

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/22/02

Referred: 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 and bonding of motor vehicle dealers; eliminating certain registration and
3 other requirements for certain motor vehicle buyers' agents; relating to acts and
4 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; and providing for an effective date."

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

8 * **Section 1.** AS 08.66.010 is amended to read:

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

13 * **Sec. 2.** AS 08.66.030 is amended to read:

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

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

5 (2) the location of the business;

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

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

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

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

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

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

21 * **Sec. 3.** AS 08.66.040 is amended to read:

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

30 * **Sec. 4.** AS 08.66.050 is amended to read:

31 **Sec. 08.66.050. Renewal of registration.** A dealer shall renew the

1 registration required by **this chapter** [AS 08.66.010 - 08.66.090] before January 1
 2 every two years.

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

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

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

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

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

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

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

25 * **Sec. 6.** AS 08.66.070 is amended to read:

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

1 * **Sec. 7.** AS 08.66.080 is amended to read:

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

6 * **Sec. 8.** AS 08.66.090 is repealed and reenacted to read:

7 **Sec. 08.66.090. Definitions.** In this chapter,

8 (1) "dealer" means a person, other than a manufacturer, who sells,
9 leases, or solicits the sale or lease of five or more new or used motor vehicles in any
10 12 consecutive months, regardless of who owns the vehicles; "dealer" does not include

11 (A) a receiver, a trustee, an administrator, an executor, a
12 guardian, or another person appointed by a court or a person performing duties
13 as a public officer;

14 (B) a person disposing of a motor vehicle acquired and actually
15 used for the person's own use or for the use of a family member of the person,
16 or acquiring a motor vehicle for the person's own use or for the use of a family
17 member of the person if the vehicle is acquired and used in good faith and not
18 for the purpose of avoiding the provisions of this chapter;

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

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

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

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

28 (3) "motor vehicle" means a motor vehicle that is required to be
29 registered under AS 28.10.

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

31 **Chapter 25. Motor Vehicle Transactions.**

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

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

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

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

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

14 **Article 2. Franchise Agreements.**

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

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

21 (1) the manufacturer has

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

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

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

1 dealership.

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

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

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

16 (1) 90 days before the effective date of a termination, except as
17 required under (2) or (3) of this subsection;

18 (2) 15 days before the effective date of a termination when the new
19 motor vehicle dealer

20 (A) is insolvent or is the subject of a bankruptcy or receivership
21 proceeding;

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

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

29 (3) 180 days before the effective date of the termination if the
30 manufacturer or distributor is discontinuing the sale of the product line.

31 (b) Notice required under (a) of this section must be in writing, shall be sent

1 by certified mail or personally delivered to the new motor vehicle dealer, and must
2 contain

- 3 (1) a statement of intention to terminate the franchise;
- 4 (2) a statement of the reasons for the termination; and
- 5 (3) the date on which the termination takes effect.

6 **Sec. 45.25.130. Threat of termination.** (a) A manufacturer or manufacturer
7 representative may not coerce or attempt to coerce a new motor vehicle dealer to enter
8 into an agreement with the manufacturer or a subsidiary of the manufacturer, or to do
9 any other act unfair to the new motor vehicle dealer, by threatening to terminate a
10 franchise agreement between the manufacturer or subsidiary of the manufacturer and
11 the new motor vehicle dealer.

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

15 **Sec. 45.25.140. Repurchase obligations on termination.** (a) Upon the
16 termination of a new motor vehicle dealer's franchise agreement by the manufacturer
17 or distributor, the manufacturer or distributor shall repurchase from the new motor
18 vehicle dealer at

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

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

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

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

4 (b) Within 90 days after the effective date of the termination, the new motor
5 vehicle dealer shall return the property required by (a) of this section to be
6 repurchased to the manufacturer or distributor at the manufacturer's or distributor's
7 expense. The manufacturer or distributor shall pay the compensation for the property
8 within 60 days after the tender of inventory and other items if the new motor vehicle
9 dealer has clear title to the property and is in a position to convey that title to the
10 manufacturer or distributor. If the property is subject to a security interest, the
11 manufacturer or distributor may make payment jointly to the new motor vehicle dealer
12 and the holder of the security interest, and the manufacturer or distributor may offset
13 these payments.

