

## Sectional Analysis for Senate Bill

Amends the AS 45.25 statutes that govern franchise contracts between a manufacturer and its automobile vehicle dealers in Alaska. This bill does not affect motor homes, recreation vehicles or motorcycles. This bill offers protections to Alaska's automobile dealers. This bill updates the current Alaska statutes using other states, mostly Washington State as a model. Many of the updates are modeled after Washington State statutes. Thus, we are not asking national and international manufacturers to live under new procedures, only to offer the same protections to Alaska's auto dealers that are available to those in other states.

### Section 1

#### Legislative Findings

Declare that it is in the public interest and public welfare to prevent activities between automobile manufacturers and motor vehicle dealers to prevent inflict abuses on the people of the state and to protect investments and properties of people in the state.

### Section 2

#### Repeals and reenacts AS 45.25.010 Applicability:

Provides applicability to the extent it does not violate the state or federal constitutions. It applies to new franchise agreements, existing agreements and those entered into after the effective date of this bill.

### Section 3

#### Amends AS 45.25.110 Termination of franchise agreements:

Amends current law to specify that a manufacturer must provide notice have good cause and act in good faith when terminating a franchise agreement. (This is similar to language found in Washington state law RCW 46.96.030)

### Section 4

#### Adds AS 45.25.115 Good cause and burden of proof

Adds detailed description of "good cause" for termination of franchise, and provides for a reasonable amount of time to correct deficiencies upon notice by manufacturer. Adds additional requirement that manufacturer provide dealer with reasonable performance goals, imposes burden on manufacturer to establish dealers failure to perform was not due to market, economic or other factors beyond dealer's control.

Manufacturer must supply dealer with sufficient inventory to meet established goals, and sufficient documentation to develop a market analysis.

The manufacturer has the burden of proof to establish good cause for termination of the franchise agreement.

(This is similar to language found in Washington state law RCW 46.96.060)

#### Section 5

Amends AS 45.25.120 notice of termination

Addresses notice requirements for termination of franchise. Addresses the effect of discontinuance of the sale of a motor vehicle line by manufacturer. Provides for alternative notice requirements depending upon reason for termination. Adds loss of license to operate a dealership in excess of 30 days as grounds for termination. Maintains allowance for interruption in operations due to “acts of God or circumstances beyond the control of the new motor vehicle dealer.”

(You will find similar language in Washington state law RCW 46.96.070)

#### Section 6

Adds AS 45.25.135 Termination by dealer

Allows the dealer to terminate the franchise agreement by giving the manufacturer 90 days notice.

#### Section 7

Repeals and reenacts AS 45.25.140 Payment for inventory, equipment, and other items.

Provides for manufacturer payments upon termination of the dealer’s franchise. Payment is required for vehicle inventory as well as loaners or demonstrator vehicles, signage if signage was recommended or required by the manufacture, computer hardware and software, and the cost of transporting, handling, packing etc. of vehicles and other property being returned. Provides that in the event of any inconsistency between franchise agreement and statute, statute controls. Also requires that manufacturer pay purchase price within 30 days, rather than 60 days, following termination of franchise and return of property, so long as the dealer provides clear title to the property.

This section is similar to Washington state law (RCW 46.96.080) except that it includes computers. It adds language dealing with current and previous model years because new models year vehicle changes are made at indiscriminant times and different times for various models. The section adds mileage discount for vehicles in the inventory or used for demonstrative purposes.

#### Section 8

Repeals and reenacts AS 45.25.150 Payments for dealership facilities and business.

Addresses payment for facilities upon termination of a franchise agreement. Requires manufacturer, upon dealer request, to pay dealer for its cost of relocating dealership or for making improvements to dealership if required by the manufacturer as condition of retaining franchise required relocation or improvements within 3 years of the termination. Manufacturer must pay dealer rent, if the dealer owns the facility, for up to 24, rather than 18, months, but only to the extent facilities were used for activities under the

franchise agreement. If the facility is leased that manufactures must pay up to 24 months lease payments and may choose to use the property during that period. Finally it requires payment to the dealer if the manufacturer discontinues the sale and distribution of a new motor vehicle line on a nationwide basis. The fair market value of the franchise is as if the dealership were continuing.

This section does not apply when a dealer voluntarily enters into a buy-sell agreement.

#### Section 9

Adds a new Section AS 45.25.155 Application of payment provisions

This section provides that the payment provisions in AS 45.25.140 and 45.25.150 do not apply when the manufacturer terminates the franchise agreement where the dealer is insolvent; fails to conduct regular business for seven consecutive days, except for circumstances beyond dealer's control; is convicted of a felony; the dealer has its license to operate revoked for more than 30 days; the dealer makes fraudulent misrepresentations to the manufacturer; or if the dealer enters into a manufacturer agreement to sell the stock of the dealership.

