

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1939

Chapter 123, Laws of 2009

61st Legislature
2009 Regular Session

VEHICLE DEALERS--DOCUMENTARY SERVICE FEES

EFFECTIVE DATE: 07/26/09

Passed by the House March 9, 2009
Yeas 73 Nays 22

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 8, 2009
Yeas 42 Nays 3

BRAD OWEN

President of the Senate

Approved April 17, 2009, 3:15 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1939** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 20, 2009

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1939

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Transportation (originally sponsored by Representatives Takko, Armstrong, Morris, Springer, Eddy, Wood, Warnick, Ericksen, Sells, Kenney, Simpson, Moeller, Ormsby, and Wallace)

READ FIRST TIME 03/03/09.

1 AN ACT Relating to vehicle dealer documentary service fees; and
2 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)(i) To incorporate within the terms of any purchase and sale
11 or 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.

18 (ii) However, an amount not to exceed ((fifty-dollars)) the
19 applicable amount provided in (iii)(A) and (B) of this subsection
20 (2)(a) per vehicle sale or lease may be charged by a dealer to recover
21 administrative costs for collecting motor vehicle excise taxes,
22 licensing and registration fees and other agency fees, verifying and
23 clearing titles, transferring titles, perfecting, releasing, or
24 satisfying liens or other security interests, and other administrative
25 and documentary services rendered by a dealer in connection with the
26 sale or lease of a vehicle and in carrying out the requirements of this
27 chapter or any other provisions of state law.

28 (iii) A dealer may charge under (a)(ii) of this subsection:

29 (A) As of the effective date of this act through June 30, 2014, an
30 amount not to exceed one hundred fifty dollars; and

31 (B) As of July 1, 2014, an amount not to exceed fifty dollars.

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

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

37 (ii) The dealer discloses to the purchaser or lessee in writing
38 that the documentary service fee is ((not-represented)) a negotiable

1 fee. The disclosure must be written in a typeface that is at least as
2 large as the typeface used in the standard text of the document that
3 contains the disclosure and that is bold faced, capitalized,
4 underlined, or otherwise set out from the surrounding material so as to
5 be conspicuous. The dealer shall not represent to the purchaser or
6 lessee (~~as a~~) that the fee or charge is required by the state to be
7 paid by either the dealer or prospective purchaser or lessee;

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

11 (iv) Dealers disclose in any advertisement that a documentary
12 service fee in an amount (~~up to fifty dollars~~) provided in (iv)(A)
13 and (B) of this subsection (2)(b) may be added to the sale price or the
14 capitalized cost:

15 (A) As of the effective date of this act through June 30, 2014, an
16 amount up to one hundred fifty dollars; and

17 (B) As of July 1, 2014, an amount up to fifty dollars.

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

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

29 (4) To commit, allow, or ratify any act of "bushing" which is
30 defined as follows: Entering into a written contract, written purchase
31 order or agreement, retail installment sales agreement, note and
32 security agreement, or written lease agreement, hereinafter
33 collectively referred to as contract or lease, signed by the
34 prospective buyer or lessee of a vehicle, which:

35 (a) Is subject to any conditions or the dealer's or his or her
36 authorized representative's future acceptance, and the dealer fails or
37 refuses within four calendar days, exclusive of Saturday, Sunday, or
38 legal holiday, and prior to any further negotiations with said buyer or

1 lessee to inform the buyer or lessee either: (i) That the dealer
2 unconditionally accepts the contract or lease, having satisfied,
3 removed, or waived all conditions to acceptance or performance,
4 including, but not limited to, financing, assignment, or lease
5 approval; or (ii) that the dealer rejects the contract or lease,
6 thereby automatically voiding the contract or lease, as long as such
7 voiding does not negate commercially reasonable contract or lease
8 provisions pertaining to the return of the subject vehicle and any
9 physical damage, excessive mileage after the demand for return of the
10 vehicle, and attorneys' fees authorized by law, and tenders the refund
11 of any initial payment or security made or given by the buyer or
12 lessee, including, but not limited to, any down payment, and tenders
13 return of the trade-in vehicle, key, other trade-in, or certificate of
14 title to a trade-in. Tender may be conditioned on return of the
15 subject vehicle if previously delivered to the buyer or lessee.

