February 23, 2017

The Honorable Mia Costello
Chairman, Senate Committee on Labor and Commerce
State Capitol
Juneau, Alaska 99801

SUBJECT: SENATE BILL 47 –MOTOR VEHICLE FRANCHISES - OPPOSE

Dear Senator Costello:

Global Automakers, www.globalautomakers.org, represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. We work with industry leaders, legislators, regulators, and other stakeholders in the United States. Our goal in Maryland and elsewhere is to create public policy that improves motor vehicle safety, encourages technological innovation and protects our planet. Global Automakers is writing to inform you of our **opposition to SB 47 (Meyer).**

Efforts to Work with the Dealers
Our most significant automotive relationship, above all others, is with the customer. Since manufacturers work through independent automobile dealers to reach the retail customer, equally important is our relationships with dealers and the associations representing their interests. Global Automakers always seeks to reach consensus with dealers to develop public policy that is reasonable and in the best interest of the manufacturers, dealers and consumers. **Global Automakers, however, has not been contacted by the Alaska Auto Dealers Association or been able to enter into productive discussions regarding this legislation.**

We believe the legislature should delay action on this bill so that policy makers and all stake holders can have meaningful input into the provisions in this legislation.

Why We Oppose
SB 47 seeks to implement an overhaul of Alaska's automobile franchise laws, fundamentally changing current law and dramatically altering the current contractual relationship between automobile manufacturers and independently franchised dealers in the State. This bill, if enacted, would be detrimental to motor vehicle consumers in the State of Alaska. It would give dealers the rights, among others, to operate from sub-standard facilities and locations, contrary to their agreements with manufacturers. We cannot completely address each section in this letter, however **we are highlighting provisions that are especially problematic.**

1. Section 3(d)(2). Many dealers enter into agreements with their manufacturers that specify that certain areas within the dealership -- e.g., a showroom, a lot, a service area, a parts counter -- will be used exclusively for that manufacturer's operations. This provision of the bill would allow dealers to violate those agreements at will by stating that "notwithstanding" the agreements, dealers may never be terminated for establishing another line or make of new motor vehicles in the same facilities. The bill should not attempt to rewrite agreements already reached between dealers and manufacturers as to the use of space in facilities. At a minimum, there should be some protections related to the comparative size, quality, and location of the new versus old facilities.

2. Section 3(d)(3). This section would have the effect of permitting a dealer to unilaterally pick up its dealership facility and move it, without manufacturer consent, to any location it chooses within the "relevant market area," which, as defined, may be a very large area, depending on the dealer agreement. We know of no other law that would permit a dealer to relocate its dealership without manufacturer consent. This is plainly contrary to the interests of Alaska motor vehicle consumers as well as manufacturers. Manufacturers should not be deprived of the right to specify where their products will be sold.

3. Section 3(d)(4). This section prohibits a manufacturer from terminating a dealer agreement in instances where a dealer "fails to change the location of the dealership or make substantial alterations" to its use or facilities. There of course may be instances where the specified changes are agreed to by the dealer and necessary or beneficial for consumers. The termination of a dealer is a rare occurrence and only occurs in the most extreme of cases. However, when those cases do occur, manufacturers should not be prohibited from enforcing their contractual right of termination.

4. Section 8. This section amends the "post-termination" provisions in the current statute to add extraordinary payments by manufacturers to dealers for (1) renovations to the facilities; and (2) two-years' rental value for the facilities. This appears to apply not only in instances where a manufacturer initiates termination, but where a dealer simply resigns or voluntarily terminates the dealership. Subsection (1) provides that a manufacturer must pay the dealer's "cost for a relocation, substantial alteration, or remodeling of the facilities" so long as it occurred "within three years before" or "after" the termination, while Subsection (2) requires the payment of two-years' rent. In essence, this is a tax on the manufacturer for any dealer that resigns from its dealer network. Further, as written, a dealer could simply improve its facilities, sell the improved facilities to a third party at a higher price or profit, and then force the manufacturer to pay the selling dealer its costs of improvement as a windfall upon termination. Manufacturers should not be forced to pay such a huge tax upon the conclusion of the dealer's business relationship. Nor are manufacturers insurers for dealers against all business risks associated with their facility construction projects. At a minimum, Section 8 should apply only in instances where the manufacturer is terminating the dealership without "good cause," as defined.

