

**SENATE CS FOR CS FOR HOUSE BILL NO. 182(L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Offered: 4/26/02**

**Referred: Judiciary, Finance**

**Sponsor(s): REPRESENTATIVES MURKOWSKI, Halcro, Hayes**

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to certain vehicles, including motorcycles and trailers; relating to the**  
2   **registration, bonding, and other regulation of motor vehicle dealers; relating to the**  
3   **registration and other regulation of certain motor vehicle buyers' agents; relating to acts**  
4   **and transactions involving vehicles, including trailers, and to the acts and practices of**  
5   **certain persons and entities involved in vehicle transactions, including trailer**  
6   **transactions; relating to consumer protection for used vehicle buyers; amending Rule 3,**  
7   **Alaska Rules of Civil Procedure; and providing for an effective date."**

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

9    \* **Section 1.** AS 08.66.010 is amended to read:

10           **Sec. 08.66.010. Dealers to register.** A dealer in motor vehicles [,  
11   TRAILERS, OR SEMI-TRAILERS] shall, as a condition to engaging in business in  
12   the state, register biennially with the department [DEPARTMENT OF  
13   ADMINISTRATION].

1     \* **Sec. 2.** AS 08.66.030 is amended to read:

2                     **Sec. 08.66.030. Form of application.** The department [DEPARTMENT OF  
3     ADMINISTRATION] shall prescribe and furnish the form of application for dealer  
4     registration under AS 08.66.010. The application must contain

5                     (1) the name under which the business is conducted;

6                     (2) the location of the business;

7                     (3) the name and address of all persons having an interest in the  
8     business and, in the case of a corporation, the application shall contain the name and  
9     address of the two principal officers;

10                    (4) the name and make of all vehicles handled;

11                    (5) a statement of whether or not used vehicles are handled;

12                    (6) a statement that the applicant is a bona fide dealer in motor  
13     vehicles [, TRAILERS, OR SEMI-TRAILERS] with an established business at the  
14     location given;

15                    (7) if the applicant sells a motor vehicle as a new or current model  
16     motor vehicle having a manufacturer's warranty, the name of the manufacturer of the  
17     motor vehicle and the date and duration of the applicant's sales and service agreement  
18     with the manufacturer; and

19                    (8) other information the department [DEPARTMENT OF  
20     ADMINISTRATION] requires to administer this chapter [AS 08.66.010 -  
21     08.66.090].

22     \* **Sec. 3.** AS 08.66.040 is amended to read:

23                     **Sec. 08.66.040. Filing application for registration.** The application shall be  
24     filed with the department [DEPARTMENT OF ADMINISTRATION]. Upon receipt  
25     of the application, the department shall examine it and may make an investigation of  
26     the information in it. If the department is satisfied that the dealer is entitled to  
27     registration, and the fees have been paid and a bond filed, the department shall assign  
28     a distinctive registration number to the dealer and file the dealer's application and  
29     index it alphabetically and numerically. A dealer is registered when the department  
30     assigns a registration number.

31     \* **Sec. 4.** AS 08.66.050 is amended to read:

1           **Sec. 08.66.050. Renewal of registration.** A dealer shall renew the  
 2 registration required by **this chapter** [AS 08.66.010 - 08.66.090] before January 1  
 3 every two years.

4 \* **Sec. 5.** AS 08.66.060 is repealed and reenacted to read:

5           **Sec. 08.66.060. Bond.** (a) An applicant for a dealer registration under  
 6 AS 08.66.010 shall file with the application and shall maintain in force while  
 7 registered a bond in favor of the state that is executed by a surety approved by the  
 8 commissioner. The amount of the bond shall be \$50,000, except that the amount of a  
 9 bond for a dealer who sells only motorcycles shall be \$25,000. The bond must be  
 10 conditioned on the dealer's

11                   (1) doing business in compliance with this chapter and the other laws  
 12 of this state; and

13                   (2) not committing fraud or making fraudulent representations in the  
 14 course of doing business as a dealer.

15           (b) A surety may cancel the bond required by (a) of this section by giving  
 16 notice in writing to the commissioner or the commissioner's designee. However,  
 17 cancellation does not relieve a surety of liability arising before cancellation or a  
 18 liability that has accrued on the bond before cancellation. The commissioner or the  
 19 commissioner's designee shall retain the canceled bond on file and may not relieve a  
 20 surety of a liability arising before cancellation or accruing on the bond before  
 21 cancellation.

22           (c) A bond filed under (a) of this section is valid for renewal of a dealer  
 23 registration unless the surety has provided a written notice of cancellation to the  
 24 commissioner.

25           (d) In this section, "commissioner" means the commissioner of administration.

26 \* **Sec. 6.** AS 08.66.070 is amended to read:

27           **Sec. 08.66.070. Action on bond.** If a person suffers loss or damage by reason  
 28 of fraud, fraudulent representations, or **a** violation of **a** [ANY] provision of **this**  
 29 **chapter or another law of this state** [AS 08.66.010 - 08.66.090] by a dealer, the  
 30 person has a right of action against the dealer and a personal right of action against the  
 31 surety upon the bond. The aggregate liability of the surety **may** [DOES] not exceed

1 the amount of the bond.

2 \* **Sec. 7.** AS 08.66.080 is amended to read:

3 **Sec. 08.66.080. Penalties.** A dealer who fails to register and file a bond as  
4 required by this chapter [AS 08.66.010 - 08.66.090] is guilty of a violation. A dealer  
5 who knowingly violates a provision of this chapter [AS 08.66.010 - 08.66.090] is  
6 guilty of a class A misdemeanor.

