

SENATE BILL NO. 125

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY SENATORS MEYER, Egan, McGuire

REPRESENTATIVE Kerttula

Introduced: 4/12/11

Referred: Transportation, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain vehicles, including trailers; and relating to motor vehicle**
2 **dealer advertising, motor vehicle dealer sales of used motor vehicles, motor vehicle sales**
3 **contracts, motor vehicle service contracts, and motor vehicle sales financing."**

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

5 * **Section 1.** AS 45.25.400(b) is amended to read:

6 (b) A motor vehicle dealer may use the term "manufacturer's suggested retail
7 price," "MSRP," or "list price" in an advertisement for the sale of a motor vehicle,
8 subject to the restriction on price comparisons in AS 45.25.450 and the following:

9 (1) the manufacturer's suggested retail price or list
10 [ADVERTISED] price must reference the final price listed by the manufacturer on the
11 Monroney sticker, including accessories and options physically attached to the vehicle
12 at the time of delivery to the dealer, plus any transportation charges [, AND MINUS
13 ALL MANUFACTURER DISCOUNTS AND SAVINGS];

14 (2) the manufacturer's suggested retail price or the list price does not

include charges added by the dealer or options added to the vehicle by the dealer; and

(3) whenever using the term "manufacturer's suggested retail price," "MSRP," or "list price," the dealer may not represent that a buyer would save money by paying a price that is lower than the "manufacturer's suggested retail price," "MSRP," or "list price [.]" **unless the representation refers to savings from the manufacturer's suggested retail price," "MSRP," or "list price."**

* **Sec. 2.** AS 45.25.440 is repealed and reenacted to read:

Sec. 45.25.440. Advertised price. A motor vehicle dealer's advertised price for a motor vehicle must include all dealer fees and costs, except for fees, such as licensing fees, registration fees, title transfer fees, and sales taxes, actually paid to a government agency. In this section, "dealer fees and costs" includes dealer preparation fees, document preparation fees, surcharges, and other dealer-imposed fees and costs.

* **Sec. 3.** AS 45.25.450(b) is amended to read:

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

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

(2) the advertised price references the final price listed by the manufacturer on the Monroney sticker; **and**

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

(4) THE DEALER CLEARLY DISCLOSES THAT THE MANUFACTURER'S SUGGESTED RETAIL PRICE, MSRP, OR LIST PRICE MAY NOT REFLECT THE ACTUAL SELLING PRICE FOR THE VEHICLE IN THE DEALER'S TRADE AREA; AND

(5) THE DEALER DOES NOT MAKE A REPRESENTATION IN THE ADVERTISEMENT, INCLUDING A REFERENCE TO A "SALE," "REDUCTION," OR "DISCOUNT," THAT THE COMPARISON REPRESENTS A SAVING TO THE CONSUMER[1].

* **Sec. 4.** AS 45.25.450 is amended by adding new subsections to read:

(e) A motor vehicle dealer may advertise a price comparison for a used motor

1 vehicle only if the reference price is the retail value of the vehicle as specified in the
 2 current edition of a nationally recognized valuation publication for used motor
 3 vehicles.

4 (f) When advertising a price comparison for a used motor vehicle, the
 5 advertisement must identify the source of the reference price, and the motor vehicle
 6 dealer shall make this source available to a potential retail buyer on request.

7 * **Sec. 5. AS 45.25.460(a)** is amended to read:

8 (a) In addition to the provisions of AS 45.50.471 and regulations adopted
 9 under AS 45.50.471, a motor vehicle dealer

10 (1) [SHALL INCLUDE IN AN ADVERTISEMENT OF A MOTOR
 11 VEHICLE FOR SALE ALL FEES OR CHARGES, EXCEPT FEES OR CHARGES
 12 TO BE PAID TO A THIRD PARTY;

13 (2)] may not represent the dealer document preparation fee as a
 14 government fee;

15 (2) [(3)] may not advertise a specific motor vehicle for sale unless the
 16 [WITHOUT IDENTIFYING THE VEHICLE BY EITHER ITS] vehicle identification
 17 number, vehicle stocking number, or license number is disclosed in the
 18 advertisement or made available by the dealer on request of a retail buyer;

19 (3) [(4) MAY NOT ADVERTISE THAT FREE MERCHANDISE,
 20 GIFTS, OR SERVICES WILL BE PROVIDED BY THE DEALER IF A VEHICLE
 21 IS PURCHASED; IN THIS PARAGRAPH, "FREE" INCLUDES MERCHANDISE
 22 OR SERVICES OFFERED FOR SALE AT A PRICE LESS THAN THE DEALER'S
 23 COST FOR THE MERCHANDISE OR SERVICES;

24 (5)] may not use the term "rebate," "cash back," or a similar term in
 25 advertising the sale of a motor vehicle unless the rebate is expressed in a specific
 26 dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor
 27 directly to the retail buyer of the vehicle;

28 (4) [(6)] may not require a person, in order to receive the advertised
 29 credit terms, to pay a higher price for a motor vehicle and any related goods or
 30 services than the cash price the same person would have to pay to purchase the same
 31 vehicle and related goods or services;

(5) [(7)] may not advertise a guaranteed trade-in allowance or range of allowances unless the guarantee is provided by the manufacturer or distributor;

(6) [(8)] may not affix to a new motor vehicle a supplemental price sticker containing a price that represents the dealer's asking price if the supplemental price sticker exceeds the manufacturer's suggested retail price, unless the supplemental sticker

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

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

(C) states, if the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, the difference and describes it as additional dealer markup;

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

(8) [(10)] may not advertise an offer for the sale, lease, or purchase of a motor vehicle that does not contain the name of the dealer;

(9) [(11)] may not represent and sell as a new motor vehicle a demonstrator vehicle or a motor vehicle that is a used motor vehicle; in this paragraph, "demonstrator vehicle"

(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;

(10) [(12)] may not advertise that the dealer finances any person or does not reject any person's credit, or make similar claims;

(11) [(13)] may not 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.

