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CS FOR SENATE BILL NO. 47(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR MEYER

A BILL

FOR AN ACT ENTITLED

"An Act relating to motor vehicle franchises, motor vehicle dealers, motor vehicle manufacturers, and motor vehicle distributors."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 45.25.010 is amended to read:

Sec. 45.25.010. Applicability. AS 45.25.020 - 45.25.310 [AS 45.25.020 - 45.25.320] apply to franchise contracts between a manufacturer and its new motor vehicle dealers in this state.

* **Sec. 2.** AS 45.25.110(a) is amended to read:

(a) A manufacturer may not terminate a franchise agreement with a new motor vehicle dealer unless

(1) the manufacturer has

(A) complied with [SATISFIED] the notice requirements of this chapter;

(B) shown that there is good cause for the termination of the

franchise agreement, and, if the reasons underlying the good cause can be corrected by the new motor vehicle dealer, the new motor vehicle dealer has failed for 180 [60] days after delivery of the notice required by as 45.25.120 to make the corrections; the circumstances identified under as 45.25.120(a)(2) for which a 15-day notice of termination is required do not qualify as reasons for which correction is allowed under this subparagraph [PARAGRAPH]; or

(2) the new motor vehicle dealer has systematically engaged in fraud against consumers or the manufacturer or in the operation of the new motor vehicle dealership.

* **Sec. 3.** AS 45.25.110 is amended by adding a new subsection to read:

(d) If the failure of the new motor vehicle dealer under (a) of this section relates to the performance of the new motor vehicle dealer in sales, service, or level of customer satisfaction, the failure does not amount to good cause under this section, unless the new motor vehicle dealer failed substantially to comply and the failure to substantially comply was caused by

(1) market, economic, or other factors that exist within the new motor vehicle dealer's relevant market area and that were beyond the control of the new motor vehicle dealer; or

(2) the failure of the manufacturer to provide the new motor vehicle dealer with an adequate supply of new motor vehicles, both in quantity and product mix, for the new motor vehicle dealer's assigned market area.

* **Sec. 4.** AS 45.25.140(a) is amended to read:

(a) Upon the termination of a new motor vehicle dealer's franchise agreement by the manufacturer or distributor, the manufacturer or distributor shall repurchase from the new motor vehicle dealer at

(1) the new motor vehicle dealer's net acquisition cost, if

(A) the motor vehicles have not been materially altered or damaged, all inventory consisting of unsold new motor vehicles that are current models and models that have been acquired from the manufacturer within the past two model years before receipt of the notice of termination; or

(B) the manufacturer required that the new motor vehicle

dealer use the vehicles for loaning, demonstration, or display purposes;

(2) the new motor vehicle dealer price listed in the current parts catalog, less applicable allowances, new unused undamaged parts in their original, unbroken packaging, listed in the current price catalog and acquired from the manufacturer or distributor;

(3) fair market value, signs, equipment, and furnishings that bear a trademark or trade name, that have not been altered or damaged, and that were required by the manufacturer or distributor within five years preceding the notice of termination; [AND]

(4) the new motor vehicle dealer's net acquisition cost, special tools that have not been altered or materially damaged that were purchased from the manufacturer or distributor within three years preceding the date of the termination;

and

(5) fair market value, all manufacturer required computers, printers, and other electronic hardware, and electronic software, except, if the new motor vehicle dealer leases the computers, printers, or other electronic hardware, or electronic software, the manufacturer shall pay the new motor vehicle dealer the amount of money that is required for the new motor vehicle dealer to terminate the lease under the lease agreement.

* **Sec. 5.** AS 45.25.150 is amended by adding a new subsection to read:

(f) In addition to the payment required under AS 45.25.140 and (a) of this section, upon termination of a franchise agreement under this chapter, the manufacturer shall, at the request and option of the new motor vehicle dealer, pay the new motor vehicle dealer the new motor vehicle dealer's cost for a relocation, substantial alteration, or remodeling of the new motor vehicle dealer's facilities, if

(1) the manufacturer required the relocation, substantial alteration, or remodeling of the new motor vehicle dealer's facilities for a continuation or renewal of the franchise agreement; and

(2) the relocation, substantial alteration, or remodeling of the new motor vehicle dealer's facilities was completed within three years before or after the termination.

