

HOUSE BILL NO. 136

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES CLAMAN, Reinbold, Millett, Sullivan-Leonard, Birch, Kopp, Kito, Tuck, Stutes, Kawasaki, Josephson, Wool

Introduced: 2/20/17

Referred: Transportation, 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.** 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, manufacturer representatives, and
13 distributor representatives, and to regulate motor vehicle dealers doing business in the state;
14 and

1 (3) AS 45.25 is remedial.

2 * **Sec. 2.** AS 45.25.110(a) is amended to read:

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

5 (1) the manufacturer has

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

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

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

19 (2) the new motor vehicle dealer has systematically engaged in fraud
20 against consumers or the manufacturer or in the operation of the new motor vehicle
21 dealership.

22 * **Sec. 3.** AS 45.25.110 is amended by adding a new subsection to read:

23 (d) Notwithstanding the terms of a franchise agreement, a manufacturer may
24 not terminate a franchise with a new motor vehicle dealer because the new motor
25 vehicle dealer

26 (1) owns, has an investment in, participates in the management of, or
27 holds a franchise agreement for the sale or service of another line or make of new
28 motor vehicles;

29 (2) has established another line or make of new motor vehicles or
30 service in the same dealership facilities as those of the manufacturer or distributor;

31 (3) has or intends to relocate the manufacturer's or distributor's line or

1 make of new motor vehicles or service to an existing dealership facility that is within
 2 the relevant market area of the motor vehicle line or make to be relocated, except that,
 3 in a nonemergency circumstance, the dealer shall give the manufacturer or distributor
 4 at least 60 days' notice of the intent to relocate; or

5 (4) fails to change the location of the dealership or to make substantial
 6 alterations to the use or number of franchises on the dealership premises or facilities.

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

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

11 (1) a new motor vehicle dealer fails to comply with a franchise
 12 agreement provision that is reasonable and materially significant to the franchise
 13 agreement; and

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

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

22 (1) the manufacturer determined the failure based on methodology
 23 supporting reasonable performance standards that the manufacturer

24 (A) determined in accordance with criteria that the
 25 manufacturer established for a dealership located in this state and that the
 26 manufacturer applied uniformly; and

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

28 (2) the manufacturer notified the new motor vehicle dealer in writing
 29 of the failure of the new motor vehicle dealer in sales, service, or level of customer
 30 satisfaction;

31 (3) after providing the notice under (2) of this subsection, the

1 manufacturer provided the new motor vehicle dealer with

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

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

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

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

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

22 (2) upon request, the manufacturer provides the new motor vehicle
23 dealer with documentation that is sufficient for the new motor vehicle dealer to
24 develop a market analysis; the documentation must include the allocation of new
25 motor vehicles to the new motor vehicle dealer and other new motor vehicle dealers in
26 the same zone during the period established by the manufacturer; the new motor
27 vehicle dealer may not share the market analysis with a person that is not involved in
28 preparing the market analysis or terminating the franchise agreement.

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

31 (1) the new motor vehicle dealer is insolvent or is the subject of a

1 bankruptcy or receivership proceeding;

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

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

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

11 (e) The manufacturer has the burden of proving that good cause exists for
12 termination of a franchise agreement.

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

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

17 (1) 90 days before the effective date of a termination, except as
18 required under (2) or (3) of this subsection;

19 (2) 15 days before the effective date of a termination when the [NEW
20 MOTOR VEHICLE DEALER]

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

23 (B) **new motor vehicle dealer** has failed to conduct its
24 customary sales and service operations during its customary business hours for
25 seven consecutive business days; this subparagraph does not apply to **a closure**
26 **caused by an act** [CLOSURES DUE TO ACTS OF GOD] or **circumstance**
27 [CIRCUMSTANCES] beyond the direct control of the new motor vehicle
28 dealer; [OR]

29 (C) **new motor vehicle dealer or a principal operator of the**
30 **dealership** is convicted of a felony [INVOLVING MORAL TURPITUDE OR
31 FRAUD UNDER THE LAW OF THIS STATE, ANOTHER STATE, THE

1 FEDERAL GOVERNMENT, A TERRITORY OF THE UNITED STATES,
2 OR THE DISTRICT OF COLUMBIA]; or

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

7 (3) 180 days before the effective date of the termination if the
8 manufacturer or distributor is discontinuing the sale and distribution of the product
9 line on a nationwide basis.

