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HOUSE BILL 2225

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State of Washington

53rd Legislature

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By Representatives Zellinsky, R. Fisher and Forner; by request of Department of Licensing

Read first time 01/11/94. Referred to Committee on Transportation.

1 AN ACT Relating to vehicle dealer places of business; amending RCW  
2 46.70.023, 46.70.101, and 46.70.120; and reenacting and amending RCW  
3 46.70.041.

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

5 **Sec. 1.** RCW 46.70.023 and 1993 c 307 s 5 are each amended to read  
6 as 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 shall  
18 display a vehicle for sale only at its established place of business,  
19 licensed subagency, or temporary subagency site. The dealer shall post

1 a sign at the business stating the business hours and shall keep the  
2 ~~((building))~~ business open to the public and for inspection by the  
3 department so that ((they)) the public and the department may contact  
4 the vehicle dealer or the dealer's salespersons ((at all reasonable  
5 times)) during posted hours. The books, records, and files necessary  
6 to conduct the business shall be kept and maintained at that place.  
7 The established place of business shall display an exterior sign with  
8 the business name and nature of the business, such as auto sales,  
9 permanently affixed to the land or building, with letters clearly  
10 visible to the major avenue of traffic. ((In no event may)) A room or  
11 rooms in a hotel, rooming house, or apartment house building or part of  
12 a single or multiple-unit dwelling house may not be considered an  
13 "established place of business" unless the ground floor of such a  
14 dwelling is devoted principally to and occupied for commercial purposes  
15 and the dealer offices are located on the ground floor. A mobile  
16 office or mobile home may be used as an office if it is connected to  
17 utilities and is set up in accordance with state law. ((This  
18 subsection does not apply to auction companies that do not own vehicle  
19 inventory or sell vehicles from an auction yard.)) A vehicle dealer  
20 shall maintain a telecommunications system and a telephone listing in  
21 the local directory. If two or more vehicle dealer businesses share a  
22 location, all records, office facilities, and inventory must be  
23 physically segregated and clearly identified.

24 (2) An auction company or wholesale dealer shall ~~((have office~~  
25 ~~facilities within the state. The books, records, and files necessary~~  
26 ~~to conduct the business shall be maintained at the office facilities.))~~  
27 list all storage facilities for inventory ((shall be listed)) with the  
28 department, and shall meet local zoning and land use ordinances. ((An  
29 auction company shall maintain a telecommunications system.

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

34 ~~((4))~~ (3) If a dealer maintains a place of business at more than  
35 one location or under more than one name in this state, he or she shall  
36 designate one location as the principal place of business of the firm,  
37 one name as the principal name of the firm, and all other locations or  
38 names as subagencies. A subagency license is required for each and  
39 every subagency: PROVIDED, That the department may grant an exception

1 to the subagency requirement in the specific instance where a licensed  
2 dealer is unable to locate their used vehicle sales facilities adjacent  
3 to or at the established place of business. This exception shall be  
4 granted and defined under the promulgation of rules consistent with the  
5 Administrative Procedure Act.

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

11 ~~(6))~~ (4) A subagency shall comply with all requirements of an  
12 established place of business, except that subagency records may be  
13 kept at the principal place of business designated by the dealer, and  
14 that auction companies shall comply with the requirements in subsection  
15 (2) of this section.

16 ~~((7))~~ (5) A temporary subagency shall meet all local zoning and  
17 building codes for the type of merchandising being conducted. The  
18 dealer license certificate shall be posted at the location. No other  
19 requirements of an established place of business apply to a temporary  
20 subagency. Auction companies are not required to obtain a temporary  
21 subagency license.

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

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

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

3       ~~(11))~~ (6) A subagency license is not required for a mobile home  
4 dealer to display an on-site display model, a consigned mobile home not  
5 relocated from its site, or a repossessed mobile home if sales are  
6 handled from a principal place of business or subagency. A mobile home  
7 dealer shall identify on-site display models, repossessed mobile homes,  
8 and those consigned at their sites with a sign that includes the  
9 dealer's name and telephone number.