* **Sec. 6.** AS 45.25.160 is repealed and reenacted to read:

Sec. 45.25.160. Prevention of or refusal to honor transfer of new motor vehicle dealership ownership. (a) A manufacturer may not unreasonably prevent or refuse to honor the transfer of ownership of a new motor vehicle dealership and may not withhold consent to the transfer of ownership if the transferee

(1) meets the normal and reasonable standards established by the manufacturer for a person to whom the manufacturer may grant an application to be a new motor vehicle dealer and if the manufacturer uniformly applies the standards to the manufacturer's new motor vehicle dealers who hold a franchise from the manufacturer; or

(2) already holds a franchise from the manufacturer.

(b) If a manufacturer refuses to approve the transfer of a franchise, not later than 60 days after the date the manufacturer receives the written request from the new motor vehicle dealer, the manufacturer shall serve written notice on the applicant and on the transferring new motor vehicle dealer of the manufacturer's refusal to approve the transfer of the franchise. The notice must state the specific grounds for the refusal to approve the transfer. The manufacturer shall serve a notice under this subsection by personal service or certified mail with return receipt requested.

* **Sec. 7.** AS 45.25.180(d) is amended to read:

(d) When determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line make, the superior court shall consider the existing circumstances, including

(1) whether the establishment of an additional franchise or relocation of the existing new motor vehicle dealer appears to be warranted by economic and marketing conditions, including anticipated future changes;

(2) the retail sales and service business transacted by the protesting new motor vehicle dealer and other new motor vehicle dealers of the same line make with a place of business in the relevant market area to be served by the additional franchise or proposed new location of an existing new motor vehicle dealer during the three-year period immediately preceding the notice;

(3) the investment necessarily made and obligations incurred by the

1 protesting new motor vehicle dealer to perform the protesting new motor vehicle
2 dealer's obligations under existing franchise agreements;

3 (4) the permanency of the investment of the protesting new motor
4 vehicle dealer; [AND]

5 (5) whether it is beneficial or injurious to the public welfare for an
6 additional franchise to be established or for the existing new motor vehicle dealer to
7 be relocated;

8 **(6) whether the manufacturer is motivated principally by good**
9 **faith and economic considerations to establish an additional or new motor vehicle**
10 **dealer; and**

11 **(7) whether the manufacturer has denied the manufacturer's**
12 **existing new motor vehicle dealer of the same line or make the opportunity for**
13 **reasonable growth, market expansion, establishment of a satellite location, or**
14 **relocation.**

15 * **Sec. 8.** AS 45.25.180 is amended by adding a new subsection to read:

16 (f) Under this section, a manufacturer has the burden of proving that good
17 cause exists for permitting the proposed establishment or relocation of a new motor
18 vehicle dealer.

19 * **Sec. 9.** AS 45.25.190 is amended to read:

20 **Sec. 45.25.190. Arbitration.** In a controversy between a manufacturer and a
21 new motor vehicle dealer under **AS 45.25.010 - 45.25.310** [AS 45.25.010 - 45.25.320],
22 neither the manufacturer nor the new motor vehicle dealer is required to submit the
23 controversy to arbitration. If both the manufacturer and the new motor vehicle dealer
24 agree to submit a controversy under **AS 45.25.010 - 45.25.310** [AS 45.25.010 -
25 45.25.320] to arbitration, the arbitration shall be conducted under AS 09.43.010 -
26 09.43.180 (Uniform Arbitration Act) or AS 09.43.300 - 09.43.595 (Revised Uniform
27 Arbitration Act), as applicable, the manufacturer and the new motor vehicle dealer
28 shall each select one arbitrator, and both the manufacturer and the new motor vehicle
29 dealer shall select the third arbitrator.

