

**SENATE BILL NO. 189**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

**BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST**

**Introduced: 4/11/01**

**Referred: Labor and Commerce, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to motor vehicles; and providing for an effective date."**

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

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

5 LEGISLATIVE FINDINGS. The legislature finds that

6 (1) the manufacture, distribution, and sale of motor vehicles in the state vitally  
7 affects the general economy of the state and the public interest and public welfare;

8 (2) motor vehicle distributors and the manufacturers of motor vehicles whose  
9 physical manufacturing facilities are not located in the state are in fact doing business in the  
10 state through their control over, relationships with, and transactions with their dealers in the  
11 state;

12 (3) the geographical location of the state makes it necessary to ensure the  
13 availability of motor vehicles and parts and dependable service for motor vehicles throughout  
14 the state to protect and preserve the transportation system, the public safety and welfare, and  
15 the investments of residents; and

1 (4) it is necessary to regulate and license motor vehicle manufacturers and  
 2 distributors and their branches and representatives, motor vehicle dealers, and other persons  
 3 engaged in the business of selling, repairing, or purchasing vehicles in the state in order to  
 4 prevent fraud and other abuses against residents and to protect and preserve the economy, the  
 5 transportation system, the public safety and welfare, and the investments of residents.

6 \* **Sec. 2.** AS 45 is amended by adding a new chapter to read:

7 **Chapter 25. Motor Vehicle Transactions.**

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

9 **Sec. 45.25.010. Applicability.** The provisions of this chapter are declared to  
 10 be remedial and apply to a contract, franchise, or other agreement between a  
 11 manufacturer and its respective dealers in this state.

12 **Sec. 45.25.020. Jurisdiction; choice of law.** The courts of this state have  
 13 jurisdiction over a legal dispute between a manufacturer located in or outside this state  
 14 and a dealer located in this state, and the dispute is governed by and interpreted and  
 15 adjudicated under the law of this state.

16 **Sec. 45.25.030. Corporate affiliates.** A manufacturer may not use a  
 17 subsidiary corporation, affiliated corporation, partnership, association, or other person  
 18 to accomplish what would otherwise be prohibited conduct under this chapter. This  
 19 section does not limit the right of an entity included within the scope of this section to  
 20 engage in reasonable and appropriate business practices consistent with an existing  
 21 trade practice that is not prohibited by this chapter.

22 **Article 2. Licensing.**

23 **Sec. 45.25.100. Licenses required.** A person may not act as a new or used  
 24 motor vehicle dealer or a motor vehicle salesperson or as a motor vehicle  
 25 manufacturer, factory branch, factory representative, distributor, distributor branch,  
 26 distributor representative, administrator, wholesaler, or subsidiary engaged in the  
 27 business of selling, leasing, brokering, or exchanging motor vehicles in this state  
 28 without first obtaining a license as provided in this chapter.

29 **Sec. 45.25.110. Application and issuance of license.** (a) An application for  
 30 a license required under this chapter shall be made on a form prescribed by the  
 31 commissioner and must contain the information that the commissioner reasonably

1 believes is necessary for the issuance of the license.

2 (b) An applicant for a license may apply for issuance of a license by  
3 complying with the application process specified in this chapter and the regulations  
4 adopted by the commissioner.

5 (c) The commissioner shall issue a license applied for in compliance with the  
6 provisions of this chapter when the commissioner determines that the applicant meets  
7 the requirements of this chapter and regulations adopted by the commissioner. A  
8 license shall be timely issued and may not be unreasonably withheld.

9 **Sec. 45.25.120. Manufacturer license.** (a) The commissioner may issue a  
10 manufacturer license that permits the licensee to engage in the business of

11 (1) constructing or assembling vehicles of the type subject to  
12 registration under AS 28.10 at an established place within the state;

13 (2) selling and distributing the licensee's vehicles, parts, accessories,  
14 and services to its franchised dealers; and

15 (3) contacting prospective authorized dealers for the purpose of  
16 making or promoting the sale of the licensee's vehicles, parts, accessories, and  
17 services.

18 (b) An application for a license for a manufacturer must contain the address of  
19 the manufacturer's principal place of business, the address where notices may be sent,  
20 and the address of the manufacturer's registered agent in this state and must be  
21 accompanied by the manufacturer's annual report, a list of its franchised new motor  
22 vehicle dealers in this state, and the annual fee.

23 (c) An applicant for licensing by the commissioner as a manufacturer that uses  
24 an identical or substantially similar franchise form agreement for its dealers or  
25 distributors in this state shall, as a condition for the issuance of a license, file with the  
26 commissioner a copy of the franchise form agreement and all addenda and  
27 supplements to the agreement.

28 (d) The annual fee for a fiscal year or part of a fiscal year for a manufacturer  
29 license is \$1,500.

30 **Sec. 45.25.130. Manufacturer representative license.** (a) The  
31 commissioner may issue a manufacturer representative license that permits the

1 licensee to engage in the business of contacting the manufacturer's respective  
 2 franchised dealers for the purpose of making or promoting the sale of the  
 3 manufacturer's vehicles, parts, accessories, and services.

4 (b) An application for a manufacturer representative license must contain the  
 5 name and address of the manufacturer, the name of the manufacturer representative, a  
 6 list of the franchised new motor vehicle dealers the representative contacts in this  
 7 state, and the annual fee.

8 (c) The annual fee for each fiscal year or part of a fiscal year for a  
 9 manufacturer representative license is \$50.

10 **Sec. 45.25.140. Dealer license.** (a) The commissioner may issue a motor  
 11 vehicle dealer license that permits the licensee to engage in the business of servicing,  
 12 selling, leasing, brokering, or exchanging new and used vehicles of any kind and to  
 13 engage in all other business pursuits that are reasonably associated with a new or used  
 14 vehicle sales and service business.

15 (b) A motor vehicle dealer license permits a licensee who is an owner or part  
 16 owner of the business of the licensee to act as a vehicle salesperson without obtaining  
 17 a motor vehicle salesperson license.

18 (c) A motor vehicle dealer license shall be issued for a period of two fiscal  
 19 years. The fee for all or part of the license period is \$400.

20 **Sec. 45.25.150. Dealer required to maintain principal place of business.**  
 21 An applicant for a dealer license must have a principal place of business in this state.  
 22 If a dealer changes the site or location of a principal place of business, the dealer shall  
 23 immediately upon making the change notify the commissioner, and a new license shall  
 24 be granted for the unexpired portion of the term of the existing license if the new  
 25 location meets all the requirements for a principal place of business. If a dealer ceases  
 26 to be in possession of a principal place of business, the dealer shall immediately notify  
 27 the commissioner and, upon demand by the commissioner, shall deliver the dealer  
 28 license to the commissioner. A license delivered to the commissioner shall be retained  
 29 until the commissioner determines that the licensee has a principal place of business in  
 30 this state. An unexpired dealer license delivered to the commissioner and returned to  
 31 the dealer as required by this section shall be returned to the dealer without charge.

1           **Sec. 45.25.160. Multiple dealer locations.** This chapter may not be  
 2 construed to prevent a dealer from conducting the business for which the dealer is  
 3 licensed at one or more licensed supplemental lots or locations not contiguous to the  
 4 dealer's principal place of business but operated and maintained in conjunction with it.

5           **Sec. 45.25.170. Salesperson license.** (a) The commissioner may issue a  
 6 motor vehicle salesperson license to a person employed by a motor vehicle dealer.

7           (b) A motor vehicle salesperson license is valid for three years. The fee for a  
 8 motor vehicle salesperson license is \$60. The fee for changing the name of the dealer  
 9 by whom the salesperson is employed is \$40.

10          (c) An applicant for a motor vehicle salesperson license may be allowed to act  
 11 as a salesperson under a temporary license issued by the commissioner for a maximum  
 12 period of 60 days from the date of application. The fee for a temporary license is \$20.

13          **Sec. 45.25.180. Display and custody of dealer and salesperson licenses;**  
 14 **pocket cards.** (a) A dealer shall conspicuously display the motor vehicle dealer  
 15 license in the dealer's principal place of business and a copy of the license at any other  
 16 lot or location of the dealer.

17          (b) The commissioner shall prepare and deliver a pocket card that will certify  
 18 that the person whose name appears on the card is a licensed dealer or licensed motor  
 19 vehicle salesperson, as the case may be. The pocket card of a licensed motor vehicle  
 20 salesperson must also contain the name and address of the salesperson's employing  
 21 dealer, a current photograph of the salesperson, and the expiration date of the  
 22 salesperson's license. A licensed motor vehicle salesperson shall, on request, display  
 23 the pocket card.

24          **Sec. 45.25.190. Restrictions on salesperson licenses.** A motor vehicle  
 25 salesperson license must conspicuously show the name of the motor vehicle dealer  
 26 that employs the salesperson. A salesperson may not be employed by more than one  
 27 dealer at a time.

28          **Sec. 45.25.200. Duplicate license fee.** The department may issue a duplicate  
 29 license, salesperson or dealer pocket card, or other licensing documents at a licensee's  
 30 request upon payment of a fee of \$20. A fee may not be imposed if the license card or  
 31 document is required to be reissued as a result of an error by the department.

**Sec. 45.25.210. Sanctions, denial, revocation, or suspension of license. (a)**

The commissioner may deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee for any of the following reasons:

(1) material misrepresentation on an application or in other information filed under this chapter or regulations of the commissioner;

(2) conduct for which the person may be held responsible under AS 45.25.700; or

(3) failure to maintain the qualifications of the license.

(b) An existing license may not be denied, revoked, or suspended and disciplinary action may not be taken under this section except after a hearing conducted by the department as provided by AS 44.62.330 - 44.62.630.

**Article 3. Franchise Agreements.**

**Sec. 45.25.300. Content, filing, and review of franchise agreements and amendments.** (a) The terms and conditions in a motor vehicle franchise agreement that are inconsistent with the law of this state do not have any force or effect.

(b) A manufacturer who is licensed by the commissioner under this chapter and who uses an identical or substantially similar franchise form agreement for its franchisees in this state shall file with the commissioner a copy of the franchise form agreement and all addenda and supplements to the agreement.

(c) A manufacturer or the manufacturer's subsidiary licensed by the commissioner under this chapter shall, not later than 60 days before the date of a revision, modification, or addition to the franchise form agreement, file a copy of the revision, modification, or addition with the commissioner and include with the notification

(1) a copy of the franchise form agreement, which must include all of the proposed revisions, modifications, and additions to the agreement and all addenda and supplements to the agreement; and

(2) an affidavit from the manufacturer that confirms that a copy of the proposed revisions, modifications, and additions have been delivered to the manufacturer's or subsidiary's dealers and distributors in this state; and

1                   (3) a separate statement that identifies all proposed substantive  
2 revisions, modifications, and additions.

