

CS FOR HOUSE BILL NO. 272(STA) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Amended: 5/17/03

Offered: 5/17/03

Sponsor(s): REPRESENTATIVE WEYHRAUCH

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the advertising of motor vehicles, including trailers, for sale by**
2 **motor vehicle dealers; relating to the financing of motor vehicle purchases; relating to**
3 **motor vehicle sales contracts; relating to the disclosures required to be made by motor**
4 **vehicle dealers when selling motor vehicles, including trailers, or when their service**
5 **employees work on commission; relating to a motor vehicle dealer's selling as a new or**
6 **current model vehicle, a motor vehicle required to be registered under AS 28.10;**
7 **relating to a motor vehicle dealer's advertising an offer for the sale, lease, or purchase of**
8 **a motor vehicle, including a trailer; relating to a motor vehicle dealer's conditioning the**
9 **sale and delivery of a motor vehicle, including a trailer, on the buyer's purchase of other**
10 **items; and relating to the return of a buyer's trade-in by a motor vehicle dealer."**

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

12 * **Section 1.** AS 08.66.015 is amended to read:

1 **Sec. 08.66.015. Sale of motor vehicle.** (a) A person who does business as a
 2 dealer in the state may not offer to sell or sell a motor vehicle as a new [OR
 3 CURRENT MODEL] motor vehicle unless the motor vehicle retains the
 4 manufacturer's certificate of origin.

5 (b) A person who does business as a dealer in the state may [NOT] offer to
 6 sell or sell a motor vehicle as a [NEW OR] current model motor vehicle **only if**
 7 [HAVING A MANUFACTURER'S WARRANTY UNLESS]

8 (1) the dealer has a current sales and service agreement with the
 9 manufacturer [AND THE AGREEMENT REQUIRES THE DEALER, UPON
 10 DEMAND OF THE MOTOR VEHICLE BUYER, TO PERFORM OR ARRANGE
 11 FOR, WITHIN A REASONABLE DISTANCE OF THE DEALER'S PLACE OF
 12 BUSINESS IN THE STATE, THE REPAIR AND REPLACEMENT WORK
 13 REQUIRED OF THE MANUFACTURER UNDER THE WARRANTY]; [OR]

14 (2) the **vehicle is a current model used vehicle received as a trade-**
 15 **in in the normal course** [DEALER OFFERS TO GIVE THE BUYER A REBATE
 16 TO COVER THE REPAIR AND REPLACEMENT WORK THAT THE DEALER
 17 CANNOT PERFORM OR ARRANGE FOR WITHIN A REASONABLE
 18 DISTANCE OF THE DEALER'S PLACE] of business;

19 **(3) the vehicle has been purchased directly from a consumer in the**
 20 **United States for purposes of resale;**

21 **(4) the vehicle has been in service with a bona fide rental fleet for**
 22 **at least four months;**

23 **(5) the vehicle is a current model used vehicle that has been leased**
 24 **by a consumer and has been returned to the leasing dealer;**

25 **(6) the vehicle has been repossessed; or**

26 **(7) the vehicle was purchased at an auction and meets the**
 27 **requirements of (2), (3), (4), (5), or (6) of this subsection.**

28 * **Sec. 2.** AS 45.25.400(b) is amended to read:

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

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

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

7 (3) whenever using the term "manufacturer's suggested retail price,"
 8 "MSRP," or "list price," the dealer [SHALL PROVIDE IN THE ADVERTISEMENT
 9 A CLEAR AND CONSPICUOUS DISCLOSURE THAT STATES THAT A SALE]
 10 may not **represent that a buyer would save money by paying a** [HAVE
 11 OCCURRED AT THAT] price **that is lower than the "manufacturer's suggested**
 12 **retail price," "MSRP," or "list price"**.