30 * **Sec. 10.** AS 45.25 is amended by adding new sections to article 2 to read:

31 **Sec. 45.25.200. Payment and approval of claims.** (a) A manufacturer shall

1 pay a new motor vehicle dealer for all repairs performed by a new motor vehicle
2 dealer that are covered under a manufacturer's warranty, policy, or service contract.
3 The manufacturer shall pay for the repairs whether the owner or the dealership
4 personnel identified the need for the repair. A manufacturer shall pay the new motor
5 vehicle dealer for the repairs in accordance with the new motor vehicle dealer's
6 schedule of compensation that applies to the repairs when the new motor vehicle
7 dealer made the repairs.

8 (b) A new motor vehicle dealer shall submit a claim for warranty work, policy
9 work, or predelivery service to the manufacturer within 90 days after the owner
10 reclaims the motor vehicle following the new motor vehicle dealer's completion of
11 work on the motor vehicle. The new motor vehicle dealer shall submit the claim in the
12 manner that the manufacturer requires.

13 (c) Within 30 days after the manufacturer receives a claim from a new motor
14 vehicle dealer under (b) of this section, the manufacturer shall approve or deny the
15 claim in writing or electronically. If a manufacturer does not disapprove a claim as
16 required by this subsection, the manufacturer is considered to have approved the claim
17 and the manufacturer shall pay the claim within 30 days after the manufacturer
18 received the claim.

19 (d) If a manufacturer disapproves a claim that the new motor vehicle dealer
20 submits under (b) of this section, a manufacturer shall notify the new motor vehicle
21 dealer in writing or electronically and shall set out the reasons for disapproving the
22 claim. A new motor vehicle dealer may correct and resubmit the claim within 30 days
23 after the new motor vehicle dealer receives the written or electronic notice that the
24 manufacturer disapproved or denied the claim.

25 (e) Notwithstanding the other provisions of this section, within 15 days after a
26 manufacturer receives a consumer or dealer claim from a new motor vehicle dealer,
27 the manufacturer shall approve or deny the claim by a written or electronic notice of
28 denial. If a manufacturer does not deny the claim in writing or electronically, as
29 required by this subsection and (f) of this section, within 15 days after the
30 manufacturer receives the claim, the manufacturer is considered to have approved the
31 claim, and the manufacturer shall pay the claim within 30 days after the manufacturer

received the claim.

(f) If the manufacturer denies a claim under (e) of this section, the manufacturer shall set out the reasons for the denial in the notice of denial. A new motor vehicle dealer may correct and resubmit the claim within 30 days after the new motor vehicle dealer receives the written or electronic notice that the manufacturer disapproved the claim.

(g) A manufacturer may not initiate or conduct an audit to determine the validity of paid claims for new motor vehicle dealer warranty work, policy work, predelivery service claims, or other service claims, or for consumer or new motor vehicle dealer incentive claims, unless the manufacturer initiates the audit within one year following the payment of the claim. The manufacturer may not perform more than one audit in a calendar year.

(h) A manufacturer may not deny or charge back to a new motor vehicle dealer a warranty or policy claim after the initial submission or resubmission of the claim, or as a result of an audit, if the new motor vehicle dealer can reasonably demonstrate that the reason for the repair existed, the repair was performed, and the cause for the repair was cured.

(i) A manufacturer may not recover all or a portion of its costs for compensating its dealers for parts and labor provided by a new motor vehicle dealer under AS 45.25.210 and this section by using offsets against amounts owed to the new motor vehicle dealer or by making a separate charge, surcharge, or other imposition.

Sec. 45.25.210. Rates for warranty and other work. (a) A manufacturer shall provide each of its new motor vehicle dealers with the schedule of compensation that the manufacturer shall pay to the new motor vehicle dealer for warranty work, policy work, predelivery service, or other service that the manufacturer requires the new motor vehicle dealer to perform for the manufacturer's products.

(b) The schedule of compensation must be contained in the franchise agreement or in a separate agreement with the new motor vehicle dealer. The schedule of compensation must include compensation for parts, labor, and diagnostic work and must comply with this section.

(c) The rates in the schedule of compensation may not be less than the rates

that the new motor vehicle dealer charges retail customers for similar service for nonwarranty service, labor on diagnostic work, and repairs. The rates for parts must include the price paid for the part, shipping charges, other charges incurred for the parts, and the average retail percentage markup that the new motor vehicle dealer charges. The rates for labor on diagnostic work must also include any documentation work or contact time that the new motor vehicle dealer spends and the manufacturer requires to authorize or verify the work, including providing photographs, paperwork, consultation, and electronic data.