3                   (d) A manufacturer or the manufacturer's subsidiary licensed under this  
4 chapter may not offer a franchise agreement or an addendum or supplement to the  
5 agreement to a dealer in the state until the manufacturer or the manufacturer's  
6 subsidiary has complied with this section.

7                   (e) The commissioner may investigate or prevent violations of this section.

8                   **Sec. 45.25.310. Petition by franchised dealer.** (a) A franchised new motor  
9 vehicle dealer who believes that a manufacturer with whom the dealer holds a  
10 currently valid franchise has violated or is violating any provision of this chapter may  
11 file a petition with the commissioner naming the manufacturer and setting out the  
12 factual and legal basis for the petition. The commissioner shall promptly forward a  
13 copy of the petition to the named manufacturer, requesting a reply to the petition  
14 within 30 days.

15                   (b) Allowing for sufficient time for the parties to conduct discovery, the  
16 commissioner or a designee may hold an evidentiary hearing and render findings of  
17 fact and conclusions of law based on the evidence presented.

18                   **Sec. 45.25.320. Granting additional franchises.** (a) A manufacturer or  
19 manufacturer representative may not enter into a franchise establishing an additional  
20 new motor vehicle dealer or relocating an existing new motor vehicle dealer into a  
21 market area where the same line-make is already represented by a dealer unless the  
22 manufacturer or manufacturer representative first provides written notice to the  
23 commissioner and each new motor vehicle dealer in that line-make in the market area  
24 of the manufacturer's or manufacturer representative's intention to establish an  
25 additional dealer or to relocate an existing dealer within or into that market area.  
26 Within 30 days after receiving notice from the manufacturer or manufacturer  
27 representative or within 30 days after the end of an appeal procedure provided by the  
28 manufacturer, a new motor vehicle dealer in that market area may file a protest with  
29 the commissioner to the establishment or relocation of the new motor vehicle dealer.  
30 If a protest is timely filed, the commissioner shall promptly provide notice of the  
31 protest to the manufacturer or the manufacturer representative and shall schedule a

1 hearing on the protest. A manufacturer may not establish or relocate the proposed new  
2 motor vehicle dealer if the commissioner determines that there is good cause for not  
3 permitting the addition or relocation of the new motor vehicle dealer.

4 (b) The fact that a manufacturer desires an additional share of the market does  
5 not, by itself, constitute good cause to add a new motor vehicle dealer or relocate an  
6 existing motor vehicle dealer in the market area.

7 (c) In determining whether good cause exists for not permitting the entrance  
8 into or relocation of an additional new motor vehicle dealer for the same line-make,  
9 the commissioner shall take into consideration the existing market circumstances,  
10 including

11 (1) the lasting nature of the existing dealer's investment, the  
12 commitments of the dealer to the dealership, the value of time and effort devoted to  
13 building the business, and any real property of the dealer used by the dealership,  
14 whether or not held in the name of the dealership;

15 (2) growth or decline in population, density of population, and new car  
16 registrations in the market area;

17 (3) effect on the consumers in the market area;

18 (4) whether it is injurious or beneficial to the public welfare for an  
19 additional new motor vehicle dealer to be established;

20 (5) whether the new motor vehicle dealers of the same line-make in  
21 that market area are providing adequate competition and convenient customer care for  
22 the motor vehicles of the same line-make in the market area, including the adequacy of  
23 motor vehicle sales and service facilities, equipment, supply of motor vehicle parts,  
24 and qualified service personnel;

25 (6) whether the establishment of an additional new motor vehicle  
26 dealer or relocation of an existing new motor vehicle dealer in the market area would  
27 increase competition in a manner that is in the long-term public interest; and

28 (7) the effect on the relocating dealer of a denial of its relocation into  
29 the relevant market area.

30 (d) The department shall conduct a protest hearing and render a final  
31 determination within 180 days after a protest is filed. Under this subsection,

1 (1) in a hearing involving a proposed additional new motor vehicle  
 2 dealer, the manufacturer or distributor has the burden of proof, and in a proceeding  
 3 involving the relocation of an existing new motor vehicle dealer, the dealer seeking to  
 4 relocate has the burden of proof; and

5 (2) if the commissioner determines, following a hearing, that good  
 6 cause does not exist for refusing to permit the proposed additional or relocated new  
 7 motor vehicle dealer, the dealer seeking the proposed additional or relocated motor  
 8 vehicle dealer shall, within two years after the commissioner's determination, obtain a  
 9 license from the commissioner for the sale of vehicles at the proposed site, and shall  
 10 actually commence selling at the proposed site new motor vehicles of all line-makes  
 11 for which the dealer has a franchise, as allowed by the commissioner; failure to obtain  
 12 a license and commence sales within two years after the commissioner's determination  
 13 constitutes waiver by the dealer of the dealer's right to operate the additional or  
 14 relocated new motor vehicle dealer and requires a new notification, a new hearing, and  
 15 a new determination as described in this paragraph.

16 (e) For purposes of this section, the addition, creation, or operation of a  
 17 facility that is not physically part of, contiguous to, or within the defined market area  
 18 of an existing licensed new motor vehicle dealer, whether or not owned or operated by  
 19 a person or other entity holding a franchise, at which warranty service work that is  
 20 authorized or reimbursed by a manufacturer is performed or at which new motor  
 21 vehicles are offered for sale to the public is considered an additional new motor  
 22 vehicle dealer requiring compliance with the provisions of this section.

23 **Sec. 45.25.330. Termination, cancellation, or nonrenewal of franchises.**

24 (a) A manufacturer may not terminate, cancel, or fail to renew a franchise with a new  
 25 motor vehicle dealer unless the manufacturer has

26 (1) satisfied the notice requirements of AS 45.25.340;

27 (2) shown that there is good cause for the termination, cancellation, or  
 28 nonrenewal of the franchise; and

29 (3) acted in good faith.

30 (b) A new motor vehicle dealer may petition the commissioner for a  
 31 determination as to the existence of good cause and good faith for the termination,

1 cancellation, or nonrenewal of a franchise. A petition must be filed within 10 days  
 2 after the dealer receives notice of the termination, cancellation, or nonrenewal from  
 3 the manufacturer as required under AS 45.25.340. The commissioner shall promptly  
 4 give notice to the manufacturer when a timely petition is filed. A franchise that is the  
 5 subject of the petition shall continue in effect pending the commissioner's decision.  
 6 The department shall conduct a hearing and render a final determination within 180  
 7 days after a petition has been filed.

8 (c) Good cause exists, for purposes of a termination, cancellation, or  
 9 nonrenewal of a franchise, if there is a failure by the new motor vehicle dealer

10 (1) to comply with a provision of the franchise that is both reasonable  
 11 and of material significance to the franchise relationship and the dealer received  
 12 written notice of the failure within 180 days after the manufacturer first learned of the  
 13 failure;

14 (2) relating to the performance of sales or service by the new motor  
 15 vehicle dealer and

16 (A) the new motor vehicle dealer received written notice from  
 17 the manufacturer of the failure;

18 (B) the notice stated that the notice of failure in performance  
 19 was provided as required by this section;

20 (C) the new motor vehicle dealer was afforded a reasonable  
 21 opportunity, for a period of not less than 180 days, to remedy the failure; and

22 (D) the new motor vehicle dealer failed to demonstrate  
 23 substantial progress towards compliance with the manufacturer's performance  
 24 criteria during the period and the new motor vehicle dealer's failure was not  
 25 primarily due to economic or market factors within the dealer's market area  
 26 that were beyond the dealer's control.

27 (d) The manufacturer has the burden of proof under this section to show that  
 28 good cause exists for a termination, cancellation, or nonrenewal.

29 **Sec. 45.25.340. Notice of termination, cancellation, and nonrenewal.** (a)  
 30 A manufacturer shall furnish notice of termination, cancellation, or nonrenewal to a  
 31 new motor vehicle dealer at least

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

3 (2) 15 days before the effective date of a termination, cancellation, or  
4 nonrenewal when the new motor vehicle dealer

5 (A) is insolvent or is the subject of a bankruptcy or receivership  
6 proceeding;

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

11 (C) has had a license revoked and the license is required in  
12 order to operate as a dealer; or

13 (D) is convicted of a felony involving moral turpitude or fraud  
14 under the law of this state, another state, a territory, or the District of  
15 Columbia;

16 (3) 180 days before the effective date of the termination or cancellation  
17 if the manufacturer or distributor is discontinuing the sale of the product line.

18 (b) Notice required under this section must be in writing and sent by certified  
19 mail or personally delivered to the new motor vehicle dealer, and must contain

20 (1) a statement of intention to terminate, to cancel, or not to renew the  
21 franchise;

22 (2) a statement of the reasons for the termination, cancellation, or  
23 nonrenewal; and

24 (3) the date on which the termination, cancellation, or nonrenewal  
25 takes effect.

26 **Sec. 45.25.350. Compensation for termination, nonrenewal, or**  
27 **cancellation.** (a) If a franchise is terminated, not renewed, or canceled by a  
28 manufacturer, the manufacturer shall compensate the new motor vehicle dealer by  
29 paying for franchise inventory or other items by purchasing the

30 (1) inventory consisting of new motor vehicles that have been acquired  
31 from the manufacturer within the preceding 24 months at a price not less than the

1 original manufacturer's price to the dealer, if the motor vehicles have not been altered  
 2 or damaged, the motor vehicles have not been driven more than 200 miles, and  
 3 certificates of title have not been issued;

4 (2) unused, undamaged, and unsold supplies and parts purchased from  
 5 the manufacturer or a supplier approved or required by the manufacturer at a price not  
 6 less than the manufacturer's or approved supplier's current price to the dealer, if the  
 7 supplies and parts are currently offered for sale by the manufacturer or a supplier in a  
 8 current parts catalog and are in salable condition;

9 (3) equipment, signs, and furnishings that have not been altered or  
 10 damaged and that have been required by the manufacturer to be purchased by the new  
 11 motor vehicle dealer from the manufacturer or an approved source at fair market  
 12 value; and

13 (4) special tools that have not been altered or materially damaged and  
 14 that have been required by the manufacturer or distributor to be purchased by the new  
 15 motor vehicle dealer from the manufacturer or distributor or an approved source at fair  
 16 market value within five years immediately preceding the termination, nonrenewal, or  
 17 cancellation of the franchise.

18 (b) The manufacturer shall pay compensation required under (a) of this section  
 19 within 90 days after the effective date of the termination, cancellation, or nonrenewal  
 20 if the new motor vehicle dealer has clear title to the inventory and has conveyed title  
 21 and possession of all compensable items to the manufacturer.