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

18       ~~((13))~~ (8) A vehicle dealer's license shall upon the death or  
19 incapacity of an individual vehicle dealer authorize the personal  
20 representative of such dealer, subject to payment of license fees, to  
21 continue the business for a period of six months from the date of the  
22 death or incapacity.

23       **Sec. 2.** RCW 46.70.041 and 1993 c 307 s 6 and 1993 c 175 s 2 are  
24 each reenacted and amended to read as follows:

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

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

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

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

36       (d) The applicant's financial condition or history including a bank  
37 reference and whether the applicant or any partner, officer, or

1 director has ever been adjudged bankrupt or has any unsatisfied  
2 judgment in any federal or state court;

3 (e) Whether the applicant has been adjudged guilty of a crime which  
4 directly relates to the business for which the license is sought and  
5 the time elapsed since the conviction is less than ten years, or has  
6 suffered any judgment within the preceding five years in any civil  
7 action involving fraud, misrepresentation, or conversion and in the  
8 case of a corporation or partnership, all directors, officers, or  
9 partners;

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

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

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

15 (i) A certificate by a representative of the department, that the  
16 applicant's principal place of business and each subagency business  
17 location in the state of Washington meets the location requirements as  
18 required by this chapter(~~(. The certificate shall include proof of the~~  
19 ~~applicant's ownership or lease of the real property where the~~  
20 ~~applicant's principal place of business is established))~~);

21 (j) A copy of a current service agreement with a manufacturer, or  
22 distributor for a foreign manufacturer, requiring the applicant, upon  
23 demand of any customer receiving a new vehicle warranty to perform or  
24 arrange for, within a reasonable distance of his established place of  
25 business, the service repair and replacement work required of the  
26 manufacturer or distributor by such vehicle warranty. This requirement  
27 applies only to applicants seeking to sell, to exchange, to offer, to  
28 auction, to solicit, to advertise, or to broker new or current-model  
29 vehicles with factory or distributor warranties;

30 (k) The class of vehicles the vehicle dealer will be buying,  
31 selling, listing, exchanging, offering, brokering, leasing with an  
32 option to purchase, auctioning, soliciting, or advertising, and which  
33 classification or classifications the dealer wishes to be designated  
34 as;

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

36 (2) If the applicant is a manufacturer the application shall  
37 contain the following information to the extent it is applicable to the  
38 applicant:

1 (a) The name and address of the principal place of business of the  
2 applicant and, if different, the name and address of the Washington  
3 state representative of the applicant;

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

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

8 (d) The name or names of the vehicles that the licensee  
9 manufactures;

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

12 (f) The name or names and address or addresses of resident  
13 employees or agents to provide service or repairs to vehicles located  
14 in the state of Washington only under the terms of any warranty  
15 attached to new or unused vehicles manufactured, unless such  
16 manufacturer requires warranty service to be performed by all of its  
17 dealers pursuant to a current service agreement on file with the  
18 department;

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

20 **Sec. 3.** RCW 46.70.101 and 1991 c 140 s 3 are each amended to read  
21 as follows:

22 The director may by order deny, suspend, or revoke the license of  
23 any vehicle dealer or vehicle manufacturer or, in lieu thereof or in  
24 addition thereto, may by order assess monetary penalties of a civil  
25 nature not to exceed one thousand dollars per violation, if the  
26 director finds that the order is in the public interest and that the  
27 applicant or licensee:

28 (1) In the case of a vehicle dealer:

29 (a) The applicant or licensee, or any partner, officer, director,  
30 owner of ten percent or more of the assets of the firm, or managing  
31 employee:

32 (i) Was the holder of a license issued pursuant to this chapter,  
33 which was revoked for cause and never reissued by the department, or  
34 which license was suspended for cause and the terms of the suspension  
35 have not been fulfilled or which license was assessed a civil penalty  
36 and the assessed amount has not been paid;