13 * **Sec. 3.** AS 45.25.410 is amended to read:

14 **Sec. 45.25.410. Availability of advertised items.** A motor vehicle dealer
 15 may not advertise **a new motor vehicle** [VEHICLES AND RELATED GOODS OR
 16 SERVICES] at a specified dealer price with the intent not to supply reasonably
 17 expected demand, unless the advertisement discloses the number of vehicles in stock
 18 at the advertised price.

19 * **Sec. 4.** AS 45.25.460(a) is amended to read:

20 (a) In addition to the provisions of AS 45.50.471 and regulations adopted
 21 under AS 45.50.471, a motor vehicle dealer [MAY NOT]

22 (1) **shall include in** [EXCLUDE FROM] an advertisement of a motor
 23 vehicle for sale **all** [THAT TAXES, IF APPLICABLE, VEHICLE REGISTRATION
 24 FEES, FINANCE CHARGES, CHARGES FOR THE ISSUANCE OF ANY
 25 CERTIFICATE OF COMPLIANCE OR NONCOMPLIANCE REQUIRED BY
 26 STATUTE, OR OTHER] fees or charges, **except fees or charges** to be paid to a third
 27 party [THAT ARE NOT OTHERWISE INCLUDED IN THE ADVERTISED PRICE
 28 WILL BE ADDED TO THE ADVERTISED PRICE AT THE TIME OF THE SALE];

29 (2) **may not** represent the dealer document preparation fee as a
 30 government fee;

31 (3) **may not** advertise a specific motor vehicle for sale without

1 identifying the vehicle by either its vehicle identification number, vehicle stocking
2 number, or license number;

3 (4) **may not** advertise that free merchandise, gifts, or services will be
4 provided by the dealer if a vehicle is purchased; in this paragraph, "free" includes
5 merchandise or services offered for sale at a price less than the dealer's cost for the
6 merchandise or services;

7 (5) **may not** use the term "rebate," "cash back," or a similar term in
8 advertising the sale of a motor vehicle unless the rebate is expressed in a specific
9 dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor
10 directly to the retail buyer of the vehicle;

11 (6) **may not** require a person, in order to receive the advertised credit
12 terms, to pay a higher price for a motor vehicle and any related goods or services than
13 the cash price the same person would have to pay to purchase the same vehicle and
14 related goods or services;

15 (7) **may not** advertise a guaranteed trade-in allowance or range of
16 allowances unless the guarantee is provided by the manufacturer or distributor;

17 (8) **may not** affix to a new motor vehicle a supplemental price sticker
18 containing a price that represents the dealer's asking price if the supplemental price
19 sticker exceeds the manufacturer's suggested retail price, unless the supplemental
20 sticker

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

25 (B) clearly and conspicuously discloses the manufacturer's
26 suggested retail price; and

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

31 (9) **may not** advertise or otherwise represent, or knowingly allow to be

1 advertised or represented on behalf of the dealer, that a down payment is not required
 2 in connection with the sale of a motor vehicle when a down payment is in fact
 3 required;

4 (10) **may not** advertise an offer for the sale, lease, or purchase of a
 5 motor vehicle that [CREATES THE FALSE IMPRESSION THAT THE VEHICLE IS
 6 BEING OFFERED BY A PRIVATE PARTY OR A MOTOR VEHICLE AGENT OR
 7 THAT] does not contain the name of the dealer;

8 (11) **may not** [USE AN ADVERTISEMENT FOR A MOTOR
 9 VEHICLE THAT CONTAINS LANGUAGE THAT FALSELY, IMPLICITLY, OR
 10 EXPLICITLY SUGGESTS THAT, TO TAKE ADVANTAGE OF AN OFFER, A
 11 CONSUMER MUST ACT WITHIN A CERTAIN PERIOD OF TIME WHEN, IN
 12 FACT, THE VEHICLES WILL CONTINUE TO BE AVAILABLE AT THE
 13 ADVERTISED PRICE BEYOND THAT TIME PERIOD;

