

HOUSE BILL REPORT

ESSB 6606

As Passed House:
March 2, 2016

Title: An act relating to wholesale vehicle dealers.

Brief Description: Concerning wholesale vehicle dealers.

Sponsors: Senate Committee on Transportation (originally sponsored by Senator King).

Brief History:

Committee Activity:

Business & Financial Services: 2/24/16 [DP].

Floor Activity:

Passed House: 3/2/16, 91-6.

Brief Summary of Engrossed Substitute Bill

- Redefines "wholesale vehicle dealer."
- Requires a wholesale vehicle dealer's office facilities to be in a commercial building in the state with no more than two other licensed vehicle dealers in the same building.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 11 members: Representatives Kirby, Chair; Stanford, Vice Chair; Vick, Ranking Minority Member; McCabe, Assistant Ranking Minority Member; Barkis, Blake, Dye, Hurst, Kochmar, Ryu and Santos.

Staff: Peter Clodfelter (786-7127).

Background:

The Department of Licensing (DOL) is responsible for licensing all motor vehicle dealers operating in Washington. A "vehicle dealer" is defined to include a person, business, or trust that is engaged in the business of buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, or advertising the sale of new or used vehicles, irrespective of whether the motor vehicles are owned by that person.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

With certain exceptions, a person selling more than four vehicles per year that are registered to the person must have a vehicle dealer license. A person selling any vehicles not registered to the person must have a vehicle dealer license. In addition to the license requirement, vehicle dealers must file a surety bond with the DOL. Generally, the surety bond must be in the amount of \$30,000.

Within the broad category of "vehicle dealers" are several subcategories of vehicle dealers. The license fee for each type of vehicle dealer license is \$975, except for each "subagency" of a vehicle dealer, which is a \$100 license fee. The subcategories of vehicle dealers are the following:

- A "motor vehicle dealer" is a vehicle dealer that deals in new or used motor vehicles.
- A "retail vehicle dealer" is a vehicle dealer that may buy and sell vehicles at both wholesale and retail.
- A "wholesale vehicle dealer" is a vehicle dealer that buys and sells other than at retail.
- A "mobile home and travel trailer dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers.
- A "miscellaneous vehicle dealer" is a vehicle dealer that deals in motorcycles or vehicles other than motor vehicles or mobile homes and travel trailers. (\$5,000 surety bond instead of \$30,000 surety bond).
- A "subagency" is any place of business of a vehicle dealer within the state, which is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the state, at which place the firm does business using a name other than the principal name of the firm, or both.

The business of a vehicle dealer must be lawfully carried on at an established place of business in accordance with the terms of all applicable building code, zoning, and other land-use regulatory ordinances. An established place of business is a permanent, enclosed commercial building located in Washington that is easily accessible at all reasonable times. Generally, a vehicle dealer's building must be kept open to the public so that the public may contact the vehicle dealer or the vehicle dealer's salespersons at all reasonable times (at least 10:00 a.m. to 4:00 p.m.).

However, certain requirements that apply to other types of vehicle dealers do not apply to wholesale vehicle dealers and additional specific requirements apply to wholesale vehicle dealers. Wholesale vehicle dealers are not required to maintain normal business hours, are not required to have a building that is kept open to the public at all reasonable times, and are not required to have a telephone book listing, like other vehicle dealers. But all storage facilities for a wholesale vehicle dealer's inventory must be listed with the DOL and comply with local land use ordinances. Also, a wholesale vehicle dealer must maintain a telecommunications system, and an exterior sign, visible from the nearest street, must identify the wholesale vehicle dealer's business name and the nature of business. If a wholesale vehicle dealer and another vehicle dealer or dealers businesses share a location, all records, office facilities, and inventory, if any, must be physically segregated and clearly identified.

Summary of Bill:

The definition of "wholesale vehicle dealer" is changed to require a wholesale vehicle dealer to buy vehicles from or sell vehicles to other Washington licensed vehicle dealers.

