

SENATE BILL NO. 197

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY SENATORS COGHILL, Giessel

Introduced: 2/22/16

Referred: Labor and Commerce, Judiciary

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.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 LEGISLATIVE FINDINGS. The legislature finds that

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

9 (2) in the exercise of its police power, to promote the public interest and the
10 public welfare, to prevent the infliction of fraud and other abuses on people in the state, and to
11 protect and preserve the investments and properties of people in the state, it is necessary to
12 regulate motor vehicle manufacturers, distributors, factory representatives, and distributor
13 representatives, and to regulate motor vehicle dealers doing business in the state; and

14 (3) AS 45.25 is remedial.

1 * **Sec. 2.** AS 45.25.010 is repealed and reenacted to read:

2 **Sec. 45.25.010. Applicability.** Except to the extent that the application under
3 this section would impair valid contractual agreements in violation of a provision of
4 the Constitution of the State of Alaska or the Constitution of the United States, this
5 chapter applies to franchise agreements between manufacturers and new motor vehicle
6 dealers in the state if the franchise agreement

7 (1) is in existence on the effective date of this Act;

8 (2) is renewed or amended on or after the effective date of this Act; or

9 (3) is entered into on or after the effective date of this Act.

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

11 (a) A manufacturer may not terminate a franchise **agreement** with a new
12 motor vehicle dealer unless

13 (1) the manufacturer has

14 (A) **complied with** [SATISFIED] the notice requirements of
15 this chapter;

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

18 (C) **acted in good faith** [IF THE REASONS UNDERLYING
19 THE GOOD CAUSE CAN BE CORRECTED BY THE NEW MOTOR
20 VEHICLE DEALER, THE NEW MOTOR VEHICLE DEALER HAS
21 FAILED FOR 60 DAYS AFTER DELIVERY OF THE NOTICE REQUIRED
22 BY AS 45.25.120 TO MAKE THE CORRECTIONS; THE
23 CIRCUMSTANCES IDENTIFIED UNDER AS 45.25.120(a)(2) FOR WHICH
24 A 15-DAY NOTICE OF TERMINATION IS REQUIRED DO NOT
25 QUALIFY AS REASONS FOR WHICH CORRECTION IS ALLOWED
26 UNDER THIS PARAGRAPH]; or

27 (2) the new motor vehicle dealer has systematically engaged in fraud
28 against consumers or the manufacturer or in the operation of the new motor vehicle
29 dealership.

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

31 **Sec. 45.25.115. Good cause; burden of proof.** (a) Notwithstanding the terms

1 of a franchise agreement or a waiver, and except as otherwise provided in (b) - (e) of
2 this section, good cause exists for termination of a franchise agreement if

3 (1) a new motor vehicle dealer fails to comply with a franchise
4 agreement provision that is reasonable and materially significant to the franchise
5 agreement; and

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

10 (b) If the failure of the new motor vehicle dealer under (a) of this section
11 relates to the performance of the new motor vehicle dealer in sales, service, or level of
12 customer satisfaction, the failure does not amount to good cause under AS 45.25.110,
13 unless

14 (1) the manufacturer determined the failure based on methodology
15 supporting reasonable performance standards that the manufacturer

16 (A) determined in accordance with criteria that the
17 manufacturer established for a dealership located in this state and that the
18 manufacturer applied uniformly; and

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

20 (2) the manufacturer notified the new motor vehicle dealer in writing
21 of the failure of the new motor vehicle dealer in sales, service, or level of customer
22 satisfaction;

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

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

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

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

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

10 (1) the manufacturer provided an adequate supply of new motor
11 vehicles, both in quantity and product mix, for the new motor vehicle dealer's assigned
12 market area, and the manufacturer delivered the supply in a manner that allowed the
13 dealer reasonably to meet the manufacturer's performance standards or goals; and

14 (2) upon request, the manufacturer provides the new motor vehicle
15 dealer with documentation that is sufficient for the new motor vehicle dealer to
16 develop a market analysis; the documentation must include the allocation of new
17 motor vehicles to the new motor vehicle dealer and other new motor vehicle dealers in
18 the same zone during the period established by the manufacturer; the new motor
19 vehicle dealer may not share the market analysis with a person that is not involved in
20 preparing the market analysis or terminating the franchise agreement.