(d) To establish the average retail percentage markup, the new motor vehicle dealer shall submit to the manufacturer 50 sequential chronologically issued retail service repair orders paid by customers, or 45 days of retail service repair orders paid by customers if the number of orders during the 45 days is fewer than 50. The orders that the new motor vehicle dealer submits must cover retail repairs that the new motor vehicle dealer made less than 180 days before the new motor vehicle dealer submits them to the manufacturer.

(e) A manufacturer may not require a new motor vehicle dealer to establish the average retail percentage markup by a method other than the method required by (d) of this section. When establishing the average retail percentage markup, a manufacturer may not require the new motor vehicle dealer to provide information that is unduly burdensome or time consuming to provide, including part-by-part or transaction-by-transaction calculations.

(f) A manufacturer may not include in the calculation of the rates in the schedule of compensation

(1) repairs for manufacturer special events, manufacturer specials, or retail customer repair promotional discounts;

(2) for insurance repairs, parts sold at wholesale or at reduced or specially negotiated rates;

(3) routine maintenance not covered under warranty, including the replacement of fluids, filters, and belts, unless the new motor vehicle dealer provides the routine maintenance in the course of making a repair;

(4) nuts, bolts, fasteners, and similar items that do not have an

individual part number;

(5) tires, batteries, and light bulbs; and

(6) vehicle reconditioning.

(g) The average retail percentage markup calculated under (d) of this section may not take effect more than 30 days after the new motor vehicle dealer submits the information required in (d) of this section to the manufacturer.

(h) A manufacturer may disapprove a rate proposed by the new motor vehicle dealer under this section if the manufacturer demonstrates that the hourly rates or other charges under this section unreasonably exceed the rates and charges of other franchised new motor vehicle dealers in the same relevant market area offering the same motor vehicle line or a competitive motor vehicle line.

(i) A new motor vehicle dealer may not receive more than one rate increase under this section in a calendar year.

(j) In this section, "average retail percentage markup" means the average retail percentage markup established under (d) of this section.

Sec. 45.25.220. Performance and reimbursement of certain repairs. (a) If a manufacturer requires that a certified technician perform a repair on a motor vehicle, and if a certified technician is not available to begin the repair within one business day after the delivery of the motor vehicle to a new motor vehicle dealer, an uncertified technician may perform the repair if the uncertified technician performs the repair under the supervision of a certified technician or service manager, and the manufacturer shall pay a new motor vehicle dealer for the repairs performed by the uncertified technician at the rate charged by the new motor vehicle dealer for the same repair when performed by a certified technician.

(b) If a motor vehicle needs repairs that are covered under a manufacturer's warranty, policy, or service contract, and if the motor vehicle is in a location that is not accessible by road or that is more than 100 road miles from a new motor vehicle dealer who may perform warranty, policy, or service contract repairs on the motor vehicle, a new motor vehicle dealer may arrange to have the repairs performed by another technician where the vehicle is located. The manufacturer shall reimburse the new motor vehicle dealer for the cost of having the repairs performed in accordance

1 with the authorizing new motor vehicle dealer's then current schedule of
2 compensation, plus any freight or shipping charges, or at the retail rate that is in effect
3 when, and in the community where, the repairs are made, whichever amount is less.

4 **Sec. 45.25.230. Discontinuation or reduction of line.** In this chapter, if a
5 manufacturer discontinues the sale and distribution of a new motor vehicle line, or if a
6 manufacturer materially reduces the selection of new motor vehicle lines that the
7 manufacturer is offering to the extent that it is not economically viable for a new
8 motor vehicle dealer to continue to retail the new motor vehicle line, the new motor
9 vehicle dealer may consider the discontinuation or reduction a termination of the
10 franchise agreement between the manufacturer and the new motor vehicle dealer.

