

---

SENATE BILL 5244

---

State of Washington                      65th Legislature                      2017 Regular Session

By Senators O'Ban, Hobbs, Takko, and Wilson

Read first time 01/18/17. Referred to Committee on Transportation.

1            AN ACT Relating to the means of communication between a buyer or  
2 lessee and an auto dealer during the "bushing" period; and amending  
3 RCW 46.70.180.

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

5            **Sec. 1.** RCW 46.70.180 and 2012 c 74 s 8 are each amended to read  
6 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  
10 any manner whatsoever, any statement or representation with regard to  
11 the sale, lease, or financing of a vehicle which is false, deceptive,  
12 or misleading, including but not limited to the following:

13            (a) That no down payment is required in connection with the sale  
14 of a vehicle when a down payment is in fact required, or that a  
15 vehicle may be purchased for a smaller down payment than is actually  
16 required;

17            (b) That a certain percentage of the sale price of a vehicle may  
18 be financed when such financing is not offered in a single document  
19 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  
8 certain amount, without including in the statement the number of  
9 payments of that same amount which are required to liquidate the  
10 unpaid purchase price.

11 (2)(a)(i) To incorporate within the terms of any purchase and  
12 sale or lease agreement any statement or representation with regard  
13 to the sale, lease, or financing of a vehicle which is false,  
14 deceptive, or misleading, including but not limited to terms that  
15 include as an added cost to the selling price or capitalized cost of  
16 a vehicle an amount for licensing or transfer of title of that  
17 vehicle which is not actually due to the state, unless such amount  
18 has in fact been paid by the dealer prior to such sale.

19 (ii) However, an amount not to exceed one hundred fifty dollars  
20 per vehicle sale or lease may be charged by a dealer to recover  
21 administrative costs for collecting motor vehicle excise taxes,  
22 licensing and registration fees and other agency fees, verifying and  
23 clearing titles, transferring titles, perfecting, releasing, or  
24 satisfying liens or other security interests, and other  
25 administrative and documentary services rendered by a dealer in  
26 connection with the sale or lease of a vehicle and in carrying out  
27 the requirements of this chapter or any other provisions of state  
28 law.

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

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

34 (ii) The dealer discloses to the purchaser or lessee in writing  
35 that the documentary service fee is a negotiable fee. The disclosure  
36 must be written in a typeface that is at least as large as the  
37 typeface used in the standard text of the document that contains the  
38 disclosure and that is bold faced, capitalized, underlined, or  
39 otherwise set out from the surrounding material so as to be  
40 conspicuous. The dealer shall not represent to the purchaser or

1 lessee that the fee or charge is required by the state to be paid by  
2 either the dealer or prospective purchaser or lessee;

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

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

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

12 (3) To set up, promote, or aid in the promotion of a plan by  
13 which vehicles are to be sold or leased to a person for a  
14 consideration and upon further consideration that the purchaser or  
15 lessee agrees to secure one or more persons to participate in the  
16 plan by respectively making a similar purchase and in turn agreeing  
17 to secure one or more persons likewise to join in said plan, each  
18 purchaser or lessee being given the right to secure money, credits,  
19 goods, or something of value, depending upon the number of persons  
20 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  
23 purchase order or agreement, retail installment sales agreement, note  
24 and 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  
29 or refuses within the "bushing" period, which is four calendar days,  
30 exclusive of Saturday, Sunday, or legal holiday, and prior to any  
31 further negotiations with said buyer or lessee to inform the buyer or  
32 lessee either: (i) That the dealer unconditionally accepts the  
33 contract or lease, having satisfied, removed, or waived all  
34 conditions to acceptance or performance, including, but not limited  
35 to, financing, assignment, or lease approval; or (ii) that the dealer  
36 rejects the contract or lease, thereby automatically voiding the  
37 contract or lease, as long as such voiding does not negate  
38 commercially reasonable contract or lease provisions pertaining to  
39 the return of the subject vehicle and any physical damage, excessive  
40 mileage after the demand for return of the vehicle, and attorneys'

