

SENATE BILL REPORT

SB 6768

As Reported By Senate Committee On:
Consumer Protection & Housing, February 07, 2008

Title: An act relating to used vehicle purchases.

Brief Description: Providing for certain requirements and restrictions on purchases of used vehicles.

Sponsors: Senator Weinstein.

Brief History:

Committee Activity: Consumer Protection & Housing: 1/31/08, 2/07/08 [DPS, DNP].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: That Substitute Senate Bill No. 6768 be substituted therefor, and the substitute bill do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Honeyford, Ranking Minority Member; Haugen, Jacobsen, Kilmer, McCaslin and Tom.

Minority Report: Do not pass.

Signed by Senator Delvin.

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: Licensing. Used motor vehicle dealers (dealers) must be licensed by the Department of Licensing (DOL). To obtain a license, a dealer must pay a fee, post a bond, and attend eight hours of a DOL approved education program. DOL may refuse or revoke a license for fraudulent behavior related to operating a dealership.

Financing. Under Washington's bushing law, if a buyer signs a sales contract with a dealer that is contingent on the dealer obtaining financing for the buyer the dealer has four business days to find financing at the agreed upon terms. If the dealer is unable to find financing at the terms the buyer agreed to, the dealer must offer to rescind the sales contract.

The federal Truth in Lending Act (TILA) applies to all used vehicle loans. TILA requires that the following be disclosed to the borrower: annual percentage rate (APR); total finance charges; payment schedule; any pre-payment penalty; total amount buyer will have paid after making all payments; and total sale price. If a loan offered by a dealer has APR of over 12 percent, the Washington Consumer Loan Act also applies and the dealer must be licensed by the Department of Financial Institutions.

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.

Violations of these financing laws are per se consumer protection act violations.

Warranties. Federal law requires dealers to put a buyer's guide on the window of every vehicle for sale. The guide includes warranty information on the vehicle. The guide must be in both Spanish and English if sales are conducted in Spanish. State law is expressly permitted to be more protective of consumers than this federal provision.

When a dealer sells a used vehicle for personal (and not business) use, the vehicle has an implied warranty of merchantability. This warranty promises that the vehicle will be fit for ordinary driving purposes and is of average quality compared to other vehicles of similar age and type. A dealer may disclaim this warranty if the disclaimer is specifically negotiated with the buyer. However, a dealer may not disclaim the implied warranty of merchantability if the dealer sells a service contract with the vehicle.

Some dealers offer extended warranties on used vehicles they sell. These warranties are actually service contracts purchased by buyers; under the contract, the dealer agrees to pay for any repairs to the parts of the vehicle that are included under the contract for a specified period of time.

Washington's Lemon Law requires a manufacturer to replace or repurchase a new or nearly new vehicle that has a defect that cannot be reasonably repaired or that has put the vehicle out of commission for an unreasonable amount of time. The lemon law applies only to used vehicles that were leased or purchased by the original owner within the past 30 months; therefore, most used vehicles are not covered under this law.

Summary of Bill: The bill as referred to committee was not considered.

SUMMARY OF BILL (Recommended Substitute) A joint legislative, bipartisan task force is created to study the consumer protections currently available to used vehicle buyers. The task force must determine whether there are shortcomings in the current consumer protections, and report its findings to the Legislature. If the task force determines that it is appropriate, it must also draft proposed legislation to remedy any shortcomings in the current law.

The taskforce has nine members:

- four legislative members, two from each chamber. The Speaker of the House and the Majority Leader of the Senate must appoint one member of each of the two largest caucuses in their respective chambers;
- A consumer advocate;
- two used-vehicle dealers;
- an attorney with expertise in consumer protection law; and
- a representative from the Attorney General's Consumer Protection Division.

The Majority Leader of the Senate and the Speaker of the House must jointly appoint the non-legislative members.

Senate committee services and the Office of Program Research must provide staff support.

EFFECT OF CHANGES MADE BY CONSUMER PROTECTION & HOUSING COMMITTEE (Recommended Substitute as Passed Committee): All of the following provisions are deleted:

The disclosures, requirements, and right-to-cancel option described below do not apply to used vehicle transactions conducted by auction or by auction companies.

Disclosures. Before executing a sales contract, a used-vehicle dealer must disclose in writing the description and price of each add-on item the buyer is charged for, including service contracts, insurance products, debt cancellation agreements, theft deterrent devices, and contract cancellation option agreements.

If the dealer arranges financing for the buyer, the dealer may not state or imply that the financing offered is the best that the buyer qualifies for. Dealers arranging financing must also disclose in writing:

- the amount of the installment payments if add-on items are not included, and the amount of the payments if add-ons are included;
- notice that the buyer does not have to finance through the dealer; and
- itemization of any compensation, points, or reimbursement that the dealer receives from the lender.

The above disclosures and any other document related to a used vehicle transaction must be written in the same language that the vehicle deal was actually negotiated in.

Any used vehicle transaction that does not meet the above requirements is voidable at any time by the buyer.

Right to Cancel Option. Dealers must offer buyers a three-day contract cancellation option on all used vehicles purchased for \$40,000 or less. Used-vehicle purchase contracts must contain a conspicuous notice that the buyer will not be able to cancel the contract under most circumstances unless the right-to-cancel option is purchased.

The maximum price that dealers may charge for the cancellation option depends on the price of the vehicle; the pricing scale begins at \$75 for a vehicle with a purchase price of \$5,000 or less, and tops out at 1 percent of the purchase price for a vehicle costing between \$30,000 and \$40,000.

The dealer may charge the buyer a restocking fee if the buyer exercises the right to cancel. The maximum charge for restocking also depends on the price of the vehicle; for a \$5,000 vehicle, a dealer may charge up \$175; for a vehicle purchased for \$10,000 or more, the fee may not be more than \$500. The dealer must credit the price paid for the cancellation option toward the restocking fee.

Procedures for exercising the right to cancel option are described. The vehicle must be returned in the same condition, and must not be driven more than the mileage limit specified in the cancellation option agreement.

The above provisions are replaced with a joint legislative task force, which will study the consumer protections available to used vehicle buyers.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:

PRO: Predatory lending practices in the used car industry are a major problem. Low-income consumers are especially vulnerable; if their financing turns out more expensive than they thought, they will lose their vehicle and be unable to get to work. Consumers often end up paying exorbitant costs for add-on items. Seniors are often targets of these unscrupulous practices. This is a major problem in the Hispanic community. The clear disclosures and right to cancel in this bill would solve a lot of problems.

CON: Requiring disclosures to be given in the language that the car deal was negotiated in is going too far. This is a slippery slope; next thing you know the law will require car dealers to hire translators who speak Swahili. I believe in speaking English at my dealership and do not allow my employees to speak Spanish; this bill goes against that. There are already plenty of regulations and enforcement by DOL and the AG; this bill is not needed. Most dealers are well-run and fair; there are just a few bad apples. This bill is very similar to California, and California does not have a good climate for business. Dealers are often abused by buyers, too. The three-day right to cancel conflicts with the requirement that the dealer has only three days to pay off the trade loan. It is too expensive to translate documents into other languages. The right-to-cancel option will just increase the price of used cars.

Persons Testifying: **PRO:** Catherine A. West, Northwest Justice Project; Nate Marshall, Goodwill Working Wheels; Uriel Iniguez, Commission on Hispanic Affairs.

CON: Kenneth Scroggins, Puget Sound Truck Sales; James R. Boltz, Washington State Motorsports Dealers Association & Cycle Barn Motorsports Group; Rubin Harrison, J&R Auto Sales.