11 * **Sec. 11.** AS 45.25.300 is repealed and reenacted to read:

12 **Sec. 45.25.300. Unfair practices.** (a) Notwithstanding the terms of a franchise
13 agreement, a manufacturer may not

14 (1) require, coerce, or attempt to coerce a new motor vehicle dealer to
15 change the location of the new motor vehicle dealership or to make any substantial
16 alterations to the new motor vehicle dealership premises or facilities if the change or
17 alteration would be unreasonable or if there is not a sufficient supply of new motor
18 vehicles to justify the expansion in light of the current market and economic
19 conditions;

20 (2) provide a rebate or incentive program that is based on a new motor
21 vehicle dealer purchasing or including in inventory a predetermined number or
22 percentage of certified pre-owned motor vehicles or lease return motor vehicles;

23 (3) refuse or fail to deliver, in reasonable quantities and within a
24 reasonable period after receipt of an order, to a new motor vehicle dealer holding a
25 franchise for a line or make of new motor vehicles sold or distributed by the
26 manufacturer, distributor, factory branch, or manufacturer representative a new motor
27 vehicle part or accessory, if the new vehicle part or accessory is being delivered to
28 other new motor vehicle dealers;

29 (4) require a new motor vehicle dealer to purchase unreasonable
30 advertising displays or other materials;

31 (5) require a new motor vehicle dealer to order or accept delivery of a

new motor vehicle, part, accessory, piece of equipment, promotional material, display device, display decoration, or other item that is not otherwise required by law and that the new motor vehicle dealer does not voluntarily order; this paragraph does not apply to the recall of safety and emissions campaign parts unless the new motor vehicle dealer voluntarily ordered them, or to a motor vehicle feature, part, accessory, or other component required by federal law, the law of this state, or local law;

(6) coerce or attempt to coerce a new motor vehicle dealer

(A) to join, contribute money to, or affiliate with an advertising association;

(B) to participate monetarily in an advertising campaign; or

(C) if a new motor vehicle dealer chooses to join, contribute monetarily to, or affiliate with an advertising association, to require the new motor vehicle dealer to use the association funding allocated to the new motor vehicle dealer to run prepackaged radio, television, or newspaper advertising that identifies the association as the advertiser rather than the contributing new motor vehicle dealer;

(7) increase the price of a new motor vehicle that the new motor vehicle dealer has ordered from the manufacturer and for which there exists at the time of the order a bona fide sale to a retail or fleet purchaser if the order was made before the manufacturer provided the new motor vehicle dealer with an official written price increase notification.

*** Sec. 12.** AS 45.25.990(19) is repealed and reenacted to read:

(19) "terminate" includes to cancel, not to renew, or to discontinue or make a reduction under AS 45.25.230;

*** Sec. 13.** AS 45.25.990 is amended by adding new paragraphs to read:

(22) "line or make" means motor vehicles that are offered for sale under a common name, trademark, service mark, or brand name of the manufacturer of those motor vehicles;

(23) "relevant market area" means the geographical area of responsibility of a new motor vehicle dealer established in a franchise agreement;

(24) "schedule of compensation" means the schedule of compensation

provided under AS 45.25.210.

* **Sec. 14.** AS 45.25.320 is repealed.

* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Except to the extent that the application under this section would impair valid contractual agreements in violation of a provision of the Constitution of the State of Alaska or the Constitution of the United States, this Act applies to franchise agreements between manufacturers and new motor vehicle dealers in the state if the franchise agreement is

(1) in existence on the effective date of this Act;

(2) renewed or amended on or after the effective date of this Act; or

(3) entered into on or after the effective date of this Act.

(b) In this section,

(1) "franchise" has the meaning given in AS 45.25.990;

(2) "manufacturer" has the meaning given in AS 45.25.990;

(3) "new motor vehicle dealer" has the meaning given in AS 45.25.990.

* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: SCHEDULE OF COMPENSATION. The schedule of compensation for a new motor vehicle dealer under franchise with a manufacturer on the effective date of this Act may not be less than the schedule of compensation provided to the new motor vehicle dealer immediately before the effective date of this Act. In this section,

(1) "franchise" has the meaning given in AS 45.25.990;

(2) "manufacturer" has the meaning given in AS 45.25.990;

(3) "new motor vehicle dealer" has the meaning given in AS 45.25.990;

(4) "schedule of compensation" means the schedule of compensation provided

under AS 45.25.210.