22 **Sec. 45.25.360. Dealer facilities assistance.** (a) If a manufacturer terminates,  
 23 cancels, or does not renew a franchise, the manufacturer shall compensate the dealer  
 24 for facilities as follows:

25 (1) if the new motor vehicle dealer is leasing the dealer facilities from  
 26 a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle  
 27 dealer a sum equal to the rent for the unexpired term of the lease or two years' rent,  
 28 whichever is less, or a longer term as is provided in the franchise agreement between  
 29 the dealer and manufacturer; or

30 (2) if the new motor vehicle dealer owns the dealer facilities, the  
 31 manufacturer shall pay the new motor vehicle dealer a sum equal to the reasonable

1 rental value of the dealer facilities for two years.

2 (b) This section does not relieve a dealer of the obligation to mitigate damages  
3 under the lease, prevent a manufacturer from occupying and using the dealer facilities  
4 while paying rent, or preclude a manufacturer from negotiating a lease termination,  
5 sublease, or new lease.

6 (c) This section does not apply if the termination, nonrenewal, or cancellation  
7 of the franchise agreement is the result of the dealer's

8 (1) voluntary act;

9 (2) insolvency;

10 (3) license revocation; or

11 (4) conviction of a felony involving moral turpitude or fraud.

12 **Sec. 45.25.370. Transfer of dealer ownership.** (a) A manufacturer may not  
13 unreasonably prevent or refuse to honor a transfer of ownership of a dealer.

14 (b) A new motor vehicle dealer may appoint by will or another written  
15 instrument a designated successor to succeed in the ownership interest of the dealer,  
16 including the franchise, upon the death or incapacity of the owner.

17 (c) A manufacturer may object to an owner's appointment of a designated  
18 successor under the following procedure:

19 (1) within 30 days after receiving written notice of the identity of the  
20 owner's designated successor and general information as to the financial ability and  
21 qualifications of the designated successor, the manufacturer shall send the owner and  
22 designated successor notice of the objection, by registered or certified mail, return  
23 receipt requested; a notice of objection must state in detail all facts that constitute the  
24 basis for the contention on the part of the manufacturer or distributor that good cause  
25 exists for rejection of the designated successor; failure by the manufacturer to send a  
26 notice of objection constitutes waiver by the manufacturer of the right to object to the  
27 appointment of the designated successor;

28 (2) within 30 days after receipt of a manufacturer's notice of objection,  
29 the owner or the designated successor may file a written request with the  
30 commissioner that the commissioner determine whether good cause exists for  
31 rejection of the designated successor; if a request is timely filed, the commissioner

1 shall promptly inform the affected manufacturer that a request has been filed;

2 (3) the commissioner may hold a hearing on the objection and shall  
3 make a determination within 180 days after receipt of the written request from the  
4 owner or designated successor; in determining whether good cause exists for rejection  
5 of the owner's appointed designated successor, the manufacturer or distributor has the  
6 burden of proof.

7 (d) Nothing in this section precludes a manufacturer, upon receipt of written  
8 notice from a dealer of the identity of the dealer's designated successor, from requiring  
9 that the designated successor promptly provide personal and financial data reasonably  
10 necessary to determine the financial ability and qualifications of the designated  
11 successor. However, a request for additional information may not delay a time period  
12 imposed under this section.

13 (e) In the event that death or incapacity of the owner occurs before the time a  
14 manufacturer receives notice of the owner's appointment of a designated successor or  
15 before the commissioner had made a determination as provided in (c) of this section,  
16 the existing franchise shall remain in effect, and the designated successor shall  
17 succeed to all of the owner's rights and obligations in the dealer and under the  
18 franchise until a determination is made by the commissioner or the rights of the parties  
19 have otherwise changed as provided in this chapter.

20 (f) Except as provided in (g) of this section, a designated successor of a  
21 deceased or incapacitated owner of a new motor vehicle dealer appointed by an owner  
22 in substantial compliance with this section succeeds at the time of death or incapacity  
23 to all of the ownership rights and obligations of the owner in the new motor vehicle  
24 dealer and under the existing franchise.

25 (g) Within 60 days after the death or incapacity of the owner, a designated  
26 successor appointed in substantial compliance with this section shall give the affected  
27 manufacturer written notice of the succession to the ownership of the new motor  
28 vehicle dealer.

29 (h) A designated successor is bound by all terms and conditions of the  
30 franchise in effect between the manufacturer and the owner at the time of the owner's  
31 death or incapacity if required in writing by the manufacturer subsequent to the

1 owner's death or incapacity.

2 (i) This section does not preclude an owner of a new motor vehicle dealer  
3 from designating a person as a successor by written instrument filed with the  
4 manufacturer. If there is an inconsistency between the successor named in the written  
5 instrument and the designated successor otherwise appointed by the owner consistent  
6 with the provisions of this section, the written instrument filed with the manufacturer  
7 determines the appointment of the successor, unless the written instrument has been  
8 revoked by the owner of the new motor vehicle dealer in writing to the manufacturer.

9 (j) Notwithstanding the terms of the franchise agreement, in the event of a  
10 proposed sale or other transfer of a dealership, the manufacturer may not exercise a  
11 right of first refusal to acquire the dealership or the dealership assets where the  
12 proposed sale or transfer is conditioned on the manufacturer's or dealer's entering into  
13 a franchise with the proposed new owner or other transferee unless all the following  
14 requirements are met:

15 (1) the manufacturer notifies the dealer in writing within 30 days of the  
16 manufacturer's receipt of the completed proposal for the proposed sale or other  
17 transfer;

18 (2) the exercise of the right of first refusal results in the dealer  
19 receiving the same consideration as or greater consideration than the dealer contracted  
20 to receive for the proposed sale or other transfer;

21 (3) the proposed sale or transfer does not involve the sale or other  
22 transfer to

23 (A) a family member of the dealer;

24 (B) a qualified manager;

25 (C) a person who has been employed continuously by the  
26 dealer for at least 10 years; or

27 (D) a person, other than an individual, controlled by a person  
28 described in (A) - (C) of this paragraph; and

29 (4) the manufacturer agrees to pay the reasonable expenses, including  
30 attorney fees that do not exceed the usual, customary, and reasonable fees charged for  
31 similar work done for other clients incurred by the proposed purchaser or transferee

1 before the manufacturer's exercise of the right of first refusal in negotiating and  
 2 implementing the contract for the proposed sale or other transfer; notwithstanding the  
 3 foregoing, the payment of the expenses is not required if the dealer has not submitted  
 4 or caused to be submitted an accounting of the expenses within 30 days of the dealer's  
 5 receipt of the manufacturer's written request for the accounting; a manufacturer may  
 6 request an accounting before exercising the right of first refusal.

7 **Article 4. Manufacturer Practices.**

8 **Sec. 45.25.400. Prohibited manufacturer trade practices.** Notwithstanding  
 9 the terms of the franchise agreement, a manufacturer may not

10 (1) modify or replace a dealer agreement of any kind with a succeeding  
 11 dealer agreement that would adversely alter the rights or obligations of a new motor  
 12 vehicle dealer under an existing dealer agreement or that substantially impairs the  
 13 sales, service obligations, or investment of the new motor vehicle dealer;

14 (2) require, coerce, or attempt to coerce a new motor vehicle dealer to

15 (A) order or accept delivery of a new motor vehicle with  
 16 special features, accessories, or equipment not included in the list price of the  
 17 motor vehicles as publicly advertised by the manufacturer;

18 (B) participate monetarily in an advertising campaign or  
 19 contest, or to purchase unnecessary or unreasonable quantities of any  
 20 promotional materials, training materials, training programs, or showroom or  
 21 other display decorations or materials at the expense of the new motor vehicle  
 22 dealer; nothing in this subparagraph precludes a manufacturer from including  
 23 an unitemized uniform charge in the base price of the new motor vehicle  
 24 charged to the dealer, unless the charge is attributable to advertising costs  
 25 incurred or to be incurred by the manufacturer in the ordinary course of its  
 26 business, if the uniform charge is in effect for vehicles sold to dealers in all  
 27 other states;

28 (C) change the capital structure of the new motor vehicle dealer  
 29 or the means by or through which the new motor vehicle dealer finances the  
 30 operation of the dealer if the new motor vehicle dealer at all times meets any  
 31 reasonable capital standards determined by the manufacturer under uniformly

1 applied criteria, except that a change in the capital structure does not cause a  
2 change in the principal management or have the effect of a sale of the franchise  
3 without the consent of the manufacturer; consent required under this  
4 subparagraph may not be unreasonably withheld;

5 (D) refrain from participation in the management of,  
6 investment in, or acquisition of another line of new motor vehicles or related  
7 products; this subparagraph applies only if the new motor vehicle dealer  
8 maintains a reasonable line of credit for each make-line of new motor vehicle  
9 and the new motor vehicle dealer remains in compliance with any reasonable  
10 capital standards and facilities requirements of the manufacturer; the  
11 reasonable facilities requirements may not include requirements that a new  
12 motor vehicle dealer establish or maintain exclusive facilities, personnel, or  
13 display space when the requirements would be unreasonable in light of current  
14 economic conditions and would not otherwise be justified by reasonable  
15 business considerations;

16 (E) change the location of the dealership, or to make any  
17 substantial alterations to the dealership premises or facilities, when the change  
18 or alteration would be unreasonable or when the change or alteration is without  
19 written assurance of a sufficient supply of new motor vehicles to justify the  
20 expansion in light of the current market and economic conditions;

21 (F) prospectively assent to a release, assignment, novation,  
22 waiver, or estoppel that would relieve a person from liability to be imposed by  
23 law or to require a controversy between a new motor vehicle dealer and a  
24 manufacturer to be referred to a person other than a court or the commissioner  
25 if the referral would be binding on the new motor vehicle dealer;

26 (G) sell a new motor vehicle at a minimum or maximum price  
27 that has been fixed by the manufacturer;

28 (H) pay more for a delivery or destination charge than for a  
29 delivery or destination charge in the contiguous United States if the  
30 manufacturer has an equalized delivery or destination charge in the contiguous  
31 United States;

1 (I) deliver new motor vehicles or otherwise participate in a plan  
2 where the manufacturer sells new vehicles directly or through a subsidiary to a  
3 customer through electronic or other means;

4 (J) offer or adhere to menu prices set by the manufacturer for  
5 service, parts, or accessories; or

6 (K) participate in a manufacturer's national or regional  
7 marketing promotion that arbitrarily and adversely economically affects the  
8 dealer;

9 (3) sell or offer to sell dealer-obligor service contracts;