37 (ii) Has been adjudged guilty of a crime which directly relates to  
38 the business of a vehicle dealer and the time elapsed since the

1 adjudication is less than ten years, or suffering any judgment within  
2 the preceding five years in any civil action involving fraud,  
3 misrepresentation, or conversion. For the purposes of this section,  
4 adjudged guilty shall mean in addition to a final conviction in either  
5 a state or municipal court, an unvacated forfeiture of bail or  
6 collateral deposited to secure a defendant's appearance in court, the  
7 payment of a fine, a plea of guilty, or a finding of guilt regardless  
8 of whether the sentence is deferred or the penalty is suspended;

9 (iii) Has knowingly or with reason to know made a false statement  
10 of a material fact in his application for license or any data attached  
11 thereto, or in any matter under investigation by the department;

12 (iv) Has knowingly, or with reason to know, provided the department  
13 with false information relating to the number of vehicle sales  
14 transacted during the past one year in order to obtain a vehicle dealer  
15 license plate;

16 (v) Does not have an established place of business as required in  
17 this chapter;

18 (vi) Refuses to allow representatives or agents of the department  
19 to inspect during (~~normal~~) posted business hours all books, records,  
20 and files maintained within this state;

21 (vii) Sells, exchanges, offers, brokers, auctions, solicits, or  
22 advertises a new or current model vehicle to which a factory new  
23 vehicle warranty attaches and fails to have a valid, written service  
24 agreement as required by this chapter, or having such agreement refuses  
25 to honor the terms of such agreement within a reasonable time or  
26 repudiates the same;

27 (viii) Is insolvent, either in the sense that their liabilities  
28 exceed their assets, or in the sense that they cannot meet their  
29 obligations as they mature;

30 (ix) Fails to pay any civil monetary penalty assessed by the  
31 director pursuant to this section within ten days after such assessment  
32 becomes final;

33 (x) Fails to notify the department of bankruptcy proceedings in the  
34 manner required by RCW 46.70.183;

35 (xi) Knowingly, or with reason to know, allows a salesperson  
36 employed by the dealer, or acting as their agent, to commit any of the  
37 prohibited practices set forth in subsection (1)(a) of this section and  
38 RCW 46.70.180.

1 (b) The applicant or licensee, or any partner, officer, director,  
2 owner of ten percent of the assets of the firm, or any employee or  
3 agent:

4 (i) Has failed to comply with the applicable provisions of chapter  
5 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted  
6 thereunder;

7 (ii) Has defrauded or attempted to defraud the state, or a  
8 political subdivision thereof of any taxes or fees in connection with  
9 the sale or transfer of a vehicle;

10 (iii) Has forged the signature of the registered or legal owner on  
11 a certificate of title;

12 (iv) Has purchased, sold, disposed of, or has in his or her  
13 possession any vehicle which he or she knows or has reason to know has  
14 been stolen or appropriated without the consent of the owner;

15 (v) Has willfully failed to deliver to a purchaser a certificate of  
16 ownership to a vehicle which he has sold;

17 (vi) Has committed any act in violation of RCW 46.70.090 relating  
18 to vehicle dealer license plates or manufacturer license plates;

19 (vii) Has committed any act in violation of RCW 46.70.180 relating  
20 to unlawful acts and practices;

21 (viii) Has engaged in practices inimical to the health or safety of  
22 the citizens of the state of Washington including but not limited to  
23 failure to comply with standards set by the state of Washington or the  
24 federal government pertaining to the construction or safety of  
25 vehicles;

26 (ix) Has aided or assisted an unlicensed dealer or salesperson in  
27 unlawful activity through active or passive participation in sales,  
28 allowing use of facilities, dealer license number, or by any other  
29 means;

30 (x) Converts or appropriates, whether temporarily or permanently,  
31 property or funds belonging to a customer, dealer, or manufacturer,  
32 without the consent of the owner of the property or funds; or

33 (xi) Has sold any vehicle with knowledge that it has "REBUILT" on  
34 the title or has been declared totaled out by an insurance carrier and  
35 then rebuilt without clearly disclosing that fact in writing.

