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HOUSE BILL 2995

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State of Washington

57th Legislature

2002 Regular Session

By Representative Fisher

Read first time 02/27/2002. Referred to Committee on Transportation.

1 AN ACT Relating to vehicle dealer documentary service fees;  
2 amending RCW 63.14.010 and 63.14.130; reenacting and amending RCW  
3 46.70.180; and creating a new section.

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

5 **Sec. 1.** RCW 46.70.180 and 2001 c 272 s 10 and 2001 c 64 s 9 are  
6 each reenacted and amended to read as follows:

7 Each of the following acts or practices is unlawful:

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

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

16 (b) That a certain percentage of the sale price of a vehicle may be  
17 financed when such financing is not offered in a single document  
18 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)(a) To incorporate within the terms of any purchase and sale or  
12 lease agreement any statement or representation with regard to the  
13 sale, lease, or financing of a vehicle which is false, deceptive, or  
14 misleading, including but not limited to terms that include as an added  
15 cost to the selling price or capitalized cost of a vehicle an amount  
16 for licensing or transfer of title of that vehicle which is not  
17 actually due to the state, unless such amount has in fact been paid by  
18 the dealer prior to such sale. However, an amount not to exceed  
19 thirty-five dollars per vehicle sale or lease may be charged by a  
20 dealer to recover administrative costs for collecting motor vehicle  
21 excise taxes, licensing and registration fees and other agency fees,  
22 verifying and clearing titles, transferring titles, perfecting,  
23 releasing, or satisfying liens or other security interests, and other  
24 administrative and documentary services rendered by a dealer in  
25 connection with the sale or lease of a vehicle and in carrying out the  
26 requirements of this chapter or any other provisions of state law.

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

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

32 (ii) The documentary service fee is not represented to the  
33 purchaser or lessee as a fee or charge required by the state to be paid  
34 by either the dealer or prospective purchaser or lessee;

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

1        (iv) Dealers disclose in any advertisement that a documentary  
2 service fee in an amount up to twenty-five dollars may be added to the  
3 sale price or the capitalized cost.

4        For the purposes of this subsection (2), the term "documentary  
5 service fee" means the optional amount charged by a dealer to process  
6 sales and use taxes.

7        (3) To set up, promote, or aid in the promotion of a plan by which  
8 vehicles are to be sold or leased to a person for a consideration and  
9 upon further consideration that the purchaser or lessee agrees to  
10 secure one or more persons to participate in the plan by respectively  
11 making a similar purchase and in turn agreeing to secure one or more  
12 persons likewise to join in said plan, each purchaser or lessee being  
13 given the right to secure money, credits, goods, or something of value,  
14 depending upon the number of persons joining the plan.

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

19        (a) Is subject to the dealer's, or his or her authorized  
20 representative's future acceptance, and the dealer fails or refuses  
21 within three calendar days, exclusive of Saturday, Sunday, or legal  
22 holiday, and prior to any further negotiations with said buyer or  
23 lessee, either (i) to deliver to the buyer or lessee the dealer's  
24 signed acceptance, or (ii) to void the order, offer, or contract  
25 document and tender the return of any initial payment or security made  
26 or given by the buyer or lessee, including but not limited to money,  
27 check, promissory note, vehicle keys, a trade-in, or certificate of  
28 title to a trade-in; or

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

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

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

1 (iii) Excessive additional miles or a discrepancy in the mileage.  
2 "Excessive additional miles" means the addition of five hundred miles  
3 or more, as reflected on the vehicle's odometer, between the time the  
4 vehicle was first valued by the dealer for purposes of determining its  
5 trade-in value and the time of actual delivery of the vehicle to the  
6 dealer. "A discrepancy in the mileage" means (A) a discrepancy between  
7 the mileage reflected on the vehicle's odometer and the stated mileage  
8 on the signed odometer statement; or (B) a discrepancy between the  
9 mileage stated on the signed odometer statement and the actual mileage  
10 on the vehicle; or

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

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

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

22 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or  
23 46.37.425.

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

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

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

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

37 (9) For a dealer, salesperson, or mobile home manufacturer, having  
38 taken an instrument or cash "on deposit" from a purchaser or lessee  
39 prior to the delivery of the bargained-for vehicle, to commingle the

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

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

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

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

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

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

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

9 It is unlawful for a buyer's agent to use a power of attorney  
10 obtained from the consumer to accomplish or effect the purchase, sale,  
11 lease, or transfer of ownership documents of any new motor vehicle by  
12 any means which would otherwise be prohibited under (a) through (c) of  
13 this subsection. However, the buyer's agent may use a power of  
14 attorney for physical delivery of motor vehicle license plates to the  
15 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. This subsection  
25 also applies to leased vehicles. In addition, it is unlawful for any  
26 buyer's agent to fail to have a written agreement with the customer  
27 that: (a) Sets forth the terms of the parties' agreement; (b)  
28 discloses to the customer the total amount of any fees or other  
29 compensation being paid by the customer to the buyer's agent for the  
30 agent's services; and (c) further discloses whether the fee or any  
31 portion of the fee is refundable.

