

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2179

Chapter 194, Laws of 1996

54th Legislature
1996 Regular Session

MOTOR VEHICLE TRANSACTIONS INVOLVING BUYER'S AGENTS

EFFECTIVE DATE: 6/6/96

Passed by the House February 6, 1996
Yea 95 Nays 0

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2179** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Passed by the Senate February 29, 1996
Yea 47 Nays 0

JOEL PRITCHARD
President of the Senate

TIMOTHY A. MARTIN

Chief Clerk

Approved March 28, 1996

FILED

March 28, 1996 - 4:07 p.m.

MIKE LOWRY
Governor of the State of Washington

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 2179

Passed Legislature - 1996 Regular Session

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Horn, Blanton, Scott, Mitchell, Quall and Thompson)

Read first time 02/01/96.

1 AN ACT Relating to new motor vehicle transactions involving buyer's
2 agents; and amending RCW 46.70.011, 46.70.070, and 46.70.180.

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

4 **Sec. 1.** RCW 46.70.011 and 1993 c 175 s 1 are each amended to read
5 as follows:

6 As used in this chapter:

7 (1) "Vehicle" means and includes every device capable of being
8 moved upon a public highway and in, upon, or by which any persons or
9 property is or may be transported or drawn upon a public highway,
10 excepting devices moved by human or animal power or used exclusively
11 upon stationary rails or tracks.

12 (2) "Motor vehicle" means every vehicle which is self-propelled and
13 every vehicle which is propelled by electric power obtained from
14 overhead trolley wires, but not operated upon rails, and which is
15 required to be registered and titled under Title 46 RCW, Motor
16 Vehicles.

17 (3) "Vehicle dealer" means any person, firm, association,
18 corporation, or trust, not excluded by subsection (4) of this section,
19 engaged in the business of buying, selling, listing, exchanging,

1 offering, brokering, leasing with an option to purchase, auctioning,
2 soliciting, or advertising the sale of new or used vehicles, or
3 arranging or offering or attempting to solicit or negotiate on behalf
4 of others, a sale, purchase, or exchange of an interest in new or used
5 motor vehicles, irrespective of whether the motor vehicles are owned by
6 that person. Vehicle dealers shall be classified as follows:

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

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

12 (c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals
13 in motorcycles or vehicles other than motor vehicles or mobile homes
14 and travel trailers or any combination of such vehicles.

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

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

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

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

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

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

29 (f) A real estate broker licensed under chapter 18.85 RCW, or his
30 authorized representative, who, on behalf of the legal or registered
31 owner of a used mobile home negotiates the purchase, sale, or exchange
32 of the used mobile home in conjunction with the purchase, sale,
33 exchange, rental, or lease of the land upon which the used mobile home
34 is located and the real estate broker is not acting as an agent,
35 subagent, or representative of a vehicle dealer licensed under this
36 chapter; or

37 (g) Owners who are also operators of the special highway
38 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, limited liability company, limited liability partnership,
36 or corporation retained or employed by a consumer to arrange for or to
37 negotiate, or both, the purchase of a new motor vehicle on behalf of
38 the consumer, and who is paid a fee or receives other compensation from
39 the consumer for ((the)) its services.

1 (19) "New motor vehicle" means any motor vehicle that is self-
2 propelled and is required to be registered and titled under Title 46
3 RCW, has not been previously titled to a retail purchaser or lessee,
4 and is not a "used vehicle" as defined under RCW 46.04.660.

5 **Sec. 2.** RCW 46.70.070 and 1989 c 337 s 15 are each amended to read
6 as follows:

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

10 (a) Fifteen thousand dollars for motor vehicle dealers;
11 (b) Thirty thousand dollars for mobile home, park trailer, and
12 travel trailer dealers: PROVIDED, That if such dealer does not deal in
13 mobile homes or park trailers such bond shall be fifteen thousand
14 dollars;

15 (c) Five thousand dollars for miscellaneous dealers,
16 running to the state, and executed by a surety company authorized to do
17 business in the state. Such bond shall be approved by the attorney
18 general as to form and conditioned that the dealer shall conduct his
19 business in conformity with the provisions of this chapter.

20 Any retail purchaser, consignor who is not a motor vehicle dealer,
21 or a motor vehicle dealer who has purchased from, sold to, or otherwise
22 transacted business with a wholesale dealer, who has suffered any loss
23 or damage by reason of any act by a dealer which constitutes a
24 violation of this chapter shall have the right to institute an action
25 for recovery against such dealer and the surety upon such bond.
26 However, under this section, motor vehicle dealers who have purchased
27 from, sold to, or otherwise transacted business with wholesale dealers
28 may only institute actions against wholesale dealers and their surety
29 bonds. Successive recoveries against said bond shall be permitted, but
30 the aggregate liability of the surety to all persons shall in no event
31 exceed the amount of the bond. Upon exhaustion of the penalty of said
32 bond or cancellation of the bond by the surety the vehicle dealer
33 license shall automatically be deemed canceled.

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

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

1 **Sec. 3.** RCW 46.70.180 and 1995 c 256 s 26 are each amended to read
2 as follows:

3 Each of the following acts or practices is unlawful:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
35 46.37.425.

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

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

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

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

35 (12) For a buyer's agent, acting directly or through a subsidiary,
36 to pay to or to receive from any motor vehicle dealer any compensation,
37 fee, gratuity, or reward in connection with the purchase or sale of a
38 new motor vehicle. In addition, it is unlawful for any buyer's agent

1 to engage in any of the following acts on behalf of or in the name of
2 the consumer:

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

5 (b) Signing any vehicle purchase orders, sales contract, odometer
6 statements, or title documents, or having the name of the buyer's agent
7 appear on the vehicle purchase order, sales contract, or title; or

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

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

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

21 (13) For a buyer's agent to arrange for or to negotiate the
22 purchase, or both, of a new motor vehicle through an out-of-state
23 dealer without disclosing in writing to the customer that the new
24 vehicle would not be subject to chapter 19.118 RCW. In addition, it is
25 unlawful for any buyer's agent to fail to have a written agreement with
26 the customer that: (a) Sets forth the terms of the parties' agreement;
27 (b) discloses to the customer the total amount of any fees or other
28 compensation being paid by the customer to the buyer's agent for the
29 agent's services; and (c) further discloses whether the fee or any
30 portion of the fee is refundable. The department of licensing shall by
31 December 31, 1996, in rule, adopt standard disclosure language for
32 buyer's agent agreements under RCW 46.70.011, 46.70.070, and this
33 section.

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

36 (a) Coerce or attempt to coerce any vehicle dealer to order or
37 accept delivery of any vehicle or vehicles, parts or accessories, or
38 any other commodities which have not been voluntarily ordered by the
39 vehicle dealer: PROVIDED, That recommendation, endorsement,

1 exposition, persuasion, urging, or argument are not deemed to
2 constitute coercion;

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

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

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

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

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

1 only make any warranty claim on any item included as an integral part
2 of the vehicle against 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.

Passed the House February 6, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.