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

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

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

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

31 (4) the new motor vehicle dealer has had a license revoked or

1 suspended for more than 30 days, if the new motor vehicle dealer is required to have
2 the license to operate the new motor vehicle dealership.

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

5 (f) The manufacturer has the burden of proving that good cause exists for
6 termination of a franchise agreement.

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

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

11 (1) 90 days before the effective date of a termination, except as
12 required under (2) or (3) of this subsection;

13 (2) 15 days before the effective date of a termination when the [NEW
14 MOTOR VEHICLE DEALER]

15 (A) **new motor vehicle dealer** is insolvent or is the subject of a
16 bankruptcy or receivership proceeding;

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

22 (C) **new motor vehicle dealer or a principal operator of the**
23 **dealership** is convicted of a felony [INVOLVING MORAL TURPITUDE OR
24 FRAUD UNDER THE LAW OF THIS STATE, ANOTHER STATE, THE
25 FEDERAL GOVERNMENT, A TERRITORY OF THE UNITED STATES,
26 OR THE DISTRICT OF COLUMBIA]; **or**

27 (D) **new motor vehicle dealer has had a license revoked or**
28 **suspended for more than 30 days, if the new motor vehicle dealer is**
29 **required to have the license to operate the new motor vehicle dealership;**
30 **or**

31 (3) 180 days before the effective date of the termination if the

1 manufacturer or distributor is discontinuing the sale **and distribution** of the product
 2 line **on a nationwide basis**.

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

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

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

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

12 (1) if the new motor vehicles have not been materially altered or
 13 materially damaged and if the new motor vehicles are current or previous year models
 14 the dealer acquired from the manufacturer within the past two model years before
 15 receipt of the notice of termination, the new motor vehicle dealer's cost of the unsold
 16 new motor vehicles, plus any charges by the manufacturer for distribution, delivery,
 17 and taxes, and less

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

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

25 (C) a mileage charge of 20 cents a mile for all mileage over
 26 200 miles on demonstrator vehicles;

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

31 (3) the new motor vehicle dealer's cost for all unused, undamaged, and

1 unsold supplies, parts, and accessories in the original unbroken packaging if

2 (A) the supply, part, or accessory is listed in the manufacturer's
3 current parts catalog; and

4 (B) the new motor vehicle dealer acquired the supply, part, or
5 accessory from the manufacturer or distributor, or the manufacturer required
6 the new motor vehicle dealer to purchase the supply, part, or accessory;

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

12 (5) the fair market value of all equipment, furnishings, and special
13 tools that the new motor vehicle dealer owns or leases, that the new motor vehicle
14 dealer acquired from the manufacturer or from sources approved by the manufacturer,
15 that the manufacturer recommended or required the new motor vehicle dealer to
16 purchase, and that are in good and usable condition, less reasonable wear and tear;
17 however, if the new motor vehicle dealer leases the equipment, furnishings, or tools,
18 the manufacturer shall pay the new motor vehicle dealer the amount of money that is
19 required for the new motor vehicle dealer to terminate the lease under the lease
20 agreement;

21 (6) the fair market value of all computers, printers, and software that
22 the manufacturer required or that were reasonably necessary for the new motor vehicle
23 dealer to operate the dealership according to the standards of the manufacturer, except,
24 if the new motor vehicle dealer leases the computers, printers, or software, the
25 manufacturer shall pay the new motor vehicle dealer the amount of money that is
26 required for the new motor vehicle dealer to terminate the lease under the lease
27 agreement; and

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

31 (b) To the extent the franchise agreement requires the manufacturer to pay or

1 reimburse the new motor vehicle dealer more than the amounts required under (a) of
2 this section, the provisions of the franchise agreement control.

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

6 (d) The manufacturer shall pay the compensation required under (a) of this
7 section within 30 days after the new motor vehicle dealer tenders the property
8 described in (a) of this section to the manufacturer if the new motor vehicle dealer has
9 clear title to the property and is in a position to convey that title to the manufacturer. If
10 the property is subject to a security interest, the manufacturer may jointly pay the new
11 motor vehicle dealer and the holder of the security interest, and the manufacturer may
12 offset those payments.