16 The provisions of this subsection (4)(a) do not impair, prejudice,
17 or abrogate the rights of a dealer to assert a claim against the buyer
18 or lessee for misrepresentation or breach of contract and to exercise
19 all remedies available at law or in equity, including those under
20 chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing
21 company discovers that approval of the contract or financing or
22 approval of the lease was based upon material misrepresentations made
23 by the buyer or lessee, including, but not limited to,
24 misrepresentations regarding income, employment, or debt of the buyer
25 or lessee, as long as the dealer, or his or her staff, has not, with
26 knowledge of the material misrepresentation, aided, assisted,
27 encouraged, or participated, directly or indirectly, in the
28 misrepresentation. A dealer shall not be in violation of this
29 subsection (4)(a) if the buyer or lessee made a material
30 misrepresentation to the dealer, as long as the dealer, or his or her
31 staff, has not, with knowledge of the material misrepresentation,
32 aided, assisted, encouraged, or participated, directly or indirectly,
33 in the misrepresentation.

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

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

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

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

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

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

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

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

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

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

1 vehicle. However, a dealer may issue a second temporary permit on a
2 vehicle if the following conditions are met:

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

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

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

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

32 (10) For a dealer or manufacturer to fail to comply with the
33 obligations of any written warranty or guarantee given by the dealer or
34 manufacturer requiring the furnishing of goods and services or repairs
35 within a reasonable period of time, or to fail to furnish to a
36 purchaser or lessee, all parts which attach to the manufactured unit
37 including but not limited to the undercarriage, and all items specified

1 in the terms of a sales or lease agreement signed by the seller and
2 buyer or lessee.

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

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

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

18 (b) Signing any vehicle purchase orders, sales contracts, leases,
19 odometer statements, or title documents, or having the name of the
20 buyer's agent appear on the vehicle purchase order, sales contract,
21 lease, or title; or

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

24 It is unlawful for a buyer's agent to use a power of attorney
25 obtained from the consumer to accomplish or effect the purchase, sale,
26 lease, or transfer of ownership documents of any new motor vehicle by
27 any means which would otherwise be prohibited under (a) through (c) of
28 this subsection. However, the buyer's agent may use a power of
29 attorney for physical delivery of motor vehicle license plates to the
30 consumer.

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

36 (13) For a buyer's agent to arrange for or to negotiate the
37 purchase, or both, of a new motor vehicle through an out-of-state
38 dealer without disclosing in writing to the customer that the new

1 vehicle would not be subject to chapter 19.118 RCW. This subsection
2 also applies to leased vehicles. In addition, it is unlawful for any
3 buyer's agent to fail to have a written agreement with the customer
4 that: (a) Sets forth the terms of the parties' agreement; (b)
5 discloses to the customer the total amount of any fees or other
6 compensation being paid by the customer to the buyer's agent for the
7 agent's services; and (c) further discloses whether the fee or any
8 portion of the fee is refundable.

9 (14) Being a manufacturer, other than a motorcycle manufacturer
10 governed by chapter 46.93 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 or
35 lease vehicles through any false, deceptive, or misleading sales or
36 financing practices including but not limited to those practices
37 declared 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 or lease of new and unused
7 vehicles sold or distributed by such manufacturer within sixty days
8 after such dealer's order has been received in writing unless caused by
9 inability to deliver because of shortage or curtailment of material,
10 labor, transportation, or utility services, or by any labor or
11 production difficulty, or by any cause beyond the reasonable control of
12 the manufacturer;

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

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

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

32 (16) To knowingly and intentionally engage in collusion with a
33 registered owner of a vehicle to repossess and return or resell the
34 vehicle to the registered owner in an attempt to avoid a suspended
35 license impound under chapter 46.55 RCW. However, compliance with
36 chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise

1 disposing of the vehicle, including providing redemption rights to the
2 debtor, is not a violation of this section.

Passed by the House March 9, 2009.

Passed by the Senate April 8, 2009.

Approved by the Governor April 17, 2009.

Filed in Office of Secretary of State April 20, 2009.