* **Sec. 6.** AS 45.25.465(a) is amended to read:

(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 signed [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.

* **Sec. 7.** AS 45.25.490 is amended to read:

Sec. 45.25.490. Required documentation. A motor vehicle dealer may not enter into a contract to sell [OR OFFER TO SELL] a motor vehicle unless the motor vehicle dealer holds a manufacturer's statement of origin, a title, or another properly executed document reasonably necessary to obtain the statement of origin or title for transfer of the vehicle to the buyer.

* **Sec. 8.** AS 45.25.520 is amended to read:

Sec. 45.25.520. Form of disclosures. Except as provided in AS 45.25.460(a)(6)(A) [AS 45.25.460(a)(8)(A),] if a disclosure is required by this chapter with respect to a motor vehicle advertisement, the disclosure must be made in a clear and conspicuous manner.

* **Sec. 9.** AS 45.25.610(c) is amended to read:

(c) If a motor vehicle dealer arranges financing for a buyer, the motor vehicle dealer may deliver the motor vehicle to the buyer before final approval by the financing entity if

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

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

(3) the separate agreement provides that the [SEPARATE AGREEMENT, THE] motor vehicle sales contract [, AND ANY AND ALL OTHER CONDITIONS OF THE PURCHASE] will be void if any of the terms contained in the separate agreement are changed by either the motor vehicle dealer or the financing institution as a condition of sale or final financing approval.

* **Sec. 10.** AS 45.25.610(d) is amended to read:

(d) If a buyer's final financing is not approved and, as a result, the transaction is not completed, **and if the motor vehicle dealer has delivered the motor vehicle to the buyer, the buyer shall deliver the motor vehicle to the motor vehicle dealer,** the motor vehicle dealer shall return the buyer's entire down payment **less any amount owed to the motor vehicle dealer under (f) and (g) of this section,** and the buyer's trade-in, if any, shall be returned to the buyer in the same condition and with not more than 100 miles accumulated on the odometer from when the **trade-in** motor vehicle was delivered to the motor vehicle dealer.

* **Sec. 11.** AS 45.25.610 is amended by adding new subsections to read:

(f) If a buyer's final financing is not approved and the buyer has made an intentional misrepresentation in a credit application or other financial statement

provided by the buyer to the motor vehicle dealer or to a financing institution, the buyer shall reimburse the motor vehicle dealer for the buyer's use of the motor vehicle that exceeds 100 miles over the odometer reading on the motor vehicle on the date of the initial delivery, at a rate that is the greater of

(1) the business use mileage rate that is applied by the federal Internal Revenue Service at the time the motor vehicle is returned to the motor vehicle dealer; or

(2) \$.45 a mile.

(g) If a buyer's financing is not approved and the buyer has made an intentional misrepresentation as described in (f) of this section, the buyer is responsible for damage to the motor vehicle that occurred while the motor vehicle was in the buyer's possession and for parking tickets, towing fees, storage fees, impound fees, and other similar charges incurred by the buyer for the motor vehicle while the motor vehicle was in the buyer's possession.

* **Sec. 12.** AS 45.25.620(a) is amended to read:

(a) A motor vehicle service contract must be in writing and contain all essential provisions regarding the administration of the contract. [IF A MOTOR VEHICLE DEALER PRESENTS A SERVICE CONTRACT TO THE CUSTOMER AS AN "APPLICATION" FOR A CONTRACT, IT MUST BE CLEARLY AND CONSPICUOUSLY MARKED AS AN APPLICATION AND MUST DISCLOSE THE APPLICABLE RULES FOR OBTAINING A FINAL SERVICE CONTRACT.]

* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 45.25.490, as amended by sec. 7 of this Act, applies to motor vehicle contracts entered into on or after the effective date of this Act. In this subsection, "motor vehicle" has the meaning given in AS 45.25.590.

(b) AS 45.25.610(c), as amended by sec. 9 of this Act, 45.25.610(d), as amended by sec. 10 of this Act, and 45.25.610(f) and (g), added by sec. 11 of this Act, apply to a motor vehicle sales contract or an agreement that is entered into on or after the effective date of this Act. In this subsection,

(1) "agreement" means a separate agreement required by AS 45.25.610(c), as

1 amended by sec. 9 of this Act;

2 (2) "sales contract" has the meaning given in AS 45.25.610.

3 (c) AS 45.25.620(a), as amended by sec. 12 of this Act, applies to a motor vehicle
4 service contract entered into on or after the effective date of this Act. In this subsection,
5 "service contract" has the meaning given in AS 45.25.990.

6 (d) In (b) and (c) of this section, "motor vehicle" has the meaning given in
7 AS 45.25.990.