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

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

18 (1) the dealer's cost for a relocation, substantial alteration, or
19 remodeling of a dealer's facilities that the manufacturer required for the continuation
20 or renewal of the franchise agreement and that was completed within three years of the
21 termination;

22 (2) if the new motor vehicle dealer is leasing the new motor vehicle
23 dealership facilities from a lessor other than the manufacturer, an amount of money
24 that is equal to the rent for the longer of

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

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

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

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

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

9 (d) If a manufacturer makes a payment under (a) of this section, the
 10 manufacturer is entitled to possess and use the new motor vehicle dealership facility
 11 during the period for which the payment is made.

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

13 **Sec. 45.25.155. Application of payment provisions.** The provisions of
 14 AS 45.25.140 and 45.25.150 do not apply when a manufacturer terminates a franchise
 15 agreement because

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

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

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

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

27 (5) the new motor vehicle dealer has made a fraudulent
 28 misrepresentation to the manufacturer or distributor that is material to the franchise
 29 agreement; or

30 (6) the new motor vehicle dealer voluntarily enters into an agreement
 31 to sell the stock of the new motor vehicle dealer to another person, and the

1 manufacturer approves the agreement.

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

3 **Sec. 45.25.160. Sale, transfer, or exchange of a franchise.** (a)

4 Notwithstanding the terms of a franchise agreement, a manufacturer may not withhold
5 consent to the sale, transfer, or exchange of a franchise to a qualified buyer if the
6 qualified buyer

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

10 (2) already holds a franchise from the manufacturer; or

11 (3) is capable of being licensed as a new motor vehicle dealer in the
12 state.

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

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

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

19 (c) If a manufacturer refuses to approve the sale, transfer, or exchange of a
20 franchise, the manufacturer shall serve written notice on the applicant and on the
21 transferring, selling, or exchanging new motor vehicle dealer of its refusal to approve
22 the transfer of the franchise not later than 60 days after the date the manufacturer
23 receives the written request from the new motor vehicle dealer. If the manufacturer
24 has requested personal or financial information from the applicant under (b)(1) of this
25 section, the manufacturer shall serve the notice not later than 60 days after the receipt
26 of the information. Service of a notice under this section shall be made by personal
27 service or certified mail, return receipt requested.

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

1 the manufacturer's consent to the request.

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

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

5 **Sec. 45.25.165. Mitigation of damages.** The provisions of AS 45.25.110 -
6 45.25.160 do not relieve a new motor vehicle dealer of the obligation to mitigate the
7 new motor vehicle dealer's damages upon termination.

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

9 **Sec. 45.25.170. Succession.** (a) Notwithstanding the terms of a franchise
10 agreement, an owner of a new motor vehicle dealer franchise

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

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

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

21 (1) the person is qualified and experienced in the business of being a
22 new motor vehicle dealer and meets the normal, reasonable, and uniformly applied
23 standards of a manufacturer to grant an application to a person for a franchise from the
24 manufacturer or, in the case of a designated successor who is not experienced in the
25 business of being a new motor vehicle dealer, the person will employ an individual
26 who is qualified and experienced in the business of being a new motor vehicle dealer
27 to help manage the day-to-day operations of the new motor vehicle dealership;

28 (2) the designated successor gives written notice to the manufacturer of
29 the intention of the designated successor to succeed to the ownership of the new motor
30 vehicle dealer franchise within 60 days after the former owner's death or incapacity or,
31 if the appointment is under (a)(2) of this section, at least 30 days before the designated

1 successor's proposed succession; and

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

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

7 (d) A manufacturer may refuse to honor the succession to the ownership of a
8 new motor vehicle dealer franchise agreement by a designated successor if the
9 manufacturer establishes that good cause exists for its refusal and if the manufacturer
10 gives written notice to the designated successor and the new motor vehicle dealer of
11 its refusal to accept the designated successor not earlier than 60 days after the date the
12 manufacturer receives the notice from the new motor vehicle dealer. However, if the
13 manufacturer has requested personal or financial information from the applicant under
14 (c) of this section, the manufacturer shall give the notice not later than 30 days after
15 the manufacturer's receipt of the requested personal or financial information.

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

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

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

28 (h) If an owner enters into an agreement to sell the franchise to a person who
29 is related to the owner in the first or second degree or is the husband or wife of a
30 person who is related to the owner in the first or second degree, the manufacturer may
31 not exercise a right of first refusal contained in the manufacturer's franchise agreement

1 with the owner.

