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SENATE BILL 5896

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State of Washington                      58th Legislature                      2003 Regular Session

By Senators Schmidt, Prentice, Winsley, Fairley, Roach and Franklin

Read first time 02/19/2003.      Referred to Committee on Commerce & Trade.

1            AN ACT Relating to vehicle brokers; and amending RCW 46.70.011 and  
2            46.70.041.

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

4            **Sec. 1.** RCW 46.70.011 and 2001 c 272 s 2 are each amended to read  
5            as follows:

6            As used in this chapter:

7            (1) "Vehicle" means and includes every device capable of being  
8            moved upon a public highway and in, upon, or by which any persons or  
9            property is or may be transported or drawn upon a public highway,  
10            excepting devices moved by human or animal power or used exclusively  
11            upon stationary rails or tracks.

12            (2) "Motor vehicle" means every vehicle which is self-propelled and  
13            every vehicle which is propelled by electric power obtained from  
14            overhead trolley wires, but not operated upon rails, and which is  
15            required to be registered and titled under Title 46 RCW, Motor  
16            Vehicles.

17            (3) "Vehicle dealer" means any person, firm, association,  
18            corporation, or trust, not excluded by subsection (4) of this section,  
19            engaged in the business of buying, selling, listing, exchanging,

1 offering, brokering, leasing with an option to purchase, auctioning,  
2 soliciting, or advertising the sale of new or used vehicles, or  
3 arranging or offering or attempting to solicit or negotiate on behalf  
4 of others, a sale, purchase, or exchange of an interest in new or used  
5 motor vehicles, irrespective of whether the motor vehicles are owned by  
6 that person. Vehicle dealers shall be classified as follows:

7 (a) A "motor vehicle dealer" is a vehicle dealer that deals in new  
8 or used motor vehicles, or both;

9 (b) A "mobile home and travel trailer dealer" is a vehicle dealer  
10 that deals in mobile homes, park trailers, or travel trailers, or more  
11 than one type of these vehicles;

12 (c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals  
13 in motorcycles or vehicles other than motor vehicles or mobile homes  
14 and travel trailers or any combination of such vehicles.

15 (4) The term "vehicle dealer" does not include, nor do the  
16 licensing requirements of RCW 46.70.021 apply to, the following  
17 persons, firms, associations, or corporations:

18 (a) Receivers, trustees, administrators, executors, guardians, or  
19 other persons appointed by, or acting under a judgment or order of, any  
20 court; or

21 (b) Public officers while performing their official duties; or

22 (c) Employees of vehicle dealers who are engaged in the specific  
23 performance of their duties as such employees; or

24 (d) Any person engaged in an isolated sale of a vehicle in which  
25 that person is the registered or legal owner, or both, thereof; or

26 (e) Any person, firm, association, corporation, or trust, engaged  
27 in the selling of equipment other than vehicles, subject to  
28 registration, used for agricultural or industrial purposes; or

29 (f) A real estate broker licensed under chapter 18.85 RCW, or an  
30 affiliated licensee, who, on behalf of another negotiates the purchase,  
31 sale, lease, or exchange of a manufactured or mobile home in  
32 conjunction with the purchase, sale, exchange, rental, or lease of the  
33 land upon which the manufactured or mobile home is, or will be,  
34 located; or

35 (g) Owners who are also operators of the special highway  
36 construction equipment or of the highway construction equipment for  
37 which a vehicle license and display vehicle license number plate is  
38 required as defined in RCW 46.16.010; or

1 (h) Any bank, trust company, savings bank, mutual savings bank,  
2 savings and loan association, credit union, and any parent, subsidiary,  
3 or affiliate thereof, authorized to do business in this state under  
4 state or federal law with respect to the sale or other disposition of  
5 a motor vehicle owned and used in their business; or with respect to  
6 the acquisition and sale or other disposition of a motor vehicle in  
7 which the entity has acquired an interest as a lessor, lessee, or  
8 secured party; or

9 (i) Any person who is regularly engaged in the business of  
10 acquiring leases or installment contracts by assignment, with respect  
11 to the acquisition and sale or other disposition of a motor vehicle in  
12 which the person has acquired an interest as a result of the business.

