

HOUSE BILL NO. 318

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES PRUITT, Thompson, Muñoz, Millett

Introduced: 2/19/16

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to motor vehicle franchises, motor vehicle transactions, motor vehicle**
2 **dealers, motor vehicle manufacturers, and motor vehicle distributors."**

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

4 *** Section 1.** AS 45.25.010 is repealed and reenacted to read:

5 **Sec. 45.25.010. Applicability.** The provisions of AS 45.25.020 - 45.25.340
6 apply to franchise agreements that are entered into, renewed, or amended by a
7 manufacturer and a new motor vehicle dealer before, on, or after the effective date of
8 this Act.

9 *** Sec. 2.** AS 45.25.020(b) is amended to read:

10 (b) **Except as provided in AS 45.25.185(b), venue** [VENUE] for a dispute
11 under (a) of this section is in the judicial district of this state where the new motor
12 vehicle dealer's principal place of business is located.

13 *** Sec. 3.** AS 45.25.110(a) is amended to read:

14 (a) A manufacturer may not terminate a franchise **agreement** with a new

1 motor vehicle dealer unless

2 (1) the manufacturer has

3 (A) complied with [SATISFIED] the notice requirements of
4 this chapter;

5 (B) shown that there is good cause under AS 45.25.115 for the
6 termination of the franchise agreement; [,] and

7 (C) acted in good faith [, IF THE REASONS UNDERLYING
8 THE GOOD CAUSE CAN BE CORRECTED BY THE NEW MOTOR
9 VEHICLE DEALER, THE NEW MOTOR VEHICLE DEALER HAS
10 FAILED FOR 60 DAYS AFTER DELIVERY OF THE NOTICE REQUIRED
11 BY AS 45.25.120 TO MAKE THE CORRECTIONS; THE
12 CIRCUMSTANCES IDENTIFIED UNDER AS 45.25.120(a)(2) FOR WHICH
13 A 15-DAY NOTICE OF TERMINATION IS REQUIRED DO NOT
14 QUALIFY AS REASONS FOR WHICH CORRECTION IS ALLOWED
15 UNDER THIS PARAGRAPH]; or

16 (2) the new motor vehicle dealer has systematically engaged in fraud
17 against consumers or the manufacturer or in the operation of the new motor vehicle
18 dealership.

19 * **Sec. 4.** AS 45.25 is amended by adding a new section to read:

20 **Sec. 45.25.115. Good cause; burden of proof.** (a) Notwithstanding the terms
21 of a franchise agreement or a waiver, and except as otherwise provided in (b) - (e) of
22 this section, good cause exists for termination of a franchise agreement if

23 (1) a new motor vehicle dealer fails to comply with a franchise
24 agreement provision that is reasonable and materially significant to the franchise
25 agreement; and

26 (2) the manufacturer notifies the new motor vehicle dealer of the
27 failure under (1) of this subsection within 180 days after the manufacturer first
28 acquires knowledge of the failure and the new motor vehicle dealer does not correct
29 the failure in a reasonable time after receiving the notice.

30 (b) If the failure of the new motor vehicle dealer under (a) of this section
31 relates to the performance of the new motor vehicle dealer in sales, service, or level of

1 customer satisfaction, the failure does not amount to good cause under AS 45.25.110,
2 unless

3 (1) the manufacturer determined the failure based on methodology
4 supporting reasonable performance standards that the manufacturer

5 (A) determined in accordance with criteria that the
6 manufacturer established for a dealership located in this state and that the
7 manufacturer applied uniformly; and

8 (B) fully disclosed to the new motor vehicle dealer;

9 (2) the manufacturer notified the new motor vehicle dealer in writing
10 of the failure of the new motor vehicle dealer in sales, service, or level of customer
11 satisfaction;

12 (3) after providing the notice under (2) of this subsection, the
13 manufacturer provided the new motor vehicle dealer with

14 (A) specific reasonable performance standards or goals with
15 which the dealer must comply and that took into account the specific
16 challenges arising from location and environmental conditions for a new
17 vehicle dealer in the state; and

18 (B) a suggested timetable or program during a period of not
19 less than 180 days for reaching the standards or goals under (A) of this
20 paragraph; and

21 (4) the new motor vehicle dealer did not substantially comply with the
22 performance standards or goals under (3)(A) of this subsection during the period
23 provided under (3)(B) of this subsection, and the failure substantially to comply was
24 not because of market, economic, or other factors that exist within the new motor
25 vehicle dealer's relevant market area and that are beyond the control of the dealer.

26 (c) Notwithstanding (a) and (b) of this section, if a new motor vehicle dealer
27 claims that the manufacturer has not provided the new motor vehicle dealer with an
28 adequate supply of new motor vehicles, the manufacturer does not have good cause to
29 terminate the franchise agreement under AS 45.25.110, unless

30 (1) the manufacturer provided an adequate supply of new motor
31 vehicles in the new motor vehicle dealer's primary allocation of new motor vehicles,

1 both in quantity and product mix, for the new motor vehicle dealer's assigned market
 2 area, and the manufacturer delivered the supply in a manner that allowed the dealer
 3 reasonably to meet the manufacturer's performance standards or goals; and

4 (2) the new motor vehicle dealer requests the documentation and the
 5 manufacturer provides the new motor vehicle dealer with documentation that is
 6 sufficient for the new motor vehicle dealer to develop a market analysis; the
 7 documentation must include the allocation of new motor vehicles to the new motor
 8 vehicle dealer and other new motor vehicle dealers in the same zone during the period
 9 established by the manufacturer; the new motor vehicle dealer may not share the
 10 market analysis with a person that is not involved in preparing the market analysis or
 11 terminating the franchise agreement.

12 (d) Notwithstanding the other provisions of this section, there is good cause to
 13 terminate a franchise agreement under AS 45.25.110 if

14 (1) the new motor vehicle dealer is insolvent or is the subject of a
 15 bankruptcy or receivership proceeding;

16 (2) the new motor vehicle dealer has failed to conduct its customary
 17 sales and service operations during its customary business hours for seven consecutive
 18 business days; this paragraph does not apply to a closure because of an act or
 19 circumstance beyond the direct control of the new motor vehicle dealer;

20 (3) the new motor vehicle dealer or a principal operator of the
 21 dealership is convicted of a felony; or

22 (4) the new motor vehicle dealer has had a license revoked or
 23 suspended for more than 30 days, if the new motor vehicle dealer is required to have
 24 the license to operate the new motor vehicle dealership.

25 (e) The events described in AS 45.25.300(12) do not constitute good cause for
 26 termination.