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

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

7 **Sec. 45.25.180. New or relocated dealership.** (a) Before a manufacturer
8 enters into a franchise establishing or relocating a new motor vehicle dealer within a
9 dealer's relevant market area, the manufacturer shall give 90 days' written notice to the
10 new motor vehicle dealer holding the relevant market area of the manufacturer's
11 intention to establish an additional new motor vehicle dealer or to relocate an existing
12 new motor vehicle dealer within the dealer's relevant market area.

13 (b) This section does not apply

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

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

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

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

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

31 (c) Notwithstanding the terms of a franchise agreement and notwithstanding

1 the terms of a waiver, if a manufacturer intends or proposes to establish an additional
2 new motor vehicle dealership or relocate an existing new motor vehicle dealership
3 within or into a relevant market area in which the same make or line of new motor
4 vehicle is represented, the manufacturer shall first establish good cause to establish or
5 relocate a dealership. When determining whether good cause exists for permitting the
6 proposed establishment or relocation of a new motor vehicle dealer of the same line
7 make, the manufacturer shall consider the existing circumstances, including

8 (1) the extent, nature, and permanency of the investment of the
9 existing new motor vehicle dealers of the same line make in the relevant market area
10 and the proposed additional or relocating new motor vehicle dealer, including
11 obligations reasonably incurred by the existing dealer to perform its obligations under
12 its respective franchise;

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

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

16 (4) the effect on the existing new motor vehicle dealers in the relevant
17 market area, including any adverse financial effect on the existing new motor vehicle
18 dealer;

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

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

25 (7) whether the new motor vehicle dealer of the same line make in the
26 relevant market area is providing adequate competition and convenient customer care
27 for the new motor vehicles of the same line make in the relevant market area,
28 including a consideration of the service facilities, the equipment, the supply of vehicle
29 parts, the qualifications of service personnel, and the number of new motor vehicle
30 sales;

31 (8) whether the establishment of an additional new motor vehicle

1 dealer would increase competition and be in the public interest;

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

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

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

9 (d) If a manufacturer intends or proposes to enter into a franchise agreement to
10 establish an additional new motor vehicle dealer within a relevant market area in
11 which the same make or line of new motor vehicle is represented, the manufacturer
12 shall first offer the existing dealer in that relevant market area the opportunity to
13 establish the new dealership as a satellite location of the existing dealer. If the
14 manufacturer believes, in good faith, that the existing new motor vehicle dealer does
15 not, for good cause, qualify to establish the additional dealership or satellite location,
16 or relocate an existing new motor vehicle dealer within or into a relevant market area
17 in which the same line make of motor vehicle is then represented, the manufacturer
18 shall provide at least 90 days' advance written notice to each new motor vehicle dealer
19 of the same line make in the relevant market area of the manufacturer's intention to
20 establish an additional new motor vehicle dealer within the relevant market area. The
21 notice shall be sent by certified mail and must include the

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

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

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

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

31 (5) specific grounds or reasons for the proposed establishment of an

1 additional new motor vehicle dealer or relocation of an existing new motor vehicle
2 dealer.

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

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

7 **Sec. 45.25.185. Court actions.** (a) Within 30 days after receiving the notice of
8 termination given under AS 45.25.120 or within 30 days after the end of an appeal
9 procedure provided by the manufacturer, whichever event is later, a new motor vehicle
10 dealer may bring an action for declaratory judgment in the superior court to determine
11 whether good cause exists under AS 45.25.115 for the termination of the franchise
12 agreement. If a new motor vehicle dealer files an action under this subsection, the
13 manufacturer may not terminate the franchise agreement until the superior court has
14 issued a decision on the matter.

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

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

23 (d) Within 30 days after receiving the notice required under AS 45.25.180(d),
24 or within 30 days after the end of an appeal procedure provided by the manufacturer,
25 whichever is longer, a new motor vehicle dealer may bring an action for declaratory
26 judgment in the superior court to determine whether good cause exists for the
27 establishment or relocation of a proposed new motor vehicle dealer. If a new motor
28 vehicle dealer files an action under this subsection, the manufacturer may not establish
29 or relocate the proposed new motor vehicle dealer until the superior court decides the
30 matter.