A requirement is added so that the office facilities in a commercial building within the state that a wholesale vehicle dealer must have are required to be in a commercial building within the state that has no more than two other wholesale or retail vehicle dealers in the same building.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The DOL reports a recent 800 percent increase in applications for wholesale vehicle dealer licenses. The DOL believes this is largely driven by a company selling a service through a nationally marketed Internet website and is a case of jurisdiction shopping for a state with a low licensing requirement. Through this Internet website, non-Washington residents with no intention of doing business in or visiting Washington obtain a Washington wholesale vehicle dealer license from the DOL, which gives a licensee access nationwide to wholesale vehicle auctions that the general public may not attend.

These out-of-state licensees comply with Washington law because there is a physical commercial office facility in Washington provided by the company hosting the website, which each out-of-state licensee pays the company to have the licensee's designated office facilities at, even though the out-of-state licensee is never physically in Washington. There is such a commercial office facility in the town of Wilbur and another in the City of Moses Lake in which hundreds of these out-of-state licensees have their required commercial office facilities at. This is the impetus for the requirement in the bill that a wholesale vehicle dealer may not have its office facilities in a building that more than two other licensed vehicle dealers have their office facilities in (the colocation requirement).

The DOL has received numerous complaints from other states concerning these out-of-state wholesale dealer licensees related to the illegal sale of vehicles at retail, fraud, theft of funds, the failure to deliver a vehicle or title, and title washing. This is a consumer protection issue because a consumer injured by an out-of-state licensee who is not conducting business in Washington may not be able to recover on the out-of-state licensee's Washington bond. The Federal Bureau of Investigation and the United States Drug Enforcement Administration have both also contacted the DOL concerning investigations involving an out-of-state Washington licensed wholesale vehicle dealer traced back to the town of Wilbur. Moreover, the state Department of Revenue (DOR) is concerned that out-of-state licensees are not properly reporting income, which is creating workload. Recently, Indiana eliminated its wholesale vehicle dealer license in response to Indiana's license being used like Washington's is now.

(Opposed) In its current form, with the colocation requirement, the bill is not tailored to address the issues that proponents cite as justifications for the bill. A bad actor could simply obtain office space in Washington through a company like Regus or partner with a Washington retail vehicle dealer to obtain a license and an auction access card. Instead, the bill is an attempt to raise a competitor's costs by targeting a competitor's business model. The current statutory requirements that apply to wholesale vehicle dealers, such as the physical office space and signage requirements, are not of operational value to wholesale vehicle dealers, who generally do not conduct business from a desk. American Dealer License (ADL) provides a low-cost administrative way of supporting wholesale vehicle dealer licensees consistent with Washington law. American Dealer License guides people through the process of obtaining a wholesale vehicle dealer license, provides a commercial office facility in Washington for licensees, and advises licensees on operating a wholesale vehicle dealer business.

Currently, there are about 279 Washington licensees served by ADL with another 400 in various stages of the license application process. The issues cited by proponents are problems with the vehicle dealer industry generally, not just specifically with wholesale dealer licensees who have purchased ADL's services, which this bill targets. Several dozen enforcement actions have been brought against in-state wholesale vehicle dealers, and complaints against retail vehicle dealer licensees exceed complaints against wholesale vehicle dealer licensees. American Dealer License has worked with the DOL when issues have arisen with licensees. American Dealer License is the registered agent for licensees purchasing ADL's services, and has not received a single subpoena or correspondence from law enforcement. Proponents cite Indiana's elimination of the wholesale vehicle dealer license but omit critical differences between the situation in Indiana and here in Washington.

In Indiana, the removal of the wholesale dealer license program was related to the transfer of licensing authority between state agencies and a state agency's inability to issue nationally recognizable dealer license plates, which is not the case here. Also, Indiana ultimately protected the thousands of licensees who had already purchased Indiana wholesale vehicle dealer licenses by allowing those licensees to continue operating for a year and a half. This bill provides no protection for over 500 existing Washington licensed wholesale vehicle dealers, who are generally good actors. Please oppose the bill or amend the bill so that the colocation requirement is removed. Opponents would support the House of Representatives version of the bill that lacks the colocation requirement.

Persons Testifying: (In support) Tony Sermonti, Department of Licensing; and Rick Jensen, Dealers Auto Auction Northwest.

(Opposed) Brad Tower, Adrian Kiglies, and Maurice Kiglies, American Dealer License.

Persons Signed In To Testify But Not Testifying: None.