27 * **Sec. 5.** AS 45.25.120(a) is amended to read:

28 (a) **Before termination of a franchise agreement, a** [A] manufacturer shall
 29 **give** [FURNISH] a notice of termination of **the** [A] franchise agreement to a new
 30 motor vehicle dealer at least

31 (1) 90 days before the effective date of a termination, except as

1 required under (2) or (3) of this subsection;

2 (2) 15 days before the effective date of a termination when the [NEW
3 MOTOR VEHICLE DEALER]

4 (A) new motor vehicle dealer is insolvent or is the subject of a
5 bankruptcy or receivership proceeding;

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

11 (C) new motor vehicle dealer or a principal operator of the
12 dealership is convicted of a felony [INVOLVING MORAL TURPITUDE OR
13 FRAUD UNDER THE LAW OF THIS STATE, ANOTHER STATE, THE
14 FEDERAL GOVERNMENT, A TERRITORY OF THE UNITED STATES,
15 OR THE DISTRICT OF COLUMBIA]; or

16 (D) new motor vehicle dealer has had a license revoked or
17 suspended for more than 30 days, if the new motor vehicle dealer is
18 required to have the license to operate the new motor vehicle dealership;
19 or

20 (3) 180 days before the effective date of the termination if the
21 manufacturer or distributor is discontinuing the sale and distribution of the product
22 line on a nationwide basis.

23 * **Sec. 6.** AS 45.25 is amended by adding a new section to read:

24 **Sec. 45.25.135. Termination by dealer.** Notwithstanding the terms of a
25 franchise agreement, a new motor vehicle dealer may terminate a franchise agreement
26 by giving written notice of the termination to the manufacturer at least 90 days before
27 the effective date of the termination.

28 * **Sec. 7.** AS 45.25.140 is repealed and reenacted to read:

29 **Sec. 45.25.140. Payment for inventory, equipment, and other items.** (a)
30 Upon the termination of a new motor vehicle dealer's franchise agreement, the
31 manufacturer or distributor shall pay the new motor vehicle dealer, at a minimum,

1 (1) if the new motor vehicles have not been materially altered or
2 materially damaged and if the new motor vehicles are current models the dealer
3 acquired from the manufacturer within the past two model years before receipt of the
4 notice of termination, the new motor vehicle dealer's cost of the unsold new motor
5 vehicles, plus any charges by the manufacturer for distribution, delivery, and taxes,
6 and less

7 (A) all allowances paid or credited to the new motor vehicle
8 dealer by the manufacturer;

9 (B) repairable damage, except that the manufacturer is not
10 required to repurchase a damaged motor vehicle if the cost of repairing the
11 damage exceeds five percent of the manufacturer's suggested retail price of the
12 motor vehicle as calculated at the dealer's authorized warranty rate for labor
13 and parts; and

14 (C) a mileage charge of 20 cents a mile for all mileage over
15 200 miles on demonstrator vehicles;

16 (2) the new motor vehicle dealer's cost, including any charges by the
17 manufacturer for distribution, delivery, and taxes, less all allowances that the
18 manufacturer paid or credited to the new motor vehicle dealer, of new motor vehicles
19 required by the manufacturer to be used for loaner, demonstrator, or display purposes;

20 (3) the new motor vehicle dealer's cost for all unused, undamaged, and
21 unsold supplies, parts, and accessories in the original unbroken packaging if

22 (A) the supply, part, or accessory is listed in the current price
23 catalog; and

24 (B) the new motor vehicle dealer acquired the supply, part, or
25 accessory from the manufacturer or distributor, or the manufacturer required
26 the new motor vehicle dealer to purchase the supply, part, or accessory;

27 (4) the fair market value, less reasonable wear and tear, of each
28 undamaged sign that is owned by the new motor vehicle dealer and that bears a
29 common name, trade name, or trademark of the manufacturer, if the manufacturer
30 recommended or required the new motor vehicle dealer to acquire the sign and the
31 sign is in good and usable condition;

1 (5) the fair market value of all equipment, furnishings, and special
2 tools that the new motor vehicle dealer owns or leases, that the new motor vehicle
3 dealer acquired from the manufacturer or from sources approved by the manufacturer,
4 that the manufacturer recommended or required the new motor vehicle dealer to
5 purchase, and that are in good and usable condition, less reasonable wear and tear;
6 however, if the new motor vehicle dealer leases the equipment, furnishings, or tools,
7 the manufacturer shall pay the new motor vehicle dealer the amount of money that is
8 required for the new motor vehicle dealer to terminate the lease under the lease
9 agreement;

10 (6) the fair market value of all computers, printers, and software that
11 the manufacturer required or that were reasonably necessary for the new motor vehicle
12 dealer to operate the dealership according to the standards of the manufacturer, except,
13 if the new motor vehicle dealer leases the computers, printers, or software, the
14 manufacturer shall pay the new motor vehicle dealer the amount of money that is
15 required for the new motor vehicle dealer to terminate the lease under the lease
16 agreement; and

17 (7) the cost to the new motor vehicle dealer to transport, handle, pack,
18 and load the new motor vehicles, supplies, parts, accessories, signs, equipment,
19 furnishings, and special tools described in this subsection.

20 (b) To the extent the franchise agreement requires the manufacturer to pay or
21 reimburse the new motor vehicle dealer more than the amounts required under (a) of
22 this section, the provisions of the franchise agreement control.

23 (c) Within 90 days after the effective date of the termination, the new motor
24 vehicle dealer shall return the property required to be repurchased under (a) of this
25 section to the manufacturer or distributor at the expense of the manufacturer or
26 distributor.

27 (d) The manufacturer or distributor shall pay the compensation required under
28 (a) of this section within 30 days after the new motor vehicle dealer tenders the
29 property described in (a) of this section to the manufacturer or distributor if the new
30 motor vehicle dealer has clear title to the property and is in a position to convey that
31 title to the manufacturer or distributor. If the property is subject to a security interest,

1 the manufacturer or distributor may jointly pay the new motor vehicle dealer and the
2 holder of the security interest, and the manufacturer or distributor may offset those
3 payments.

4 * **Sec. 8.** AS 45.25.150 is repealed and reenacted to read:

5 **Sec. 45.25.150. Payments for dealership facilities and business.** (a) In
6 addition to the payment required under AS 45.25.140 and (c) of this section, upon
7 termination of a franchise agreement under this chapter, the manufacturer shall, at the
8 request and option of the new motor vehicle dealer, pay the new motor vehicle dealer

9 (1) the dealer's cost for a relocation, substantial alteration, or
10 remodeling of a dealer's facilities that the manufacturer required for the continuation
11 or renewal of the franchise agreement and that was completed within three years
12 before the termination;

13 (2) if the new motor vehicle dealer is leasing the new motor vehicle
14 dealership facilities from a lessor other than the manufacturer or distributor, an amount
15 of money that is equal to the rent for the longer of

16 (A) the unexpired term of a lease or 24 months, whichever
17 period is shorter; or

18 (B) the time provided by the franchise agreement; or

19 (3) if the new motor vehicle dealer owns the dealership facilities, a
20 sum of money that is equivalent to the reasonable rental value of the dealership
21 facilities for 24 months or until the facilities are leased or sold, whichever period is
22 shorter.

23 (b) The payments under (a) of this section are only required to the extent that
24 the new motor vehicle dealer used the facilities for activities under the franchise
25 agreement and only to the extent that the new motor vehicle dealer did not lease the
26 facilities for unrelated purposes.

