

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2215

58th Legislature
2003 Regular Session

Passed by the House April 26, 2003
Yeas 65 Nays 32

Speaker of the House of Representatives

Passed by the Senate April 16, 2003
Yeas 42 Nays 7

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2215** 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**

SUBSTITUTE HOUSE BILL 2215

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Transportation (originally sponsored by
Representatives Murray and Simpson)

READ FIRST TIME 04/02/03.

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 providing contingent effect.

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 thirty-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 provide
6 the services specified in (a) of this subsection.

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

1 could not have been reasonably discoverable at the time of the taking
2 of the order, offer, or contract; or

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

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

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

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

24 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
25 46.37.425.

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

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

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

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

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

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

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

37 (12) For a buyer's agent, acting directly or through a subsidiary,
38 to pay to or to receive from any motor vehicle dealer any compensation,

1 fee, gratuity, or reward in connection with the purchase, sale, or
2 lease of a new motor vehicle. In addition, it is unlawful for any
3 buyer's agent to engage in any of the following acts on behalf of or in
4 the name of the consumer:

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

7 (b) Signing any vehicle purchase orders, sales contracts, leases,
8 odometer statements, or title documents, or having the name of the
9 buyer's agent appear on the vehicle purchase order, sales contract,
10 lease, or title; or

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

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

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

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

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

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

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

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

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

31 (e) Refuse to deliver any vehicle publicly advertised for immediate
32 delivery to any duly licensed vehicle dealer having a franchise or
33 contractual agreement for the retail sale or lease of new and unused
34 vehicles sold or distributed by such manufacturer within sixty days
35 after such dealer's order has been received in writing unless caused by
36 inability to deliver because of shortage or curtailment of material,
37 labor, transportation, or utility services, or by any labor or

1 production difficulty, or by any cause beyond the reasonable control of
2 the manufacturer;

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

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

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

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

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

31 In this chapter, unless the context otherwise requires:

32 (1) "Goods" means all chattels personal when purchased primarily
33 for personal, family, or household use and not for commercial or
34 business use, but not including money or, except as provided in the
35 next sentence, things in action. The term includes but is not limited
36 to merchandise certificates or coupons, issued by a retail seller, to
37 be used in their face amount in lieu of cash in exchange for goods or

1 services sold by such a seller and goods which, at the time of sale or
2 subsequently, are to be so affixed to real property as to become a part
3 thereof, whether or not severable therefrom;

4 (2) "Lender credit card" means a card or device under a lender
5 credit card agreement pursuant to which the issuer gives to a
6 cardholder residing in this state the privilege of obtaining credit
7 from the issuer or other persons in purchasing or leasing property or
8 services, obtaining loans, or otherwise, and the issuer of which is
9 not: (a) Principally engaged in the business of selling goods; or (b)
10 a financial institution;

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

19 (4) "Financial institution" means any bank or trust company, mutual
20 savings bank, credit union, or savings and loan association organized
21 pursuant to the laws of any one of the United States of America or the
22 United States of America, or the laws of a foreign country if also
23 qualified to conduct business in any one of the United States of
24 America or pursuant to the laws of the United States of America;

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

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

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

3 (8) "Retail installment transaction" means any transaction in which
4 a retail buyer purchases goods or services from a retail seller
5 pursuant to a retail installment contract, a retail charge agreement,
6 or a lender credit card agreement, as defined in this section, which
7 provides for a service charge, as defined in this section, and under
8 which the buyer agrees to pay the unpaid principal balance in one or
9 more installments or which provides for no service charge and under
10 which the buyer agrees to pay the unpaid balance in more than four
11 installments;

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

32 (10) "Retail charge agreement," "revolving charge agreement," or
33 "charge agreement" means an agreement between a retail buyer and a
34 retail seller that is entered into or performed in this state and that
35 prescribes the terms of retail installment transactions with one or
36 more sellers which may be made thereunder from time to time and under
37 the terms of which a service charge, as defined in this section, is to

1 be computed in relation to the buyer's unpaid balance from time to
2 time;

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

11 (12) "Sale price" means the price for which the seller would have
12 sold or furnished to the buyer, and the buyer would have bought or
13 obtained from the seller, the goods or services which are the subject
14 matter of a retail installment transaction. The sale price may include
15 any taxes, registration and license fees, any vehicle dealer
16 administrative fee, any vehicle dealer documentary service fee, and
17 charges for transferring vehicle titles, delivery, installation,
18 servicing, repairs, alterations, or improvements;

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

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

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

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

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

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

8 The service charge shall be inclusive of all charges incident to
9 investigating and making the retail installment contract or charge
10 agreement and for the privilege of making the installment payments
11 thereunder and no other fee, expense or charge whatsoever shall be
12 taken, received, reserved or contracted therefor from the buyer, except
13 for any vehicle dealer administrative fee under RCW 46.12.042 or for
14 any vehicle dealer documentary service fee under RCW 46.70.180(2).

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

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

23 NEW SECTION. **Sec. 4.** This act takes effect only when Senate Bill
24 No. 6061 or House Bill No. 2231 takes effect. If neither of these
25 bills takes effect by December 31, 2003, this act is null and void in
26 its entirety.

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