14 **Sec. 45.25.150. Required compensation for new motor vehicle dealer**
15 **facilities.** (a) Upon termination by the manufacturer or distributor, the manufacturer
16 or distributor shall compensate the new motor vehicle dealer for new motor vehicle
17 dealer facilities a sum equivalent to the

18 (1) rent for the unexpired term of the lease or 18 months, whichever
19 period is shorter, if the new motor vehicle dealer is leasing the new motor vehicle
20 dealership facilities from a lessor other than the manufacturer or distributor; or

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

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

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

31 (1) insolvency of the new motor vehicle dealer or the filing of any

1 petition by or against the new motor vehicle dealer under a bankruptcy or receivership
2 law;

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

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

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

11 (5) a fraudulent misrepresentation by the new motor vehicle dealer to
12 the manufacturer or distributor that is material to the new motor vehicle dealer's
13 agreement.

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

17 (e) If payment under (a) of this section is made, the manufacturer or
18 distributor is entitled to possession and use of the new motor vehicle dealership
19 facilities for the period for which the payment is paid.

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

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

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

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

5 (3) the manufacturer or distributor may not unreasonably withhold
6 approval of the succession; if the manufacturer or distributor refuses to honor the
7 succession, the manufacturer or distributor shall send written notice to the proposed
8 successor within 60 days after receiving the information requested in (2) of this
9 subsection or within 60 days after receiving the notice of the proposed successor's
10 intent to succeed, whichever is later.

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

16 (c) This section does not preclude the owner of a new motor vehicle
17 dealership from filing with the manufacturer or distributor a written instrument
18 designating any person as a successor. If there are competing successors, the written
19 instrument governs who may submit a proposal as a successor.

20 **Sec. 45.25.180. New dealerships.** (a) Before a manufacturer or distributor
21 enters into a franchise establishing or relocating a new motor vehicle dealer within a
22 relevant market area where the same line make is represented, the manufacturer or
23 distributor shall give 90 days' written notice to each new motor vehicle dealer of the
24 same line make in the relevant market area of the intention to establish an additional
25 new motor vehicle dealer or to relocate an existing new motor vehicle dealer within
26 that relevant market area.

27 (b) Within 30 days after receiving the notice required under (a) of this section
28 or within 30 days after the end of any appeal procedure provided by the manufacturer
29 or distributor, a new motor vehicle dealer may bring a declaratory judgment action in
30 the superior court of this state to determine whether good cause exists for the
31 establishment or relocation of a proposed new motor vehicle dealer. If an action is

1 filed, the manufacturer or distributor may not establish or relocate the proposed new
2 motor vehicle dealer until the court has rendered a decision on the matter.

3 (c) This section does not prohibit

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

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

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

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

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

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

24 (3) the investment necessarily made and obligations incurred by the
25 protesting new motor vehicle dealer to perform the protesting new motor vehicle
26 dealer's obligations under existing franchise agreements;

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

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

1 (e) In this section,

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

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

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

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

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

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

20 **Sec. 45.25.300. New motor vehicle dealership location and facilities.** A
21 manufacturer may not require, coerce, or attempt to coerce a new motor vehicle dealer
22 to change the location of the new motor vehicle dealership, or to make any substantial
23 alterations to the new motor vehicle dealership premises or facilities if the change or
24 alteration would be unreasonable or if there is not a sufficient supply of new motor
25 vehicles to justify the expansion in light of the current market and economic
26 conditions.