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

34 (a) Coerce or attempt to coerce any vehicle dealer to order or  
35 accept delivery of any vehicle or vehicles, parts or accessories, or  
36 any other commodities which have not been voluntarily ordered by the  
37 vehicle dealer: PROVIDED, That recommendation, endorsement,  
38 exposition, persuasion, urging, or argument are not deemed to  
39 constitute coercion;

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

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

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

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

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

1 Nothing in this section may be construed to impair the obligations  
2 of a contract or to prevent a manufacturer, distributor,  
3 representative, or any other person, whether or not licensed under this  
4 chapter, from requiring performance of a written contract entered into  
5 with any licensee hereunder, nor does the requirement of such  
6 performance constitute a violation of any of the provisions of this  
7 section if any such contract or the terms thereof requiring  
8 performance, have been freely entered into and executed between the  
9 contracting parties. This paragraph and subsection (14)(b) of this  
10 section do not apply to new motor vehicle manufacturers governed by  
11 chapter 46.96 RCW.

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

14 (16) To knowingly and intentionally engage in collusion with a  
15 registered owner of a vehicle to repossess and return or resell the  
16 vehicle to the registered owner in an attempt to avoid a suspended  
17 license impound under chapter 46.55 RCW. However, compliance with  
18 chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise  
19 disposing of the vehicle, including providing redemption rights to the  
20 debtor, is not a violation of this section.

21 **Sec. 2.** RCW 63.14.010 and 1999 c 113 s 1 are each amended to read  
22 as follows:

23 In this chapter, unless the context otherwise requires:

24 (1) "Goods" means all chattels personal when purchased primarily  
25 for personal, family, or household use and not for commercial or  
26 business use, but not including money or, except as provided in the  
27 next sentence, things in action. The term includes but is not limited  
28 to merchandise certificates or coupons, issued by a retail seller, to  
29 be used in their face amount in lieu of cash in exchange for goods or  
30 services sold by such a seller and goods which, at the time of sale or  
31 subsequently, are to be so affixed to real property as to become a part  
32 thereof, whether or not severable therefrom;

33 (2) "Lender credit card" means a card or device under a lender  
34 credit card agreement pursuant to which the issuer gives to a  
35 cardholder residing in this state the privilege of obtaining credit  
36 from the issuer or other persons in purchasing or leasing property or  
37 services, obtaining loans, or otherwise, and the issuer of which is



1 not: (a) Principally engaged in the business of selling goods; or (b)  
2 a financial institution;

3 (3) "Lender credit card agreement" means an agreement entered into  
4 or performed in this state prescribing the terms of retail installment  
5 transactions pursuant to which the issuer may, with the buyer's  
6 consent, purchase or acquire one or more retail sellers' indebtedness  
7 of the buyer under a sales slip or memorandum evidencing the purchase,  
8 lease, loan, or otherwise to be paid in accordance with the agreement.  
9 The issuer of a lender credit card agreement shall not be principally  
10 engaged in the business of selling goods or be a financial institution;

11 (4) "Financial institution" means any bank or trust company, mutual  
12 savings bank, credit union, or savings and loan association organized  
13 pursuant to the laws of any one of the United States of America or the  
14 United States of America, or the laws of a foreign country if also  
15 qualified to conduct business in any one of the United States of  
16 America or pursuant to the laws of the United States of America;

17 (5) "Services" means work, labor, or services of any kind when  
18 purchased primarily for personal, family, or household use and not for  
19 commercial or business use whether or not furnished in connection with  
20 the delivery, installation, servicing, repair, or improvement of goods  
21 and includes repairs, alterations, or improvements upon or in  
22 connection with real property, but does not include services for which  
23 the price charged is required by law to be determined or approved by or  
24 to be filed, subject to approval or disapproval, with the United States  
25 or any state, or any department, division, agency, officer, or official  
26 of either as in the case of transportation services;

27 (6) "Retail buyer" or "buyer" means a person who buys or agrees to  
28 buy goods or obtain services or agrees to have services rendered or  
29 furnished, from a retail seller;

30 (7) "Retail seller" or "seller" means a person engaged in the  
31 business of selling goods or services to retail buyers;

32 (8) "Retail installment transaction" means any transaction in which  
33 a retail buyer purchases goods or services from a retail seller  
34 pursuant to a retail installment contract, a retail charge agreement,  
35 or a lender credit card agreement, as defined in this section, which  
36 provides for a service charge, as defined in this section, and under  
37 which the buyer agrees to pay the unpaid principal balance in one or  
38 more installments or which provides for no service charge and under

1 which the buyer agrees to pay the unpaid balance in more than four  
2 installments;