27 (c) If a manufacturer discontinues the sale and distribution of a new motor
28 vehicle line on a nationwide basis, the manufacturer shall pay the new motor vehicle
29 dealer the fair market value of the franchise as if the dealership were a continuing
30 business.

31 (d) If a manufacturer makes a payment under (a) of this section, the

1 manufacturer is entitled to possess and use the new motor vehicle dealership facility
2 during the period for which the payment is made.

3 * **Sec. 9.** AS 45.25 is amended by adding a new section to read:

4 **Sec. 45.25.155. Application of payment provisions.** The provisions of
5 AS 45.25.140 and 45.25.150 do not apply when a manufacturer terminates a franchise
6 agreement because

7 (1) the new motor vehicle dealer is insolvent or is the subject of a
8 bankruptcy or receivership proceeding;

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

13 (3) the new motor vehicle dealer or a principal operator of the
14 dealership is convicted of a felony;

15 (4) the new motor vehicle dealer has had a license revoked or
16 suspended for more than 30 days, if the new motor vehicle dealer is required to have
17 the license to operate the new motor vehicle dealership;

18 (5) the new motor vehicle dealer has made a fraudulent
19 misrepresentation to the manufacturer or distributor that is material to the franchise
20 agreement; or

21 (6) the new motor vehicle dealer voluntarily enters into an agreement
22 to sell the stock or other assets of the new motor vehicle dealer to another person, and
23 the manufacturer approves the agreement.

24 * **Sec. 10.** AS 45.25.160 is repealed and reenacted to read:

25 **Sec. 45.25.160. Sale, transfer, or exchange of a franchise.** (a)
26 Notwithstanding the terms of a franchise agreement, a manufacturer may not withhold
27 consent to the sale, transfer, or exchange of a franchise to a qualified buyer if the
28 qualified buyer

29 (1) meets the normal, reasonable, and uniformly applied standards
30 established by the manufacturer for a person to whom the manufacturer may grant an
31 application to be a new motor vehicle dealer;

1 (2) does not already hold a franchise from the manufacturer; and
 2 (3) is capable of being licensed as a new motor vehicle dealer in the
 3 state.

4 (b) If requested by a manufacturer, the applicant for a franchise shall

5 (1) promptly provide the personal and financial information that is
 6 reasonably necessary to determine whether the sale, transfer, or exchange should be
 7 approved; and

8 (2) agree to be bound by all reasonable terms and conditions of the
 9 franchise.

10 (c) If a manufacturer refuses to approve the sale, transfer, or exchange of a
 11 franchise, the manufacturer shall serve written notice on the applicant and on the
 12 transferring, selling, or exchanging new motor vehicle dealer of its refusal to approve
 13 the transfer of the franchise not later than 60 days after the date the manufacturer
 14 receives the written request from the new motor vehicle dealer. If the manufacturer
 15 has requested personal or financial information from the applicant under (b)(1) of this
 16 section, the manufacturer shall serve the notice not later than 60 days after the receipt
 17 of the information. Service of a notice under this section shall be made by personal
 18 service or certified mail, return receipt requested.

19 (d) A manufacturer's failure to respond in writing to a request for consent to a
 20 sale, transfer, or exchange under (a) of this section within 60 days after receipt of a
 21 written request on the forms, if any, generally used by the manufacturer containing the
 22 information and reasonable promises required by a manufacturer is considered to be
 23 the manufacturer's consent to the request.

24 (e) The notice under (c) of this section must state the specific grounds for the
 25 refusal to approve the sale, transfer, or exchange of the franchise.

26 * **Sec. 11.** AS 45.25 is amended by adding a new section to read:

27 **Sec. 45.25.165. Mitigation of damages.** The provisions of AS 45.25.110 -
 28 45.25.160 do not relieve a new motor vehicle dealer of the obligation to mitigate the
 29 new motor vehicle dealer's damages upon termination.

30 * **Sec. 12.** AS 45.25.170 is repealed and reenacted to read:

31 **Sec. 45.25.170. Succession.** (a) Notwithstanding the terms of a franchise

1 agreement, an owner of a new motor vehicle dealer franchise

2 (1) may appoint a designated successor to succeed to the ownership of
3 the new motor vehicle dealer franchise upon the owner's death or incapacity; or

4 (2) if the owner has owned the franchise for at least five consecutive
5 years, may appoint a person to succeed to the ownership of the new motor vehicle
6 dealer franchise at the current date, a specific future date, or an undetermined future
7 date of the owner's choosing that is before the new motor vehicle dealer's death or
8 incapacity.

9 (b) Notwithstanding the terms of a franchise agreement, a designated
10 successor described under (a) of this section may succeed to the ownership interest of
11 the dealer under the existing franchise if

12 (1) the person is qualified and experienced in the business of being a
13 new motor vehicle dealer and meets the normal, reasonable, and uniformly applied
14 standards of a manufacturer to grant an application to a person for a franchise from the
15 manufacturer or, in the case of a designated successor who is not experienced in the
16 business of being a new motor vehicle dealer, the person will employ an individual
17 who is qualified and experienced in the business of being a new motor vehicle dealer
18 to help manage the day-to-day operations of the new motor vehicle dealership;

19 (2) the designated successor gives written notice to the manufacturer of
20 the intention of the designated successor to succeed to the ownership of the new motor
21 vehicle dealer franchise within 60 days after the former owner's death or incapacity or,
22 if the appointment is under (a)(2) of this section, at least 30 days before the designated
23 successor's proposed succession; and

24 (3) the designated successor agrees to be bound by all terms and
25 conditions of the existing franchise that are in compliance with the law of the state.

26 (c) The manufacturer may request, and the designated successor shall
27 promptly provide, the personal and financial information that is reasonably necessary
28 for the manufacturer to determine whether to accept the designated successor.

29 (d) A manufacturer may refuse to honor the succession to the ownership of a
30 new motor vehicle dealer franchise agreement by a designated successor if the
31 manufacturer establishes that good cause exists for its refusal and if the manufacturer

1 gives written notice to the designated successor and the new motor vehicle dealer of
 2 its refusal to accept the designated successor not earlier than 60 days after the date the
 3 manufacturer receives the notice from the new motor vehicle dealer. However, if the
 4 manufacturer has requested personal or financial information from the applicant under
 5 (c) of this section, the manufacturer shall give the notice not later than 30 days after
 6 the manufacturer's receipt of the requested personal or financial information.

7 (e) The notice under (d) of this section must state the specific grounds for the
 8 refusal to honor the succession. If the manufacturer does not serve the notice of refusal
 9 in a timely and proper manner, the designated successor shall be considered approved
 10 and continue to be an approved designated successor to the franchise agreement in full
 11 force and effect, subject to termination only as otherwise provided under this chapter.

12 (f) A manufacturer has the burden of proof to show that good cause exists for
 13 the refusal to honor a succession.

14 (g) This section does not prevent the owner of a new motor vehicle dealer
 15 from filing with the manufacturer a written, notarized notice designating a person as
 16 the successor. If the notice under this subsection has not been revoked by written
 17 notice from the owner to the manufacturer and conflicts with the provisions of this
 18 section, the notice given under this subsection governs.