7 \* **Sec. 8.** AS 08.66.350 is repealed and reenacted to read:

8 **Sec. 08.66.350. Definitions.** In this chapter,

9 (1) "buyer's agent" means a person who does business in the state by  
10 negotiating on behalf of a buyer the purchase of a motor vehicle from a motor vehicle  
11 dealer;

12 (2) "department" means the Department of Administration;

13 (3) "motor vehicle" means a motor vehicle that is required to be  
14 registered under AS 28.10;

15 (4) "motor vehicle dealer" or "dealer"

16 (A) means

17 (i) a buyer's agent; or

18 (ii) a person, other than a manufacturer, who sells,  
19 leases, solicits, or arranges for the sale or lease of five or more motor  
20 vehicles in any 12 consecutive months, regardless of who owns the  
21 vehicles;

22 (B) does not include

23 (i) a receiver, a trustee, an administrator, an executor, a  
24 guardian, or another person appointed by a court or a person  
25 performing duties as a public officer;

26 (ii) a person disposing of a motor vehicle acquired and  
27 actually used for the person's own use or for the use of a family  
28 member of the person, or acquiring a motor vehicle for the person's  
29 own use or for the use of a family member of the person if the vehicle  
30 is acquired and used in good faith and not for the purpose of avoiding  
31 the provisions of this chapter;

(iii) a person who sells motor vehicles as an incident of the person's principal business but who is not engaged primarily in the selling of motor vehicles;

(iv) an employee of an organization arranging for the purchase or lease by the organization of a vehicle for use in the organization's business;

(v) a publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of a motor vehicle owned by another person.

\* **Sec. 9.** AS 45 is amended by adding a new chapter to read:

## **Chapter 25. Motor Vehicle Transactions.**

### **Article 1. Applicability; Venue; Corporate Affiliates.**

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

**Sec. 45.25.020. Jurisdiction; choice of law.** (a) The courts of this state have jurisdiction over a legal dispute between a manufacturer located in or outside this state and a new motor vehicle dealer located in this state, and the dispute is governed by and interpreted and adjudicated under the law of this state.

(b) Venue for a dispute under (a) of this section is in the judicial district of this state where the new motor vehicle dealer's principal place of business is located.

**Sec. 45.25.030. Corporate affiliates.** (a) A manufacturer may not use a subsidiary corporation, affiliated corporation, partnership, association, or other person to accomplish what would be prohibited for the manufacturer under this chapter.

(b) This section does not limit the right of a person included within the scope of this section to engage in reasonable and appropriate business practices consistent with an existing trade practice that is not prohibited by this chapter.

### **Article 2. Franchise Agreements.**

**Sec. 45.25.100. Consistency with state law.** The terms and conditions in an agreement between a manufacturer and a new motor vehicle dealer in this state, including a motor vehicle franchise agreement, that are inconsistent with the law of this state do not have any force or effect in this state.

1                   **Sec. 45.25.110. Termination of franchise agreements.** (a) A manufacturer  
2 may not terminate a franchise with a new motor vehicle dealer unless

3                   (1) the manufacturer has

4                               (A) satisfied the notice requirements of this chapter;

5                               (B) shown that there is good cause for the termination of the  
6 franchise, and, if the reasons underlying the good cause can be corrected by the  
7 new motor vehicle dealer, the new motor vehicle dealer has failed for 60 days  
8 after delivery of the notice required by AS 45.25.120 to make the corrections;  
9 the circumstances identified under AS 45.25.120(a)(2) for which a 15-day  
10 notice of termination is required do not qualify as reasons for which correction  
11 is allowed under this paragraph; or

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

15                   (b) Notwithstanding (a)(1) of this section, a manufacturer may not terminate a  
16 franchise agreement with a new motor vehicle dealer because of the death or  
17 incapacity of an owner if the owner is not listed in the franchise as one on whose  
18 expertise and abilities the manufacturer relied in the granting of the franchise.

19                   (c) In this section, "good cause" includes when the new motor vehicle dealer  
20 fails to comply with or observe a material provision of the franchise agreement. For  
21 the purposes of determining good cause under this subsection, reasonable sales and  
22 service performance criteria and capital and facility requirements may be considered  
23 material provisions only if the criteria or requirements were communicated in writing  
24 to the new motor vehicle dealer within a reasonable period before the effective date of  
25 the termination or nonrenewal so that a reasonable opportunity was afforded over a  
26 period of not less than six months to comply with the criteria or requirements.

27                   **Sec. 45.25.120. Notice of termination.** (a) A manufacturer shall furnish a  
28 notice of termination of a franchise agreement to a new motor vehicle dealer at least

29                   (1) 90 days before the effective date of a termination, except as  
30 required under (2) or (3) of this subsection;

31                   (2) 15 days before the effective date of a termination when the new

1 motor vehicle dealer

2 (A) is insolvent or is the subject of a bankruptcy or receivership  
3 proceeding;

4 (B) has failed to conduct its customary sales and service  
5 operations during its customary business hours for seven consecutive business  
6 days; this subparagraph does not apply to closures due to acts of God or  
7 circumstances beyond the direct control of the new motor vehicle dealer; or

8 (C) is convicted of a felony involving moral turpitude or fraud  
9 under the law of this state, another state, the federal government, a territory of  
10 the United States, or the District of Columbia;

11 (3) 180 days before the effective date of the termination if the  
12 manufacturer or distributor is discontinuing the sale of the product line.

13 (b) Notice required under (a) of this section must be in writing, shall be sent  
14 by certified mail or personally delivered to the new motor vehicle dealer, and must  
15 contain

16 (1) a statement of intention to terminate the franchise;

17 (2) a statement of the reasons for the termination; and

18 (3) the date on which the termination takes effect.