13 (5) "Vehicle salesperson" means any person who for any form of  
14 compensation sells, auctions, leases with an option to purchase, or  
15 offers to sell or to so lease vehicles on behalf of a vehicle dealer.

16 (6) "Department" means the department of licensing, which shall  
17 administer and enforce the provisions of this chapter.

18 (7) "Director" means the director of licensing.

19 (8) "Manufacturer" means any person, firm, association,  
20 corporation, or trust, resident or nonresident, who manufactures or  
21 assembles new and unused vehicles or remanufactures vehicles in whole  
22 or in part and further includes the terms:

23 (a) "Distributor," which means any person, firm, association,  
24 corporation, or trust, resident or nonresident, who in whole or in part  
25 offers for sale, sells, or distributes any new and unused vehicle to  
26 vehicle dealers or who maintains factory representatives.

27 (b) "Factory branch," which means a branch office maintained by a  
28 manufacturer for the purpose of selling or offering for sale, vehicles  
29 to a distributor, wholesaler, or vehicle dealer, or for directing or  
30 supervising in whole or in part factory or distributor representatives,  
31 and further includes any sales promotion organization, whether a  
32 person, firm, or corporation, which is engaged in promoting the sale of  
33 new and unused vehicles in this state of a particular brand or make to  
34 vehicle dealers.

35 (c) "Factory representative," which means a representative employed  
36 by a manufacturer, distributor, or factory branch for the purpose of  
37 making or promoting for the sale of their vehicles or for supervising  
38 or contracting with their dealers or prospective dealers.

1 (9) "Established place of business" means a location meeting the  
2 requirements of RCW 46.70.023(1) at which a vehicle dealer conducts  
3 business in this state.

4 (10) "Principal place of business" means that dealer firm's  
5 business location in the state, which place the dealer designates as  
6 their principal place of business.

7 (11) "Subagency" means any place of business of a vehicle dealer  
8 within the state, which place is physically and geographically  
9 separated from the principal place of business of the firm or any place  
10 of business of a vehicle dealer within the state, at which place the  
11 firm does business using a name other than the principal name of the  
12 firm, or both.

13 (12) "Temporary subagency" means a location other than the  
14 principal place of business or subagency within the state where a  
15 licensed vehicle dealer may secure a license to conduct the business  
16 and is licensed for a period of time not to exceed ten days for a  
17 specific purpose such as auto shows, shopping center promotions, tent  
18 sales, exhibitions, or similar merchandising ventures. No more than  
19 six temporary subagency licenses may be issued to a licensee in any  
20 twelve-month period.

21 (13) "Wholesale vehicle dealer" means a vehicle dealer who buys and  
22 sells other than at retail.

23 (14) "Retail vehicle dealer" means a vehicle dealer who may buy and  
24 sell at both wholesale and retail.

25 (15) "Listing dealer" means a used mobile home dealer who makes  
26 contracts with sellers who will compensate the dealer for obtaining a  
27 willing purchaser for the seller's mobile home.

28 (16) "Auction" means a transaction conducted by means of exchanges  
29 between an auctioneer and the members of the audience, constituting a  
30 series of oral invitations for offers for the purchase of vehicles made  
31 by the auctioneer, offers to purchase by members of the audience, and  
32 the acceptance of the highest or most favorable offer to purchase.

33 (17) "Auction company" means a sole proprietorship, partnership,  
34 corporation, or other legal or commercial entity licensed under chapter  
35 18.11 RCW that only sells or offers to sell vehicles at auction or only  
36 arranges or sponsors auctions.

37 (18) "Buyer's agent" means any person, firm, partnership,  
38 association, limited liability company, limited liability partnership,

1 or corporation retained or employed by a consumer to arrange for or to  
2 negotiate, or both, the purchase or lease of a new motor vehicle on  
3 behalf of the consumer, and who is paid a fee or receives other  
4 compensation from the consumer for its services.

5 (19) "New motor vehicle" means any motor vehicle that is self-  
6 propelled and is required to be registered and titled under Title 46  
7 RCW, has not been previously titled to a retail purchaser or lessee,  
8 and is not a "used vehicle" as defined under RCW 46.04.660.

9 (20) "Broker" means any person, partnership, corporation, or  
10 association acting independently, who for a commission, fee, or any  
11 other form of compensation arranges or engages in the wholesale or  
12 retail purchase, sale, or lease with option to purchase of a vehicle.