19 (h) If an owner enters into an agreement to sell the franchise to a person who
 20 is related to the owner in the first or second degree or is the husband or wife of a
 21 person who is related to the owner in the first or second degree, the manufacturer may
 22 not exercise a right of first refusal contained in the manufacturer's franchise agreement
 23 with the owner.

24 (i) A manufacturer may not require changes in the capitalization or facilities of
 25 a franchise as a condition of approving a designated family member successor or a
 26 current qualified employee successor, including a general manager of the franchise, to
 27 have full managerial authority for the operating management of the franchise.

28 * **Sec. 13.** AS 45.25.180 is repealed and reenacted to read:

29 **Sec. 45.25.180. New or relocated dealership.** (a) Before a manufacturer
 30 enters into a franchise establishing or relocating a new motor vehicle dealer within a
 31 dealer's relevant market area, the manufacturer shall give 90 days' written notice to the

1 new motor vehicle dealer holding the relevant market area of the manufacturer's
2 intention to establish an additional new motor vehicle dealer or to relocate an existing
3 new motor vehicle dealer within the dealer's relevant market area.

4 (b) This section does not apply

5 (1) to the relocation of an existing new motor vehicle dealer to a new
6 location within the relevant market area of the existing new motor vehicle dealer;

7 (2) to the sale or transfer of the ownership or assets of an existing new
8 motor vehicle dealer if the transferee proposes to engage in business representing the
9 same line make of new motor vehicle at the same location or within 10 miles of that
10 location within the existing new motor vehicle dealer's assigned relevant market area;

11 (3) if the proposed new motor vehicle dealer will establish the
12 dealership at or within 10 miles of a location within the relevant market area in which
13 a former new motor vehicle dealer of the same line make of new motor vehicles had
14 ceased operating within the previous 24 months and if the manufacturer had not
15 assigned the location to another new motor vehicle dealer during the period when the
16 former new motor vehicle dealer had stopped operating;

17 (4) if the proposed relocation is two miles or less from the existing
18 location of the relocating new motor vehicle dealer; or

19 (5) if the proposed relocation will be located farther away from all
20 other existing new motor vehicle dealers of the same line make of new motor vehicle
21 than the existing new motor vehicle dealer.

22 (c) Notwithstanding the terms of a franchise agreement and notwithstanding
23 the terms of a waiver, if a manufacturer intends or proposes to establish an additional
24 new motor vehicle dealership or relocate an existing new motor vehicle dealership
25 within or into a relevant market area in which the same make or line of new motor
26 vehicle is represented, the manufacturer shall first establish good cause to establish or
27 relocate a dealership. When determining whether good cause exists for permitting the
28 proposed establishment or relocation of a new motor vehicle dealer of the same line
29 make, the manufacturer shall consider the existing circumstances, including

30 (1) the extent, nature, and permanency of the investment of the
31 existing new motor vehicle dealers of the same line make in the relevant market area

1 and the proposed additional or relocating new motor vehicle dealer, including
2 obligations reasonably incurred by the existing dealer to perform its obligations under
3 its respective franchise;

4 (2) the growth or decline in population and new motor vehicle
5 registrations during the past five years in the relevant market area;

6 (3) the effect on the consuming public in the relevant market area;

7 (4) the effect on the existing new motor vehicle dealers in the relevant
8 market area, including any adverse financial effect on the existing new motor vehicle
9 dealer;

10 (5) the reasonably expected or anticipated motor vehicle market for the
11 relevant market area, including the age of the population, income, education, size class
12 preference, product popularity, retail lease transactions, other demographic factors,
13 and other factors affecting sales to consumers in the relevant market area;

14 (6) whether establishing an additional new motor vehicle dealer would
15 injure or benefit the public welfare;

16 (7) whether the new motor vehicle dealer of the same line make in the
17 relevant market area is providing adequate competition and convenient customer care
18 for the new motor vehicles of the same line make in the relevant market area,
19 including a consideration of the service facilities, the equipment, the supply of vehicle
20 parts, the qualifications of service personnel, and the number of new motor vehicle
21 sales;

22 (8) whether the establishment of an additional new motor vehicle
23 dealer would increase competition and be in the public interest;

24 (9) whether the manufacturer is motivated principally by good faith
25 and economic considerations to establish an additional or new motor vehicle dealer;

26 (10) whether the manufacturer has denied its existing new motor
27 vehicle dealer of the same line make the opportunity for reasonable growth, market
28 expansion, establishment of a satellite location, subagency, or relocation; and

29 (11) whether the existing dealer is substantially and significantly
30 violating the franchise agreement or other agreements with the manufacturer.

31 (d) If a manufacturer intends or proposes to enter into a franchise agreement to

1 establish an additional new motor vehicle dealer within a relevant market area in
 2 which the same make or line of new motor vehicle is represented, the manufacturer
 3 shall first offer the existing dealer in that relevant market area the opportunity to
 4 establish the new dealership as a satellite location of the existing dealer. If the
 5 manufacturer believes, in good faith, that the existing new motor vehicle dealer does
 6 not, for good cause, qualify to establish the additional dealership or satellite location,
 7 or relocate an existing new motor vehicle dealer within or into a relevant market area
 8 in which the same line make of motor vehicle is then represented, the manufacturer
 9 shall provide at least 90 days' advance written notice to each new motor vehicle dealer
 10 of the same line make in the relevant market area of the manufacturer's intention to
 11 establish an additional new motor vehicle dealer within the relevant market area. The
 12 notice shall be sent by certified mail and must include the

13 (1) specific location at which the additional or relocated new motor
 14 vehicle dealer will be established;

15 (2) date on or after which the additional or relocated new motor
 16 vehicle dealer intends to begin business at the proposed location;

17 (3) identity of the new motor vehicle dealer who is franchised to sell
 18 the same line make new motor vehicles as the proposed dealer and who has licensed
 19 locations within the relevant market area;

20 (4) names and addresses, if available, of the owners of and principal
 21 investors in the proposed additional or relocated new motor vehicle dealership; and

22 (5) specific grounds or reasons for the proposed establishment of an
 23 additional new motor vehicle dealer or relocation of an existing new motor vehicle
 24 dealer.

25 (e) The manufacturer has the burden of proof to establish that good cause
 26 exists for permitting a proposed establishment or relocation of a new motor vehicle
 27 dealer under this section.

28 * **Sec. 14.** AS 45.25 is amended by adding a new section to read:

29 **Sec. 45.25.185. Court actions.** (a) Within 30 days after receiving the notice of
 30 termination given under AS 45.25.120 or within 30 days after the end of an appeal
 31 procedure provided by the manufacturer, whichever event is later, a new motor vehicle

1 dealer may bring an action for declaratory judgment in the superior court to determine
 2 whether good cause exists under AS 45.25.115 for the termination of the franchise
 3 agreement. If a new motor vehicle dealer files an action under this subsection, the
 4 manufacturer may not terminate the franchise agreement until the superior court has
 5 issued a decision on the matter.