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

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

25 ~~((When))~~ A dealer may inform~~((s))~~ a buyer or lessee under this  
26 subsection (4)(a) regarding the unconditional acceptance or rejection  
27 of the contract, lease, or financing ~~((by an electronic mail message,~~  
28 ~~the dealer must also transmit the communication by any additional~~  
29 ~~means))~~ by sending an email message to the buyer's or lessee's  
30 supplied email address, by phone call, by leaving a voice message or  
31 sending a text message to a phone number provided by the buyer or  
32 lessee, by in-person oral communication, by mailing a letter by  
33 first-class mail if the buyer or lessee expresses a preference for a  
34 letter or declines to provide an email address and a phone number  
35 capable of receiving a free text message, or by another means agreed  
36 to by the buyer or lessee or approved by the department, effective  
37 upon the execution, mailing, or sending of the communication and  
38 before expiration of the "bushing" period;

39 (b) Permits the dealer to renegotiate a dollar amount specified  
40 as trade-in allowance on a vehicle delivered or to be delivered by

1 the buyer or lessee as part of the purchase price or lease, for any  
2 reason except:

3 (i) Failure to disclose that the vehicle's certificate of title  
4 has been branded for any reason, including, but not limited to,  
5 status as a rebuilt vehicle as provided in RCW 46.12.540 and  
6 46.12.560; or

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

11 (iii) Excessive additional miles or a discrepancy in the mileage.  
12 "Excessive additional miles" means the addition of five hundred miles  
13 or more, as reflected on the vehicle's odometer, between the time the  
14 vehicle was first valued by the dealer for purposes of determining  
15 its trade-in value and the time of actual delivery of the vehicle to  
16 the dealer. "A discrepancy in the mileage" means (A) a discrepancy  
17 between the mileage reflected on the vehicle's odometer and the  
18 stated mileage on the signed odometer statement; or (B) a discrepancy  
19 between the mileage stated on the signed odometer statement and the  
20 actual mileage on the vehicle; or

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

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

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

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

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

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

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

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

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

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

37 (11) For a vehicle dealer to pay to or receive from any person,  
38 firm, partnership, association, or corporation acting, either  
39 directly or through a subsidiary, as a buyer's agent for consumers,  
40 any compensation, fee, purchase moneys or funds that have been

1 deposited into or withdrawn out of any account controlled or used by  
2 any buyer's agent, gratuity, or reward in connection with the  
3 purchase, sale, or lease of a new motor vehicle.

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

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

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

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

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

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

30 (13) For a buyer's agent to arrange for or to negotiate the  
31 purchase, or both, of a new motor vehicle through an out-of-state  
32 dealer without disclosing in writing to the customer that the new  
33 vehicle would not be subject to chapter 19.118 RCW. This subsection  
34 also applies to leased vehicles. In addition, it is unlawful for any  
35 buyer's agent to fail to have a written agreement with the customer  
36 that: (a) Sets forth the terms of the parties' agreement; (b)  
37 discloses to the customer the total amount of any fees or other  
38 compensation being paid by the customer to the buyer's agent for the  
39 agent's services; and (c) further discloses whether the fee or any  
40 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  
14 or she is notified of such cancellation or termination and which are  
15 still 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  
23 the other party: PROVIDED, That recommendation, endorsement,  
24 exposition, persuasion, urging, or argument are not deemed to  
25 constitute a lack of 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  
34 immediate delivery to any duly licensed vehicle dealer having a  
35 franchise or contractual agreement for the retail sale or lease of  
36 new and unused vehicles sold or distributed by such manufacturer  
37 within sixty days after such dealer's order has been received in  
38 writing unless caused by inability to deliver because of shortage or  
39 curtailment of material, labor, transportation, or utility services,

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

3 (f) To provide under the terms of any warranty that a purchaser  
4 or 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  
7 warranty claim on any item included as an integral part of the  
8 vehicle against the manufacturer of that item.

9 Nothing in this section may be construed to impair the  
10 obligations of a contract or to prevent a manufacturer, distributor,  
11 representative, or any other person, whether or not licensed under  
12 this chapter, from requiring performance of a written contract  
13 entered into with any licensee hereunder, nor does the requirement of  
14 such performance constitute a violation of any of the provisions of  
15 this 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  
21 vehicle 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  
28 the debtor, is not a violation of this section.

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

1 is not part of the cumulative damage required to be disclosed under  
2 this subsection.

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

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

10 (d) As used in this section:

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

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

--- END ---