13 **Sec. 2.** RCW 46.70.041 and 2001 c 272 s 3 are each amended to read  
14 as follows:

15 (1) Every application for a vehicle dealer license shall contain  
16 the following information to the extent it applies to the applicant:

17 (a) Proof as the department may require concerning the applicant's  
18 identity, including but not limited to his or her fingerprints, the  
19 honesty, truthfulness, and good reputation of the applicant for the  
20 license, or of the officers of a corporation making the application;

21 (b) The applicant's form and place of organization including if the  
22 applicant is a corporation, proof that the corporation is licensed to  
23 do business in this state;

24 (c) The qualification and business history of the applicant and any  
25 partner, officer, or director;

26 (d) The applicant's financial condition or history including a bank  
27 reference and whether the applicant or any partner, officer, or  
28 director has ever been adjudged bankrupt or has any unsatisfied  
29 judgment in any federal or state court;

30 (e) Whether the applicant has been adjudged guilty of a crime which  
31 directly relates to the business for which the license is sought and  
32 the time elapsed since the conviction is less than ten years, or has  
33 suffered any judgment within the preceding five years in any civil  
34 action involving fraud, misrepresentation, or conversion and in the  
35 case of a corporation or partnership, all directors, officers, or  
36 partners;

37 (f) A business telephone with a listing in the local directory;

- 1 (g) The name or names of new vehicles the vehicle dealer wishes to  
2 sell;
- 3 (h) The names and addresses of each manufacturer from whom the  
4 applicant has received a franchise;
- 5 (i) A certificate by a representative of the department, that the  
6 applicant's principal place of business and each subagency business  
7 location in the state of Washington meets the location requirements as  
8 required by this chapter. The certificate shall include proof of the  
9 applicant's ownership or lease of the real property where the  
10 applicant's principal place of business is established;
- 11 (j) A copy of a current service agreement with a manufacturer, or  
12 distributor for a foreign manufacturer, requiring the applicant, upon  
13 demand of any customer receiving a new vehicle warranty to perform or  
14 arrange for, within a reasonable distance of his or her established  
15 place of business, the service repair and replacement work required of  
16 the manufacturer or distributor by such vehicle warranty. This  
17 requirement (~~((applies only))~~) does not apply to applicants seeking (~~((to~~  
18 ~~sell, to exchange,))~~ to offer, (~~((to auction,))~~ to solicit, (~~((to~~  
19 ~~advertise,))~~ or to broker or lease new (~~((or current model))~~) vehicles  
20 (~~((with factory or distributor warranties))~~) that are sold by a  
21 franchised dealer having a valid written service agreement as required  
22 by this chapter;
- 23 (k) The class of vehicles the vehicle dealer will be buying,  
24 selling, listing, exchanging, offering, brokering, leasing, auctioning,  
25 soliciting, or advertising, and which classification or classifications  
26 the dealer wishes to be designated as;
- 27 (l) Effective July 1, 2002, a certificate from the provider of each  
28 education program or test showing that the applicant has completed the  
29 education programs and passed the test required under RCW 46.70.079 if  
30 the applicant is a dealer subject to the education and test  
31 requirements;
- 32 (m) Any other information the department may reasonably require.
- 33 (2) If the applicant is a manufacturer the application shall  
34 contain the following information to the extent it is applicable to the  
35 applicant:
- 36 (a) The name and address of the principal place of business of the  
37 applicant and, if different, the name and address of the Washington  
38 state representative of the applicant;

1 (b) The name or names under which the applicant will do business in  
2 the state of Washington;

3 (c) Evidence that the applicant is authorized to do business in the  
4 state of Washington;

5 (d) The name or names of the vehicles that the licensee  
6 manufactures;

7 (e) The name or names and address or addresses of each and every  
8 distributor, factory branch, and factory representative;

9 (f) The name or names and address or addresses of resident  
10 employees or agents to provide service or repairs to vehicles located  
11 in the state of Washington only under the terms of any warranty  
12 attached to new or unused vehicles manufactured, unless such  
13 manufacturer requires warranty service to be performed by all of its  
14 dealers pursuant to a current service agreement on file with the  
15 department;

16 (g) Any other information the department may reasonably require.

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