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

31 **Sec. 45.25.320. Claim audits and charge backs.** A manufacturer or

1 distributor may not audit a claim, deny a claim, reduce the amount of a claim to be
 2 reimbursed to a new motor vehicle dealer, or charge back a portion of the claim to a
 3 new motor vehicle dealer if 18 or more months have passed since the new motor
 4 vehicle dealer submitted the claim. In this section, "claim" means a claim made by a
 5 new motor vehicle dealer for compensation by the manufacturer or distributor for sales
 6 incentives, warranty repairs, service incentives, and related expenses.

7 **Article 4. Dealer Practices.**

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

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

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

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

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

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

28 **Sec. 45.25.420. Display of motor vehicles.** A motor vehicle dealer shall
 29 display all vehicles advertised for sale for the duration of the sale period in a
 30 conspicuous and clearly visible location on the dealer's premises. The advertised sale
 31 price for each vehicle must be clearly marked on the vehicle so the consumer can

1 readily identify the advertised price for the vehicle.

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

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

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

11 **Sec. 45.25.440. Advertised price.** (a) When selling a motor vehicle, a motor
12 vehicle dealer may not charge dealer fees or costs, except for fees actually paid to a
13 state agency for licensing, registration, or title transfers, unless the fees or costs are
14 included in the advertised price.

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

17 **Sec. 45.25.450. Advertised price comparisons, reductions, and discounts.**
18 (a) A motor vehicle dealer may not make a price comparison, price reduction, or price
19 discount in an advertisement unless the comparison, reduction, or discount complies
20 with this section.

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

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

25 (2) the advertised price references the final price listed on the
26 monroney sticker, including accessories and options physically attached to the vehicle
27 at the time of delivery to the dealer, plus any transportation charges and minus all
28 manufacturer discounts and savings;

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

31 (4) the dealer clearly discloses that the manufacturer's suggested retail

1 price, MSRP, or list price may not reflect the actual selling price for the vehicle in the
2 dealer's trade area; and

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

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

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

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

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

15 (d) A motor vehicle dealer shall be in possession of documents and all other
16 information necessary to substantiate all reference price claims when the claims are
17 made and shall maintain this information in a readily accessible place for two years
18 after the time the reference price claims are made.

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

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

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

28 (3) advertise a specific motor vehicle for sale without identifying the
29 vehicle by either its vehicle identification number, vehicle stocking number, or license
30 number;

31 (4) advertise that free merchandise, gifts, or services will be provided

1 by the dealer if a vehicle is purchased; in this paragraph, "free" includes merchandise
 2 or services offered for sale at a price less than the dealer's cost for the merchandise or
 3 services;

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

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

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

14 (8) affix to a new motor vehicle a supplemental price sticker
 15 containing a price that represents the dealer's asking price, if the supplemental price
 16 sticker exceeds the manufacturer's suggested retail price, unless the supplemental
 17 sticker

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

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

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

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

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

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

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

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

15 (A) means a motor vehicle

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

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

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

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

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

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

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

31 **Sec. 45.25.470. Sales of used motor vehicles.** (a) Before the sale of a used

1 motor vehicle, a motor vehicle dealer shall

2 (1) when obtaining a used motor vehicle, by purchase or otherwise,
3 that the dealer intends to resell, make a reasonable inquiry of the seller about the
4 condition of the vehicle, including the vehicle's accident and repair history, to
5 determine if the vehicle has any known material defects;

6 (2) conduct a reasonable inspection of the vehicle, including a test
7 drive and visual inspection, for material defects;

8 (3) if the dealer has information that reasonably should lead the dealer
9 to know of the potential for a material defect in a used motor vehicle, conduct a further
10 inspection of the vehicle, including, at a minimum, placing the vehicle on a rack and
11 inspecting under the hood.

12 (b) A motor vehicle dealer shall make available to all sales staff and provide in
13 writing to a prospective buyer of the vehicle before sale all information obtained by a
14 motor vehicle dealer under this section, along with all information relating to repairs
15 made to the vehicle by the dealer.

16 (c) In (a) of this section, "material defect" means a condition that impairs the
17 safe operation of a motor vehicle by a reasonable person.