31 (e) When a superior court determines whether good cause exists for permitting

1 the proposed establishment or relocation of a new motor vehicle dealer of the same
2 line make under (d) of this section,

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

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

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

10 **Sec. 45.25.195. Rates for warranty and policy work.** (a) A manufacturer
11 shall provide each of its new motor vehicle dealers with the schedule of compensation
12 that the manufacturer shall pay to the new motor vehicle dealer for warranty work,
13 policy work, predelivery service, or other service that the manufacturer requires the
14 new motor vehicle dealer to perform for the manufacturer's products.

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

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

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

27 (e) To establish the average retail percentage markup, the new motor vehicle
28 dealer shall submit to the manufacturer 50 sequential chronologically issued retail
29 service repair orders paid by customers, or 45 days of retail service repair orders paid
30 by customers if the number of orders during the 45 days is fewer. The orders that the
31 new motor vehicle dealer submits must cover retail repairs that the new motor vehicle

1 dealer made less than 180 days before the new motor vehicle dealer submits them to
2 the manufacturer.

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

9 (g) When calculating the retail rate for parts and labor, the following shall be
10 included in the calculation:

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

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

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

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

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

21 (6) vehicle reconditioning.

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

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

31 (j) A manufacturer may disapprove a rate proposed by the new motor vehicle

1 dealer under this section if the manufacturer demonstrates that the hourly rates or other
2 charges under this section unreasonably exceed the rates and charges of all other
3 franchised new motor vehicle dealers in the same relevant market area offering the
4 same motor vehicle line or a competitive motor vehicle line.

5 (k) A new motor vehicle dealer may not receive more than one rate increase
6 under (d) - (g) of this section in a calendar year.

7 (l) A manufacturer shall pay a new motor vehicle dealer for all repairs
8 performed by a new motor vehicle dealer that are covered under a manufacturer's
9 warranty, policy, or service contract. The manufacturer shall pay for the repairs
10 whether the owner or the dealership personnel identified the need for the repair. A
11 manufacturer shall pay the dealer for the repairs in accordance with the new motor
12 vehicle dealer's schedule of compensation established under (d) - (g) of this section
13 that applies to the repairs when the new motor vehicle dealer made the repairs.

14 (m) A new motor vehicle dealer shall submit a claim for warranty work,
15 policy work, or predelivery service to the manufacturer within 90 days after the owner
16 reclaims the motor vehicle following the new motor vehicle dealer's completion of
17 work on the motor vehicle. The new motor vehicle dealer shall submit the claim in the
18 manner that the manufacturer requires.

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

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

31 (p) Notwithstanding the other provisions of this section, within 15 days after a

1 manufacturer receives a consumer or dealer incentive claim from a new motor vehicle
2 dealer, the manufacturer shall approve or deny the claim. If a manufacturer does not
3 deny a claim in writing or electronically, as required by this subsection, within 15 days
4 after the manufacturer receives the claim, the manufacturer is considered to have
5 approved the claim, and the manufacturer shall pay the claim within 30 days after the
6 manufacturer receives the claim.

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

13 (r) A manufacturer may not initiate or conduct an audit to determine the
14 validity of paid claims for new motor vehicle dealer warranty work, policy work,
15 predelivery service claims, or other service claims, or for consumer or new motor
16 vehicle dealer incentive claims, unless the manufacturer initiates the audit within the
17 six months following payment of the claim. The manufacturer may not perform more
18 than one audit in a calendar year.

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

24 (t) A manufacturer may not recover all or a portion of its costs for
25 compensating its dealers for parts and labor provided by a new motor vehicle dealer
26 under this section by using offsets against amounts owed to the new motor vehicle
27 dealer or by making a separate charge, surcharge, or other imposition.

28 (u) If a manufacturer requires that a certified technician perform a repair on a
29 motor vehicle, and if a certified technician is not available to begin the repair within
30 one business day after the delivery of the motor vehicle to a new motor vehicle dealer,
31 an uncertified technician may perform the repair if the uncertified technician performs

1 the repair under the supervision of a certified technician or service manager, and the
 2 manufacturer shall pay a new motor vehicle dealer for the repairs performed by the
 3 uncertified technician at the rate charged by the new motor vehicle dealer for the same
 4 repair when performed by a certified technician.

