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Bannister
3/21/18

CS FOR HOUSE BILL NO. 136()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES CLAMAN, Reinbold

A BILL

FOR AN ACT ENTITLED

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

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

4 * **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
5 to read:

6 **LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds that

7 (1) the distribution and sale of motor vehicles in the state affects the general
8 economy of the state and the interests and welfare of the residents of the state;

9 (2) providing warranty service for new motor vehicles is a matter of
10 substantial concern to the residents of the state;

11 (3) the maintenance of fair competition among new motor vehicle dealers is in
12 the public interest;

13 (4) maintaining strong and sound new motor vehicle dealerships in the state is
14 essential to providing the consuming public with continuing and reliable services necessary

for their motor vehicles; and

(5) strong and sound new motor vehicle dealerships with active service departments will provide stable employment opportunities to the residents of the state.

(b) The legislature declares that this Act is remedial, and, to the extent permitted by the Constitution of the State of Alaska and the United States Constitution, it is the intent of the legislature that the provisions of this Act apply to all franchise agreements between manufacturers and new motor vehicle dealers.

* **Sec. 2.** 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 agreements [CONTRACTS] between a manufacturer and its new motor vehicle dealers in this state.

* **Sec. 3.** 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; and

(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 120 [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. 4.** AS 45.25.110 is amended by adding a new subsection to read:

(d) A failure of a new motor vehicle dealer under (a) of this section that relates to the performance of the new motor vehicle dealer in sales, service, or level of customer satisfaction does not amount to good cause under this section if the new

motor vehicle dealer failed to comply and the failure to comply was caused by

(1) an insufficient supply of new motor vehicles; or

(2) 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.

* **Sec. 5.** 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 the motor vehicles have not been materially altered or damaged, all inventory consisting of unsold new motor vehicles that are current models;

(2) the new motor vehicle dealer's net acquisition cost, new motor vehicle [AND] models **from the previous year** that have been acquired from the manufacturer within the past two [MODEL] years before receipt of the notice of termination, **but an adjustment based on mileage over 500 miles may be made;**

(3) [(2)] the new motor vehicle dealer price listed in the current **manufacturer's** 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;

(4) [(3)] fair market value, signs, equipment, and furnishings that bear **the manufacturer's** [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;

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

(6) the lesser of the fair market value or the depreciated 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. 6. AS 45.25.150(b) is amended to read:

(b) This section does not relieve a new motor vehicle dealer of the obligation to mitigate

(1) damages under a lease, prevent a manufacturer from occupying and using the new motor vehicle dealer's facilities while paying rent, or preclude a manufacturer from negotiating a lease termination, sublease, or new lease; or

(2) the costs of the relocation, substantial alteration, and remodeling of the new motor vehicle dealer's facilities for which payments are required under (f) of this section.

* Sec. 7. 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 by the manufacturer 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 to the extent used for the manufacturer's franchise, 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 the termination or is in process when the new motor vehicle dealer receives the notice of termination.

* Sec. 8. 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 to a buyer who is capable of being licensed as a new motor vehicle dealer in this state and who

meets the standards established by the manufacturer, if the standards are reasonable and applied uniformly.

(b) Within 30 days after receipt of a written request from a new motor vehicle dealer for transfer of the ownership of a new motor vehicle dealership, a manufacturer may request, and the new motor vehicle dealer shall promptly provide, supplementary information that is reasonably necessary for the manufacturer to determine whether the manufacturer will approve the request for the transfer. If a manufacturer refuses to approve the transfer, the manufacturer shall give written notice to the new motor vehicle dealer of the refusal. The manufacturer shall give the notice to the new motor vehicle dealer within 75 days after the date the manufacturer has received both the written transfer request and supplementary information requested under this subsection. The notice must state the specific grounds for the refusal to approve the transfer. The manufacturer shall give the notice under this subsection by personal service or certified mail with return receipt requested. If the manufacturer does not give the notice within the time allowed under this subsection and does not exercise a right of first refusal under (c) of this section, the request shall be considered approved.