10 (4) within a reasonable time after receipt of a retail order from a dealer  
11 having a franchise for the retail sale of a new motor vehicle sold or distributed by the  
12 manufacturer or distributor, delay, refuse, or fail to deliver motor vehicles or motor  
13 vehicle parts or accessories in reasonable quantities relative to the new motor vehicle  
14 dealer's facilities and sales potential in the new motor vehicle dealer's market area; the  
15 delivery to another dealer of a motor vehicle of the same model as and similarly  
16 equipped to the vehicle ordered by a motor vehicle dealer who has not received  
17 delivery but who has placed a written order for the vehicle before the order of the  
18 dealer receiving the vehicle is evidence of a delayed delivery of or refusal to deliver a  
19 new motor vehicle to a new motor vehicle dealer within a reasonable time; this  
20 paragraph does not apply to a delay or refusal caused by acts beyond the control of the  
21 manufacturer; in this paragraph, "retail order" means an order placed for a buyer who  
22 is not a licensed motor vehicle dealer franchised to sell the same line-make;

23 (5) refuse to disclose to a new motor vehicle dealer handling a line-  
24 make the manner and mode of allocation and distribution of that line-make within the  
25 state;

26 (6) count a vehicle that is still in transit between the manufacturing or  
27 assembly plant and the dealer as a vehicle available for sale or in the dealer's supply of  
28 vehicles for sale if counting that vehicle as available for sale or in the dealer's supply  
29 adversely affects a system under which the manufacturer allocates vehicles to its  
30 dealers in other states;

31 (7) require certification of any classification of employee of a dealer in

1 this state for a job-related function or reimbursement unless the manufacturer provides  
2 in this state the same or greater frequency, level, quality, and type of training for a  
3 dealer or dealership employee in this state that it provides for dealers and dealership  
4 employees in other states;

5 (8) require certification of a dealer or a dealership employee for a job  
6 function if the certification requirement would adversely affect a motor vehicle  
7 owner's or lessee's receiving prompt warranty or service contract repairs at the closest  
8 possible franchised dealership facility or dealer subcontractor facility;

9 (9) refuse to pay its dealer for a category of warranty repair or service  
10 contract repair that was actually performed by the dealer in this state for the line-make  
11 of vehicle for which the dealer has a franchise if the repair was covered by the  
12 manufacturer's warranty or service contract at any other dealership that has a franchise  
13 to sell that line-make of motor vehicle in this state or in a majority of the other 49  
14 states of the United States;

15 (10) award money, goods, services, or any other benefit to an  
16 employee of a new motor vehicle dealer, either directly or indirectly, unless the benefit  
17 is promptly accounted for and transmitted to, or approved by, the new motor vehicle  
18 dealer;

19 (11) increase the price of a new motor vehicle that a new motor vehicle  
20 dealer has ordered and that the manufacturer has accepted for immediate delivery for  
21 private retail or private commercial consumers before the new motor vehicle dealer  
22 receives the manufacturer's written official price increase notification; a sales contract  
23 signed by a private retail consumer or a purchase order signed by a private commercial  
24 customer constitutes evidence of an order if the vehicle is in fact delivered to that  
25 customer; price differences applicable to new models or series may not be considered  
26 a price increase or price decrease; this paragraph does not apply to price changes  
27 resulting from the addition to a new motor vehicle of required or optional equipment,  
28 revaluation of the United States dollar, in the case of foreign-make vehicles or  
29 components, an increase in transportation charges due to increased rates imposed by  
30 carriers, or new tariffs or duties imposed by the United States or another governmental  
31 authority;

1 (12) prevent or attempt to prevent a dealer from receiving fair and  
2 reasonable compensation for the value of a franchised business transferred as required  
3 by this chapter;

4 (13) offer a refund or other type of inducement to a person for the  
5 purchase of a new motor vehicle of a certain line-make to be sold to the state or a  
6 political subdivision of the state without making the same offer available upon request  
7 to all other new motor vehicle dealers franchised to sell the same line-make in the  
8 state;

9 (14) release to an outside party, except under subpoena or as otherwise  
10 required by law, confidential business, financial, or personal information that may be  
11 provided by a new motor vehicle dealer to the manufacturer, without the express  
12 written consent of the new motor vehicle dealer;

13 (15) deny or attempt to deny a new motor vehicle dealer the right of  
14 free association with another new motor vehicle dealer for any lawful purpose;

15 (16) unfairly discriminate among new motor vehicle dealers with  
16 respect to warranty reimbursements or authority granted new motor vehicle dealers to  
17 make warranty adjustments with retail customers;

18 (17) engage in an unfair trade practice described in this chapter against  
19 or unfairly compete with a new motor vehicle dealer located in this state;

20 (18) sell a new vehicle to a private purchaser in this state or broker the  
21 sale of a new motor vehicle to a private purchaser in this state;

22 (19) terminate a franchise because of the death or incapacity of an  
23 owner, if the owner is not listed in the franchise as one on whose expertise and  
24 abilities the manufacturer relied in the granting of the franchise;

25 (20) require, coerce, or attempt to coerce a new motor vehicle dealer to  
26 establish or maintain exclusive facilities, personnel, or display space when the  
27 requirement would not be justified by reasonable business considerations;

28 (21) require, coerce, or attempt to coerce a dealer to disclose to the  
29 manufacturer information concerning a customer or a third party if the customer or  
30 third party objects or the disclosure is otherwise unlawful;

31 (22) resort to or use a false or misleading advertisement in the conduct

1 of its business as a manufacturer in this state;

2 (23) knowingly make, either directly or through any agent or  
3 employee, a material statement that is false or misleading and that induces a new  
4 motor vehicle dealer to enter into an agreement or franchise or to take action that is  
5 materially prejudicial to the new motor vehicle dealer;

6 (24) require, coerce, or attempt to coerce a new motor vehicle dealer to  
7 purchase or order a new motor vehicle as a precondition of purchasing, ordering, or  
8 receiving other new motor vehicles; this paragraph does not prevent a manufacturer  
9 from requiring that a new motor vehicle dealer fairly represent and inventory the full  
10 line of new motor vehicles that are covered by the franchise agreement;

11 (25) require, coerce, or attempt to coerce a new motor vehicle dealer to  
12 sell, transfer, or otherwise issue stock or other ownership interest in the dealership  
13 corporation to a general manager or other person involved in the management of the  
14 dealership other than the dealer principal or dealer operator named in the franchise,  
15 unless the dealer principal or dealer operator is an absentee owner who is not involved  
16 in the operation or management of the dealership on a regular basis;

17 (26) vary the price charged to a franchised new motor vehicle dealer  
18 located in this state for new motor vehicles or the reimbursement paid to a franchised  
19 new motor vehicle dealer for parts and labor reimbursement for warranty, policy, or  
20 service contract repairs based on the dealer's (A) purchase of new facilities, supplies,  
21 tools, equipment, or other merchandise from the manufacturer; (B) relocation,  
22 remodeling, repair, or renovation of an existing dealership or construction of a new  
23 facility; or (C) participation in training programs sponsored, endorsed, recommended,  
24 or required by the manufacturer; for purposes of this paragraph, the price of a vehicle  
25 includes the manufacturer's use of rebates, credits, or other consideration that has the  
26 effect of causing a variance in the price of a new motor vehicle offered to a franchised  
27 dealer located in the state; this paragraph does not preclude a manufacturer from  
28 establishing sales contests or promotions that are of limited duration and that provide  
29 or award dealers or consumers a rebate or incentive, or prohibit a manufacturer from  
30 providing assistance or encouragement to a franchised dealer to remodel renovate,  
31 recondition, or relocate the dealer's existing facilities, if the assistance,

1 encouragement, or reward is not determined on a per vehicle basis;

2 (27) require that, in a civil or administrative proceeding in which a  
3 new motor vehicle dealer asserts a claim, right, or defense arising under this chapter or  
4 under the franchise, the dealer or a nonprevailing party compensate the manufacturer  
5 or prevailing party for court costs, attorney fees, or other expenses incurred in  
6 litigation;

7 (28) require that a franchised new motor vehicle dealer located in this  
8 state pay an extra fee, purchase unreasonable or unnecessary quantities of advertising  
9 displays or other materials, or remodel, renovate, or recondition the dealer's existing  
10 facilities in order to receive a particular model or series of vehicles manufactured or  
11 distributed by the manufacturer for which the dealer has a valid franchise; this  
12 paragraph does not prohibit or prevent a manufacturer from requiring that a franchised  
13 dealer located in this state purchase special tools or equipment, stock reasonable  
14 quantities of certain parts, or participate in training programs that are reasonably  
15 necessary for the dealer to sell or service a model or series of motor vehicles;

16 (29) require a separate dealer agreement with a new motor vehicle  
17 dealer already a party to a dealer agreement with the manufacturer for the retail sale or  
18 leasing of a particular new motor vehicle model made or distributed by the  
19 manufacturer or restrict the right of a dealer to sell all products marketed under the  
20 trademark for which the dealer has a valid franchise;

21 (30) offer a service contract for its own line or make of vehicle or a  
22 competitive make of vehicle through a new motor vehicle dealer in this state that is a  
23 dealer-obligor service contract or that could be construed in any way as a contract  
24 between the dealer and the purchaser or that the dealer is a maker of the service  
25 contract; or

26 (31) offer a service contract for sale to a resident of this state except  
27 through a dealer licensed in this state.

28 **Sec. 45.25.410. Warranty and service contract obligations.** (a) A motor  
29 vehicle manufacturer or manufacturer's subsidiary shall provide for timely warranty  
30 repair of its vehicles through its franchised dealers that are licensed in this state under  
31 the provisions of this chapter.

1 (b) A motor vehicle manufacturer or manufacturer's subsidiary shall specify in  
2 writing to each of its motor vehicle dealers licensed in this state the dealer's  
3 obligations for preparation, delivery, warranty, and service contract service on its  
4 products or the products it covers, the schedule of compensation to be paid to a dealer  
5 for parts, work, and service in connection with warranty service, recall service, and  
6 service contract service or maintenance that is the responsibility of the manufacturers,  
7 and the time allowances for the performance of warranty work and service.

8 (c) A schedule of warranty or service contract compensation must include  
9 reasonable compensation for diagnostic work, whether or not a problem is found when  
10 it has been reported by the owner, and, in addition to compensation for repair service  
11 and labor, compensation for the labor required to complete and transmit warranty and  
12 service contract claims and to gather and transmit substantiating documentation.

13 (d) When warranty work or service contract work is performed, service time  
14 allowances must be reasonable and adequate for the work to be performed and must be  
15 equal to the allowances published in the manufacturer's labor time standard manual or  
16 another industry-wide recognized labor time guide manual for repairs performed by  
17 experienced automotive technicians using hand tools, whichever is greater. When  
18 reasonable compensation is determined under this subsection, the factors to be given  
19 consideration shall include the compensation paid by other manufacturers to their  
20 dealers, the retail price dealers charge their retail customers for parts used to perform  
21 similar work and paid to dealers for parts, and the prevailing wage rates, including  
22 employment benefits, being paid by dealers and the prevailing retail labor rate posted  
23 by dealers in the community in which the dealer is doing business if the prevailing  
24 rates and prices are not unreasonable.