36 (c) The licensee or any partner, officer, director, or owner of ten  
37 percent or more of the assets of the firm holds or has held any such  
38 position in any other vehicle dealership licensed pursuant to this  
39 chapter which is subject to final proceedings under this section.



1 (2) In the case of a manufacturer, or any partner, officer,  
2 director, or majority shareholder:

3 (a) Was or is the holder of a license issued pursuant to this  
4 chapter which was revoked for cause and never reissued by the  
5 department, or which license was suspended for cause and the terms of  
6 the suspension have not been fulfilled, or which license was assessed  
7 a civil penalty and the assessed amount has not been paid;

8 (b) Has knowingly or with reason to know, made a false statement of  
9 a material fact in his application for license, or any data attached  
10 thereto, or in any matter under investigation by the department;

11 (c) Has failed to comply with the applicable provisions of chapter  
12 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted  
13 thereunder;

14 (d) Has defrauded or attempted to defraud the state or a political  
15 subdivision thereof, of any taxes or fees in connection with the sale  
16 or transfer of a vehicle;

17 (e) Has purchased, sold, disposed of, or has in his possession, any  
18 vehicle which he knows or has reason to know has been stolen or  
19 appropriated without the consent of the owner;

20 (f) Has committed any act in violation of RCW 46.70.090 relating to  
21 vehicle dealer license plates and manufacturer license plates;

22 (g) Has committed any act in violation of RCW 46.70.180 relating to  
23 unlawful acts and practices;

24 (h) Sells or distributes in this state or transfers into this state  
25 for resale, any new or unused vehicle to which a warranty attaches or  
26 has attached and refuses to honor the terms of such warranty within a  
27 reasonable time or repudiates the same;

28 (i) Fails to maintain one or more resident employees or agents to  
29 provide service or repairs to vehicles located within the state of  
30 Washington only under the terms of any warranty attached to new or  
31 unused vehicles manufactured and which are or have been sold or  
32 distributed in this state or transferred into this state for resale  
33 unless such manufacturer requires warranty service to be performed by  
34 all of its dealers pursuant to a current service agreement on file with  
35 the department;

36 (j) Fails to reimburse within a reasonable time any vehicle dealer  
37 within the state of Washington who in good faith incurs reasonable  
38 obligations in giving effect to warranties that attach or have attached

1 to any new or unused vehicle sold or distributed in this state or  
2 transferred into this state for resale by any such manufacturer;

3 (k) Engaged in practices inimical to the health and safety of the  
4 citizens of the state of Washington including but not limited to  
5 failure to comply with standards set by the state of Washington or the  
6 federal government pertaining to the construction and safety of  
7 vehicles;

8 (l) Is insolvent either in the sense that his or her liabilities  
9 exceed his or her assets or in the sense that he or she cannot meet his  
10 or her obligations as they mature;

11 (m) Fails to notify the department of bankruptcy proceedings in the  
12 manner required by RCW 46.70.183.

13 **Sec. 4.** RCW 46.70.120 and 1990 c 238 s 7 are each amended to read  
14 as follows:

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

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

20 (2) A description of the vehicle;

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

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

23 (5) The name and address of purchaser;

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

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

27 (8) The vehicle odometer disclosure statement given by the seller  
28 to the dealer, and the vehicle odometer disclosure statement given by  
29 the dealer to the purchaser;

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

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

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

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

36 Such record shall be maintained separate (~~and apart~~) from all  
37 other business records of the dealer (~~and~~). Records older than two  
38 years may be kept at another location provided they shall be made

1 available for inspection within twenty-four hours upon request by the  
2 director or the director's authorized agent. Records kept at the  
3 vehicle dealer's place of business shall ((at all times)) be available  
4 during business hours for inspection by the director or ((his)) the  
5 director's duly authorized agent.

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