

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1198

55th Legislature
1997 Regular Session

Passed by the House March 10, 1997
Yeas 95 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 10, 1997
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1198** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1198

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By Representatives Mitchell, Fisher, Robertson, Johnson, Costa and L. Thomas

Read first time 01/17/97. Referred to Committee on Transportation Policy & Budget.

1 AN ACT Relating to motor vehicle dealer practices; and amending RCW
2 46.70.180.

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

4 **Sec. 1.** RCW 46.70.180 and 1996 c 194 s 3 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 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;

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

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

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

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

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

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

30 (a) Is subject to the dealer's, or his or her authorized
31 representative's future acceptance, and the dealer fails or refuses
32 within (~~forty-eight hours~~) three calendar days, exclusive of
33 Saturday, Sunday, or legal holiday, and prior to any further
34 negotiations with said buyer, either (i) to deliver to the buyer
35 (~~either~~) the dealer's signed acceptance, or (~~all copies of~~) (ii) to
36 void the order, offer, or contract document (~~together with~~) and
37 tender the return of any initial payment or security made or given by
38 the buyer, including but not limited to money, check, promissory note,
39 vehicle keys, a trade-in, or certificate of title to a trade-in; or

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 as part of the purchase price, for any reason except:

4 (i) Failure to disclose that the vehicle's certificate of ownership
5 has been branded for any reason, including, but not limited to, status
6 as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075;
7 (~~and~~) 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 (~~salesman~~) salesperson to
30 refuse to furnish, upon request of a prospective purchaser, (~~the name~~
31 ~~and address of the previous registered owner of any used vehicle~~
32 ~~offered for sale~~) for vehicles previously registered to a business or
33 governmental entity, the name and address of the business or
34 governmental entity.

35 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
36 46.37.425.

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

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

38 (11) For a vehicle dealer to pay to or receive from any person,
39 firm, partnership, association, or corporation acting, either directly

1 or through a subsidiary, as a buyer's agent for consumers, any
2 compensation, fee, purchase moneys or funds that have been deposited
3 into or withdrawn out of any account controlled or used by any buyer's
4 agent, gratuity, or reward in connection with the purchase or sale of
5 a new motor vehicle.

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

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

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

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

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

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

30 (13) For a buyer's agent to arrange for or to negotiate the
31 purchase, or both, of a new motor vehicle through an out-of-state
32 dealer without disclosing in writing to the customer that the new
33 vehicle would not be subject to chapter 19.118 RCW. In addition, it is
34 unlawful for any buyer's agent to fail to have a written agreement with
35 the customer that: (a) Sets forth the terms of the parties' agreement;
36 (b) discloses to the customer the total amount of any fees or other
37 compensation being paid by the customer to the buyer's agent for the
38 agent's services; and (c) further discloses whether the fee or any
39 portion of the fee is refundable. The department of licensing shall by

1 December 31, 1996, in rule, adopt standard disclosure language for
2 buyer's agent agreements under RCW 46.70.011, 46.70.070, and this
3 section.

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

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

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

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

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

36 (e) Refuse to deliver any vehicle publicly advertised for immediate
37 delivery to any duly licensed vehicle dealer having a franchise or
38 contractual agreement for the retail sale of new and unused vehicles
39 sold or distributed by such manufacturer within sixty days after such

1 dealer's order has been received in writing unless caused by inability
2 to deliver because of shortage or curtailment of material, labor,
3 transportation, or utility services, or by any labor or production
4 difficulty, or by any cause beyond the reasonable control of the
5 manufacturer;

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

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

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

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