6 (b) Within 20 days after receipt of a notice under AS 45.25.160(c) of a
 7 manufacturer's refusal to approve a sale, transfer, or exchange of a franchise by a new
 8 motor vehicle dealer, the new motor vehicle dealer may file an action in the superior
 9 court to determine whether the manufacturer unreasonably withheld consent to the
 10 sale, transfer, or exchange of the franchise.

11 (c) Within 30 days after receipt of a notice of disapproval of succession under
 12 AS 45.25.170(d), the proposed successor may file an action with the superior court to
 13 determine whether the manufacturer has unreasonably withheld approval.

14 (d) Within 30 days after receiving the notice required under AS 45.25.180(d),
 15 or within 30 days after the end of an appeal procedure provided by the manufacturer, a
 16 new motor vehicle dealer may bring an action for declaratory judgment in the superior
 17 court to determine whether good cause exists for the establishment or relocation of a
 18 proposed new motor vehicle dealer. If a new motor vehicle dealer files an action under
 19 this subsection, the manufacturer may not establish or relocate the proposed new
 20 motor vehicle dealer until the superior court decides the matter.

21 (e) When a superior court determines whether good cause exists for permitting
 22 the proposed establishment or relocation of a new motor vehicle dealer of the same
 23 line make under (d) of this section,

24 (1) the superior court shall consider the existing circumstances,
 25 including the factors in AS 45.25.180(c), and shall give equal weight to the factors
 26 applied under AS 45.25.180(c); and

27 (2) a finding of good cause requires that at least nine of the 11 factors
 28 in AS 45.25.180(c) support the proposed establishment or relocation of a new motor
 29 vehicle dealer.

30 * **Sec. 15.** AS 45.25 is amended by adding new sections to article 2 to read:

31 **Sec. 45.25.195. Rates for warranty and policy work.** (a) A manufacturer

1 shall provide each of its new motor vehicle dealers with the schedule of compensation
2 that the manufacturer shall pay to the new motor vehicle dealer for warranty work,
3 policy work, predelivery service, or other service that the manufacturer requires the
4 new motor vehicle dealer to perform for the manufacturer's products.

5 (b) The manufacturer shall provide the schedule of compensation established
6 under (a) of this section in the franchise agreement or in a separate agreement with the
7 new motor vehicle dealer. The schedule of compensation must include compensation
8 for parts, labor, and diagnostic work and must comply with this section.

9 (c) The schedule of compensation may not be less than the rates that the new
10 motor vehicle dealer charges retail customers for similar service for nonwarranty
11 service and repairs.

12 (d) The manufacturer shall establish the schedule of compensation for parts at
13 a rate that equals the prices that a new motor vehicle dealer charges retail customers
14 for nonwarranty service and repairs for parts, including the price paid for the part,
15 shipping charges, other charges incurred for the parts, and the average retail
16 percentage markup that the new motor vehicle dealer charges.

17 (e) To establish the average retail percentage markup, the new motor vehicle
18 dealer shall submit to the manufacturer 50 sequential chronologically issued retail
19 service repair orders paid by customers, or 45 days of retail service repair orders paid
20 by customers if the number of orders during the 45 days is fewer. The orders that the
21 new motor vehicle dealer submits must cover retail repairs that the new motor vehicle
22 dealer made less than 180 days before the new motor vehicle dealer submits them to
23 the manufacturer.

24 (f) A manufacturer may not require a new motor vehicle dealer to establish the
25 average retail percentage markup for parts by a method other than the method required
26 by (e) of this section. When establishing the average retail percentage markup, a
27 manufacturer may not require the new motor vehicle dealer to provide information
28 that is unduly burdensome or time consuming to provide, including part-by-part or
29 transaction-by-transaction calculations.

30 (g) When calculating the retail rate for parts and labor, a dealer may not
31 include in the calculation

1 (1) repairs for manufacturer special events, manufacturer specials, or
2 retail customer repair promotional discounts;

3 (2) for insurance repairs, parts sold at wholesale or at reduced or
4 specially negotiated rates;

5 (3) routine maintenance not covered under warranty, including the
6 replacement of fluids, filters, and belts, unless the new motor vehicle dealer provides
7 the routine maintenance in the course of making a repair;

8 (4) nuts, bolts, fasteners, and similar items that do not have an
9 individual part number;

10 (5) tires, batteries, and light bulbs; and

11 (6) vehicle reconditioning.

12 (h) The average retail percentage markup calculated under (d) - (g) of this
13 section may not take effect more than 30 days after the new motor vehicle dealer
14 submits the information required in (e) of this section to the manufacturer.

15 (i) A manufacturer shall compensate a new motor vehicle dealer for labor and
16 diagnostic work at the hourly rates charged by the new motor vehicle dealer to its
17 retail customers for that type of work, plus any documentation work or contact time
18 that the new motor vehicle dealer spends and the manufacturer requires to authorize or
19 verify the work, including providing photographs, paperwork, consultation, and
20 electronic data.

21 (j) A manufacturer may disapprove a rate proposed by the new motor vehicle
22 dealer under (i) of this section if the manufacturer demonstrates that the hourly rates or
23 other charges under (i) of this section unreasonably exceed the rates and charges of all
24 other franchised new motor vehicle dealers in the same relevant market area offering
25 the same motor vehicle line or a competitive motor vehicle line.

26 (k) A new motor vehicle dealer may not receive more than one rate increase
27 under (i) of this section in a calendar year.

28 (l) A manufacturer shall pay a new motor vehicle dealer for all repairs
29 performed by a new motor vehicle dealer that are covered under a manufacturer's
30 warranty, policy, or service contract. The manufacturer shall pay for the repairs
31 whether the owner or the dealership personnel identified the need for the repair. A

1 manufacturer shall pay the dealer for the repairs in accordance with the new motor
2 vehicle dealer's schedule of compensation established under (i) of this section that
3 applies to the repairs when the new motor vehicle dealer made the repairs.

4 (m) A new motor vehicle dealer shall submit a warranty work claim to the
5 manufacturer within 90 days after the owner reclaims the motor vehicle following the
6 new motor vehicle dealer's completion of work on the motor vehicle. The new motor
7 vehicle dealer shall submit the claim in the manner that the manufacturer requires.

8 (n) Within 15 days after the manufacturer receives a claim from a new motor
9 vehicle dealer under (m) of this section, the manufacturer shall approve or deny the
10 claim. If a manufacturer does not disapprove a claim in writing or electronically, as
11 required by this subsection, the manufacturer is considered to have approved the
12 claim, and the manufacturer shall pay the claim within 30 days after the manufacturer
13 receives the claim.

14 (o) If a manufacturer disapproves a claim that the new motor vehicle dealer
15 submits under (m) of this section, a manufacturer shall notify the new motor vehicle
16 dealer in writing or electronically and shall set out the reasons for disapproving the
17 claim. A new motor vehicle dealer may correct and resubmit the claim within 30 days
18 after the new motor vehicle dealer receives the written or electronic notice that the
19 manufacturer disapproved or denied the claim.