25 (e) If a motor vehicle that is covered by a manufacturer's warranty or service  
26 contract is brought to a dealer and the owner describes a concern that, if verified,  
27 could reasonably lead to a covered warranty or service contract repair, the dealer shall  
28 make a diligent and reasonable attempt to verify the owner's complaint, and the  
29 manufacturer or administrator shall reimburse the dealer for the actual diagnosis time  
30 spent at the dealer's current warranty labor rate, whether or not a covered defect or  
31 failure is diagnosed. If, after a reasonable effort, the dealer is unable to verify the

1 owner's complaint, the dealer shall notify the owner in writing of the diagnostic steps  
2 performed and the diagnostic results.

3 (f) When a motor vehicle that is covered by a manufacturer's warranty or  
4 service contract is brought to a licensed dealer that has a franchise to sell a line-make  
5 of motor vehicles in this state, if the dealer determines a motor vehicle covered by the  
6 franchise has a nonconformity covered by the manufacturer's warranty or a necessary  
7 repair covered by the manufacturer's service contract, and if the dealer subsequently  
8 fixes the nonconformity or performs the covered repair, the manufacturer shall pay the  
9 dealer for the labor associated with fixing the nonconformity or performing the  
10 covered repair.

11 (g) If a manufacturer or administrator requires

12 (1) a franchised dealer to perform a diagnostic task that leads to, could  
13 reasonably lead to, or confirms completion of a repair covered by a warranty or  
14 service contract, the manufacturer or administrator shall reimburse the franchised  
15 dealer for the actual diagnosis time at the dealer's current warranty labor rate, and the  
16 labor shall be considered labor over and above the labor that is included in an  
17 applicable published labor time standard or that was performed by the repairing  
18 technician;

19 (2) a dealer or dealership employee to obtain prior approval before  
20 performing a repair covered by a warranty or service contract, the manufacturer or  
21 administrator shall reimburse the dealer at the dealer's normal warranty labor rate for  
22 the actual time spent by a dealership employee to obtain the prior approval;

23 (3) a dealer or dealership employee to contact factory personnel in  
24 order to obtain unpublished diagnostic processes or repair procedures or to clarify  
25 diagnostic processes or repair procedures, the manufacturer or administrator shall  
26 reimburse the dealer at the dealer's normal warranty labor rate for the actual time spent  
27 by a dealership employee to obtain the information;

28 (4) a dealer to transmit digital images, video images, photographs,  
29 documents, or other material to the manufacturer for prior approval of warranty or  
30 service contract repairs, the manufacturer shall reimburse the dealer for the actual cost  
31 of transmitting the material.

1 (h) A motor vehicle manufacturer or manufacturer's subsidiary may not fail to  
2 (1) timely perform or, through a policy or procedure, may not cause a  
3 dealer to be unable to timely perform a manufacturer's warranty obligations with  
4 respect to a motor vehicle that the dealer has a franchise to sell;

5 (2) timely compensate its motor vehicle dealers licensed in this state  
6 for warranty parts at the prevailing retail rate according to the requirements or other  
7 factors set out in this section, or under the schedule of compensation provided the  
8 dealer described in this chapter; or

9 (3) indemnify and hold harmless its franchised dealers licensed in this  
10 state against a judgment for damages or a settlement agreed to by the manufacturer,  
11 including court costs and reasonable attorney fees of the motor vehicle dealer, arising  
12 out of a complaint, claim, or lawsuit relating to the alleged defective negligent  
13 manufacture, assembly, or design or a new motor vehicle, part, or accessory, or to  
14 other functions by the manufacturer, factory branch, distributor or distributor branch,  
15 beyond the control of the dealer.

16 (i) A dealer or repair facility may not repair or replace an air emission related  
17 component on a motor vehicle that requires emission certification without performing,  
18 once the repair is complete, an emission test to verify that the repair is effective. A  
19 manufacturer or administrator may not refuse to fully reimburse a dealer at the dealer's  
20 current hourly warranty rate for performance of an emission test required under this  
21 subsection for a repair or replacement that is covered by an emission defect warranty,  
22 other warranty, or service contract.

23 (j) The power train components of a motor vehicle operated in this state must  
24 operate within the manufacturer's specifications. A dealer or repair facility may not  
25 repair or replace a power train component on a motor vehicle that is operated in this  
26 state without performing, once the repair is complete, the necessary test to confirm  
27 that the repaired or replaced component is operating within the manufacturer's  
28 specifications. A manufacturer or administrator may not refuse to reimburse a dealer  
29 at the dealer's current hourly warranty rate for performance of the test required under  
30 this subsection to confirm that a repaired or replaced power train component covered  
31 by a warranty or service contract is operating within the manufacturer's specifications.

1 (k) Operating through its dealers with franchises with the manufacturer or the  
2 manufacturer's subsidiary, a new vehicle manufacturer or manufacturer's subsidiary  
3 shall commence and complete repairs or maintenance covered by a new vehicle  
4 warranty or service plan as quickly as possible and without unreasonable delay. A  
5 motor vehicle manufacturer or administrator shall provide, at the manufacturer's  
6 expense, reasonable alternate transportation for an owner whose vehicle is covered by  
7 an express warranty or an authorized service plan if (1) the vehicle is unsafe or  
8 inoperable and has been brought to a franchised dealer or to a subcontracting repair  
9 facility working in cooperation with the franchised dealer; (2) covered repairs cannot  
10 begin the same working day because of the decision of the manufacturer or  
11 administrator to require prior approval before the dealer may commence the covered  
12 repairs; and (3) for any reason beyond the control of the dealer, oral prior approval  
13 may not be obtained that same day or repair parts for the vehicle required by the  
14 manufacturer are not available at the dealership and the manufacturer or its authorized  
15 suppliers cannot provide the repair parts within two working days. A manufacturer is  
16 in compliance with the provisions of this subsection if the manufacturer authorizes the  
17 repairing dealer to provide reasonable alternate transportation for the owner at the  
18 manufacturer's expense. When a dealer is authorized to provide transportation, the  
19 dealer shall attempt to provide a rental vehicle that is a similar model, or has similar  
20 characteristics to the owner's vehicle, through its own rental fleet or from the fleet of  
21 another licensed rental company. A manufacturer or administrator shall reimburse the  
22 owner or the dealer for the cost of the rental in the same manner and time frame the  
23 manufacturer or administrator uses to reimburse the dealer for warranty repairs, and  
24 the manufacturer or administrator may not include the rental car expense in the  
25 expenses that are used to compare the dealer to other dealers for audit purposes or for  
26 the purposes of prior warranty approval.

27 (l) A manufacturer shall pay a claim made by the manufacturer's franchised  
28 dealer for compensation for sales incentives, delivery, preparation, warranty repairs,  
29 transportation claims, recall work, and service contract repairs, including labor, parts,  
30 rental vehicle reimbursement, and other covered expenses, within 30 days after receipt  
31 of a claim from the dealer. If a claim is disapproved, the dealer shall be notified in

1 writing of the grounds for disapproval. A claim not specifically disapproved in  
2 writing within 30 days after receipt is considered approved and payment is due  
3 immediately. A dealer's failure to comply with the specific requirements of the  
4 manufacturer for processing the claim does not constitute grounds for denial of the  
5 claim or reduction of the amount of compensation to the dealer as long as reasonable  
6 documentation or other evidence has been presented to substantiate the claim. A  
7 claim that has been approved and paid may not be charged back to the dealer unless it  
8 can be shown that the claim was false or fraudulent, that the repairs were not properly  
9 made according to industry standards or were unnecessary to correct the defective  
10 condition, or that the dealer failed to reasonably substantiate the repairs. A  
11 manufacturer or distributor may not deny a claim, reduce the amount to be reimbursed  
12 to the dealer, or charge back a portion of the claim if 12 or more months have passed  
13 since the claim was submitted, or if the dealer has provided reasonably sufficient  
14 documentation that the dealer made a good faith attempt to perform the work in  
15 compliance with the written policies and procedures of the manufacturer and actually  
16 performed the work.

17 (m) A dealer may not be charged back or otherwise held liable for sales  
18 incentives or charges related to motor vehicles sold by the dealer and subsequently  
19 exported if the dealer can demonstrate that the dealer exercised due diligence and that  
20 the sale was made in good faith and without knowledge of the purchaser's intention to  
21 export the motor vehicle.

22 (n) If there is a dispute between the manufacturer and the dealer regarding a  
23 matter described in this section, either party may petition the commissioner in writing,  
24 within 30 days after either party has given written notice of the dispute to the other, for  
25 a hearing on the dispute. This subsection does not give the commissioner authority  
26 regarding the content of a manufacturer's or distributor's warranty. If a petition is filed  
27 with the commissioner under this subsection, a chargeback to or payment required of a  
28 dealer by a manufacturer relating to warranty parts or service compensation, or sales  
29 incentives, service incentives, rebates, or other forms of incentive compensation shall  
30 be stayed during the pendency of the determination by the commissioner and during  
31 the pendency of any internal appeal provided by the manufacturer. Notification of

1 intent to use a manufacturer's internal appeal procedure shall be provided within 14  
2 days after notification of the chargeback is received by the dealer, and the appeal shall  
3 be completed and submitted by the dealer within 60 days from receipt by the dealer of  
4 the manufacturer's list of specific claims scheduled for chargeback, including a  
5 detailed claim-by-claim explanation of the policies the manufacturer alleges the dealer  
6 has violated.

7 (o) A manufacturer may not process a chargeback against a dealer without  
8 first providing the dealer with a detailed list of specific policies the dealer has violated  
9 and a detailed explanation of the policy or procedure the dealer should have followed  
10 to avoid the chargeback.

11 (p) A manufacturer or administrator may not contract with a person to audit a  
12 dealer in this state for compliance with any of the manufacturer's policies or  
13 procedures if the auditor's compensation is in any way based on the amount charged  
14 back to the dealer or recovered from the dealer.

15 (q) A manufacturer or administrator may not require or cause, for any reason,  
16 a motor vehicle owner to take a vehicle covered by a warranty for warranty repair to a  
17 dealership in this state other than the manufacturer's franchised dealership closest to  
18 the motor vehicle owner's residence or to the location where the motor vehicle's  
19 nonconformity became apparent to the motor vehicle owner, whichever is closer. In  
20 any case involving warranty repairs or service contract repairs, the motor vehicle  
21 owners shall have the option, for any covered repair, to have the vehicle towed to and  
22 repaired at the manufacturer's expense by the dealership that sold the motor vehicle to  
23 the motor vehicle owner if the dealership is within 35 miles of the location where the  
24 vehicle became inoperable due to the nonconformity.