5 (v) If a motor vehicle needs repairs that are covered under a manufacturer's
 6 warranty, policy, or service contract, and if the motor vehicle is in a location that is not
 7 accessible by road or that is more than 100 road miles from a new motor vehicle
 8 dealer who may perform warranty, policy, or service contract repairs on the motor
 9 vehicle, a new motor vehicle dealer may arrange to have the repairs performed by
 10 another technician where the vehicle is located. The manufacturer shall reimburse the
 11 new motor vehicle dealer for the cost of having the repairs performed in accordance
 12 with the authorizing new motor vehicle dealer's then current schedule of compensation
 13 for parts and labor, plus any freight or shipping charges, or at the retail rate that is in
 14 effect when, and in the community where, the repairs are made, whichever amount is
 15 less.

16 (w) In this section,

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

19 (2) "schedule of compensation" means the schedule of compensation
 20 provided under (a) of this section.

21 **Sec. 45.25.200. Discontinuation or reduction of line.** In this chapter, if a
 22 manufacturer discontinues the sale and distribution of a new motor vehicle line, or if a
 23 manufacturer materially reduces the selection of new motor vehicle lines that the
 24 manufacturer is offering to the extent that it is not economically viable for a new
 25 motor vehicle dealer to continue to retail the new motor vehicle line, the new motor
 26 vehicle dealer may consider the discontinuation or reduction a termination of the
 27 franchise agreement between the manufacturer and the new motor vehicle dealer.

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

29 **Sec. 45.25.300. Unfair practices.** (a) Notwithstanding the terms of a franchise
 30 agreement, a manufacturer may not

31 (1) sell, offer to sell, or deliver a new motor vehicle to a new motor

1 vehicle dealer at a lower actual price than the actual price offered to another new
2 motor vehicle dealer for the same model of new motor vehicle that is similarly
3 equipped;

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

7 (3) use a promotion plan, marketing plan, or other similar device that
8 would

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

12 (B) provide a rebate or incentive program that is based on a
13 new motor vehicle dealer purchasing, selling, or including in inventory a
14 predetermined number or percentage of new motor vehicles, certified pre-
15 owned motor vehicles, or lease return motor vehicles;

16 (4) adopt or change a method for the allocation, scheduling, or delivery
17 of new motor vehicles, parts, or accessories to a new motor vehicle dealer if the new
18 or changed method is not fair, reasonable, and equitable; upon request of a new motor
19 vehicle dealer, a manufacturer, distributor, factory branch, or factory representative
20 shall disclose in writing to the dealer the method by which the manufacturer allocates,
21 schedules, or delivers new motor vehicles, parts, and accessories to the manufacturer's
22 new motor vehicle dealers handling the same line make of vehicles;

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

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

31 (B) "documentation service fee" means a fee for filling out and

1 filing paperwork in connection with the sale of a new motor vehicle;

2 (6) refuse or fail to deliver, in reasonable quantities and within a
3 reasonable period after receipt of an order, to a new motor vehicle dealer holding a
4 franchise for a make or line of new motor vehicles sold or distributed by the
5 manufacturer, distributor, factory branch, or factory representative a new motor
6 vehicle, part, or accessory, if the vehicle, part, or accessory is being delivered to other
7 motor vehicle dealers, or require a dealer to purchase unreasonable advertising
8 displays or other materials, or unreasonably require a dealer to remodel or renovate
9 existing facilities as a prerequisite to receiving a model or series of vehicles;

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

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

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

21 (B) a manufacturer or new motor vehicle dealer to arrange for
22 the delivery of a new motor vehicle that is sold or leased to a specific customer
23 of another new motor vehicle dealer that is assigned to the relevant market area
24 in which the purchaser or lessor resides, if the manufacturer or new motor
25 vehicle dealer arranges for the delivery by using an agreement with the new
26 motor vehicle dealer that is assigned to the relevant market area in which the
27 purchaser or lessor resides;

28 (9) own, operate, or control, whether directly or indirectly, a new
29 motor vehicle dealership in this state, except that a manufacturer may own or operate a
30 dealership

31 (A) for a temporary period, not to exceed two years, during the

1 transition from one owner of the dealership to another owner if a franchised
 2 new motor vehicle dealer previously owned the dealership and the dealership is
 3 currently for sale at a fair and reasonable price to a qualified person who is
 4 independent of the manufacturer, distributor, factory branch, or factory
 5 representative; or