5. Section 10(a). This section amends Alaska Stat. § 45.25.160 relating to dealership transfers. Specifically, SB 47 provides that a manufacturer may not withhold consent to the sale or transfer of a franchise if a buyer (1) meets the normal, reasonable and uniformly applied standards for a dealer candidate, (2) already holds a franchise from a manufacturer or (3) is capable of being licensed as a new motor vehicle dealer in the state. The use of the word "or" effectively means that a manufacturer must accept anyone capable of being licensed in the state. This would deprive manufacturers of deciding what persons may represent their respective brands, effectively depriving manufacturers of considerable value of those brands. Further, simply "already holding a franchise" does not mean an applicant is qualified, since that person may not be performing adequately or may be in default or process of termination. At a minimum Items (2) and (3) should be removed from Section 10(a).

6. Section 12. This section amends Alaska Stat. § 45.25.170 relating to succession. The bill would allow owners to by-pass a manufacturer's contractual right to review ownership transfers by (a) allowing a person that has owned a dealership for at least 5 consecutive years to appoint a person to succeed to the ownership at the current date, a specific future date or an undetermined future date of the owner's

choosing that is before the owner's death or incapacity and (b) stating that a designated successor is deemed qualified based on a manufacturer's normal, reasonable and uniformly applied standards or if the successor will employ a person who is qualified and experienced to help manage the day-to-day operations. Our Members should have the right to demand that owners themselves are qualified to run the day-to-day operations. As with other provisions contained in SB 47, this section improperly limits our Members' ability to approve owners that represent their respective brands in the State of Alaska.

7. Section 15. This section adds entirely new provisions to Alaskan law relating to warranty reimbursement and incentive payments to dealers. While our Members do not oppose the concept of warranty reimbursement, they should have the opportunity to discuss and reach a compromise with dealers on proposed legislation. In addition, we oppose any provision that prohibits cost recovery as our Members should retain their contractual right to increase vehicle prices to recover their compliance costs associated with such regulations. The bill would also require our Members to make payment to dealers within 15 days of receiving a claim for warranty reimbursement or incentives, which time period should be at least 45 days. Moreover, our Members, due to safety concerns, oppose the provisions in this section allowing (a) uncertified technicians to perform warranty repairs as long as they are under the supervision of a certified technician and (b) dealers to have warranty repairs performed at locations other than the dealership.

8. Section 16. This section makes sweeping changes to Alaska Stat. § 45.25.300, which currently provides that "[a] manufacturer may not require, coerce, or attempt to coerce a new motor vehicle dealer to change the location of the new motor vehicle dealership or to make substantial alterations to the new motor vehicle dealership premises or facilities if the change or alteration would be unreasonable or if there is not a sufficient supply of new motor vehicles to justify the expansion in light of the current market and economic conditions." The bill would replace this provision with twenty (24) separate paragraphs identifying "unfair practices" by a manufacturer, encompassing almost every aspect of the relationship between a manufacturer and its dealers. This is a stunning example of over-regulation, as it imposes overbroad and unnecessary burdens on manufacturers --- all to the detriment of consumers in the State of Alaska.

There is nothing unique about automobile dealers and the products and services they sell to Alaska consumers (as compared with the other hundreds of products sold throughout Alaska under similar agreements) that require a complete overhaul of existing law. For these key reasons, Global Automakers and its member companies must oppose this legislation and urge members not to act on this bill. We are happy to provide you with additional information and data or answer any questions you may have on this important issue.

Sincerely,

Josh Fisher
Manager
State Government Affairs