(c) A manufacturer or distributor may exercise a contractual right of first refusal with respect to the proposed sale or other transfer of the interest of the dealer in a new motor vehicle dealership if

(1) the sale or other transfer is to a person who is not a family member of an owner of the dealership, a managerial employee of the dealership owning 15 percent or more of the dealership, or a corporation, partnership, or other legal entity owned by the existing owners of the dealership; in this paragraph, "family member" means

(A) the spouse of an owner of the dealership;

(B) the child, stepchild, grandchild, brother, sister, or parent of an owner of the dealership; or

(C) a spouse of a person identified in (B) of this paragraph;

(2) the manufacturer or distributor notifies the new motor vehicle dealer in writing of the intent to exercise the right of first refusal; within 30 days after receipt of a written request from a new motor vehicle dealer for transfer of the

ownership of a new motor vehicle dealership, a manufacturer or distributor may request, and the new motor vehicle dealer shall promptly provide, related information generally used by a manufacturer or distributor to conduct its review of a proposed intent to exercise the right of first refusal and supplementary information that is reasonably necessary for the manufacturer or distributor to determine whether the manufacturer or distributor will exercise the right of first refusal; if the manufacturer or distributor decides to exercise the right of first refusal, the manufacturer or distributor shall give written notice to the new motor vehicle dealer of the decision within 75 days after receiving the completed transfer request, related information, and requested supplementary information; the manufacturer or distributor shall give the notice under this subsection by personal service or certified mail with return receipt requested; if the manufacturer or distributor fails to notify the dealer within the 75-day period that the manufacturer or distributor will exercise the right of first refusal, the manufacturer or distributor may not exercise the right of first refusal;

(3) the exercise of the right of first refusal provides to the new motor vehicle dealer the same compensation as, or greater compensation than, the new motor vehicle dealer had negotiated to receive from the proposed buyer or other transferee; and

(4) the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney and accountant fees that do not exceed the usual, customary, and reasonable fees charged for similar work done in the state for other clients, incurred before the manufacturer or distributor exercised its right of first refusal by the proposed buyer or transferee to negotiate and implement the terms of the contract for the sale or transfer.

* **Sec. 9.** 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 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;

(6) whether the manufacturer has denied the manufacturer's existing new motor vehicle dealer of the same line make the opportunity for reasonable growth, market expansion, or relocation; and

(7) whether the proposed relocation is farther away from the protesting new motor vehicle dealer.

* **Sec. 10.** AS 45.25.180 is amended by adding a new subsection to read:

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

* **Sec. 11.** AS 45.25.190 is amended to read:

Sec. 45.25.190. Arbitration. In a controversy between a manufacturer and a new motor vehicle dealer under **AS 45.25.010 - 45.25.310** [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 - 45.25.310** [AS 45.25.010 -

45.25.320] to arbitration, the arbitration shall be conducted under AS 09.43.010 - 09.43.180 (Uniform Arbitration Act) or AS 09.43.300 - 09.43.595 (Revised Uniform Arbitration Act), as applicable, 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.

* **Sec. 12.** AS 45.25 is amended by adding new sections to article 2 to read:

Sec. 45.25.200. Payment and approval of claims. (a) A manufacturer shall pay a new motor vehicle dealer for all warranty work. The manufacturer may not deny a claim for warranty work to resolve a condition discovered and properly repaired by the dealer during the course of a separate repair, if the dealer provides the required documentation demonstrating the need for the repair. A manufacturer shall pay the new motor vehicle dealer for the approved warranty repairs in accordance with the schedule of compensation that applies to the repairs when the new motor vehicle dealer makes the repairs.

(b) A new motor vehicle dealer shall submit a claim for warranty work to the manufacturer within 90 days after the new motor vehicle dealer completes the work on the new motor vehicle. The new motor vehicle dealer shall submit the claim in the manner that the manufacturer requires.

(c) Within 30 days after the manufacturer receives a claim from a new motor vehicle dealer under (b) of this section, the manufacturer shall approve or disapprove the claim in writing or electronically. If a manufacturer does not disapprove a claim as required by this subsection, the claim is considered approved. The manufacturer shall pay the claim within 30 days after the approval of the claim.