#### Section 10

Repeals and reenacts AS 45.25.160 Sale, transfer, or exchange of a franchise.

This new section clarifies the reasons a manufacturer may not withhold consent to the sale, transfer or exchange including if the buyer meets the standards normally applied by the manufacturer and the buyer provides appropriate personal and financial information. The manufacturer is required to respond to a request within 60 days. Refusal to approve a sale must include specific grounds for the denial.

This has been added to prevent the manufacturer from waiting until very late in the transaction to issue its denial, or to fail to provide specific grounds as has been the case in sales transactions.

#### Section 11

Adds AS 45.25.175 Mitigation of damages

This section reiterates that the dealer has a responsibility to mitigate the dealer's damages in the case of termination, cancellation, or nonrenewal of the franchise.

#### Section 12

Repeals and reenacts AS 45.25.170 Succession

Current law provides for a successor at the death of the dealer. This change also allows a dealer, after five years of ownership, to appoint a successor designated by the dealer so long as stated conditions are satisfied. The manufacturer may not refuse to honor succession except upon good cause. This section prevents the manufacturer from requiring changes in capitalization as a condition of approving a succession plan. This

section contains notice requirements manufacturer must follow if it refuses to honor succession, requires that manufacturer provide specific reasons for opposing succession, and places burden on manufacturer to prove good cause exists for the refusal to honor a succession.

This section, similar to Washington state law RCW 46.96.110, provides a clear path for planning for a dealer to provide for a successor to the dealer's ownership of the dealership. As in nearly every state in the U.S., Alaska will protect the dealer's ability to transfer ownership upon death, incapacity or retirement to family members or close associates such as a qualified general manager. This provision is necessary because of all the different manufacturer requirements regarding successor plans. For example, in some cases, manufacturers require facility changes or additional capitalization just in order to nominate a successor – even though such requirements are not reasonable or economically justified. There are sufficient protections in this procedure that protect the manufacturer from having to approve a totally unqualified successor. And it also protects the dealer from unreasonable qualifications in order to have an approved successor.

#### Section 13 Repeals and reenacts AS 45.25.180 New or relocated dealerships

This section provides criteria for a manufacturer to follow if it enters into a franchise establishing or relocating a new motor vehicle dealership within a dealer's relevant market area. It allows relocation of existing dealerships or dealerships that operated with the past 24 months.

It requires notification to existing dealerships of the intent to establish a new dealership. The manufacturer must show good cause, as defined in the section, for establishing a new dealership in the current dealer's relevant market area, including the impact on the consuming public, and whether the existing dealer is providing adequate customer sales an service, the growth or decline in population. The manufacturer must offer the existing dealer in the market area the first right of refusal unless it determines specific grounds for denying the opportunity to the existing dealer.

#### Section 14 adds AS 45.25.185 Court Actions

This section is a reorganization of the rights of an motor vehicle dealer to appeal decisions of a manufacturer as to such things as good cause in termination of a franchise, refusal to approve a sale or succession, or the establishment of a new dealership in the existing dealer's relevant market area.

#### Section 15

Adds AS 45.25.195 Rates for warranty and policy work and AS 45.25.200 Discontinuation or reduction of line

AS 45.25.195 is new, and tracks provisions found in Washington State law (RCW 46.96.105) regarding warranty work, rates and providing service in Alaska's rural areas.

In general, it addresses dealer compensation for labor and parts performed by the dealer in connection with performing pre-delivery service, warranty service and policy work. It provides a procedure for establishing dealer rates for parts and service, establishes deadlines for submission of claims to and payment by manufacturers. It also deals with situations when a certified technician is not available. Subsection (v) contains provisions allowing dealers to provide warranty work for consumers over 100 miles from the dealer or in locations not accessible by road.

This requires the manufacturer to pay for warranty work, subsection (l), regardless of whether the vehicle owner or dealer's service discovers the needed repair. Currently dealers can have the cost of warranty work denied unless the owner brought the problem to the dealer's attention.

AS 45.25.200 provides that a dealer may consider discontinuance in the sale or distribution of a motor vehicle line or material reduction in the selection of new motor vehicles to the extent it is not economically viable to continue the retail line a termination of the franchise agreement.

## Section 16

### Adds AS 45.25.330 Unfair practices

This section is entirely new, and contains a detailed list of prohibited manufacturer practices. The section prohibits a manufacturer from imposing unreasonable facility requirements that would not increase economic viability of the franchise, deals with fair pricing and allocation from the manufacturer, prohibits withholding product to coerce action by the dealer, permits dealers to sell products of more than one manufacturer, prohibits the manufacturer from competing with dealers, force participation in advertising not specific to dealership, or control a dealer's senior management without cause. Again, Washington state law RCW 46.96.185 is used as a model for this section.