20 (p) Notwithstanding the other provisions of this section, within 15 days after a
21 manufacturer receives a consumer or dealer incentive claim from a new motor vehicle
22 dealer, the manufacturer shall approve or deny the claim. If a manufacturer does not
23 deny a claim in writing or electronically, as required by this subsection, within 15 days
24 after the manufacturer receives the claim, the manufacturer is considered to have
25 approved the claim, and the manufacturer shall pay the claim within 30 days after the
26 manufacturer receives the claim.

27 (q) The manufacturer shall notify the new motor vehicle dealer in writing or
28 electronically if the manufacturer denies the claim that the new motor vehicle dealer
29 submits under (p) of this section, and shall set out the reasons for the denial. A new
30 motor vehicle dealer may correct and resubmit the claim within 30 days after the new
31 motor vehicle dealer receives the written or electronic notice that the manufacturer

1 disapproved the claim.

2 (r) A manufacturer may not initiate or conduct an audit to determine the
3 validity of paid claims for new motor vehicle dealer warranty work, policy work,
4 predelivery service claims, or other service claims, or for consumer or new motor
5 vehicle dealer incentive claims, unless the manufacturer paid the claims within the six
6 months before performance of the audit. The manufacturer may not perform more than
7 one audit in a calendar year.

8 (s) A manufacturer may not deny or charge back to a new motor vehicle dealer
9 a warranty or policy claim after the initial submission or resubmission of the claim, or
10 as a result of an audit, if the new motor vehicle dealer can reasonably demonstrate that
11 the reason for the repair existed, the repair was performed, and the cause for the repair
12 was cured.

13 (t) A manufacturer may not recover all or a portion of its costs for
14 compensating its dealers for parts and labor provided by a new motor vehicle dealer
15 under this section by reducing the amount because of the new motor vehicle dealer or
16 by making a separate charge, surcharge, or other imposition.

17 (u) If a manufacturer requires that a certified technician perform a repair on a
18 motor vehicle, and if a certified technician is not available to begin the repair within
19 one business day after the delivery of the motor vehicle to a new motor vehicle dealer,
20 an uncertified technician may perform the repair if the uncertified technician performs
21 the repair under the supervision of a certified technician or service manager, and the
22 manufacturer shall pay a new motor vehicle dealer for the repairs performed by the
23 uncertified technician at the rate charged by the new motor vehicle dealer for the same
24 repair when performed by a certified technician.

25 (v) If a motor vehicle needs repairs that are covered under a manufacturer's
26 warranty, policy, or service contract, and if the motor vehicle is in a location that is not
27 accessible by road or that is more than 100 road miles from a new motor vehicle
28 dealer who may perform warranty, policy, or service contract repairs on the motor
29 vehicle, a new motor vehicle dealer may arrange to have the repairs performed by
30 another technician where the vehicle is located. The manufacturer shall reimburse the
31 new motor vehicle dealer for the cost of having the repairs performed in accordance

1 with the authorizing new motor vehicle dealer's then current schedule of compensation
 2 for parts and labor, plus any freight or shipping charges, or at the retail rate that is in
 3 effect when, and in the community where, the repairs are made, whichever amount is
 4 less.

5 (w) In this section,

6 (1) "average retail percentage markup" means the average retail
 7 percentage markup established under (e) of this section;

8 (2) "schedule of compensation" means the schedule of compensation
 9 provided under (a) of this section.

10 **Sec. 45.25.200. Discontinuation or reduction of line.** In this chapter, if a
 11 manufacturer discontinues the sale and distribution of a new motor vehicle line, or if a
 12 manufacturer materially reduces the selection of new motor vehicle lines that the
 13 manufacturer is offering to the extent that it is not economically viable for a new
 14 motor vehicle dealer to continue to retail the new motor vehicle line, the new motor
 15 vehicle dealer may consider the discontinuation or reduction a termination of the
 16 franchise agreement between the manufacturer and the new motor vehicle dealer.

17 * **Sec. 16.** AS 45.25.300 is repealed and reenacted to read:

18 **Sec. 45.25.300. Unfair practices.** (a) Notwithstanding the terms of a franchise
 19 agreement, a manufacturer, distributor, factory branch, or factory representative, or an
 20 agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity,
 21 or other person controlled by or under common control with a manufacturer,
 22 distributor, factory branch, or factory representative may not

23 (1) sell, offer to sell, or deliver a new motor vehicle to a new motor
 24 vehicle dealer at a lower actual price than the actual price offered to another new
 25 motor vehicle dealer for the same model of new motor vehicle that is similarly
 26 equipped;

27 (2) sell, offer to sell, or deliver parts, accessories, equipment, or other
 28 items to a new motor vehicle dealer at a lower actual price than the actual price
 29 offered to another new motor vehicle dealer;

30 (3) use a promotion plan, marketing plan, or other similar device that
 31 would

1 (A) result in one new motor vehicle dealer being charged a
2 lower actual price on new motor vehicles, parts, accessories, or other items
3 than another new motor vehicle dealer; or

4 (B) provide a rebate or incentive program that is based on a
5 new motor vehicle dealer selling or including in inventory a predetermined
6 number or percentage of new motor vehicles, certified pre-owned motor
7 vehicles, or lease return motor vehicles;

8 (4) adopt or change a method for the allocation, scheduling, or delivery
9 of new motor vehicles, parts, or accessories to a new motor vehicle dealer if the new
10 or changed method is not fair, reasonable, and equitable; upon request of a new motor
11 vehicle dealer, a manufacturer, distributor, factory branch, or factory representative
12 shall disclose in writing to the dealer the method by which the manufacturer allocates,
13 schedules, or delivers new motor vehicles, parts, and accessories to the manufacturer's
14 new motor vehicle dealers handling the same line make of vehicles;

15 (5) prevent, offset, or otherwise impair a new motor vehicle dealer's
16 right to request a documentation service fee on purchases made under an affinity
17 program or a similar program, including a promotion plan, marketing plan,
18 manufacturer employee program, new motor vehicle dealer employee program, or
19 employee friends or family purchase program; in this paragraph,

20 (A) "affinity program" means a marketing program designed to
21 increase brand loyalty by developing an ongoing relationship between a new
22 motor vehicle dealer and the customers of the new motor vehicle dealer;

23 (B) "documentation service fee" means a fee for filling out and
24 filing paperwork for a new motor vehicle;

25 (6) refuse or fail to deliver, in reasonable quantities and within a
26 reasonable period after receipt of an order, to a new motor vehicle dealer holding a
27 franchise for a make or line of new motor vehicles sold or distributed by the
28 manufacturer, distributor, factory branch, or factory representative a new motor
29 vehicle, part, or accessory, if the vehicle, part, or accessory is being delivered to other
30 motor vehicle dealers, or require a dealer to purchase unreasonable advertising
31 displays or other materials, or unreasonably require a dealer to remodel or renovate

1 existing facilities as a prerequisite to receiving a model or series of vehicles;

2 (7) fail or refuse to offer to its new motor vehicle dealer franchised to
3 sell the same line make of new motor vehicles all models manufactured for that line
4 make of new motor vehicles;