18 **Sec. 45.25.480. Sales of vehicles manufactured for sale in a foreign**
19 **country.** Before sale, a motor vehicle dealer shall disclose in writing whether a motor
20 vehicle was originally manufactured for sale in Canada or another foreign country.

21 **Sec. 45.25.490. Identification number plates.** A motor vehicle dealer may
22 not knowingly purchase or sell a vehicle that has an altered or removed vehicle
23 identification number plate, or alter or remove a vehicle identification number plate.

24 **Sec. 45.25.500. Required documentation.** A motor vehicle dealer may not
25 sell or offer to sell a motor vehicle unless the motor vehicle dealer holds a
26 manufacturer's statement of origin, a title, or another properly executed document
27 reasonably necessary to obtain the statement of origin or title for transfer of the
28 vehicle to the buyer.

29 **Sec. 45.25.510. Trade-ins.** A motor vehicle dealer may not transfer title to a
30 trade-in vehicle or perform any repairs or reconditioning on a trade-in vehicle before
31 the completion of the sales transaction for which the vehicle is a trade-in.

1 **Sec. 45.25.520. Disclosure of damages.** (a) Before entering into a new
 2 motor vehicle sales contract, a new motor vehicle dealer shall disclose in writing to a
 3 buyer of the new motor vehicle any known damage and repair to the new motor
 4 vehicle if the damage exceeds five percent of the manufacturer's suggested retail price
 5 as calculated at the dealer's authorized warranty rate for labor and parts. A new motor
 6 vehicle dealer is not required to disclose to a buyer that glass, tires, bumpers, or
 7 cosmetic parts of a new motor vehicle were damaged at any time if the damaged item
 8 has been replaced with original or comparable equipment. A replaced part is not part
 9 of the cumulative damage required to be disclosed under this subsection.

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

13 (c) In this section,

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

17 (2) "manufacturer's suggested retail price" means the retail price of the
 18 new motor vehicle suggested by the manufacturer and includes the retail delivered
 19 price suggested by the manufacturer for each accessory or item of optional equipment
 20 physically attached to the new motor vehicle at the time of delivery to the new motor
 21 vehicle dealer that is not included within the retail price suggested by the manufacturer
 22 for the new motor vehicle.

23 **Sec. 45.25.530. Form of disclosures.** Except as provided by
 24 AS 45.25.460(a)(8)(A), if a disclosure is required by this chapter with respect to a
 25 motor vehicle advertisement, the disclosure must be made in at least 12 point bold
 26 type and in the same font style as the advertisement generally.

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

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

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

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

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

9 **Article 5. Sales and Service Contracts.**

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

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

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

21 (c) Notwithstanding the requirements of this section, if a motor vehicle dealer
22 arranges financing for a buyer, the motor vehicle dealer may deliver the motor vehicle
23 to the buyer before final approval by the financing entity if

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

30 (2) the separate agreement clearly and conspicuously informs the
31 buyer that accepting delivery of the vehicle before final financing approval obligates

1 the buyer to terms of the motor vehicle sales contract if the terms on the separate
2 agreement are identical to the terms finally approved by the financing entity; and

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

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

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

16 **Sec. 45.25.620. Service contracts.** (a) A motor vehicle service contract must
17 be in writing and contain all essential provisions regarding the administration of the
18 contract. If a motor vehicle dealer presents a service contract to the customer as an
19 "application" for a contract, it must be clearly and conspicuously marked as an
20 application and must disclose the applicable rules for obtaining a final service
21 contract.

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

26 (1) explains the difference between a service contract and a warranty;

27 (2) discloses the maker of or obligor on the service contract;

28 (3) describes the relationship between the maker and the seller of the
29 service contract;

30 (4) for a vehicle that is a used vehicle, notifies the buyer that the seller
31 may not disclaim implied warranties if the seller is the maker or obligor of the service

1 contract; and

2 (5) includes all other disclosures required by law.