(d) If a manufacturer disapproves a claim that the new motor vehicle dealer submits under (b) of this section, a manufacturer shall notify the new motor vehicle dealer in writing or electronically and shall state the reasons for disapproving the claim. 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.

(e) A manufacturer may not initiate or conduct an audit to determine the validity of paid claims for new motor vehicle dealer warranty work unless the

1 manufacturer initiates the audit within one year after the payment of the claim. The
2 manufacturer may not perform more than one audit in a calendar year to determine the
3 validity of paid claims for new motor vehicle dealer warranty work.

4 (f) A manufacturer may not initiate or conduct an audit to determine the
5 validity of paid incentive claims unless the manufacturer initiates the audit within one
6 year after the payment of the claim or the conclusion of the incentive program,
7 whichever event occurs later. The manufacturer may not perform more than one audit
8 in a calendar year to determine the validity of paid incentive claims.

9 (g) Notwithstanding the limitations under (e) and (f) of this section, if a
10 manufacturer reasonably suspects fraud, the manufacturer may audit a dealer for
11 fraudulent claims during any period in which an action for fraud may be commenced
12 under applicable state law.

13 **Sec. 45.25.210. Rates for warranty and other work.** (a) A manufacturer shall
14 provide each of its new motor vehicle dealers with the schedule of compensation that
15 the manufacturer shall pay to the new motor vehicle dealer for warranty work that the
16 manufacturer requires the new motor vehicle dealer to perform for the manufacturer's
17 products.

18 (b) The schedule of compensation must include compensation for parts and
19 labor and must comply with this section. The compensation for parts must include the
20 average retail percentage markup that the new motor vehicle dealer charges.

21 (c) Unless otherwise agreed to by the manufacturer and the new motor vehicle
22 dealer, the rates in the schedule of compensation may not be less than the rates that the
23 new motor vehicle dealer charges retail customers for similar nonwarranty service
24 work.

25 (d) To establish the retail percentage markup, the new motor vehicle dealer
26 shall submit to the manufacturer 100 sequential chronologically issued retail service
27 repair orders paid by customers for warranty-like repairs, or 90 consecutive days of
28 retail service repair orders paid by customers for warranty-like repairs, whichever
29 number of retail service repair orders is less. The retail service repair orders that the
30 new motor vehicle dealer submits must cover retail repairs that the new motor vehicle
31 dealer made less than 180 days before the new motor vehicle dealer submits them to

1 the manufacturer.

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

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

10 (1) repairs for manufacturer special events, manufacturer specials, or
11 manufacturer promotional discounts;

12 (2) parts sold at wholesale;

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

16 (4) nuts, bolts, fasteners, and similar items that do not have an
17 individual part number;

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

19 (6) vehicle reconditioning; and

20 (7) repair orders for motor vehicle body repairs if an insurer pays for
21 the repairs.

22 (g) The retail percentage markup calculated under (d) of this section may not
23 take effect more than 30 days after the manufacturer approves the dealer's proposed
24 rate, or after the manufacturer is considered to have approved the dealer's proposed
25 rate under this section. If a manufacturer does not disapprove the dealer's proposed
26 rate within 30 days after the new motor vehicle dealer submits the rate application,
27 then the dealer's proposed rate shall be considered approved.

28 (h) A manufacturer may disapprove a rate proposed by the new motor vehicle
29 dealer under this section if the manufacturer demonstrates that the proposed rate is
30 materially miscalculated or unreasonable compared to other similarly situated new
31 motor vehicle dealers in this state.

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

3 **Sec. 45.25.220. Performance and reimbursement of certain repairs.** (a)
4 Except as provided in (b) of this section, if a new motor vehicle needs repairs that are
5 covered under a manufacturer's warranty, and if the new motor vehicle is located in a
6 remote location, the manufacturer shall make reasonable efforts to arrange for the new
7 motor vehicle to be repaired in the remote location.

