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**SUBSTITUTE HOUSE BILL 1939**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** House Transportation (originally sponsored by Representatives Takko, Armstrong, Morris, Springer, Eddy, Wood, Warnick, Ericksen, Sells, Kenney, Simpson, Moeller, Ormsby, and Wallace)

READ FIRST TIME 03/03/09.

1 AN ACT Relating to vehicle dealer documentary service fees; and  
2 amending RCW 46.70.180.

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

4 **Sec. 1.** RCW 46.70.180 and 2007 c 155 s 2 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) To incorporate within the terms of any purchase and sale or  
11 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. However, an amount not to exceed one  
18 hundred fifty dollars per vehicle sale or lease may be charged by a  
19 dealer to recover administrative costs for collecting motor vehicle  
20 excise taxes, licensing and registration fees and other agency fees,  
21 verifying and clearing titles, transferring titles, perfecting,  
22 releasing, or satisfying liens or other security interests, and other  
23 administrative and documentary services rendered by a dealer in  
24 connection with the sale or lease of a vehicle and in carrying out the  
25 requirements of this chapter or any other provisions of state law.

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

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

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

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

3 (iii) The documentary service fee is separately designated from the  
4 selling price or capitalized cost of the vehicle and from any other  
5 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 which  
13 vehicles are to be sold or leased to a person for a consideration and  
14 upon further consideration that the purchaser or lessee agrees to  
15 secure one or more persons to participate in the plan by respectively  
16 making a similar purchase and in turn agreeing to secure one or more  
17 persons likewise to join in said plan, each purchaser or lessee being  
18 given the right to secure money, credits, goods, or something of value,  
19 depending upon the number of persons joining the plan.

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

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

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

7 The provisions of this subsection (4)(a) do not impair, prejudice,  
8 or abrogate the rights of a dealer to assert a claim against the buyer  
9 or lessee for misrepresentation or breach of contract and to exercise  
10 all remedies available at law or in equity, including those under  
11 chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing  
12 company discovers that approval of the contract or financing or  
13 approval of the lease was based upon material misrepresentations made  
14 by the buyer or lessee, including, but not limited to,  
15 misrepresentations regarding income, employment, or debt of the buyer  
16 or lessee, as long as the dealer, or his or her staff, has not, with  
17 knowledge of the material misrepresentation, aided, assisted,  
18 encouraged, or participated, directly or indirectly, in the  
19 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 informs a buyer or lessee under this subsection  
26 (4)(a) regarding the unconditional acceptance or rejection of the  
27 contract, lease, or financing by an electronic mail message, the dealer  
28 must also transmit the communication by any additional means;

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

33 (i) Failure to disclose that the vehicle's certificate of ownership  
34 has been branded for any reason, including, but not limited to, status  
35 as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

36 (ii) Substantial physical damage or latent mechanical defect  
37 occurring before the dealer took possession of the vehicle and which

1 could not have been reasonably discoverable at the time of the taking  
2 of the order, offer, or contract; or

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

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

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

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

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

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

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

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

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

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

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

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

37           (12) For a buyer's agent, acting directly or through a subsidiary,  
38 to pay to or to receive from any motor vehicle dealer any compensation,

1 fee, gratuity, or reward in connection with the purchase, sale, or  
2 lease of a new motor vehicle. In addition, it is unlawful for any  
3 buyer's agent to engage in any of the following acts on behalf of or in  
4 the name of the consumer:

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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