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

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

14 **Article 6. General Provisions.**

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

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

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

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

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

24 (3) "distributor" means a person or entity who sells or distributes new
25 or used motor vehicles to motor vehicle dealers or who maintains or sends distributor
26 representatives within or to this state to sell or distribute new or used motor vehicles to
27 motor vehicle dealers in this state; in this paragraph, "distributor representative"
28 means a representative employed by a distributor branch, distributor, or wholesaler
29 who sells or distributes new or used motor vehicles to franchised motor vehicle dealers
30 in this state;

31 (4) "distributor branch" means a branch office maintained by a

1 distributor or wholesaler who sells or distributes new or used motor vehicles to
2 franchised motor vehicle dealers in this state;

3 (5) "family member" means a spouse, child, stepchild, grandchild,
4 stepgrandchild, parent, stepparent, brother, stepbrother, sister, or stepsister;

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

11 (7) "franchised" means having a franchise;

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

14 (9) "good faith" means honesty in fact and the observation of
15 reasonable commercial standards of fair dealing in the trade;

16 (10) "lease," except in AS 45.25.150, means a contract by which a
17 person owning a motor vehicle grants to another person the right to possess, use, and
18 enjoy the motor vehicle for a specified period of time in exchange for periodic
19 payment of a stipulated price, and in which the use of the vehicle is granted for a
20 period of 12 or more months;

21 (11) "manufacturer" means a person or the person's subsidiary who
22 manufactures, imports, distributes, or assembles new motor vehicles and includes an
23 administrator, a distributor, a distributor branch, and a factory branch; in this
24 paragraph, "factory branch" means a branch office maintained by a manufacturer for
25 directing and supervising the representatives of the manufacturer;

26 (12) "manufacturer representative" means any employee or agent of a
27 manufacturer who engages in the business of contacting a manufacturer's respective
28 franchised dealers for the purpose of making or promoting the sale of the
29 manufacturer's vehicles, parts, accessories, or services;

30 (13) "motor vehicle" means a motor vehicle that is required to be
31 registered under AS 28.10, but does not include a motor home, a recreational vehicle,

1 or a motorcycle;

2 (14) "motor vehicle dealer" means a person, other than a manufacturer,
3 who sells, leases, solicits, or arranges for sale or lease, of five or more new or used
4 motor vehicles in any 12 consecutive months, regardless of who owns the vehicles;
5 "motor vehicle dealer" does not include

6 (A) a receiver, trustee, administrator, executor, guardian, or
7 other person appointed by a court or a person performing duties as a public
8 officer;

9 (B) a person disposing of a motor vehicle acquired and actually
10 used for the person's own use or for the use of a family member of the person
11 if the vehicle is acquired and used in good faith and not for the purpose of
12 avoiding the provisions of this chapter;

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

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

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

21 (F) a person acquiring an interest in a motor vehicle for a
22 family member of the person;

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

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

29 (17) "new motor vehicle dealer" means a motor vehicle dealer for new
30 motor vehicles or for new and used motor vehicles;

31 (18) "sale" means the issuance, transfer, agreement for transfer,

1 exchange, gift, pledge, hypothecation, or mortgage in any form, whether by transfer in
2 trust or otherwise, of a motor vehicle, an interest in a motor vehicle, or a related
3 franchise;

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

7 (20) "terminate" includes nonrenewal or cancellation;

8 (21) "used motor vehicle" means a motor vehicle that has been
9 previously sold to and registered to a person other than a distributor, wholesaler, or
10 motor vehicle dealer;

11 (22) "used motor vehicle dealer" means a motor vehicle dealer for used
12 motor vehicles.

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

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

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

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

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

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

23 * **Sec. 13.** AS 08.66.015, 08.66.200, 08.66.210, 08.66.220, 08.66.230, 08.66.240,
24 08.66.250, 08.66.260, 08.66.270, 08.66.280, 08.66.290, 08.66.300, 08.66.310, 08.66.320,
25 08.66.330, 08.66.350; and AS 45.50.471(b)(34) are repealed.

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

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

31 * **Sec. 15.** This Act takes effect July 1, 2002.