
SUBSTITUTE HOUSE BILL 2872

State of Washington

56th Legislature

2000 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives DeBolt, Alexander, Benson and Hatfield)

Read first time 02/04/2000. Referred to Committee on .

1 AN ACT Relating to escrows on the sale of manufactured homes;
2 amending RCW 46.70.180; creating new sections; and providing an
3 expiration date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that housing is a
6 fundamental need of Washington residents and manufactured homes are the
7 housing choice for a significant number of state residents, often being
8 their largest asset. The legislature also finds that problems with the
9 sale of a manufactured home may cause extreme hardship on purchasers of
10 a manufactured home, sometimes resulting in loss of the home and
11 financial ruin. These problems may be the result of, among other
12 things, a lack of information or knowledge on the part of the
13 purchaser, mistakes by the seller, and, occasionally, fraud or improper
14 business practices on the part of the seller. These issues are
15 complicated by the fact that manufactured homes are titled as vehicles
16 unless they are converted to real property under chapter 65.20 RCW.
17 The legislature intends to explore alternatives to better protect
18 purchasers of manufactured homes, particularly ways to improve the
19 closing of manufactured home sales.

1 **Sec. 2.** RCW 46.70.180 and 1999 c 398 s 10 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 three calendar days, exclusive of Saturday, Sunday, or legal
8 holiday, and prior to any further negotiations with said buyer, either
9 (i) to deliver to the buyer the dealer's signed acceptance, or (ii) to
10 void the order, offer, or contract document and tender the return of
11 any initial payment or security made or given by the buyer, including
12 but not limited to money, check, promissory note, vehicle keys, a
13 trade-in, 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; or

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 (iii) Excessive additional miles or a discrepancy in the mileage.
25 "Excessive additional miles" means the addition of five hundred miles
26 or more, as reflected on the vehicle's odometer, between the time the
27 vehicle was first valued by the dealer for purposes of determining its
28 trade-in value and the time of actual delivery of the vehicle to the
29 dealer. "A discrepancy in the mileage" means (A) a discrepancy between
30 the mileage reflected on the vehicle's odometer and the stated mileage
31 on the signed odometer statement; or (B) a discrepancy between the
32 mileage stated on the signed odometer statement and the actual mileage
33 on the vehicle; or

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

37 (5) To commit any offense relating to odometers, as such offenses
38 are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A

1 violation of this subsection is a class C felony punishable under
2 chapter 9A.20 RCW.

3 (6) For any vehicle dealer or vehicle salesperson to refuse to
4 furnish, upon request of a prospective purchaser, for vehicles
5 previously registered to a business or governmental entity, the name
6 and address of the business or governmental entity.

7 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
8 46.37.425.

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

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

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

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

22 (9) For a dealer, salesman, or mobile home manufacturer, having
23 taken an instrument or cash "on deposit" from a purchaser prior to the
24 delivery of the bargained-for vehicle, to commingle the "on deposit"
25 funds with assets of the dealer, salesman, or mobile home manufacturer
26 instead of holding the "on deposit" funds as trustee in a separate
27 trust account until the purchaser has taken delivery of the bargained-
28 for vehicle. Delivery of a manufactured home shall be deemed to occur
29 in accordance with RCW 46.70.135(5). Failure, immediately upon
30 receipt, to endorse "on deposit" instruments to such a trust account,
31 or to set aside "on deposit" cash for deposit in such trust account,
32 and failure to deposit such instruments or cash in such trust account
33 by the close of banking hours on the day following receipt thereof,
34 shall be evidence of intent to commit this unlawful practice:
35 PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate
36 trust account which equals his or her customary total customer deposits
37 for vehicles for future delivery. For purposes of this section, "on
38 deposit" funds received from a purchaser of a manufactured home means
39 those funds that a seller requires a purchaser to advance before

1 ordering the manufactured home, but does not include any loan proceeds
2 or moneys that might have been paid on an installment contract.

3 (10) For a dealer or manufacturer to fail to comply with the
4 obligations of any written warranty or guarantee given by the dealer or
5 manufacturer requiring the furnishing of goods and services or repairs
6 within a reasonable period of time, or to fail to furnish to a
7 purchaser, all parts which attach to the manufactured unit including
8 but not limited to the undercarriage, and all items specified in the
9 terms of a sales agreement signed by the seller and buyer.

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

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

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

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

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

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

36 Further, it is unlawful for a buyer's agent to engage in any false,
37 deceptive, or misleading advertising, disseminated in any manner
38 whatsoever, including but not limited to making any claim or statement

1 that the buyer's agent offers, obtains, or guarantees the lowest price
2 on any motor vehicle or words to similar effect.

3 (13) For a buyer's agent to arrange for or to negotiate the
4 purchase, or both, of a new motor vehicle through an out-of-state
5 dealer without disclosing in writing to the customer that the new
6 vehicle would not be subject to chapter 19.118 RCW. In addition, it is
7 unlawful for any buyer's agent to fail to have a written agreement with
8 the customer that: (a) Sets forth the terms of the parties' agreement;
9 (b) discloses to the customer the total amount of any fees or other
10 compensation being paid by the customer to the buyer's agent for the
11 agent's services; and (c) further discloses whether the fee or any
12 portion of the fee is refundable. The department of licensing shall by
13 December 31, 1996, in rule, adopt standard disclosure language for
14 buyer's agent agreements under RCW 46.70.011, 46.70.070, and this
15 section.