19 **Sec. 45.25.130. Threat of termination.** (a) A manufacturer or manufacturer  
20 representative may not coerce or attempt to coerce a new motor vehicle dealer to enter  
21 into an agreement with the manufacturer or a subsidiary of the manufacturer, or to do  
22 any other act unfair to the new motor vehicle dealer, by threatening to terminate a  
23 franchise agreement between the manufacturer or subsidiary of the manufacturer and  
24 the new motor vehicle dealer.

25 (b) This section does not prohibit a voluntary agreement between a  
26 manufacturer and a new motor vehicle dealer or between a distributor and a new  
27 motor vehicle dealer to settle legitimate disputes.

28 **Sec. 45.25.140. Repurchase obligations on termination.** (a) Upon the  
29 termination of a new motor vehicle dealer's franchise agreement by the manufacturer  
30 or distributor, the manufacturer or distributor shall repurchase from the new motor  
31 vehicle dealer at

1 (1) the new motor vehicle dealer's net acquisition cost, if the motor  
 2 vehicles have not been materially altered or damaged, all inventory consisting of  
 3 unsold new motor vehicles that are current models and models that have been acquired  
 4 from the manufacturer within the past two model years before receipt of the notice of  
 5 termination;

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

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

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

17 (b) Within 90 days after the effective date of the termination, the new motor  
 18 vehicle dealer shall return the property required by (a) of this section to be  
 19 repurchased to the manufacturer or distributor at the manufacturer's or distributor's  
 20 expense. The manufacturer or distributor shall pay the compensation for the property  
 21 within 60 days after the tender of inventory and other items if the new motor vehicle  
 22 dealer has clear title to the property and is in a position to convey that title to the  
 23 manufacturer or distributor. If the property is subject to a security interest, the  
 24 manufacturer or distributor may make payment jointly to the new motor vehicle dealer  
 25 and the holder of the security interest, and the manufacturer or distributor may offset  
 26 these payments.

27 **Sec. 45.25.150. Required compensation for new motor vehicle dealer**  
 28 **facilities.** (a) Upon termination by the manufacturer or distributor, the manufacturer  
 29 or distributor shall compensate the new motor vehicle dealer for new motor vehicle  
 30 dealer facilities a sum equivalent to the

31 (1) rent for the unexpired term of the lease or 18 months, whichever



1 period is shorter, if the new motor vehicle dealer is leasing the new motor vehicle  
2 dealership facilities from a lessor other than the manufacturer or distributor; or

3 (2) reasonable rental value of the new motor vehicle dealership  
4 facilities for 18 months or until the facilities are leased or sold, whichever period is  
5 shorter, if the new motor vehicle dealer owns the new motor vehicle dealership  
6 facilities; the sum may be paid in monthly installments at the election of the  
7 manufacturer or distributor.

8 (b) This section does not relieve a new motor vehicle dealer of the obligation  
9 to mitigate damages under a lease, prevent a manufacturer from occupying and using  
10 the new motor vehicle dealer's facilities while paying rent, or preclude a manufacturer  
11 from negotiating a lease termination, sublease, or new lease.

12 (c) This section does not apply to a termination for

13 (1) insolvency of the new motor vehicle dealer or the filing of any  
14 petition by or against the new motor vehicle dealer under a bankruptcy or receivership  
15 law;

16 (2) failure of the new motor vehicle dealer to conduct its customary  
17 sales and service operations during its customary business hours for seven consecutive  
18 business days;

19 (3) conviction of the new motor vehicle dealer or its principal owners  
20 of a felony or a misdemeanor regardless of the punishment if the crime involves theft,  
21 dishonesty, or false statement;

22 (4) revocation of a license required for the new motor vehicle dealer to  
23 operate; or

24 (5) a fraudulent misrepresentation by the new motor vehicle dealer to  
25 the manufacturer or distributor that is material to the new motor vehicle dealer's  
26 agreement.

27 (d) The payment required under (a) of this section is only required to the  
28 extent that the facilities were used for activities under the franchise agreement and  
29 only to the extent the facilities were not leased for unrelated purposes.

30 (e) If payment under (a) of this section is made, the manufacturer or  
31 distributor is entitled to possession and use of the new motor vehicle dealership

1 facilities for the period for which the payment is paid.

2 **Sec. 45.25.160. Prevention or refusal to honor transfer of new motor**  
 3 **vehicle dealership ownership.** A manufacturer may not unreasonably prevent or  
 4 refuse to honor a transfer of ownership of a new motor vehicle dealership.

5 **Sec. 45.25.170. Succession.** (a) A manufacturer or distributor may not  
 6 prevent or refuse to honor the succession to a new motor vehicle franchise of an heir  
 7 or devisee under a will of a franchisee, under a written instrument filed with the  
 8 manufacturer or distributor designating any person as the successor franchisee, or  
 9 under AS 13.06 - AS 13.36 (Uniform Probate Code), except that

10 (1) a designated successor must, within 60 days after the owner's death  
 11 or incapacity, give the manufacturer or distributor written notice of the intent to  
 12 succeed, and the designee must agree to be bound by all the terms and conditions of  
 13 the current franchise agreement;

14 (2) the manufacturer or distributor may request from the designated  
 15 successor personal and financial data that are reasonably necessary to determine the  
 16 qualifications of the designated successor; the designated successor shall provide the  
 17 information within 60 days after receiving the request;

18 (3) the manufacturer or distributor may not unreasonably withhold  
 19 approval of the succession; if the manufacturer or distributor refuses to honor the  
 20 succession, the manufacturer or distributor shall send written notice to the proposed  
 21 successor within 60 days after receiving the information requested in (2) of this  
 22 subsection or within 60 days after receiving the notice of the proposed successor's  
 23 intent to succeed, whichever is later.

