.

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

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

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

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

1 (b) Signing any vehicle purchase orders, sales contracts, leases,  
2 odometer statements, or title documents, or having the name of the  
3 buyer's agent appear on the vehicle purchase order, sales contract,  
4 lease, or title; or

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

7 It is unlawful for a buyer's agent to use a power of attorney  
8 obtained from the consumer to accomplish or effect the purchase, sale,  
9 lease, or transfer of ownership documents of any new motor vehicle by  
10 any means which would otherwise be prohibited under (a) through (c) of  
11 this subsection. However, the buyer's agent may use a power of  
12 attorney for physical delivery of motor vehicle license plates to the  
13 consumer.

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

19 (13) For a buyer's agent to arrange for or to negotiate the  
20 purchase, or both, of a new motor vehicle through an out-of-state  
21 dealer without disclosing in writing to the customer that the new  
22 vehicle would not be subject to chapter 19.118 RCW. This subsection  
23 also applies to leased vehicles. In addition, it is unlawful for any  
24 buyer's agent to fail to have a written agreement with the customer  
25 that: (a) Sets forth the terms of the parties' agreement; (b)  
26 discloses to the customer the total amount of any fees or other  
27 compensation being paid by the customer to the buyer's agent for the  
28 agent's services; and (c) further discloses whether the fee or any  
29 portion of the fee is refundable.

30 (14) Being a manufacturer, other than a motorcycle manufacturer  
31 governed by chapter 46.93 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;

1 (b) Cancel or fail to renew the franchise or selling agreement of  
2 any vehicle dealer doing business in this state without fairly  
3 compensating the dealer at a fair going business value for his or her  
4 capital investment which shall include but not be limited to tools,  
5 equipment, and parts inventory possessed by the dealer on the day he or  
6 she is notified of such cancellation or termination and which are still  
7 within the dealer's possession on the day the cancellation or  
8 termination is effective, if: (i) The capital investment has been  
9 entered into with reasonable and prudent business judgment for the  
10 purpose of fulfilling the franchise; and (ii) the cancellation or  
11 nonrenewal was not done in good faith. Good faith is defined as the  
12 duty of each party to any franchise to act in a fair and equitable  
13 manner towards each other, so as to guarantee one party freedom from  
14 coercion, intimidation, or threats of coercion or intimidation from the  
15 other party: PROVIDED, That recommendation, endorsement, exposition,  
16 persuasion, urging, or argument are not deemed to constitute a lack of  
17 good faith;

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

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

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

34 (f) To provide under the terms of any warranty that a purchaser or  
35 lessee of any new or unused vehicle that has been sold or leased,  
36 distributed for sale or lease, or transferred into this state for  
37 resale or lease by the vehicle manufacturer may only make any warranty

1 claim on any item included as an integral part of the vehicle against  
2 the manufacturer of that item.

3 Nothing in this section may be construed to impair the obligations  
4 of a contract or to prevent a manufacturer, distributor,  
5 representative, or any other person, whether or not licensed under this  
6 chapter, from requiring performance of a written contract entered into  
7 with any licensee hereunder, nor does the requirement of such  
8 performance constitute a violation of any of the provisions of this  
9 section if any such contract or the terms thereof requiring  
10 performance, have been freely entered into and executed between the  
11 contracting parties. This paragraph and subsection (14)(b) of this  
12 section do not apply to new motor vehicle manufacturers governed by  
13 chapter 46.96 RCW.

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

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

23 (17)(a) For a dealer to enter into a new motor vehicle sales  
24 contract without disclosing in writing to a buyer of the new motor  
25 vehicle, or to a dealer in the case of an unregistered motor vehicle,  
26 any known damage and repair to the new motor vehicle if the damage  
27 exceeds five percent of the manufacturer's suggested retail price as  
28 calculated at the dealer's authorized warranty rate for labor and  
29 parts, or one thousand dollars, whichever amount is greater. A  
30 manufacturer or new motor vehicle dealer is not required to disclose to  
31 a dealer or buyer that glass, tires, bumpers, or cosmetic parts of a  
32 new motor vehicle were damaged at any time if the damaged item has been  
33 replaced with original or comparable equipment. A replaced part is not  
34 part of the cumulative damage required to be disclosed under this  
35 subsection.

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

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

5 (d) As used in this section:

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

10 (ii) "Manufacturer's suggested retail price" means the retail price  
11 of the new motor vehicle suggested by the manufacturer, and includes  
12 the retail delivered price suggested by the manufacturer for each  
13 accessory or item of optional equipment physically attached to the new  
14 motor vehicle at the time of delivery to the new motor vehicle dealer  
15 that is not included within the retail price suggested by the  
16 manufacturer for the new motor vehicle.

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