14 (12) REQUIRE A BUYER OF A NEW MOTOR VEHICLE, AS A
 15 CONDITION OF SALE AND DELIVERY, TO ALSO PURCHASE SPECIAL
 16 FEATURES, APPLIANCES, ACCESSORIES, OR EQUIPMENT NOT DESIRED
 17 OR REQUESTED BY THE BUYER UNLESS THE SPECIAL FEATURES,
 18 APPLIANCES, EQUIPMENT, OR ACCESSORIES ARE ALREADY INSTALLED
 19 ON THE VEHICLE WHEN RECEIVED BY THE DEALER;

20 (13)] represent and sell as a new motor vehicle a demonstrator vehicle
 21 or a motor vehicle that is a used motor vehicle; in this paragraph, "demonstrator
 22 vehicle"

23 (A) means a motor vehicle

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

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

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

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

1 **(12) may not** [(14)] advertise that the dealer finances any person or
 2 does not reject any person's credit, or make similar claims;

3 **(13) may not** [(15)] advertise or make a statement, declaration, or
 4 representation in an advertisement that cannot be substantiated in fact; the burden of
 5 proof of the factual basis for the statement, declaration, or representation is on the
 6 dealer.

7 * **Sec. 5.** AS 45.25.465 is amended by adding a new subsection to read:

8 (c) When a motor vehicle dealer sells a used motor vehicle or a current model
 9 used motor vehicle, the motor vehicle dealer shall disclose to the buyer in writing in a
 10 manner that is clear and conspicuous and posted in the window of the vehicle

11 (1) that the warranty provisions of AS 45.45.300 - 45.45.360 do not
 12 apply to the purchase of the motor vehicle;

13 (2) that, if applicable, the vehicle is not subject to a manufacturer's
 14 warranty; and

15 (3) that, if applicable, the vehicle was originally manufactured for sale
 16 in Canada or another foreign country.

17 * **Sec. 6.** AS 45.25.510(a) is amended to read:

18 (a) Before entering into a new motor vehicle sales contract, a new motor
 19 vehicle dealer shall disclose in writing to a buyer of the new motor vehicle any known
 20 damage and repair to the new motor vehicle if the damage exceeds five percent of the
 21 manufacturer's suggested retail price as calculated at the dealer's authorized warranty
 22 rate for labor and parts, **or \$1,000, whichever amount is greater.** A new motor
 23 vehicle dealer is not required to disclose to a buyer that glass, tires, bumpers, or
 24 cosmetic parts of a new motor vehicle were damaged at any time if the damaged item
 25 has been replaced with original or comparable equipment. A replaced part is not part
 26 of the cumulative damage required to be disclosed under this subsection.

27 * **Sec. 7.** AS 45.25 is amended by adding a new section to read:

28 **Sec. 45.25.530. Disclosure regarding receipt of commissions.** If a motor
 29 vehicle dealer's service operations employees receive a commission for the amount of
 30 work they perform, the motor vehicle dealer shall post a conspicuous sign that is
 31 visible to service customers that the dealer's service operations employees work on

1 commission.

2 * **Sec. 8.** AS 45.25.610(c) is amended to read:

3 (c) **If** [NOTWITHSTANDING THE REQUIREMENTS OF THIS SECTION,
4 IF] a motor vehicle dealer arranges financing for a buyer, the motor vehicle dealer
5 may deliver the motor vehicle to the buyer before final approval by the financing
6 entity if

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

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

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

22 * **Sec. 9.** AS 45.25.610(d) is amended to read:

23 (d) If a buyer's final financing is not approved [WITHIN SEVEN BUSINESS
24 DAYS FROM THE DATE OF THE SEPARATE AGREEMENT] and, as a result, the
25 transaction is not completed, the motor vehicle dealer shall return the buyer's entire
26 down payment, and the buyer's trade-in, if any, shall be returned to the buyer in the
27 same condition and with not more than **100** [10] miles accumulated on the odometer
28 from when the motor vehicle was delivered to the motor vehicle dealer.

29 * **Sec. 10.** AS 45.25.460(b) and 45.25.610(b) are repealed.