5 (8) sell, lease, ship, or deliver a new motor vehicle to a person in this
6 state, except directly to a new motor vehicle dealer holding a franchise agreement for
7 the line make in this state, without a written and revocable agreement by the new
8 motor vehicle dealer holding the relevant market area for the new motor vehicle dealer
9 to deliver the new motor vehicle to a specific person at a specific location; however, it
10 is not a violation of this paragraph for

11 (A) a manufacturer to sell, lease, or deliver new motor vehicles
12 directly to an agency of the federal government; or

13 (B) a manufacturer or new motor vehicle dealer to arrange for
14 the delivery of a new motor vehicle that is sold or leased to a specific customer
15 of another new motor vehicle dealer that is assigned to the relevant market area
16 in which the purchaser or lessor resides, if the manufacturer or new motor
17 vehicle dealer arranges for the delivery by using an agreement with the new
18 motor vehicle dealer that is assigned to the relevant market area in which the
19 purchaser or lessor resides;

20 (9) own, operate, or control, whether directly or indirectly, a new
21 motor vehicle dealership in this state, except that a manufacturer, distributor, factory
22 branch, or factory representative may own or operate a dealership

23 (A) for a temporary period, not to exceed two years, during the
24 transition from one owner of the dealership to another owner if a franchised
25 new motor vehicle dealer previously owned the dealership and the dealership is
26 currently for sale at a fair and reasonable price to a qualified person who is
27 independent of the manufacturer, distributor, factory branch, or factory
28 representative; or

29 (B) in conjunction with another person in a bona fide business
30 relationship for the purpose of broadening the diversity of its dealers and
31 increasing the opportunities for qualified persons who lack the resources to

1 purchase a dealership completely and immediately if the person

2 (i) is not connected by business arrangement to the
3 manufacturer, distributor, factory branch, or factory representative;

4 (ii) makes a significant bona fide capital investment in
5 the dealership that the person may lose;

6 (iii) has an ownership interest in the dealership; and

7 (iv) operates the dealership under a bona fide written
8 agreement with the manufacturer, distributor, factory branch, or factory
9 representative under which the person will acquire all of the ownership
10 interest in the dealership within a reasonable period and under
11 reasonable terms and conditions; the manufacturer, distributor, factory
12 branch, or factory representative has the burden of proof to establish
13 that the person acquired the dealership within a reasonable period and
14 under reasonable terms and conditions; this sub-subparagraph does not
15 relieve a manufacturer, distributor, factory branch, or factory
16 representative from complying with the other provisions of this
17 paragraph;

18 (10) without the express, continuing, and revocable written consent of
19 the dealer within the relevant market area, own, operate, or control, whether directly or
20 indirectly, a service facility in this state for the repair or maintenance of motor
21 vehicles under the manufacturer's new vehicle warranty, service plans, or extended
22 warranty, or contract with a person other than its franchised new motor vehicle dealer
23 in the relevant market area for payment by the manufacturer to a person for the repair,
24 maintenance, or service of motor vehicles under the manufacturer's new vehicle
25 warranty, extended warranty, or service contract; this paragraph does not prohibit a
26 manufacturer, distributor, factory branch, or factory representative from owning or
27 operating a service facility for the purpose of providing or performing maintenance,
28 repair, or service work on motor vehicles that are owned and operated solely by the
29 manufacturer, distributor, factory branch, or factory representative;

30 (11) use confidential or proprietary information obtained from a new
31 motor vehicle dealer to compete with the new motor vehicle dealer or to sell the

1 confidential or proprietary information to another person; in this paragraph,
2 "confidential or proprietary information" includes trade secrets, business plans,
3 marketing plans, marketing strategies, customer lists, contracts, sales data, revenue, or
4 other business information;

5 (12) terminate a franchise with a new motor vehicle dealer if

6 (A) the new motor vehicle dealer owns, has an investment in,
7 participates in the management of, or holds a franchise agreement for the sale
8 or service of another make or line of new motor vehicles;

9 (B) the new motor vehicle dealer has established another make
10 or line of new motor vehicles or service in the same dealership facilities as
11 those of the manufacturer or distributor;

12 (C) the new motor vehicle dealer has or intends to relocate the
13 manufacturer's or distributor's make or line of new motor vehicles or service to
14 an existing dealership facility that is within the relevant market area of the
15 motor vehicle line make to be relocated, except that, in a nonemergency
16 circumstance, the dealer shall give the manufacturer or distributor at least 60
17 days' notice of the intent to relocate; or

18 (D) a new motor vehicle dealer fails to change the location of
19 the dealership or to make substantial alterations to the use or number of
20 franchises on the dealership premises or facilities;

21 (13) coerce or attempt to coerce a new motor vehicle dealer to refrain
22 from or prohibit or attempt to prohibit a new motor vehicle dealer from acquiring,
23 owning, having an investment in, participating in the management of, or holding a
24 franchise agreement for the sale or service of another make or line of new motor
25 vehicles or related products, or establishing another make or line of new motor
26 vehicles or service in the same dealership facilities, if the prohibition against
27 acquiring, owning, investing, managing, or holding a franchise agreement for the
28 additional make or line of vehicles or products, or establishing another make or line of
29 new motor vehicles or service in the same dealership facilities, is not supported by
30 reasonable business considerations; the manufacturer has the burden of proving that
31 reasonable business considerations support or justify the prohibition against the

1 additional make or line of new motor vehicles or products or nonexclusive facilities;

2 (14) require, by contract or otherwise, a new motor vehicle dealer to
3 make a material alteration to, expansion of, or addition to a dealership facility, unless
4 the manufacturer uniformly requires similarly situated new motor vehicle dealers of
5 the same motor vehicle line make to make the alteration, expansion, or addition and
6 the alteration, expansion, or addition is reasonable in light of all existing
7 circumstances, including economic conditions and local market considerations; in an
8 administrative or judicial proceeding in which a required facility alteration, expansion,
9 or addition is an issue, the manufacturer or distributor has the burden of proof; if an
10 alteration, expansion, or addition is required under this paragraph, the new motor
11 vehicle dealer may select the person to make the alteration, expansion, or addition;

12 (15) require a new motor vehicle dealer to order or accept delivery of a
13 new motor vehicle, part, accessory, piece of equipment, promotional material, display
14 device, display decoration, or other item that is not otherwise required by law and that
15 the dealer does not voluntarily order; this paragraph does not apply to the recall of
16 safety and emissions campaign parts unless the dealer voluntarily ordered them, or to a
17 motor vehicle feature, part, accessory, or other component required by federal law, the
18 law of this state, or local law;

19 (16) coerce or attempt to coerce a new motor vehicle dealer to join,
20 contribute money to, or affiliate with an advertising association, or to participate
21 monetarily in an advertising campaign, or, if a new motor vehicle dealer chooses to
22 join, contribute monetarily to, or affiliate with an advertising association, to require
23 the new motor vehicle dealer to use the association funding allocated to the new motor
24 vehicle dealer to run prepackaged radio, television, or newspaper advertising that
25 identifies the association with the association rather than the contributing new motor
26 vehicle dealer;