25 (r) When a warranty or service contract repair results in the removal of  
26 hazardous or potentially hazardous material from a motor vehicle, the manufacturer or  
27 administrator shall reimburse the repairing dealership for the reasonable cost the  
28 dealership incurs that results from or is associated with the disposal of the material.

29 (s) A licensed manufacturer doing business in this state shall notify its  
30 franchised dealers of any hazardous or potentially hazardous material, including  
31 asbestos in brake linings, contained in the motor vehicles and replacement parts it

1 manufacturers or distributes. As part of the required notification, the manufacturer  
2 shall provide recommended procedures for the handling and disposal of the hazardous  
3 or potentially hazardous material and shall assume any liability the dealer may later  
4 incur for the handling or disposal of the hazardous or potentially hazardous material if  
5 the dealer follows the manufacturer's recommended handling and disposal procedures.

6 **Sec. 45.25.420. Transportation damages.** (a) A manufacturer is liable for  
7 all damages to a new motor vehicle manufactured by the manufacturer before delivery  
8 to a carrier or transporter. If a new motor vehicle dealer determines the method of  
9 transportation, the risk of loss passes to the dealer upon delivery of the new motor  
10 vehicle to the carrier. Except as provided in this subsection, the risk of loss from  
11 delivery of a new motor vehicle remains with the manufacturer until the new motor  
12 vehicle dealer or the new motor vehicle dealer's designee accepts the new motor  
13 vehicle from the carrier.

14 (b) If a new motor vehicle is damaged while in transit when the manufacturer  
15 designates the carrier or the means of transportation, or if a new motor vehicle is  
16 otherwise damaged before delivery to the dealer, the dealer shall notify the  
17 manufacturer of the damage within three working days or within additional time as  
18 authorized by the franchise agreement of the occurrence of the delivery of the new  
19 motor vehicle and request authorization from the manufacturer to repair the damages  
20 or replace the parts or accessories damaged. If the manufacturer refuses or fails to  
21 authorize repair or replacement of the damage within three working days after the  
22 manufacturer receives notification of damage from the dealer, ownership of the new  
23 motor vehicle reverts to the manufacturer, and the dealer does not have an obligation,  
24 financial or otherwise, for the damage to the new motor vehicle. A manufacturer may  
25 not fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a  
26 new motor vehicle, the nature and extent of damage or post-manufacturing repairs  
27 made to a new motor vehicle while in the possession or under the control of the  
28 manufacturer if the cost of the post-manufacturing repairs exceeds three percent of the  
29 manufacturer's suggested retail price or an amount stated in the manufacturer's policy  
30 regarding disclosure of damage, whichever is lower. A manufacturer is not required to  
31 disclose to a new motor vehicle dealer that the glass, tires, or bumper of a new motor

1 vehicle was damaged if the damaged item has been replaced with original or  
 2 comparable equipment. Nothing in this subsection relieves the dealer of the obligation  
 3 to cooperate with the manufacturer as necessary in filing a transportation damage  
 4 claim with the carrier.

5 (c) Before entering into a new motor vehicle sales contract, a new motor  
 6 vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle any  
 7 known damage and repair to the new motor vehicle if the damage exceeds five percent  
 8 of the manufacturer's suggested retail price as calculated at the dealer's authorized  
 9 warranty rate for labor and parts. A new motor vehicle dealer is not required to  
 10 disclose to a purchaser that glass, tires, bumpers, or cosmetic parts of a new motor  
 11 vehicle were damaged at any time if the damaged item has been replaced with original  
 12 or comparable equipment. A replaced part is not part of the cumulative damage  
 13 required to be disclosed under this subsection. If disclosure is not required under this  
 14 subsection, a purchaser may not revoke or rescind a sales contract due to the fact that  
 15 the new motor vehicle was damaged and repaired before completion of the sale. For  
 16 purposes of this subsection, "manufacturer's suggested retail price" means the retail  
 17 price of the new motor vehicle suggested by the manufacturer and includes the retail  
 18 delivered price suggested by the manufacturer for each accessory or item of optional  
 19 equipment physically attached to the new motor vehicle at the time of delivery to the  
 20 new motor vehicle dealer that is not included within the retail price suggested by the  
 21 manufacturer for the new motor vehicle. In this subsection, "cosmetic parts" means  
 22 parts that are attached by and can be replaced in total through the use of screws, bolts,  
 23 or other fasteners without the use of welding or thermal cutting and includes  
 24 windshields, bumpers, hoods, or trim panels.

25 **Sec. 45.25.430. Other unfair methods of competition.** A motor vehicle  
 26 manufacturer may not

27 (1) own, operate, or control a motor vehicle dealership in this state;  
 28 however, this paragraph does not prohibit the ownership or operation of a new motor  
 29 vehicle dealership by a manufacturer for a period, not to exceed one year, during the  
 30 transition from one owner or operator to another, or during a period when a dealership  
 31 is being sold or its shares are being purchased under a bona fide contract or purchase

1 option;

2 (2) own, operate, or control a facility for the repair or maintenance of  
3 motor vehicles except a facility that is used to

4 (A) repair or maintain vehicles owned or operated by the  
5 manufacturer; or

6 (B) perform motor vehicle service required by law that cannot  
7 be performed by the manufacturer's franchised dealers;

8 (3) contract with or approve a person or entity other than a duly  
9 franchised dealer to perform warranty repairs or service contract repairs for the  
10 manufacturer unless that person or entity is a subcontractor for that manufacturer's  
11 licensed dealer franchised for that geographic market area;

12 (4) ship new or used motor vehicles or new or used parts or accessories  
13 to a location other than the location of its franchised dealer for the geographic area or  
14 the dealer's subsidiary location or subcontractor location in that geographic area or to a  
15 wholesale distributor appointed by the manufacturer for that geographic area.

16 **Article 5. Installment Sales; Service Contracts.**

17 **Sec. 45.25.500. Installment sales; statement to be delivered to buyer;**  
18 **obligations to buyer.** (a) A motor vehicle installment contract must be in writing,  
19 signed by both the seller and buyer, and completed as to all essential provisions before  
20 the signing of the contract by the buyer and before delivery of the vehicle to the buyer.

21 (b) A dealer may not obtain a signed motor vehicle installment contract from  
22 the buyer until the financing terms reflected on the motor vehicle installment contract  
23 are final and complete.

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

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

1 and frequency of payments, and the amount of each payment;

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

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

11 (d) A licensee may not enter into a short-term or single-payment contract  
12 unless the terms and conditions described in this section are fully complied with  
13 before delivery of the vehicle to the buyer.

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

20 **Sec. 45.25.510. Installment sales coercion prohibited.** (a) A manufacturer  
21 or an officer, agent, or representative of a manufacturer, may not coerce or attempt to  
22 coerce a motor vehicle dealer in this state to sell, assign, or transfer a motor vehicle  
23 installment contract to a specified finance company, to a class of finance companies,  
24 or to another specified person.

25 (b) A manufacturer, an officer, an agent, or a representative of a manufacturer,  
26 or a person affiliated with the manufacturer may not

27 (1) offer to provide information to a dealer concerning a prospective  
28 customer who contacts the manufacturer or a person affiliated with the manufacturer  
29 about the manufacturer's or distributor's products; or

30 (2) condition the provision of the information referred to in (1) of this  
31 subsection to a dealer on the agreement of the dealer to sell or lease a motor vehicle to

1 the prospective customer only if the financing or leasing for the transaction is done by  
 2 a finance company or lease company that has a relationship or is affiliated with the  
 3 manufacturer.

4 (c) The provisions of (b) of this section do not prohibit a finance company or  
 5 lease company that is affiliated with a manufacturer from

6 (1) servicing existing loans or leases, including arranging financing or  
 7 a lease upon the maturity of an existing loan or lease;

8 (2) negotiating with an existing debtor or lessee who is in default under  
 9 the terms of a loan or lease, including working with a dealer to retake or dispose of a  
 10 motor vehicle retaken from the existing debtor or lessee; or

11 (3) providing information concerning a customer who qualifies to  
 12 purchase a new motor vehicle under a motor vehicle purchase program sponsored by a  
 13 manufacturer for factory employees, manufacturer retirees, or factory vendors or  
 14 under another reasonably similar new vehicle purchase program offered by a  
 15 manufacturer or distributor.

16 **Sec. 45.25.520. 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 dealer presents a service contract to the customer as an "application" for  
 19 a contract, it must be clearly and conspicuously marked as an application and must  
 20 disclose the applicable rules for obtaining a final service contract.

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

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

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

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

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

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

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

8 **Article 6. Prohibited Trade Practices.**

9 **Sec. 45.25.600. Prohibited trade practices.** A manufacturer or manufacturer  
10 representative may not

11 (1) coerce or attempt to coerce a dealer to accept delivery of a motor  
12 vehicle, motor vehicle parts or accessories, or another commodity, that has not been  
13 ordered by the dealer;

14 (2) coerce or attempt to coerce a dealer to enter into an agreement with  
15 the manufacturer or a subsidiary of the manufacturer, or do any other act unfair to the  
16 dealer, by threatening to cancel a franchise existing between the manufacturer or  
17 subsidiary of the manufacturer and the dealer;

18 (3) directly or indirectly impose unreasonable restrictions on a dealer  
19 relating to the transfer or sale of the business, by stock transfer or otherwise, or to the  
20 transfer, sale, or assignment of a dealer franchise; in this paragraph, "unreasonable  
21 restrictions" includes restricting a dealer's right to renew a franchise, unreasonable  
22 termination of a franchise, unreasonable discipline of a dealer, noncompetition  
23 covenants, site-control agreements, the right of first refusal to purchase agreements,  
24 option to purchase agreements, and unreasonable requirements to comply with  
25 subjective manufacturer standards;

26 (4) prevent or refuse a change in the executive management or  
27 principal operator of a franchise or prevent or refuse relocation of the franchise to  
28 another site or additional sales or service facilities within the franchise's relevant  
29 market area if the commissioner has determined, upon request in writing by the dealer  
30 within 30 days after receipt of an objection to a proposed change or relocation and  
31 after a hearing on the matter, that the manufacturer's failure to permit the change or

1 relocation is unreasonable under the circumstances; the executive management or  
 2 principal operators may not be changed, or a franchise relocated, unless the franchisor  
 3 has been given at least 30 days' prior written notice of the identity and qualifications  
 4 of the persons proposed to be involved in executive management or as principal  
 5 operators, or of the location and site plan of any proposed relocation; a franchisor  
 6 may, by registered or certified mail, return receipt requested, send the dealer a notice  
 7 of objection to the proposed change or relocation; notice of objection must be sent  
 8 within 30 days after receipt of notice from the dealer, as provided in this paragraph;  
 9 failure by the franchisor to send notice of objection within 30 days after receipt of  
 10 notice from the dealer constitutes waiver by the franchisor of the right to object to the  
 11 proposed change or relocation; a manufacturer or manufacturer representative has the  
 12 burden of proving that the proposed change or relocation is unreasonable under the  
 13 circumstances. In this paragraph, "franchisor" means a manufacturer, distributor, or  
 14 wholesaler who grants a franchise to a dealer.