24 (b) The notice required by (a)(3) of this section must state the specific grounds  
 25 for not approving the proposed successor. Within 30 days after the proposed  
 26 successor's receipt of the notice, the proposed successor may file a protest with the  
 27 superior court to determine whether the manufacturer or distributor has unreasonably  
 28 withheld approval.

29 (c) This section does not preclude the owner of a new motor vehicle  
 30 dealership from filing with the manufacturer or distributor a written instrument  
 31 designating any person as a successor. If there are competing successors, the written

1 instrument governs who may submit a proposal as a successor.

2 **Sec. 45.25.180. New dealerships.** (a) Before a manufacturer or distributor  
3 enters into a franchise establishing or relocating a new motor vehicle dealer within a  
4 relevant market area where the same line make is represented, the manufacturer or  
5 distributor shall give 90 days' written notice to each new motor vehicle dealer of the  
6 same line make in the relevant market area of the intention to establish an additional  
7 new motor vehicle dealer or to relocate an existing new motor vehicle dealer within  
8 that relevant market area.

9 (b) Within 30 days after receiving the notice required under (a) of this section  
10 or within 30 days after the end of any appeal procedure provided by the manufacturer  
11 or distributor, a new motor vehicle dealer may bring a declaratory judgment action in  
12 the superior court of this state to determine whether good cause exists for the  
13 establishment or relocation of a proposed new motor vehicle dealer. If an action is  
14 filed, the manufacturer or distributor may not establish or relocate the proposed new  
15 motor vehicle dealer until the court has rendered a decision on the matter.

16 (c) This section does not prohibit

17 (1) the relocation of an existing new motor vehicle dealer to a new  
18 location not within four miles of an existing new motor vehicle dealer;

19 (2) the appointment of a successor new motor vehicle dealer at the  
20 same location as its predecessor or within a two-mile radius from any boundary of the  
21 predecessor's former location within two years from the date when the predecessor  
22 ceased operations or was terminated, whichever occurred later; or

23 (3) the entering into of a renewal of, replacement of, or succeeding  
24 franchise agreement with an existing new motor vehicle dealer whose operations will  
25 continue at the existing new motor vehicle dealer's current location.

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

29 (1) whether the establishment of an additional franchise or relocation  
30 of the existing new motor vehicle dealer appears to be warranted by economic and  
31 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 protesting new motor vehicle dealer to perform the protesting new motor vehicle dealer's obligations under existing franchise agreements;

(4) the permanency of the investment of the protesting new motor vehicle dealer; and

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

(e) In this section,

(1) "relevant market area" means the greater of the area

(A) within a radius of 14 miles around an existing new motor vehicle dealer; or

(B) of responsibility defined in a governing franchise agreement;

(2) "relocate" and "relocation" do not include the relocation of a new motor vehicle dealer within two miles of the new motor vehicle dealer's established place of business.

**Sec. 45.25.190. Arbitration.** In a controversy between a manufacturer and a new motor vehicle dealer under AS 45.25.010 - 45.25.320, neither the manufacturer nor the new motor vehicle dealer is required to submit the controversy to arbitration. If both the manufacturer and the new motor vehicle dealer agree to submit a controversy under AS 45.25.010 - 45.25.320 to arbitration, the arbitration shall be conducted under AS 09.43.020 - 09.43.180 (Uniform Arbitration Act), the manufacturer and the new motor vehicle dealer shall each select one arbitrator, and both the manufacturer and the new motor vehicle dealer shall select the third arbitrator.

**Article 3. Manufacturer and Distributor Practices.**

**Sec. 45.25.300. New motor vehicle dealership location and facilities.** 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 any 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.

**Sec. 45.25.310. Discrimination.** A manufacturer may not unfairly discriminate among new motor vehicle dealers with respect to warranty reimbursements or authority granted new motor vehicle dealers to make warranty adjustments with retail customers.

**Sec. 45.25.320. Claim audits and charge backs.** (a) A manufacturer or distributor may not audit a claim, deny a claim, reduce the amount of a claim to be reimbursed to a new motor vehicle dealer, or charge back a portion of the claim to a new motor vehicle dealer if 18 or more months have passed since the new motor vehicle dealer submitted the claim, or, if 18 or more months have passed from the end of a manufacturer sponsored incentive program related to the claim, whichever 18-month period ends later.

(b) The time restriction in (a) of this section does not apply if the manufacturer reasonably suspects that fraud is involved in the claim.

(c) In this section, "claim" means a claim made by a new motor vehicle dealer for compensation by the manufacturer or distributor for sales incentives, warranty repairs, and service incentives.

**Article 4. Dealer Practices.**

**Sec. 45.25.400. Prohibited use of advertising terms.** (a) A motor vehicle dealer may not use the term "invoice," "factory invoice," "dealer invoice," "dealer cost," "wholesale price," or any other term of similar meaning in an advertisement for the sale of a motor vehicle.

(b) A motor vehicle dealer may use the term "manufacturer's suggested retail price," "MSRP," or "list price" in an advertisement for the sale of a motor vehicle,

1 subject to the restriction on price comparisons in AS 45.25.450 and the following:

2 (1) the advertised price must reference the final price listed by the  
3 manufacturer on the monroney sticker, including accessories and options physically  
4 attached to the vehicle at the time of delivery to the dealer, plus any transportation  
5 charges, and minus all manufacturer discounts and savings;

6 (2) the manufacturer's suggested retail price or the list price does not  
7 include charges added by the dealer or options added to the vehicle by the dealer; and

8 (3) whenever using the term "manufacturer's suggested retail price,"  
9 "MSRP," or "list price," the dealer shall provide in the advertisement a clear and  
10 conspicuous disclosure that states that a sale may not have occurred at that price.