3 (9) "Retail installment contract" or "contract" means a contract,  
4 other than a retail charge agreement, a lender credit card agreement,  
5 or an instrument reflecting a sale made pursuant thereto, entered into  
6 or performed in this state for a retail installment transaction. The  
7 term "retail installment contract" may include a chattel mortgage, a  
8 conditional sale contract, and a contract in the form of a bailment or  
9 a lease if the bailee or lessee contracts to pay as compensation for  
10 their use a sum substantially equivalent to or in excess of the value  
11 of the goods sold and if it is agreed that the bailee or lessee is  
12 bound to become, or for no other or a merely nominal consideration, has  
13 the option of becoming the owner of the goods upon full compliance with  
14 the provisions of the bailment or lease. The term "retail installment  
15 contract" does not include: (a) A "consumer lease," heretofore or  
16 hereafter entered into, as defined in RCW 63.10.020; (b) a lease which  
17 would constitute such "consumer lease" but for the fact that: (i) It  
18 was entered into before April 29, 1983; (ii) the lessee was not a  
19 natural person; (iii) the lease was not primarily for personal, family,  
20 or household purposes; or (iv) the total contractual obligations  
21 exceeded twenty-five thousand dollars; or (c) a lease-purchase  
22 agreement under chapter 63.19 RCW;

23 (10) "Retail charge agreement," "revolving charge agreement," or  
24 "charge agreement" means an agreement between a retail buyer and a  
25 retail seller that is entered into or performed in this state and that  
26 prescribes the terms of retail installment transactions with one or  
27 more sellers which may be made thereunder from time to time and under  
28 the terms of which a service charge, as defined in this section, is to  
29 be computed in relation to the buyer's unpaid balance from time to  
30 time;

31 (11) "Service charge" however denominated or expressed, means the  
32 amount which is paid or payable for the privilege of purchasing goods  
33 or services to be paid for by the buyer in installments over a period  
34 of time. It does not include the amount, if any, charged for insurance  
35 premiums, delinquency charges, attorneys' fees, court costs, any  
36 vehicle dealer administrative fee under RCW 46.12.042, any vehicle  
37 dealer documentary service fee under RCW 46.70.180(2), or official  
38 fees;

1 (12) "Sale price" means the price for which the seller would have  
2 sold or furnished to the buyer, and the buyer would have bought or  
3 obtained from the seller, the goods or services which are the subject  
4 matter of a retail installment transaction. The sale price may include  
5 any taxes, registration and license fees, any vehicle dealer  
6 administrative fee, any vehicle dealer documentary service fee, and  
7 charges for transferring vehicle titles, delivery, installation,  
8 servicing, repairs, alterations, or improvements;

9 (13) "Official fees" means the amount of the fees prescribed by law  
10 and payable to the state, county, or other governmental agency for  
11 filing, recording, or otherwise perfecting, and releasing or  
12 satisfying, a retained title, lien, or other security interest created  
13 by a retail installment transaction;

14 (14) "Time balance" means the principal balance plus the service  
15 charge;

16 (15) "Principal balance" means the sale price of the goods or  
17 services which are the subject matter of a retail installment contract  
18 less the amount of the buyer's down payment in money or goods or both,  
19 plus the amounts, if any, included therein, if a separate identified  
20 charge is made therefor and stated in the contract, for insurance, any  
21 vehicle dealer administrative fee, any vehicle dealer documentary  
22 service fee, and official fees; and the amount actually paid or to be  
23 paid by the retail seller pursuant to an agreement with the buyer to  
24 discharge a security interest or lien on like-kind goods traded in or  
25 lease interest in the circumstance of a lease for like goods being  
26 terminated in conjunction with the sale pursuant to a retail  
27 installment contract;

28 (16) "Person" means an individual, partnership, joint venture,  
29 corporation, association, or any other group, however organized;

30 (17) "Rate" means the percentage which, when multiplied times the  
31 outstanding balance for each month or other installment period, yields  
32 the amount of the service charge for such month or period.

33 **Sec. 3.** RCW 63.14.130 and 1999 c 113 s 4 are each amended to read  
34 as follows:

35 The service charge shall be inclusive of all charges incident to  
36 investigating and making the retail installment contract or charge  
37 agreement and for the privilege of making the installment payments  
38 thereunder and no other fee, expense or charge whatsoever shall be

1 taken, received, reserved or contracted therefor from the buyer, except  
2 for any vehicle dealer administrative fee under RCW 46.12.042 or for  
3 any vehicle dealer documentary service fee under RCW 46.70.180(2).

4 (1) The service charge, in a retail installment contract, shall not  
5 exceed the dollar amount or rate agreed to by contract and disclosed  
6 under RCW 63.14.040(1)(h).

7 (2) The service charge in a retail charge agreement, revolving  
8 charge agreement, lender credit card agreement, or charge agreement,  
9 shall not exceed the schedule or rate agreed to by contract and  
10 disclosed under RCW 63.14.120(1). If the service charge so computed is  
11 less than one dollar for any month, then one dollar may be charged.

12 NEW SECTION. **Sec. 4.** If House Bill No. 2969 is not ratified by  
13 the voters by January 1, 2003, this act is null and void.

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