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

18 (a) Coerce or attempt to coerce any vehicle dealer to order or
19 accept delivery of any vehicle or vehicles, parts or accessories, or
20 any other commodities which have not been voluntarily ordered by the
21 vehicle dealer: PROVIDED, That recommendation, endorsement,
22 exposition, persuasion, urging, or argument are not deemed to
23 constitute coercion;

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

1 persuasion, urging, or argument are not deemed to constitute a lack of
2 good faith.

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

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

10 (e) Refuse to deliver any vehicle publicly advertised for immediate
11 delivery to any duly licensed vehicle dealer having a franchise or
12 contractual agreement for the retail sale of new and unused vehicles
13 sold or distributed by such manufacturer within sixty days after such
14 dealer's order has been received in writing unless caused by inability
15 to deliver because of shortage or curtailment of material, labor,
16 transportation, or utility services, or by any labor or production
17 difficulty, or by any cause beyond the reasonable control of the
18 manufacturer;

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

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

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

37 (16) To knowingly and intentionally engage in collusion with a
38 registered owner of a vehicle to repossess and return or resell the
39 vehicle to the registered owner in an attempt to avoid a suspended

1 license impound under chapter 46.55 RCW. However, compliance with
2 chapter 62A.9 RCW in repossessing, selling, leasing, or otherwise
3 disposing of the vehicle, including providing redemption rights to the
4 debtor, is not a violation of this section.

5 (17) For a mobile home dealer, accepting a power of attorney from
6 the purchaser.

7 NEW SECTION. **Sec. 3.** (1) The joint task force on manufactured
8 home sales shall consist of the following members or their designees:

9 (a) The following four members of the house of representatives
10 appointed by the co-speakers: (i) Two members of the committee on
11 financial institutions and insurance, one from each major caucus; and
12 (ii) two members of the committee on economic development, housing and
13 trade, one from each caucus;

14 (b) The following four members of the senate appointed by the
15 president of the senate: (i) Two members of the committee on commerce,
16 trade, housing and financial institutions, one from each major caucus;
17 and (ii) two other senators, one from each major caucus;

18 (c) The following members appointed by the governor: (i) Three
19 citizens representing purchasers of manufactured homes; (ii) one member
20 each from the following industries: Manufactured home manufacturers,
21 manufactured home dealers, manufactured home installers, lenders, and
22 escrow agents or title companies; and (iii) a representative of local
23 governments; and

24 (d) The co-chairs of the joint task force shall request that a
25 representative of the attorney general, the department of licensing,
26 the department of community, trade, and economic development, and the
27 department of financial institutions serve on the joint task force as
28 nonvoting members, and may appoint other experts and advisors as
29 nonvoting members.

30 (2) The nonlegislative members of the joint task force on
31 manufactured home sales shall serve without compensation, but shall be
32 reimbursed for travel expenses as provided in RCW 43.03.050 and
33 43.03.060. Legislative members of the joint task force shall be
34 reimbursed for travel expenses as provided in RCW 44.04.120. The staff
35 of senate committee services and the office of program research of the
36 house of representatives shall provide administrative and clerical
37 assistance to the joint task force.

1 (3) The joint task force on manufactured home sales shall be co-
2 chaired by one senator, chosen by the task force, and one state
3 representative, chosen by the task force, from opposite parties. A
4 quorum for any meeting or hearing shall be six members. Any final
5 findings, conclusions, or recommendations of the joint task force must
6 be agreed to by at least eight members, however, minority findings,
7 conclusions, or recommendations may be included that are submitted by
8 any member or group of members. The open public meetings act shall
9 apply to all meetings and hearings of the joint task force. Rules of
10 procedure shall be established at the first meeting of the joint task
11 force.

12 (4) The joint task force on manufactured home sales shall review
13 the sales practices, transfer of ownership, land-home packages offered
14 by dealers, installation, and other practices related to the purchase,
15 closing, and installation of a manufactured home, and shall make
16 recommendations for legislation and policy regarding methods to provide
17 better protection for purchasers of manufactured homes. The joint task
18 force shall consider, among other things, the following: (a) What
19 types of complaints are being made by purchasers of manufactured homes?
20 (b) Should the closing of a manufactured home sale be more formal, such
21 as requiring that all manufactured home sales be closed in escrow? (c)
22 Should a notice be designed and provided to purchasers of manufactured
23 homes that provides consumer protection information, including such
24 things as: (i) A summary of the rights of the consumer regarding
25 warranties and installation; (ii) examples of improper sales activities
26 such as secret side agreements, delivering a different home than the
27 one purchased and pressuring the purchaser to accept the delivered
28 home, and providing the seller with a power of attorney? (d) Should
29 funds not be disbursed to the dealer until the terms of the sale have
30 been satisfied, including delivery of the manufactured home? and (e)
31 What other methods should be considered to better protect purchasers of
32 manufactured homes?

33 (5) The co-chairs of the joint task force on manufactured home
34 sales shall convene the first meeting and develop a work plan and
35 meeting schedule. The joint task force shall present a final report,
36 including recommendations and a legislative bill draft, if general
37 consensus is reached on a bill draft, to the legislative committees
38 represented on the joint task force by December 15, 2000.

1 NEW SECTION. **Sec. 4.** Sections 1 and 3 of this act expire December
2 31, 2000.

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