11 **Sec. 45.25.410. Availability of advertised items.** A motor vehicle dealer  
12 may not advertise vehicles and related goods or services at a specified dealer price  
13 with the intent not to supply reasonably expected demand, unless the advertisement  
14 discloses the number of vehicles in stock at the advertised price.

15 **Sec. 45.25.420. Display of motor vehicles.** A motor vehicle dealer shall  
16 display all vehicles advertised for sale for the duration of the sale period in a  
17 conspicuous and clearly visible location on the dealer's premises. The advertised sale  
18 price for each vehicle must be clearly marked on the vehicle so the consumer can  
19 readily identify the advertised price for the vehicle.

20 **Sec. 45.25.430. Refusal to sell on advertised terms and conditions.** A  
21 motor vehicle dealer may not refuse to sell a motor vehicle on the terms and  
22 conditions that the dealer has advertised. This section does not apply if

23 (1) the dealer can document that the advertised term or condition was  
24 the result of an error on the part of the advertising medium or an outside advertising  
25 agent; or

26 (2) the refusal is based on an error that was made in good faith by the  
27 dealer and was clearly and conspicuously a mistake, and the dealer corrected the error  
28 as soon as the dealer knew or reasonably should have known of the error.

29 **Sec. 45.25.440. Advertised price.** (a) When selling a motor vehicle, a motor  
30 vehicle dealer may not charge dealer fees or costs, except for fees actually paid to a  
31 state agency for licensing, registration, or title transfers, unless the fees or costs are

1 included in the advertised price.

2 (b) In this section, "dealer fees or costs" includes dealer preparation fees,  
3 document preparation fees, surcharges, and other dealer imposed fees and costs.

4 **Sec. 45.25.450. Advertised price comparisons, reductions, and discounts.**

5 (a) A motor vehicle dealer may not make a price comparison, price reduction, or price  
6 discount in an advertisement unless the comparison, reduction, or discount complies  
7 with this section.

8 (b) A motor vehicle dealer may advertise a price comparison for a new motor  
9 vehicle with the manufacturer's suggested retail price only if

10 (1) the dealer only uses the term "manufacturer's suggested retail  
11 price," "MSRP," or "list price";

12 (2) the advertised price references the final price listed by the  
13 manufacturer on the monroney sticker;

14 (3) the manufacturer's suggested retail price, MSRP, or list price does  
15 not include charges added by the dealer or options added to the vehicle by the dealer;

16 (4) the dealer clearly discloses that the manufacturer's suggested retail  
17 price, MSRP, or list price may not reflect the actual selling price for the vehicle in the  
18 dealer's trade area; and

19 (5) the dealer does not make a representation in the advertisement,  
20 including a reference to a "sale," "reduction," or "discount," that the comparison  
21 represents a saving to the consumer.

22 (c) A motor vehicle dealer may not use a competitor's price as a reference  
23 price unless

24 (1) the reference price is the competitor's current, bona fide price in the  
25 trade area of the dealer making the comparison;

26 (2) the comparison is to an identical or nearly identical vehicle that  
27 does not materially differ in model, style, design, name, brand, kind, or quality from  
28 the advertised product; and

29 (3) the dealer includes in the advertised price all charges that the  
30 competitor includes in the competitor's price.

31 (d) A motor vehicle dealer shall be in possession of documents and all other

1 information necessary to substantiate all reference price claims when the claims are  
 2 made and shall maintain this information in a readily accessible place for two years  
 3 after the time the reference price claims are made.

4 **Sec. 45.25.460. Advertising and selling practices generally.** (a) In addition  
 5 to the provisions of AS 45.50.471 and regulations adopted under AS 45.50.471, a  
 6 motor vehicle dealer may not

7 (1) exclude from an advertisement of a motor vehicle for sale that  
 8 taxes, if applicable, vehicle registration fees, finance charges, charges for the issuance  
 9 of any certificate of compliance or noncompliance required by statute, or other fees or  
 10 charges to be paid to a third party that are not otherwise included in the advertised  
 11 price will be added to the advertised price at the time of the sale;

12 (2) represent the dealer document preparation fee as a government fee;

13 (3) advertise a specific motor vehicle for sale without identifying the  
 14 vehicle by either its vehicle identification number, vehicle stocking number, or license  
 15 number;

16 (4) advertise that free merchandise, gifts, or services will be provided  
 17 by the dealer if a vehicle is purchased; in this paragraph, "free" includes merchandise  
 18 or services offered for sale at a price less than the dealer's cost for the merchandise or  
 19 services;

20 (5) use the term "rebate," "cash back," or a similar term in advertising  
 21 the sale of a motor vehicle unless the rebate is expressed in a specific dollar amount  
 22 and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the  
 23 retail buyer of the vehicle;

24 (6) require a person, in order to receive the advertised credit terms, to  
 25 pay a higher price for a motor vehicle and any related goods or services than the cash  
 26 price the same person would have to pay to purchase the same vehicle and related  
 27 goods or services;

28 (7) advertise a guaranteed trade in allowance or range of allowances  
 29 unless the guarantee is provided by the manufacturer or distributor;

30 (8) affix to a new motor vehicle a supplemental price sticker  
 31 containing a price that represents the dealer's asking price, if the supplemental price



1 sticker exceeds the manufacturer's suggested retail price, unless the supplemental  
2 sticker

3 (A) clearly and conspicuously, in the largest print appearing on  
4 the sticker other than the print size used for the dealer's name, discloses that  
5 the supplemental sticker price is the dealer's asking price, or words of similar  
6 meaning, and is not the manufacturer's suggested retail price;