15 **Sec. 45.25.610. Prohibited acts by licensee.** A licensed motor vehicle dealer  
 16 may not

17 (1) intentionally publish or circulate an advertisement that is  
 18 misleading or inaccurate in a material manner or that misrepresents a product sold or  
 19 furnished by a licensed motor vehicle dealer;

20 (2) use the word "invoice" in an advertisement for the sale of a motor  
 21 vehicle, unless

22 (A) the advertisement contains the following statement: "A  
 23 factory invoice may not reflect factory holdbacks or rebates paid to the dealer";  
 24 and

25 (B) the word "invoice," as used by the licensed motor vehicle  
 26 dealer, means the itemized statement that a manufacturer sends to the dealer  
 27 that clearly defines the make, model, model year, and vehicle identification  
 28 number of the vehicle shipped to the dealer, that identifies all factory installed  
 29 accessories, and that states the amount originally charged to the dealer by the  
 30 manufacturer for the vehicle delivered to the dealer's principal place of  
 31 business;

1 (3) refuse to sell a motor vehicle under the terms or conditions that the  
2 dealer has advertised; this paragraph does not apply if

3 (A) the dealer can document that the advertised term was the  
4 result of an error on the part of the advertising medium or an outside  
5 advertising agent; or

6 (B) the error was made in good faith by the dealer and was  
7 clearly and conspicuously a mistake, and the dealer corrected the error as soon  
8 as the dealer knew or reasonably should have known of the error;

9 (4) use misleading statements about dealer size, sales volume, or  
10 inventory to represent or imply that the dealer sells motor vehicles at a lower price as a  
11 result of the dealer's size, volume, or inventory;

12 (5) advertise a selling price for a motor vehicle that does not include  
13 all internal dealer fees in the advertised selling price;

14 (6) use the term "factory outlet," "factory authorized sale," or a similar  
15 term to imply that the dealer has a special connection or relationship with the  
16 manufacturer that is greater or more direct than that of other dealers when in fact there  
17 is not a special connection or relationship or when any special connection or  
18 relationship does not have a discernible effect on vehicle prices;

19 (7) use the term "liquidation sale," "public notice," "public sale," or a  
20 similar term in an advertisement when the sale is not required by court order, by  
21 operation of law, or by impending cessation of the dealer's business;

22 (8) use the word "free" or a similar term in connection with the  
23 purchase of a vehicle whose price is arrived at through bargaining or when the offer is  
24 contingent on purchasing something whose price is marked up to recover all or part of  
25 the cost of the "free" merchandise;

26 (9) advertise a minimum trade-in or use the term "guaranteed" or a  
27 similar term in connection with a trade-in if the selling price of the advertised vehicle  
28 is or may be higher than it would have been but for the minimum trade-in;

29 (10) advertise that a specific price will be paid for a trade-in vehicle,  
30 unless

31 (A) the advertised price will be paid for all trade-in vehicles; or

1 (B) the advertisement discloses any conditions that the vehicle  
2 must meet before the price is paid;

3 (11) advertise a range of prices that will be paid for trade-in vehicles,  
4 unless the advertisement discloses the factors that will be used to determine the  
5 amount to be paid for a particular trade-in vehicle;

6 (12) advertise a comparison with a manufacturer's suggested retail  
7 price, unless the

8 (A) advertised price is in fact the manufacturer's suggested  
9 retail price listed on the monroney sticker, including accessories and options  
10 physically attached to the motor vehicle at the time of delivery to the dealer  
11 and any charge to the dealer for transportation to the dealer, after all  
12 manufacturer discounts and manufacturer savings listed on the monroney  
13 sticker have been deducted;

14 (B) advertised manufacturer's suggested retail price does not  
15 include any charges added by the dealer;

16 (C) advertised manufacturer's suggested retail price is referred  
17 to as the "manufacturer's suggested retail price" or "MSRP";

18 (D) advertisement clearly and conspicuously discloses that the  
19 manufacturer's suggested retail price is a price set by the manufacturer and  
20 does not necessarily reflect the price actually paid by consumers in the trade  
21 area; and

22 (E) advertisement does not otherwise conflict with or detract  
23 from a requirement or disclosure under (A) - (D) of this paragraph;

24 (13) advertise a discount offered by the manufacturer, including a  
25 manufacturer rebate or other reduction in price offered by the manufacturer, without  
26 disclosing that the manufacturer is the source of the discount;

27 (14) violate a provision of this chapter, including this section, or a  
28 regulation adopted under this chapter;

29 (15) knowingly purchase, sell, or otherwise acquire or dispose of a  
30 stolen vehicle;

31 (16) violate a provision of law relating to purchase or sale of a motor

1 vehicle;

2 (17) engage as a dealer in the business for which the dealer is licensed  
3 without at all times maintaining a principal place of business in the state;

4 (18) knowingly purchase or sell a vehicle that has an altered or  
5 removed vehicle identification number plate, or alter or remove a vehicle  
6 identification number plate;

7 (19) display for sale or exchange or sell a vehicle for which the dealer  
8 does not hold a manufacturer's statement of origin, a title, or a properly executed  
9 consignment agreement;

10 (20) violate a provision of federal law relating to motor vehicle safety  
11 standards or to odometer laws;

12 (21) transfer the title for a new or used vehicle to a buyer before  
13 financing is final and complete;

14 (22) transfer title to a trade-in vehicle or perform any repairs or  
15 reconditioning to a trade-in vehicle before the completion of the sales transaction for  
16 which the vehicle is a trade-in;

17 (23) knowingly represent a vehicle as qualified to be covered by a  
18 service contract when the vehicle is not, in fact, qualified;

19 (24) represent and sell as new or unused a motor vehicle that has been  
20 used and operated for demonstration purposes or that is otherwise a used motor  
21 vehicle.

22 **Sec. 45.25.620. Restrictions on vehicle sale or lease.** Unless otherwise  
23 provided for in this chapter, it is unlawful for a person other than a licensed dealer to

24 (1) display a vehicle for sale or lease unless the title is in the name of  
25 the displayer; or

26 (2) solicit the sale or lease of a vehicle unless the title is in the name of  
27 the seller; this paragraph does not apply to a vehicle that is subject to a trust or  
28 financing agreement between a dealer and a financing institution or entity where title  
29 to the vehicle is obtained by paying off the trust or financing obligation.

30 **Article 7. Miscellaneous Provisions.**

31 **Sec. 45.25.700. Acts of officers, directors, partners, salespersons, and**

1 **other representatives.** (a) If a licensee is not an individual, a license may be denied,  
 2 suspended, or revoked if an officer, director, partner, member, or manager of the  
 3 licensee commits an act or omits a duty that is cause for refusing, suspending, or  
 4 revoking a license to an individual.

5 (b) A dealer or manufacturer is responsible for the acts of a representative or  
 6 salesperson while the representative or salesperson is acting as the dealer's or  
 7 manufacturer's agent.

8 (c) A manufacturer is responsible for the acts of its employees, agents, or  
 9 representatives while the employees, agents, or representatives are acting in the  
 10 conduct of the manufacturer's business, whether or not the manufacturer approved,  
 11 authorized, or had prior knowledge of the acts.

12 **Sec. 45.25.710. Powers of the commissioner.** Whenever the commissioner is  
 13 provided with information by the Motor Vehicle Dealers Advisory Board or another  
 14 person and the information supports commissioner action under this section, the  
 15 commissioner may

16 (1) prevent or investigate allegations of unfair methods of competition,  
 17 unfair deceptive acts or practices, and other violations of this chapter;

18 (2) conduct hearings, including conducting discovery, determining the  
 19 date, time, and place where hearings are to be held, subpoenaing witnesses, deposing  
 20 witnesses, and administering oaths;

21 (3) recommend that the attorney general bring an action in the name of  
 22 the state against a person for a violation of this chapter or seek to enjoin a person from  
 23 violating this chapter.

24 **Sec. 45.25.720. Required hearing notice; appeal.** (a) The commissioner  
 25 shall give reasonable notice of a hearing to all interested parties.

26 (b) In a dispute that is the subject of a hearing by the commissioner, the  
 27 commissioner's decision may be appealed to the superior court. The commissioner's  
 28 decision is binding on the parties unless the decision is appealed. The commissioner  
 29 may require the parties to a hearing to pay the costs of the hearing.

30 **Sec. 45.25.730. Motor Vehicle Dealers Advisory Board.** (a) The Motor  
 31 Vehicle Dealers Advisory Board is established in the department. The board consists

1 of six voting members appointed by the commissioner and the nonvoting member  
2 under (g) of this section.

3 (b) A voting member of the board shall be a resident of the state for a  
4 minimum of five consecutive years preceding appointment. Four voting members of  
5 the board shall be licensed franchised dealers in new motor vehicles who have been  
6 actually engaged in the sale, lease, and repair of motor vehicles in the state for at least  
7 three consecutive years. One voting member shall be a licensed dealer in used  
8 vehicles who has been actually engaged in the sale, lease, and repair of motor vehicles  
9 in the state for at least three consecutive years. One voting member shall be a member  
10 of the general public and may not be a dealer in either new or used vehicles.

11 (c) Members of the board shall meet at the call of the commissioner.  
12 Members do not receive compensation for services, but shall receive per diem and  
13 travel expenses allowed for boards under AS 39.20.180.

14 (d) The purpose of the board is to advise the commissioner regarding

- 15 (1) appeals or other disputes between manufacturers and dealers;
- 16 (2) a manufacturer's proposed changes to its new vehicle franchises;
- 17 (3) proposed regulations; and
- 18 (4) violations of the provisions of this chapter by a licensee.

19 (e) The commissioner shall refer an appeal made to the commissioner under  
20 this chapter to the board for consideration before the commissioner acts on the appeal.

21 (f) The commissioner shall appoint a qualified person to serve as executive  
22 director of the board. The executive director is a member of the exempt service under  
23 AS 39.25.110.

