
SENATE BILL 5441

State of Washington 56th Legislature 1999 Regular Session

By Senators Kline, Costa, Wojahn and Roach

Read first time 01/22/1999. Referred to Committee on Transportation.

1 AN ACT Relating to motor vehicle dealers; amending RCW 46.70.070
2 and 46.70.180; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** It is the intent of the legislature that the
5 judicial interpretation of RCW 46.70.180(1) made in *Henery v. Robinson*,
6 67 Wash. App. 277 (1992) be modified and that a violation of chapter
7 19.86 RCW can occur in a private communication that is false,
8 deceptive, or misleading between a buyer and seller.

9 **Sec. 2.** RCW 46.70.070 and 1996 c 194 s 2 are each amended to read
10 as follows:

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

14 (a) Fifteen thousand dollars for motor vehicle dealers;

15 (b) Thirty thousand dollars for mobile home, park trailer, and
16 travel trailer dealers: PROVIDED, That if such dealer does not deal in
17 mobile homes or park trailers such bond shall be fifteen thousand
18 dollars;

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

6 Any retail purchaser, consignor who is not a motor vehicle dealer,
7 or a motor vehicle dealer who has purchased from, sold to, or otherwise
8 transacted business with a wholesale dealer, who has suffered any loss
9 or damage by reason of breach of any implied or express warranty or by
10 any act by a dealer which constitutes a violation of this chapter shall
11 have the right to institute an action for recovery against such dealer
12 and the surety upon such bond. However, under this section, motor
13 vehicle dealers who have purchased from, sold to, or otherwise
14 transacted business with wholesale dealers may only institute actions
15 against wholesale dealers and their surety bonds. Successive
16 recoveries against said bond shall be permitted, but the aggregate
17 liability of the surety to all persons shall in no event exceed the
18 amount of the bond. Upon exhaustion of the penalty of said bond or
19 cancellation of the bond by the surety the vehicle dealer license shall
20 automatically be deemed canceled.

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

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

26 **Sec. 3.** RCW 46.70.180 and 1997 c 153 s 1 are each amended to read
27 as follows:

28 Each of the following acts or practices is unlawful:

29 (1) To communicate, transmit in any manner, or cause or permit to
30 be advertised, printed, displayed, published, distributed, broadcasted,
31 televised, or disseminated in any manner whatsoever, any statement or
32 representation with regard to the sale or financing of a vehicle which
33 is false, deceptive, or misleading, including but not limited to the
34 following:

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

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

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

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

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

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

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

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

33 (a) Is subject to the dealer's, or his or her authorized
34 representative's future acceptance, and the dealer fails or refuses
35 within three calendar days, exclusive of Saturday, Sunday, or legal
36 holiday, and prior to any further negotiations with said buyer, either
37 (i) to deliver to the buyer the dealer's signed acceptance, or (ii) to
38 void the order, offer, or contract document and tender the return of
39 any initial payment or security made or given by the buyer, including

1 but not limited to money, check, promissory note, vehicle keys, a
2 trade-in, or certificate of title to a trade-in; or

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

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

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

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

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

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

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

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

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 the implied warranties of merchantability or fitness for
33 a particular use or any written warranty or guarantee given by the
34 dealer or manufacturer requiring the furnishing of goods and services
35 or repairs within a reasonable period of time, or to fail to furnish to
36 a purchaser, all parts which attach to the manufactured unit including
37 but not limited to the undercarriage, and all items specified in the
38 terms of a sales agreement signed by the seller and buyer.

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

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

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

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

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

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

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

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

1 agent's services; and (c) further discloses whether the fee or any
2 portion of the fee is refundable. The department of licensing shall by
3 December 31, 1996, in rule, adopt standard disclosure language for
4 buyer's agent agreements under RCW 46.70.011, 46.70.070, and this
5 section.

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

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

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

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

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

38 (e) Refuse to deliver any vehicle publicly advertised for immediate
39 delivery to any duly licensed vehicle dealer having a franchise or

1 contractual agreement for the retail sale of new and unused vehicles
2 sold or distributed by such manufacturer within sixty days after such
3 dealer's order has been received in writing unless caused by inability
4 to deliver because of shortage or curtailment of material, labor,
5 transportation, or utility services, or by any labor or production
6 difficulty, or by any cause beyond the reasonable control of the
7 manufacturer;

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

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

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

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