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

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

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

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

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

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

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

1 (C) a mileage charge of 20 cents a mile for all mileage over
2 200 miles on demonstrator vehicles;

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

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

9 (A) the supply, part, or accessory is listed in the manufacturer's
10 current catalog; and

11 (B) the new motor vehicle dealer acquired the supply, part, or
12 accessory from the manufacturer or distributor, or the manufacturer required
13 the new motor vehicle dealer to purchase the supply, part, or accessory;

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

19 (5) the fair market value of all equipment, furnishings, and special
20 tools that the new motor vehicle dealer owns or leases, that the new motor vehicle
21 dealer acquired from the manufacturer or from sources approved by the manufacturer,
22 that the manufacturer recommended or required the new motor vehicle dealer to
23 purchase, and that are in good and usable condition, less reasonable wear and tear;
24 however, if the new motor vehicle dealer leases the equipment, furnishings, or tools,
25 the 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;

28 (6) the fair market value of all computers, printers, and software that
29 the manufacturer required or that were reasonably necessary for the new motor vehicle
30 dealer to operate the dealership according to the standards of the manufacturer, except,
31 if the new motor vehicle dealer leases the computers, printers, or software, the

1 manufacturer shall pay the new motor vehicle dealer the amount of money that is
 2 required for the new motor vehicle dealer to terminate the lease under the lease
 3 agreement; and

4 (7) the cost to the new motor vehicle dealer to transport, handle, pack,
 5 and load the new motor vehicles, supplies, parts, accessories, signs, equipment,
 6 furnishings, special tools, computers, printers, and software described in this
 7 subsection.

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

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

14 (d) The manufacturer shall pay the compensation required under (a) of this
 15 section within 30 days after the new motor vehicle dealer tenders the property
 16 described in (a) of this section to the manufacturer if the new motor vehicle dealer has
 17 clear title to the property and is in a position to convey that title to the manufacturer. If
 18 the property is subject to a security interest, the manufacturer may jointly pay the new
 19 motor vehicle dealer and the holder of the security interest, and the manufacturer may
 20 deduct from the payments the manufacturer is required to make to the new motor
 21 vehicle dealer under this section the payments that the manufacturer makes to the
 22 holder of the security interest.

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

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

28 (1) the dealer's cost for a relocation, substantial alteration, or
 29 remodeling of a dealer's facilities that the manufacturer required for the continuation
 30 or renewal of the franchise agreement and that was completed within three years
 31 before or after the termination;

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

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

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

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

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

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

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

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

23 **Sec. 45.25.155. Application of payment provisions.** The provisions of
 24 AS 45.25.140 and 45.25.150 do not apply when a manufacturer terminates a franchise
 25 agreement because

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

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

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

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

6 (5) the new motor vehicle dealer has made a fraudulent
7 misrepresentation to the manufacturer or distributor that is material to the franchise
8 agreement; or

9 (6) the new motor vehicle dealer voluntarily enters into an agreement
10 to sell the stock of the new motor vehicle dealer to another person, and the
11 manufacturer approves the agreement.

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

13 **Sec. 45.25.160. Sale, transfer, or exchange of a franchise.** (a)
14 Notwithstanding the terms of a franchise agreement, a manufacturer may not withhold
15 consent to the sale, transfer, or exchange of a franchise to a buyer if the buyer

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

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

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

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

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

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

28 (c) If a manufacturer refuses to approve the sale, transfer, or exchange of a
29 franchise, the manufacturer shall serve written notice on the applicant and on the
30 transferring, selling, or exchanging new motor vehicle dealer of its refusal to approve
31 the transfer, sale, or exchange of the franchise not later than 60 days after the date the

1 manufacturer receives the written request from the new motor vehicle dealer. If the
 2 manufacturer has requested personal or financial information from the applicant under
 3 (b)(1) of this section, the manufacturer shall serve the notice not later than 60 days
 4 after the receipt of the information. Service of a notice under this section shall be
 5 made by personal service or certified mail, return receipt requested.

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

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

13 (f) If an owner of a new motor vehicle franchise enters into an agreement to
 14 sell the franchise to a person who is related to the owner in the first or second degree
 15 or is the husband or wife of a person who is related to the owner in the first or second
 16 degree, the manufacturer may not exercise a right of first refusal contained in the
 17 manufacturer's franchise agreement with the owner.

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

19 **Sec. 45.25.165. Mitigation of damages.** The provisions of AS 45.25.110 -
 20 45.25.160 do not relieve a new motor vehicle dealer of the obligation to mitigate the
 21 new motor vehicle dealer's damages upon termination.

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

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

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

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

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

4 (1) the person is qualified and experienced in the business of being a
5 new motor vehicle dealer and meets the normal, reasonable, and uniformly applied
6 standards of a manufacturer to grant an application to a person for a franchise from the
7 manufacturer or, in the case of a designated successor who is not experienced in the
8 business of being a new motor vehicle dealer, the person will employ an individual
9 who is qualified and experienced in the business of being a new motor vehicle dealer
10 to help manage the day-to-day operations of the new motor vehicle dealership;

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

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

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

21 (d) A manufacturer may refuse to honor the succession to the ownership of a
22 new motor vehicle dealer franchise agreement by a designated successor if the
23 manufacturer establishes that good cause exists for its refusal and if the manufacturer
24 gives written notice to the designated successor and the new motor vehicle dealer of
25 its refusal to accept the designated successor not earlier than 60 days after the date the
26 manufacturer receives the notice from the new motor vehicle dealer. However, if the
27 manufacturer has requested personal or financial information from the applicant under
28 (c) of this section, the manufacturer shall give the notice not later than 30 days after
29 the manufacturer's receipt of the requested personal or financial information.