24 (g) The attorney general or a person appointed by the attorney general to  
25 represent the attorney general is a nonvoting member of the board, shall attend board  
26 meetings, and shall seek the advice of and consult with the board before issuing a  
27 business directive affecting the sale, leasing, or repair of motor vehicles in this state.

28 (h) A member of the board is not civilly liable for an act or omission that  
29 occurs while performing duties as a member of the board.

30 **Sec. 45.25.740. Civil penalty.** If, after complying with the administrative  
31 provisions of AS 44.62.330 - 44.62.630, the commissioner determines that a

1 manufacturer or dealer is violating a provision of this chapter or a regulation or order  
 2 of the commissioner issued under this chapter, the commissioner may levy a civil  
 3 penalty of not less than \$1,000 nor more than \$10,000 for each violation. If the  
 4 violation involves multiple transactions within a 30-day period, the multiple  
 5 transactions constitute a single violation. In determining the amount of the civil  
 6 penalty levied under this section, the commissioner shall consider

7 (1) the seriousness of the violation, including the nature,  
 8 circumstances, extent, and gravity of the prohibited act and the harm or potential harm  
 9 caused to the safety of the public;

10 (2) the economic damage to the public caused by the violation;

11 (3) any previous violations;

12 (4) the amount necessary to deter future violations;

13 (5) efforts made to correct the violation; and

14 (6) other matters that justice may require.

15 **Sec. 45.25.750. Requirement of principal place of business.** (a) When a  
 16 dealer is required by this chapter to have and maintain a principal place of business,  
 17 the principal place of business must include a permanent building that contains, at a  
 18 minimum, an established office and an established salesroom.

19 (b) To qualify as an established office under (a) of this section, the office must

20 (1) contain at least 400 square feet of floor space in a permanent and  
 21 enclosed building; and

22 (2) be a place where books, records, and files required by the  
 23 department are kept.

24 (c) To qualify as an established salesroom under (a) of this section, the  
 25 salesroom must

26 (1) contain at least 400 square feet of floor space in a permanent and  
 27 enclosed building;

28 (2) display, or be located immediately adjacent to, a sign having block  
 29 letters not less than six inches in height on a contrasting background, clearly and  
 30 distinctly designating the trade name of the business, unless prohibited by law;

31 (3) be a place at which the business of bartering, trading, and selling

1 motor vehicles is carried on in good faith on an ongoing basis and where the dealer  
2 can be contacted by the public at reasonable times; and

3 (4) be a place where books, records, and files required by the  
4 department are kept.

5 (d) An established salesroom includes the area contiguous to the premises on  
6 which the salesroom is located, but does not include a tent, a temporary stand, or other  
7 temporary quarters.

8 **Sec. 45.25.760. Regulations.** (a) The commissioner may adopt regulations,  
9 as provided under AS 44.62 (Administrative Procedure Act), necessary or proper for  
10 the effective administration and enforcement of this chapter.

11 (b) The commissioner shall mail a copy of proposed regulations to each  
12 licensed motor vehicle dealer before the effective date of the regulations.

### 13 **Article 8. General Provisions.**

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

16 **Sec. 45.25.950. Definitions.** In this chapter,

17 (1) "administrator" means a person who administers any part of the  
18 warranty coverage for a new or used vehicle or the service contract for a new or used  
19 vehicle on behalf of a manufacturer or audits or examines a dealer's performance or  
20 administration of a service contract, of a warranty, or of maintenance or repairs  
21 performed on covered vehicles in this state;

22 (2) "brokering" means arranging or offering to arrange, for a fee,  
23 commission, or other valuable consideration, a transaction involving the sale,  
24 purchase, or lease of a new motor vehicle, and who is not a dealer or employee of a  
25 dealer;

26 (3) "commissioner" means the commissioner of administration;

27 (4) "dealer" means a new motor vehicle dealer or used motor vehicle  
28 dealer;

29 (5) "dealer facilities" means the real estate, buildings, fixtures and  
30 improvements devoted to the conduct of business under a new vehicle franchise or in  
31 the conduct of a used vehicle business;

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

3 (7) "department" means the Department of Administration;

4 (8) "distributor" means a person or entity who sells or distributes new  
5 or used motor vehicles to motor vehicle dealers or who maintains or sends distributor  
6 representatives within or to this state to sell or distribute new or used motor vehicles to  
7 motor vehicle dealers in this state;

8 (9) "distributor branch" means a branch office maintained by a  
9 distributor or wholesaler who sells or distributes new or used motor vehicles to  
10 franchised motor vehicle dealers in this state;

11 (10) "distributor representative" means a representative employed by a  
12 distributor branch, distributor, or wholesaler who sells or distributes new or used  
13 motor vehicles to franchised motor vehicle dealers in this state;

14 (11) "factory branch" means a branch office maintained by a  
15 manufacturer for directing and supervising the representatives of the manufacturer;

16 (12) "factory representative" means a representative employed by a  
17 manufacturer or factory branch for the purpose of making or promoting the sale of  
18 motor vehicles or supervising, servicing, instructing, or contracting with franchised  
19 motor vehicle dealers or prospective franchised motor vehicle dealers;

20 (13) "family member" means a spouse, child, stepchild, grandchild,  
21 stepgrandchild, parent, stepparent, brother, stepbrother, sister, or stepsister;

22 (14) "franchise" means an oral or written arrangement for a definite or  
23 indefinite period in which a manufacturer, distributor, or motor vehicle wholesaler  
24 grants to a motor vehicle dealer a license, sales and service agreement, or contract of  
25 any kind to use a trade name, service mark, or related characteristic, and in which  
26 there is a community of interest in the wholesale or retail marketing of related motor  
27 vehicles or services;

28 (15) "franchised" means having a franchise;

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

31 (17) "good faith" means honesty in fact and the observation of

1 reasonable commercial standards of fair dealing in the trade;

2 (18) "lease" means a contract by which a person owning a motor  
3 vehicle grants to another person the right to possess, use, and enjoy the motor vehicle  
4 for a specified period of time in exchange for periodic payment of a stipulated price,  
5 and in which the use of the vehicle is granted for a period of 12 or more months;

6 (19) "licensed dealer" means a dealer licensed under AS 45.25.140;

7 (20) "licensed manufacturer" means a manufacturer licensed under  
8 AS 45.25.120;

9 (21) "line-make" means a new motor vehicle that is offered for sale,  
10 lease, or distribution under a common name, common trademark, or common service  
11 mark;

12 (22) "maker" means the person that makes, frames, and executes a  
13 service contract and assumes any obligation due to the purchaser, but does not include  
14 a dealer if the dealer merely sells the service contract as the agent of a service contract  
15 company licensed to do business in this state;

16 (23) "manufacturer" means a person or the person's subsidiary who  
17 manufacturers, imports, distributes, or assembles new motor vehicles and includes an  
18 administrator, a distributor, a distributor branch, and a factory branch;

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

23 (25) "monroney sticker" means the window sticker required by 15  
24 U.S.C. 1231 - 1233 (Automobile Information Disclosure Act);

25 (26) "motor vehicle" means a motor vehicle that is required to be  
26 registered under AS 28.10;

27 (27) "motor vehicle dealer" means a person, other than a manufacturer,  
28 who sells, leases, solicits, brokers, or arranges for sale or lease, of three or more new  
29 or used motor vehicles in any 12 consecutive months, regardless of who owns the  
30 vehicles; "motor vehicle dealer" does not include

31 (A) a receiver, trustee, administrator, executor, guardian, or

1 other person appointed by a court or a person performing duties as a public  
2 officer;

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

7 (C) a person who sells motor vehicles as an incident of their  
8 principal business but who is not engaged primarily in the selling of motor  
9 vehicles;

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

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

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

17 (28) "motor vehicle salesperson" means a person who is employed as a  
18 sales representative or salesperson by, or has an agreement with, a motor vehicle  
19 dealer to sell, lease, broker, or exchange motor vehicles;

20 (29) "new motor vehicle" means a motor vehicle that has not been  
21 previously sold to and registered to a person except a distributor, wholesaler, or  
22 licensed motor vehicle dealer for resale;

23 (30) "new motor vehicle dealer" means a motor vehicle dealer who  
24 buys, sells, leases, brokers, or exchanges, or offers or attempts to negotiate a sale,  
25 lease, or exchange of an interest in, or who is engaged, in whole or in part, in the  
26 business of selling, leasing, brokering, or exchanging new or new and used motor  
27 vehicles;

28 (31) "sale" means the issuance, transfer, agreement for transfer,  
29 exchange, gift, pledge, hypothecation, or mortgage in any form, whether by transfer in  
30 trust or otherwise, of a motor vehicle, an interest in a motor vehicle, or a related  
31 franchise;

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

4 (33) "used motor vehicle" means a motor vehicle that has been  
 5 previously sold to and registered to a person other than a distributor, wholesaler, or  
 6 licensed motor vehicle dealer;

7 (34) "used motor vehicle dealer" means a motor vehicle dealer who  
 8 buys, sells, leases, brokers, exchanges, or offers or attempts to negotiate a sale, lease,  
 9 or exchange of an interest in, only used motor vehicles.

10 \* **Sec. 3.** AS 39.25.110 is amended by adding a new paragraph to read:

11 (34) the executive director of the Motor Vehicle Dealers Advisory  
 12 Board.

13 \* **Sec. 4.** AS 44.62.330(a) is amended by adding a new paragraph to read:

14 (60) the Department of Community and Economic Development as to  
 15 the licensing and regulation of a person involved in the selling, leasing, brokering, or  
 16 exchanging of a motor vehicle under AS 45.25.

17 \* **Sec. 5.** AS 45.50.572 is amended by adding a new subsection to read:

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

21 \* **Sec. 6.** AS 08.66.010, 08.66.015, 08.66.020, 08.66.030, 08.66.040, 08.66.050, 08.66.060,  
 22 08.66.070, 08.66.080, 08.66.090, 08.66.200, 08.66.210, 08.66.220, 08.66.230, 08.66.240,  
 23 08.66.250, 08.66.260, 08.66.270, 08.66.280, 08.66.290, 08.66.300, 08.66.310, 08.66.320,  
 24 08.66.330, 08.66.350; AS 45.50.471(b)(33), and 45.50.471(b)(34) are repealed.

25 \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
 26 read:

27 **TRANSITION.** The minimum floor space requirements for an established salesroom  
 28 imposed under AS 45.25.750(c), enacted by sec. 2 of this Act, do not apply to a motor vehicle  
 29 salesroom that was in existence on or before the effective date of this Act.

30 \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to  
 31 read:

1           APPLICABILITY. This Act applies to a franchise, as that term is defined in  
2 AS 45.25.950, that is entered into or renewed before, on, or after the effective date of this Act.  
3       \* **Sec. 9.** This Act takes effect July 1, 2001.