7 (B) clearly and conspicuously discloses the manufacturer's  
8 suggested retail price; and

9 (C) states, if the supplemental sticker price is greater than the  
10 sum of the manufacturer's suggested retail price and the price of the items  
11 added by the dealer, the difference and describes it as additional dealer mark-  
12 up;

13 (9) advertise or otherwise represent, or knowingly allow to be  
14 advertised or represented on behalf of the dealer, that a down payment is not required  
15 in connection with the sale of a motor vehicle when a down payment is in fact  
16 required;

17 (10) advertise an offer for the sale, lease, or purchase of a motor  
18 vehicle that creates the false impression that the vehicle is being offered by a private  
19 party or a motor vehicle agent or that does not contain the name of the dealer;

20 (11) use an advertisement for a motor vehicle that contains language  
21 that falsely, implicitly, or explicitly suggests that, to take advantage of an offer, a  
22 consumer must act within a certain period of time when, in fact, the vehicles will  
23 continue to be available at the advertised price beyond that time period;

24 (12) require a buyer of a new motor vehicle, as a condition of sale and  
25 delivery, to also purchase special features, appliances, accessories, or equipment not  
26 desired or requested by the buyer unless the special features, appliances, equipment, or  
27 accessories are already installed on the vehicle when received by the dealer;

28 (13) represent and sell as a new motor vehicle a demonstrator vehicle  
29 or a motor vehicle that is a used motor vehicle; in this paragraph, "demonstrator  
30 vehicle"

31 (A) means a motor vehicle

(i) that has been assigned by a dealer for use by the dealership as an executive vehicle for promotional purposes, including being driven in the community;

(ii) that has not been licensed by a retail buyer; and

(iii) the title of which has not been transferred to a retail buyer;

(B) does not include a motor vehicle that has only been driven to demonstrate the motor vehicle to a prospective buyer;

(14) advertise that the dealer finances any person, or does not reject any person's credit, or make similar claims;

(15) advertise or make a statement, declaration, or representation in an advertisement that cannot be substantiated in fact; the burden of proof of the factual basis for the statement, declaration, or representation is on the dealer.

(b) A motor vehicle dealer shall disclose a beginning and ending date in all motor vehicle sale advertisements.

**Sec. 45.25.465. Sales of used motor vehicles.** (a) Before the sale of a used motor vehicle, a motor vehicle dealer shall,

(1) when obtaining a used motor vehicle from an individual consumer, make a reasonable inquiry of the seller into the condition of the vehicle, including the accident and repair history of the vehicle; the information shall be recorded in writing and verified by the seller; the dealer shall provide this information to a prospective purchaser of the vehicle;

(2) when a motor vehicle dealer obtains a used motor vehicle from another motor vehicle dealer, a wholesaler, or an auction, disclose to a prospective purchaser of the vehicle that the vehicle was purchased from another dealer, a wholesaler, or an auction.

(b) Nothing in this section creates an express warranty by the dealer.

**Sec. 45.25.470. Sales of vehicles manufactured for sale in a foreign country.** Before sale, a motor vehicle dealer shall disclose in writing whether a motor vehicle was originally manufactured for sale in Canada or another foreign country.

**Sec. 45.25.480. Identification number plates.** A motor vehicle dealer may

1 not knowingly purchase or sell a vehicle that has an altered or removed vehicle  
2 identification number plate, or alter or remove a vehicle identification number plate.

3 **Sec. 45.25.490. Required documentation.** A motor vehicle dealer may not  
4 sell or offer to sell a motor vehicle unless the motor vehicle dealer holds a  
5 manufacturer's statement of origin, a title, or another properly executed document  
6 reasonably necessary to obtain the statement of origin or title for transfer of the  
7 vehicle to the buyer.

8 **Sec. 45.25.500. Trade-ins.** A motor vehicle dealer may not transfer title to a  
9 trade-in vehicle or perform any repairs or reconditioning on a trade-in vehicle before  
10 the completion of the sales transaction for which the vehicle is a trade-in.

11 **Sec. 45.25.510. Disclosure of damages.** (a) Before entering into a new  
12 motor vehicle sales contract, a new motor vehicle dealer shall disclose in writing to a  
13 buyer of the new motor vehicle any known damage and repair to the new motor  
14 vehicle if the damage exceeds five percent of the manufacturer's suggested retail price  
15 as calculated at the dealer's authorized warranty rate for labor and parts. A new motor  
16 vehicle dealer is not required to disclose to a buyer that glass, tires, bumpers, or  
17 cosmetic parts of a new motor vehicle were damaged at any time if the damaged item  
18 has been replaced with original or comparable equipment. A replaced part is not part  
19 of the cumulative damage required to be disclosed under this subsection.

20 (b) If disclosure is not required under this section, a buyer may not revoke or  
21 rescind a sales contract due to the fact that the new motor vehicle was damaged and  
22 repaired before completion of the sale.

23 (c) In this section,

24 (1) "cosmetic parts" means parts that are attached by and can be  
25 replaced in total through the use of screws, bolts, or other fasteners without the use of  
26 welding or thermal cutting and includes windshields, bumpers, hoods, or trim panels;

27 (2) "manufacturer's suggested retail price" means the retail price of the  
28 new motor vehicle suggested by the manufacturer and includes the retail delivered  
29 price suggested by the manufacturer for each accessory or item of optional equipment  
30 physically attached to the new motor vehicle at the time of delivery to the new motor  
31 vehicle dealer that is not included within the retail price suggested by the manufacturer

1 for the new motor vehicle.

