
HOUSE BILL 2656

State of Washington 58th Legislature 2004 Regular Session

By Representatives Conway, McMorris and McIntire

Read first time 01/19/2004. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to financing practices of motor vehicle dealers;
2 and 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 2003 c 368 s 1 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) To incorporate within the terms of any purchase and sale or
11 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. However, an amount not to exceed
18 thirty-five dollars per vehicle sale or lease may be charged by a
19 dealer to recover administrative costs for collecting motor vehicle
20 excise taxes, licensing and registration fees and other agency fees,
21 verifying and clearing titles, transferring titles, perfecting,
22 releasing, or satisfying liens or other security interests, and other
23 administrative and documentary services rendered by a dealer in
24 connection with the sale or lease of a vehicle and in carrying out the
25 requirements of this chapter or any other provisions of state law.

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

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

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

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

37 (iv) Dealers disclose in any advertisement that a documentary

1 service fee in an amount up to thirty-five dollars may be added to the
2 sale price or the capitalized cost.

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

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

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

18 (a) Is subject to (i) the dealer's, or his or her authorized
19 representative's future acceptance, or (ii) is conditioned on the
20 dealer approving a financing condition in the contract document, or
21 (iii) is conditioned on the dealer obtaining from a bank or other
22 lender or leasing company, approval of financing or approval of the
23 lease for the buyer or lessee, and the dealer fails or refuses within
24 ~~((three))~~ five calendar days, exclusive of Saturday, Sunday, or legal
25 holiday, and prior to any further negotiations with said buyer or
26 lessee, either (i) to ~~((deliver to))~~ inform the buyer or lessee of the
27 dealer's ~~((signed))~~ final acceptance or the satisfaction of the
28 financing condition or lease approval, or (ii) to inform the buyer or
29 lessee that the dealer rejects the contract or that the financing or
30 the lease was not so approved (thereby automatically voiding the
31 ~~((order, offer, or))~~ contract document) and tender the return of any
32 initial payment or security made or given by the buyer or lessee,
33 including but not limited to money, check, promissory note, vehicle
34 keys, a trade-in, or certificate of title to a trade-in~~((or))~~.

35 The provisions of (a) of this subsection do not impair, prejudice,
36 or abrogate the rights of a dealer to assert a claim against the buyer
37 or lessee for misrepresentation or breach of contract and to exercise
38 all remedies available at law or in equity, including those under

1 chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing
2 company discovers that approval of the contract or financing or
3 approval of the lease was based upon material misrepresentations made
4 by the buyer or lessee, including but not limited to,
5 misrepresentations regarding income, employment, or debt of the buyer
6 or lessee so long as the dealer, or his or her staff, has not, with
7 knowledge of the material misrepresentation, aided, assisted,
8 encouraged, or participated, directly or indirectly, in the
9 misrepresentation.

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

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

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

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

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

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

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

5 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
6 46.37.425.

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

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

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

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

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

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

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

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

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

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

27 (b) Signing any vehicle purchase orders, sales contracts, leases,
28 odometer statements, or title documents, or having the name of the
29 buyer's agent appear on the vehicle purchase order, sales contract,
30 lease, or title; or

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

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

1 attorney for physical delivery of motor vehicle license plates to the
2 consumer.

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

8 (13) For a buyer's agent to arrange for or to negotiate the
9 purchase, or both, of a new motor vehicle through an out-of-state
10 dealer without disclosing in writing to the customer that the new
11 vehicle would not be subject to chapter 19.118 RCW. This subsection
12 also applies to leased vehicles. In addition, it is unlawful for any
13 buyer's agent to fail to have a written agreement with the customer
14 that: (a) Sets forth the terms of the parties' agreement; (b)
15 discloses to the customer the total amount of any fees or other
16 compensation being paid by the customer to the buyer's agent for the
17 agent's services; and (c) further discloses whether the fee or any
18 portion of the fee is refundable.

19 (14) Being a manufacturer, other than a motorcycle manufacturer
20 governed by chapter (~~46.94~~) 46.93 RCW, to:

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

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

1 manner towards each other, so as to guarantee one party freedom from
2 coercion, intimidation, or threats of coercion or intimidation from the
3 other party: PROVIDED, That recommendation, endorsement, exposition,
4 persuasion, urging, or argument are not deemed to constitute a lack of
5 good faith;

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

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

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

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

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

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

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

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