6 (B) in conjunction with another person in a bona fide business
 7 relationship for the purpose of broadening the diversity of its dealers and
 8 increasing the opportunities for qualified persons who lack the resources to
 9 purchase a dealership completely and immediately if the person

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

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

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

15 (iv) operates the dealership under a bona fide written
 16 agreement with the manufacturer, distributor, factory branch, or factory
 17 representative under which the person will acquire all of the ownership
 18 interest in the dealership within a reasonable period and under
 19 reasonable terms and conditions; the manufacturer, distributor, factory
 20 branch, or factory representative has the burden of proof to establish
 21 that the person acquired the dealership within a reasonable period and
 22 under reasonable terms and conditions; this sub-subparagraph does not
 23 relieve a manufacturer, distributor, factory branch, or factory
 24 representative from complying with the other provisions of this
 25 paragraph;

26 (10) without the express, continuing, and revocable written consent of
 27 the dealer within the relevant market area, own, operate, or control, whether directly or
 28 indirectly, a service facility in this state for the repair or maintenance of motor
 29 vehicles under the manufacturer's new vehicle warranty, service plans, or extended
 30 warranty, or contract with a person other than its franchised new motor vehicle dealer
 31 in the relevant market area for payment by the manufacturer to a person for the repair,

1 maintenance, or service of motor vehicles under the manufacturer's new vehicle
2 warranty, extended warranty, or service contract; this paragraph does not prohibit a
3 manufacturer, distributor, factory branch, or factory representative from owning or
4 operating a service facility for the purpose of providing or performing maintenance,
5 repair, or service work on motor vehicles that are owned and operated solely by the
6 manufacturer, distributor, factory branch, or factory representative;

7 (11) use confidential or proprietary information obtained from a new
8 motor vehicle dealer to compete with the new motor vehicle dealer or to sell the
9 confidential or proprietary information to another person; in this paragraph,
10 "confidential or proprietary information" includes trade secrets, business plans,
11 marketing plans, marketing strategies, customer lists, contracts, sales data, revenue, or
12 other business information;

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

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

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

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

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

29 (13) coerce or attempt to coerce a new motor vehicle dealer to refrain
30 from or prohibit or attempt to prohibit a new motor vehicle dealer from acquiring,
31 owning, having an investment in, participating in the management of, or holding a

1 franchise agreement for the sale or service of another make or line of new motor
2 vehicles or related products, or establishing another make or line of new motor
3 vehicles or service in the same dealership facilities;

4 (14) require, by contract or otherwise, a new motor vehicle dealer to
5 make a material alteration to, expansion of, or addition to a dealership facility, unless
6 the manufacturer uniformly requires similarly situated new motor vehicle dealers of
7 the same motor vehicle line make to make the alteration, expansion, or addition and
8 the alteration, expansion, or addition is reasonable in light of all existing
9 circumstances, including economic conditions and local market considerations; 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 as the advertiser 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 meets the burden of proof to show that a
30 proposed change of executive management will result in executive management by a
31 person who does not have good moral character or who does not meet reasonable,

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

8 (18) condition the sale, transfer, relocation, or renewal of a franchise
9 agreement, or condition manufacturer sales, services, or parts incentives on the

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

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

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

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

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

28 (22) deliver to a new motor vehicle dealer a new motor vehicle that
29 does not comply in every respect with equipment requirements required by the law of
30 this state, unless the manufacturer reimburses a dealer to modify the new vehicle to
31 meet the equipment requirements; or

1 (23) fail to indemnify and hold harmless a new motor vehicle dealer

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

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

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

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

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

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

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

15 (5) makes the sale under a manufacturer's bona fide motor vehicle
16 discount program to a person that owns and operates a fleet of 15 or more new motor
17 vehicles purchased or leased from a dealer where the manufacturer has assigned an
18 identifier code.

19 (c) In this section,

20 (1) "control" means to possess

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

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

28 (2) "lease return vehicle" means a motor vehicle that has been
29 previously leased and then returned to the lessor;

30 (3) "operate" means to manage a new motor vehicle dealership directly
31 or indirectly;

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

6 * **Sec. 17.** AS 45.25.990(19) is repealed and reenacted to read:

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

9 * **Sec. 18.** AS 45.25.990 is amended by adding new paragraphs to read:

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

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

15 * **Sec. 19.** AS 45.25.110(b) and 45.25.110(c) are repealed.

16 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

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

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

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

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

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