2 **Sec. 45.25.520. Form of disclosures.** Except as provided in  
3 AS 45.25.460(a)(8)(A), if a disclosure is required by this chapter with respect to a  
4 motor vehicle advertisement, the disclosure must be made in a clear and conspicuous  
5 manner.

6 **Sec. 45.25.590. Definitions.** In AS 45.25.400 - 45.25.590,

7 (1) "advertise," "advertised," "advertising," and "advertisement"  
8 include representations, whether made on or off store premises, made to persons in the  
9 print media, in the broadcast media, on the computer, in a brochure, in a flyer, by  
10 direct mail, by sign, or on a tag;

11 (2) "monroney sticker" means the window sticker required by 15  
12 U.S.C. 1231 - 1233 (Automobile Information Disclosure Act);

13 (3) "motor vehicle," notwithstanding the definition of "motor vehicle"  
14 in AS 45.25.990, means a vehicle, including a trailer, that is required to be registered  
15 under AS 28.10, but does not include a motorcycle;

16 (4) "new motor vehicle," notwithstanding the definition of "new motor  
17 vehicle" in AS 45.25.990, means a motor vehicle that has not been titled to anyone and  
18 still retains the original manufacturer's certificate of origin.

## 19 **Article 5. Sales and Service Contracts.**

20 **Sec. 45.25.600. Title transfer.** A motor vehicle dealer may not transfer the  
21 title for a motor vehicle to a buyer before all of the sale documents, including any  
22 finance contract arranged by the seller, are complete and executed in final form by all  
23 parties to the sale.

24 **Sec. 45.25.610. Sales contracts.** (a) A motor vehicle sales contract must be  
25 in writing, signed by both the seller and buyer, and completed as to all essential  
26 provisions before the signing of the contract by the buyer and before delivery of the  
27 vehicle to the buyer.

28 (b) A motor vehicle dealer may not obtain a signed motor vehicle sales  
29 contract from the buyer until any financing terms reflected on the motor vehicle  
30 installment contract are final and complete.

31 (c) Notwithstanding the requirements of this section, if a motor vehicle dealer

1 arranges financing for a buyer, the motor vehicle dealer may deliver the motor vehicle  
2 to the buyer before final approval by the financing entity if

3 (1) the buyer and seller sign an agreement separate from the motor  
4 vehicle installment contract on an 8 1/2 x 11 inch sheet of paper that clearly and  
5 conspicuously informs the buyer that final financing arrangements have not yet been  
6 approved and that clearly sets out the amount that will be financed, the annual  
7 percentage rate of the finance charge, the amount of the finance charge, the number  
8 and frequency of payments, and the amount of each payment;

9 (2) the separate agreement clearly and conspicuously informs the  
10 buyer that accepting delivery of the vehicle before final financing approval obligates  
11 the buyer to terms of the motor vehicle sales contract if the terms on the separate  
12 agreement are identical to the terms finally approved by the financing entity; and

13 (3) the separate agreement provides that the separate agreement, the  
14 motor vehicle sales contract, and any and all other conditions of the purchase will be  
15 void if any of the terms contained in the separate agreement are changed by either the  
16 motor vehicle dealer or the financing institution as a condition of sale or final  
17 financing approval.

18 (d) If a buyer's final financing is not approved within seven business days  
19 from the date of the separate agreement and, as a result, the transaction is not  
20 completed, the motor vehicle dealer shall return the buyer's entire down payment, and  
21 the buyer's trade-in, if any, shall be returned to the buyer in the same condition and  
22 with not more than 10 miles accumulated on the odometer from when the motor  
23 vehicle was delivered to the motor vehicle dealer.

24 (e) In this section, "sales contract" includes an installment sales contract, a  
25 short-term sales contract, and a single-payment contract.

26 **Sec. 45.25.620. Service contracts.** (a) A motor vehicle service contract must  
27 be in writing and contain all essential provisions regarding the administration of the  
28 contract. If a motor vehicle dealer presents a service contract to the customer as an  
29 "application" for a contract, it must be clearly and conspicuously marked as an  
30 application and must disclose the applicable rules for obtaining a final service  
31 contract.

(b) If a service contract is included in a motor vehicle sale, the seller shall, before delivery of the motor vehicle, give to the buyer a written statement with all pertinent blank spaces filled in that shall be signed by both the buyer and seller and that clearly and conspicuously

- (1) explains the difference between a service contract and a warranty;
- (2) discloses the maker of or obligor on the service contract;
- (3) describes the relationship between the maker and the seller of the service contract;
- (4) for a vehicle that is a used vehicle, notifies the buyer that the seller may not disclaim implied warranties if the seller is the maker or obligor of the service contract; and
- (5) includes all other disclosures required by law.

(c) A motor vehicle dealer may not disclaim or limit implied warranties for a motor vehicle for which the motor vehicle dealer is a maker of a service contract sold for that motor vehicle. However, a motor vehicle dealer may disclaim or limit implied warranties as otherwise allowed by law, regardless of the make or model of the motor vehicle if the motor vehicle dealer is merely the seller, not the maker, of the service contract and does not otherwise extend any written warranties on the motor vehicle that is purchased.

(d) In this section, "maker" means the person that makes, frames, and executes a service contract and assumes any obligation due to the buyer, but does not include a motor vehicle dealer who merely sells the service contract as the agent of a service contract company doing business in this state.

## **Article 6. General Provisions.**

**Sec. 45.25.900. Applicability.** If a provision of this chapter conflicts with another provision of this title, this chapter controls.