Subsections (1), (2) and (3) deal with equal pricing to the dealer, protecting smaller dealers from unfair treatment based on volumes not possible in smaller areas. They deal with manufacturers requiring dealers to sell certain items to receive after-sale rebates or incentives.

Subsection (4) deals with fair allocation of new motor vehicles.

Subsection (5) prohibits a manufacturer from impairing a dealer's right to a documentary fee, which under Alaska law must be disclosed, when it participates in factory marketing programs such as dealer employee, factory employee, friends and family plans, or any similar factory instigated promotion.

Subsection (6) prohibits manufacturers from giving preferential treatment to any dealer by refusing or failing to deliver vehicles, parts and accessories in reasonable quantity or time after receipt of an order. It also prohibits the manufacturer from requiring dealers to

purchase unreasonable advertising displays or other materials, or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles.

Subsection (7) provides that a manufacturer may not fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line make.

Subsection (8), (9) and (10) provide that the manufacturer may not compete with the dealer in sales or service of the motor vehicles or contraction with an entity to compete.

Subsection (11) requires manufacturers keep confidential and proprietary dealer information confidential. They may not use it competitively against its dealer and it may not sell such information to any other entity.

Subsection (12) and (13) prohibit termination of a franchise because the dealer sells another line of motor vehicles, relocated to a consolidated facility, or fails to move or make substantial alterations to the current facility. The manufacturer may not use coercion to prevent a dealer from acquiring or selling another motor vehicle line.

Subsection (14) prohibits a manufacturer from requiring a new motor vehicle dealer build, expand, or add to any dealership facility unless it is required of all or other situated new motor vehicle dealers and unless the manufacturer can satisfy its burden of proof that such requirement is supported by factors including economic conditions and market considerations.

Subsection (15) prohibits a manufacturer from requiring a dealer to order or accept certain new motor vehicles, parts, accessories, equipment, promotional materials, display devices, display decorations, or other item not otherwise required by law that is not voluntarily ordered by the dealer.

Subsection (16) provides that a manufacturer may not coerce a dealer to join, contribute monetarily to, or affiliate with an advertising association or participate in any advertising campaign. It does provide that a dealer who chooses to join, contribute to or affiliate with and advertising association, the manufacturer may not require the dealer to run pre-packaged radio, television, or newspaper advertising that tags the advertisement to the association rather than to the contributing dealer.

Subsection (17) provides a manufacturer cannot prevent a dealer from choosing its own executive management unless the manufacturer can show that a member of executive management does not result in a person or persons who are not of good moral character or who do not meet reasonable, preexisting and equitably applied standards of the manufacturer.

Subsection (18) prohibits a manufacturer conditioning the sale, transfer, relocation or renewal of a franchise upon the manufacturer obtaining site control, including rights to

purchase or lease the dealer's facility, or an agreement to make improvements or substantial renovations to a facility.

Subsection (19) prohibits a manufacturer from coercing, threatening, intimidating or requiring a dealer from protesting the establishment or relocation of another motor dealer in the relevant market area as a condition of granting or renewing a franchise agreement.

Subsection (20) prohibits a manufacturer from requiring unreasonable capital investment by the dealer in the dealership.

Subsection (21) prohibits a manufacturer from increasing the price of any vehicle on order if there is a bona fide sale of the vehicle before the manufacturer's published price increase.

Subsection (22) prohibits a manufacturer from delivering a vehicle to an Alaska dealer that does not, in every way, comply with Alaska mandated equipment laws.

Subsection (23) prohibits a manufacturer from failing to indemnify and hold harmless its dealers in this state from any judgment for damages or settlement approved in writing by the manufacturer or required by the franchise agreement.

Subsection (b) provides exceptions to the provisions of (a)(1) – (3) concerning sales including federal agencies, driver's education, fleets and promotions.

Subsection (c) provides definitions of control, lease return vehicles, operate, and own as used in this section.

Section 17 Repeals and reenacts AS 45.25.990(19) to define termination by adding cancel, not renew, discontinue and make reduction in supply or line under AS 45.25.200 under its definition.

#### Section 18

Adds "line make" and "relevant market area" to the list of definitions.

#### Section 19

Repeals AS 45.25.110(b), dealer death is dealt with in new AS 45.25.170

Repeals AS 45.25.110(c), "good cause" is now found in new section AS 45.25.115.

Section 20 provides a transition for the schedule of compensation.