8 (b) If a manufacturer determines that repairs cannot reasonably be made in a
9 remote location within the manufacturer's guidelines, the manufacturer may arrange, at
10 no cost to the owner of the new motor vehicle, to ship the new motor vehicle to a
11 repair facility outside of the remote location and to return the new motor vehicle to the
12 remote location after the repairs are completed.

13 (c) A manufacturer may direct a new motor vehicle dealer of the manufacturer
14 to refer customers of the new motor vehicle dealer to the manufacturer if the new
15 motor vehicles of the customers are located in remote locations and need repairs.

16 (d) This section does not prohibit a manufacturer from allowing a new motor
17 vehicle dealer to subcontract warranty work for a specific new motor vehicle that is
18 located in a remote location. If the manufacturer allows the new motor vehicle dealer
19 to subcontract the warranty work, the manufacturer shall compensate the new motor
20 vehicle dealer for the subcontracted warranty work paid for by the new motor vehicle
21 dealer.

22 (e) In this section, "remote location" means a location that is not accessible by
23 road or that is more than 100 road miles from a new motor vehicle dealer that is
24 authorized to perform warranty work on new motor vehicles.

25 **Sec. 45.25.230. Preparation and service before delivery.** A manufacturer
26 and a distributor shall provide in writing the following information to their new motor
27 vehicle dealers about new motor vehicles and other products received from the
28 manufacturer or distributor:

29 (1) the specific obligations of the new motor vehicle dealer to prepare
30 and service new motor vehicles and products before delivery of the new motor
31 vehicles and products to buyers;

(2) the compensation that the manufacturer or distributor will pay the dealer for performing the preparation and service obligations described in (1) of this section; and

(3) the amount of time that the manufacturer or distributor will allow the new motor vehicle dealer for performing the preparation and service obligations described in (1) of this section.

* **Sec. 13.** AS 45.25.300 is repealed and reenacted to read:

Sec. 45.25.300. Unfair practices. A manufacturer may not

(1) 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 alterations would be unreasonable or if there is not expected to be a sufficient supply of new motor vehicles to justify the change of location or the alterations because of market and economic conditions; this paragraph does not apply to alterations that are necessary to comply with health or safety laws; in this paragraph, "substantial alterations" does not include erecting signs subject to the manufacturer's intellectual property rights, doing interior painting that is necessary to keep a new motor vehicle dealer facility in an attractive condition, or performing routine maintenance;

(2) require a new motor vehicle dealer to purchase or include in inventory a predetermined number or percentage of certified pre-owned motor vehicles or lease return motor vehicles;

(3) except because of reasons beyond the manufacturer's control, refuse or fail to deliver or offer for sale in reasonable quantities to a new motor vehicle dealer holding a franchise for a line make of new motor vehicles sold or distributed by the manufacturer a new motor vehicle, part, or accessory, if the new motor vehicle, part, or accessory is being delivered to other new motor vehicle dealers; this paragraph does not apply to limited edition or limited release vehicle parts or accessories;

(4) require a new motor vehicle dealer to purchase unreasonable advertising displays or other materials or an unreasonable number of signs;

(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 safety and emissions recall campaign parts 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, attempt to coerce, or require a new motor vehicle dealer to

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

(B) participate monetarily in an advertising campaign; or

(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 dealer submitted the order to the manufacturer before the manufacturer provided the new motor vehicle dealer with an official written price increase notification.

* **Sec. 14.** AS 45.25.990(19) is repealed and reenacted to read:

(19) "terminate" includes

(A) canceling or not renewing;

(B) a manufacturer discontinuing the sale and distribution of a new motor vehicle line make covered by a franchise;

* **Sec. 15.** AS 45.25.990 is amended by adding new paragraphs to read:

(22) "schedule of compensation" means a schedule of compensation established under AS 45.25.210;

(23) "warranty work"

(A) means repairs that are covered under a manufacturer's warranty or a recall;

(B) means work that the manufacturer in good will directs be performed and reimbursed by the manufacturer but that is not covered by the manufacturer's warranty or a recall;

(C) does not mean work under a separate service contract.

* **Sec. 16.** AS 45.25.320 is repealed.