

CS FOR HOUSE BILL NO. 182(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/11/02

Referred: Rules

Sponsor(s): REPRESENTATIVES MURKOWSKI, Halcro, Hayes

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

6 (2) the location of the business;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the amount of the bond.

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

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

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

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

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

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

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

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

16 (A) means

17 (i) a buyer's agent; or

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

22 (B) does not include

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

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

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

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

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

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

11 **Chapter 25. Motor Vehicle Transactions.**

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

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

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

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

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

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

27 **Article 2. Franchise Agreements.**

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

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

3 (1) the manufacturer has

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

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

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

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

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

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

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

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

1 motor vehicle dealer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (c) This section does not prohibit

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

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

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

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

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

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

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

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

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

14 (e) In this section,

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

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

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

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

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

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

2 **Sec. 45.25.300. New motor vehicle dealership location and facilities.** A
 3 manufacturer may not require, coerce, or attempt to coerce a new motor vehicle dealer
 4 to change the location of the new motor vehicle dealership, or to make any substantial
 5 alterations to the new motor vehicle dealership premises or facilities if the change or
 6 alteration would be unreasonable or if there is not a sufficient supply of new motor
 7 vehicles to justify the expansion in light of the current market and economic
 8 conditions.

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

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

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

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

25 **Article 4. Dealer Practices.**

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

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

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

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

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

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

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

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

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

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

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

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

1 included in the advertised price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (A) means a motor vehicle

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

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

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

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

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

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

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

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

19 **Sec. 45.25.480. Identification number plates.** A motor vehicle dealer may
 20 not knowingly purchase or sell a vehicle that has an altered or removed vehicle
 21 identification number plate, or alter or remove a vehicle identification number plate.

22 **Sec. 45.25.490. Required documentation.** A motor vehicle dealer may not
 23 sell or offer to sell a motor vehicle unless the motor vehicle dealer holds a
 24 manufacturer's statement of origin, a title, or another properly executed document
 25 reasonably necessary to obtain the statement of origin or title for transfer of the
 26 vehicle to the buyer.

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

30 **Sec. 45.25.510. Disclosure of damages.** (a) Before entering into a new
 31 motor vehicle sales contract, a new motor vehicle dealer shall disclose in writing to a

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

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

11 (c) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (3) describes the relationship between the maker and the seller of the
27 service contract;

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

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

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

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

12 **Article 6. General Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 * **Sec. 13.** AS 08.66.090, 08.66.200, 08.66.210, 08.66.220, 08.66.230, 08.66.240,
2 08.66.250, and 08.66.330 are repealed.

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

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

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

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

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

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

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