**Sec. 45.25.910. Remedial purpose.** The provisions of this chapter are remedial.

**Sec. 45.25.990. Definitions.** In this chapter,

- (1) "dealer" means a new motor vehicle dealer or used motor vehicle dealer;

1                   (2) "dealership" means the business entity that is operated by a motor  
2 vehicle dealer;

3                   (3) "distributor" means a person or entity who sells or distributes new  
4 or used motor vehicles to motor vehicle dealers or who maintains or sends distributor  
5 representatives within or to this state to sell or distribute new or used motor vehicles to  
6 motor vehicle dealers in this state; in this paragraph, "distributor representative"  
7 means a representative employed by a distributor branch, distributor, or wholesaler  
8 who sells or distributes new or used motor vehicles to franchised motor vehicle dealers  
9 in this state;

10                  (4) "distributor branch" means a branch office maintained by a  
11 distributor or wholesaler who sells or distributes new or used motor vehicles to  
12 franchised motor vehicle dealers in this state;

13                  (5) "franchise" means a written arrangement for a definite or indefinite  
14 period in which a manufacturer, distributor, or motor vehicle wholesaler grants to a  
15 motor vehicle dealer a license, sales and service agreement, or contract of any kind to  
16 use a trade name, service mark, or related characteristic, and in which there is a  
17 community of interest in the wholesale or retail marketing of related motor vehicles or  
18 services;

19                  (6) "franchised" means having a franchise;

20                  (7) "fraud" includes a promise or representation not made honestly or  
21 in good faith, and an intentional failure to disclose a material fact;

22                  (8) "good faith" means honesty in fact and the observation of  
23 reasonable commercial standards of fair dealing in the trade;

24                  (9) "lease," except in AS 45.25.150, means a contract by which a  
25 person owning a motor vehicle grants to another person the right to possess, use, and  
26 enjoy the motor vehicle for a specified period of time in exchange for periodic  
27 payment of a stipulated price, and in which the use of the vehicle is granted for a  
28 period of 12 or more months;

29                  (10) "manufacturer" means a person or the person's subsidiary who  
30 manufacturers, imports, distributes, or assembles new motor vehicles and includes an  
31 administrator, a distributor, a distributor branch, and a factory branch; in this

1 paragraph, "factory branch" means a branch office maintained by a manufacturer for  
 2 directing and supervising the representatives of the manufacturer;

3 (11) "manufacturer representative" means any employee or agent of a  
 4 manufacturer who engages in the business of contacting a manufacturer's respective  
 5 franchised dealers for the purpose of making or promoting the sale of the  
 6 manufacturer's vehicles, parts, accessories, or services;

7 (12) "motor vehicle" means a motor vehicle that is required to be  
 8 registered under AS 28.10, but does not include a motor home, a recreational vehicle,  
 9 or a motorcycle;

10 (13) "motor vehicle dealer" has the meaning given in AS 08.66.350,  
 11 except that, in this paragraph, notwithstanding the definition of "motor vehicle" given  
 12 in AS 08.66.350, "motor vehicle" has the meaning given in this section;

13 (14) "motor vehicle salesperson" means a person who is employed by  
 14 a motor vehicle dealer as a salesperson or sales representative to solicit, sell, lease, or  
 15 exchange motor vehicles under the direction of a motor vehicle dealer;

16 (15) "new motor vehicle" means a motor vehicle that has not been  
 17 previously sold to and registered to a person except a distributor, wholesaler, or motor  
 18 vehicle dealer for resale;

19 (16) "new motor vehicle dealer" means a motor vehicle dealer for new  
 20 motor vehicles or for new and used motor vehicles;

21 (17) "sale" means the issuance, transfer, agreement for transfer,  
 22 exchange, gift, pledge, hypothecation, or mortgage in any form, whether by transfer in  
 23 trust or otherwise, of a motor vehicle, an interest in a motor vehicle, or a related  
 24 franchise;

25 (18) "service contract" means an optional agreement that is separate  
 26 from a contract for the sale of a motor vehicle, and that covers certain repair or  
 27 maintenance functions beyond coverage provided by a warranty;

28 (19) "terminate" includes nonrenewal or cancellation;

29 (20) "used motor vehicle" means a motor vehicle that has been  
 30 previously sold to and registered to a person other than a distributor, wholesaler, or  
 31 motor vehicle dealer;



(21) "used motor vehicle dealer" means a motor vehicle dealer for used motor vehicles.

\* **Sec. 10.** AS 45.50.471(b)(33) is amended to read:

(33) violating AS 08.66 [AS 08.66.010 - 08.66.090] (motor vehicle dealers);

\* **Sec. 11.** AS 45.50.471(b) is amended by adding a new paragraph to read:

(43) violating AS 45.25.400 - 45.25.590 (motor vehicle dealer practices).

\* **Sec. 12.** AS 45.50.572 is amended by adding a new subsection to read:

(k) AS 45.50.562 - 45.50.596 do not apply to action taken by a person to comply with AS 45.25 or to action refrained from by a person in order to comply with AS 45.25 (motor vehicle transactions).

\* **Sec. 13.** AS 08.66.090, 08.66.200, 08.66.210, 08.66.220, 08.66.230, 08.66.240, 08.66.250, and 08.66.330 are repealed.

\* **Sec. 14.** The uncoded law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 45.25.020(b), enacted by sec. 9 of this Act, amends Rule 3, Alaska Rules of Civil Procedure, by establishing a different rule for determining where a legal dispute described in AS 45.25.020(a), enacted by sec. 9 of this Act, may be brought.

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

APPLICABILITY. Sections 9, 11, and 12 of this Act apply to a franchise, as that term is defined in AS 45.25.990, added by sec. 9 of this Act that is entered into on or after the effective date of this Act.

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

CONDITIONAL EFFECT. AS 45.25.020(b), enacted by sec. 9 of this Act, takes effect only if sec. 14 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

\* **Sec. 17.** This Act takes effect July 1, 2002.