27 (17) prevent or attempt to prevent by contract or another method a new
28 motor vehicle dealer from changing the executive management of the new motor
29 vehicle dealer unless the manufacturer or distributor meets the burden of proof to
30 show that a proposed change of executive management will result in executive
31 management by a person who does not have good moral character or who does not

1 meet reasonable, preexisting, and equitably applied standards of the manufacturer or
 2 distributor; if a manufacturer or distributor rejects a proposed change in the executive
 3 management, the manufacturer or distributor shall give written notice of its reasons for
 4 the rejection to the new motor vehicle dealer within 60 days after receiving written
 5 notice from the new motor vehicle dealer of the proposed change and all related
 6 information reasonably requested by the manufacturer or distributor; if the
 7 manufacturer or distributor does not give the written notice within the 60 days, the
 8 manufacturer or distributor is considered to have approved the change in executive
 9 management;

10 (18) condition the sale, transfer, relocation, or renewal of a franchise
 11 agreement, or condition manufacturer, distributor, factory branch, or factory
 12 representative sales, services, or parts incentives on the

13 (A) manufacturer obtaining site control, including a right to
 14 purchase or lease the new motor vehicle dealer's facility; or

15 (B) new motor vehicle dealer making facility improvements or
 16 renovations that exceed a gross cost of \$5,000 to the new motor vehicle dealer;

17 (19) coerce, threaten, intimidate, or require a new motor vehicle dealer,
 18 as a condition of granting or renewing a franchise agreement, to waive, limit, or
 19 disclaim a right that the new motor vehicle dealer may have to protest the
 20 establishment or relocation of another motor vehicle dealer in the relevant market
 21 area;

22 (20) require a new motor vehicle dealer to change the capital structure
 23 of the dealership or the means by or through which the new motor vehicle dealer
 24 finances the operation of the dealership, unless the dealership does not at all times
 25 meet reasonable capital investment requirements;

26 (21) increase the price of a new motor vehicle that the new motor
 27 vehicle dealer has ordered from the manufacturer and for which there exists at the time
 28 of the order a bona fide sale to a retail or fleet purchaser if the order was made before
 29 the manufacturer provided the dealer with an official written price increase
 30 notification;

31 (22) require a new motor vehicle dealer to purchase or sell a

1 predetermined number of certain new, certified used, or lease return motor vehicles in
 2 a specified time for the new motor vehicle dealer to obtain offered rebates or refunds
 3 that the manufacturer offers without imposing the time requirement on another new
 4 motor vehicle dealer who sells the predetermined number of vehicles;

5 (23) increase the price of a new motor vehicle by

6 (A) charging more for the new motor vehicle; or

7 (B) effectively decreasing the price of the new motor vehicle

8 by requiring the new motor vehicle dealer to

9 (i) stock a particular model of new motor vehicle; or

10 (ii) provide an unreasonable and economically
 11 unjustifiable modification of the new motor vehicle dealer's facility;

12 (24) deliver to a new motor vehicle dealer a new motor vehicle that
 13 does not comply in every respect with equipment requirements required by the law of
 14 this state, unless the manufacturer reimburses a dealer to modify the new vehicle to
 15 meet the equipment requirements; or

16 (25) fail to indemnify and hold harmless a new motor vehicle dealer

17 (A) from a court judgment for damages, or settlement of a court
 18 action if the manufacturer approves the settlement in writing; or

19 (B) where applicable law or the franchise agreement requires
 20 the indemnification and holding harmless.

21 (b) The provisions of (a)(1) - (3) of this section do not apply to sales to a new
 22 motor vehicle dealer if the new motor vehicle dealer

23 (1) makes the sale for resale to a federal agency;

24 (2) sells or donates the vehicles for use in a driver's education
 25 program;

26 (3) makes the sale under a manufacturer's bona fide uniformly applied
 27 promotional program offering sales incentives or rebates;

28 (4) sells parts or accessories under a manufacturer's bona fide quantity
 29 discount program; or

30 (5) makes the sale under a manufacturer's bona fide motor vehicle
 31 discount program to a person that owns and operates a fleet of 15 or more new motor

1 vehicles purchased or leased from a dealer where the manufacturer has assigned an
2 identifier code.

3 (c) In this section,

4 (1) "actual price" means that the price the new motor vehicle dealer
5 pays after deducting an incentive that the manufacturer, distributor, factory branch, or
6 factory representative pays to the new motor vehicle dealer or the ultimate purchaser
7 of the vehicle;

8 (2) "control" means to possess

9 (A) title to, or right to exercise 10 percent or more of the voting
10 equity interest in a person, whether directly or indirectly through a fiduciary,
11 agent, or other intermediary; or

12 (B) directly or indirectly, the power to direct or cause the
13 direction of the management or policies of a person, whether through the
14 ownership of voting securities, through director control, by contract, or
15 otherwise, except as expressly provided under the franchise agreement;

16 (3) "lease return vehicle" means a motor vehicle that has been
17 previously leased and then returned to the lessor;

18 (4) "operate" means to manage a new motor vehicle dealership directly
19 or indirectly;

20 (5) "own" means to hold the beneficial ownership of one percent or
21 more of a class of equity interest in a new motor vehicle dealership, whether the
22 interest is that of a shareholder, partner, limited liability company member, or
23 otherwise; in this paragraph, "hold" means to have possession of, title to, or control of,
24 whether directly or indirectly through a fiduciary, agent, or other intermediary.

25 * **Sec. 17.** AS 45.25.320(a) is amended to read:

26 (a) A manufacturer or distributor may not [AUDIT A CLAIM,] deny a claim,
27 reduce the amount of a claim to be reimbursed to a new motor vehicle dealer, or
28 charge back a portion of the claim to a new motor vehicle dealer if 18 or more months
29 have passed since the new motor vehicle dealer submitted the claim or if 18 or more
30 months have passed from the end of a manufacturer-sponsored incentive program
31 related to the claim, whichever 18-month period ends later.

1 * **Sec. 18.** AS 45.25.990(19) is repealed and reenacted to read:

2 (19) "terminate" includes to cancel, not to renew, or to discontinue or
3 make a reduction under AS 45.25.200;

4 * **Sec. 19.** AS 45.25.990 is amended by adding new paragraphs to read:

5 (22) "line make" means motor vehicles that are offered for sale under a
6 common name, trademark, service mark, or brand name of the manufacturer of those
7 motor vehicles;

8 (23) "relevant market area" means the area of responsibility of a new
9 motor vehicle dealer established in a franchise agreement.

10 * **Sec. 20.** AS 45.25.110(b) and 45.25.110(c) are repealed.

11 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 **TRANSITION: SCHEDULE OF COMPENSATION.** The schedule of compensation
14 for a new motor vehicle dealer under franchise with a manufacturer on the effective date of
15 this Act may not be less than the schedule of compensation provided to the new motor vehicle
16 dealer immediately before the effective date of this Act. In this section,

17 (1) "franchise" has the meaning given in AS 45.25.990;

18 (2) "manufacturer" has the meaning given in AS 45.25.990;

19 (3) "new motor vehicle dealer" has the meaning given in AS 45.25.990;

20 (4) "schedule of compensation" has the meaning given in AS 45.25.195.