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HOUSE BILL 2757

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State of Washington                      63rd Legislature                      2014 Regular Session

By Representatives Zeiger, Fey, and Kirby

Read first time 02/03/14. Referred to Committee on Transportation.

1            AN ACT Relating to negotiation-free vehicle pricing; and amending  
2            RCW 46.70.180.

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

4            **Sec. 1.** RCW 46.70.180 and 2012 c 74 s 8 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)(i) To incorporate within the terms of any purchase and sale  
11 or 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.

18 (ii) However, an amount not to exceed one hundred fifty dollars per  
19 vehicle sale or lease may be charged by a dealer to recover  
20 administrative costs for collecting motor vehicle excise taxes,  
21 licensing and registration fees and other agency fees, verifying and  
22 clearing titles, transferring titles, perfecting, releasing, or  
23 satisfying liens or other security interests, and other administrative  
24 and documentary services rendered by a dealer in connection with the  
25 sale or lease of a vehicle and in carrying out the requirements of this  
26 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 dealer discloses to the purchaser or lessee in writing  
33 that the documentary service fee is a negotiable fee, unless the dealer  
34 exclusively offers negotiation-free vehicle pricing. The disclosure  
35 must be written in a typeface that is at least as large as the typeface  
36 used in the standard text of the document that contains the disclosure  
37 and that is bold faced, capitalized, underlined, or otherwise set out  
38 from the surrounding material so as to be conspicuous. The dealer

1 shall not represent to the purchaser or lessee that the fee or charge  
2 is required by the state to be paid by either the dealer or prospective  
3 purchaser or lessee;

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

7 (iv) Dealers disclose in any advertisement that a documentary  
8 service fee in an amount up to one hundred fifty dollars may be added  
9 to the sale price or the capitalized cost.

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

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

21 (4) To commit, allow, or ratify any act of "bushing" which is  
22 defined as follows: Entering into a written contract, written purchase  
23 order or agreement, retail installment sales agreement, note and  
24 security agreement, or written lease agreement, hereinafter  
25 collectively referred to as contract or lease, signed by the  
26 prospective buyer or lessee of a vehicle, which:

27 (a) Is subject to any conditions or the dealer's or his or her  
28 authorized representative's future acceptance, and the dealer fails or  
29 refuses within four calendar days, exclusive of Saturday, Sunday, or  
30 legal holiday, and prior to any further negotiations with said buyer or  
31 lessee to inform the buyer or lessee either: (i) That the dealer  
32 unconditionally accepts the contract or lease, having satisfied,  
33 removed, or waived all conditions to acceptance or performance,  
34 including, but not limited to, financing, assignment, or lease  
35 approval; or (ii) that the dealer rejects the contract or lease,  
36 thereby automatically voiding the contract or lease, as long as such  
37 voiding does not negate commercially reasonable contract or lease  
38 provisions pertaining to the return of the subject vehicle and any

1 physical damage, excessive mileage after the demand for return of the  
2 vehicle, and attorneys' fees authorized by law, and tenders the refund  
3 of any initial payment or security made or given by the buyer or  
4 lessee, including, but not limited to, any down payment, and tenders  
5 return of the trade-in vehicle, key, other trade-in, or certificate of  
6 title to a trade-in. Tender may be conditioned on return of the  
7 subject vehicle if previously delivered to the buyer or lessee.

8 The provisions of this subsection (4)(a) do not impair, prejudice,  
9 or abrogate the rights of a dealer to assert a claim against the buyer  
10 or lessee for misrepresentation or breach of contract and to exercise  
11 all remedies available at law or in equity, including those under  
12 chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing  
13 company discovers that approval of the contract or financing or  
14 approval of the lease was based upon material misrepresentations made  
15 by the buyer or lessee, including, but not limited to,  
16 misrepresentations regarding income, employment, or debt of the buyer  
17 or lessee, as long as the dealer, or his or her staff, has not, with  
18 knowledge of the material misrepresentation, aided, assisted,  
19 encouraged, or participated, directly or indirectly, in the  
20 misrepresentation. A dealer shall not be in violation of this  
21 subsection (4)(a) if the buyer or lessee made a material  
22 misrepresentation to the dealer, as long as the dealer, or his or her  
23 staff, has not, with knowledge of the material misrepresentation,  
24 aided, assisted, encouraged, or participated, directly or indirectly,  
25 in the misrepresentation.

26 When a dealer informs a buyer or lessee under this subsection  
27 (4)(a) regarding the unconditional acceptance or rejection of the  
28 contract, lease, or financing by an electronic mail message, the dealer  
29 must also transmit the communication by any additional means;

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

34 (i) Failure to disclose that the vehicle's certificate of title has  
35 been branded for any reason, including, but not limited to, status as  
36 a rebuilt vehicle as provided in RCW 46.12.540 and 46.12.560; or

37 (ii) Substantial physical damage or latent mechanical defect

1 occurring before the dealer took possession of the vehicle and which  
2 could not have been reasonably discoverable at the time of the taking  
3 of the order, offer, or contract; or

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

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

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

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

25 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or  
26 46.37.425.

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

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

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

35 (c) The dealer has proof that payment of the lien was made within  
36 two calendar days, exclusive of Saturday, Sunday, or a legal holiday,  
37 after the sales contract has been executed by all parties and all

1 conditions and contingencies in the sales contract have been met or  
2 otherwise satisfied.

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

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

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

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

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

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

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

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

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

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

1 (14) Being a manufacturer, other than a motorcycle manufacturer  
2 governed by chapter 46.93 RCW, to:

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

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

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

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

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



1 labor, transportation, or utility services, or by any labor or  
2 production difficulty, or by any cause beyond the reasonable control of  
3 the manufacturer;

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

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

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

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

30 (17)(a) For a dealer to enter into a new motor vehicle sales  
31 contract without disclosing in writing to a buyer of the new motor  
32 vehicle, or to a dealer in the case of an unregistered motor vehicle,  
33 any known damage and repair to the new motor vehicle if the damage  
34 exceeds five percent of the manufacturer's suggested retail price as  
35 calculated at the dealer's authorized warranty rate for labor and  
36 parts, or one thousand dollars, whichever amount is greater. A  
37 manufacturer or new motor vehicle dealer is not required to disclose to  
38 a dealer or buyer that glass, tires, bumpers, or cosmetic parts of a

1 new motor vehicle were damaged at any time if the damaged item has been  
2 replaced with original or comparable equipment. A replaced part is not  
3 part of the cumulative damage required to be disclosed under this  
4 subsection.

5 (b) A manufacturer is required to provide the same disclosure to a  
6 dealer of any known damage or repair as required in (a) of this  
7 subsection.

8 (c) If disclosure of any known damage or repair is not required  
9 under this section, a buyer may not revoke or rescind a sales contract  
10 due to the fact that the new motor vehicle was damaged and repaired  
11 before completion of the sale.

12 (d) As used in this section:

13 (i) "Cosmetic parts" means parts that are attached by and can be  
14 replaced in total through the use of screws, bolts, or other fasteners  
15 without the use of welding or thermal cutting, and includes  
16 windshields, bumpers, hoods, or trim panels.

17 (ii) "Manufacturer's suggested retail price" means the retail price  
18 of the new motor vehicle suggested by the manufacturer, and includes  
19 the retail delivered price suggested by the manufacturer for each  
20 accessory or item of optional equipment physically attached to the new  
21 motor vehicle at the time of delivery to the new motor vehicle dealer  
22 that is not included within the retail price suggested by the  
23 manufacturer for the new motor vehicle.

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