30 (e) The notice under (d) of this section must state the specific grounds for the
31 refusal to honor the succession. If the manufacturer does not serve the notice of refusal

1 in a timely and proper manner, the designated successor shall be considered approved
 2 and continue to be an approved designated successor to the franchise agreement in full
 3 force and effect, subject to termination only as otherwise provided under this chapter.

4 (f) A manufacturer has the burden of proof to show that good cause exists for
 5 the refusal to honor the succession to the ownership of a new motor vehicle franchise
 6 agreement by a designated successor.

7 (g) This section does not prevent the owner of a new motor vehicle dealer
 8 from filing with the manufacturer a written, notarized notice appointing a person as a
 9 designated successor. If the notice under this subsection has not been revoked by
 10 written notice from the owner to the manufacturer and conflicts with the provisions of
 11 this section, the notice given under this subsection governs.

12 (h) A manufacturer may not require changes in the capitalization or facilities
 13 of a franchise as a condition of approving a family member as a designated successor
 14 or a current qualified employee as a designated successor, including a general manager
 15 of the franchise, to have full managerial authority for the operating management of the
 16 franchise.

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

18 **Sec. 45.25.180. New or relocated dealership.** (a) Before a manufacturer
 19 enters into a franchise establishing or relocating a new motor vehicle dealer within a
 20 dealer's relevant market area, the manufacturer shall give 90 days' written notice to the
 21 new motor vehicle dealer holding the relevant market area of the manufacturer's
 22 intention to establish an additional new motor vehicle dealer or to relocate an existing
 23 new motor vehicle dealer within the dealer's relevant market area.

24 (b) This section does not apply

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

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

31 (3) if the proposed new motor vehicle dealer will establish the

1 dealership at or within 10 miles of a location within the relevant market area in which
 2 a former new motor vehicle dealer of the same line or make of new motor vehicles had
 3 ceased operating within the previous 24 months and if the manufacturer had not
 4 assigned the location to another new motor vehicle dealer during the period when the
 5 former new motor vehicle dealer had stopped operating;

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

8 (5) if the proposed relocation will be located farther away from all
 9 other existing new motor vehicle dealers of the same line or make of new motor
 10 vehicle than the existing new motor vehicle dealer.

11 (c) Notwithstanding the terms of a franchise agreement and notwithstanding
 12 the terms of a waiver, if a manufacturer intends or proposes to establish an additional
 13 new motor vehicle dealership or relocate an existing new motor vehicle dealership
 14 within or into a relevant market area in which the same line or make of new motor
 15 vehicle is represented, the manufacturer shall first establish good cause to establish or
 16 relocate a dealership. When determining whether good cause exists for permitting the
 17 proposed establishment or relocation of a new motor vehicle dealer of the same line or
 18 make, the manufacturer shall consider the existing circumstances, including

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

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

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

27 (4) the effect on the existing new motor vehicle dealers in the relevant
 28 market area, including any adverse financial effect on the existing new motor vehicle
 29 dealer;

30 (5) the reasonably expected or anticipated motor vehicle market for the
 31 relevant market area, including the age of the population, income, education, size class

1 preference, product popularity, retail lease transactions, other demographic factors,
2 and other factors affecting sales to consumers in the relevant market area;

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

5 (7) whether the new motor vehicle dealer of the same line or make in
6 the relevant market area is providing adequate competition and convenient customer
7 care for the new motor vehicles of the same line or make in the relevant market area,
8 including a consideration of the service facilities, the equipment, the supply of vehicle
9 parts, the qualifications of service personnel, and the number of new motor vehicle
10 sales;

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

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

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

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

20 (d) If a manufacturer intends or proposes to enter into a franchise agreement to
21 establish an additional new motor vehicle dealer within a relevant market area in
22 which the same line or make of new motor vehicle is represented, the manufacturer
23 shall first offer the existing dealer in that relevant market area the opportunity to
24 establish the new dealership as a satellite location of the existing dealer. If the
25 manufacturer believes, in good faith, that the existing new motor vehicle dealer does
26 not, for good cause, qualify to establish the additional dealership, or relocate an
27 existing new motor vehicle dealer within or into a relevant market area in which the
28 same line or make of motor vehicle is then represented, the manufacturer shall provide
29 at least 90 days' advance written notice to each new motor vehicle dealer of the same
30 line or make in the relevant market area of the manufacturer's intention to establish an
31 additional new motor vehicle dealer within the relevant market area. The notice shall

1 be sent by certified mail and must include the

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

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

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

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

11 (5) specific grounds or reasons for the proposed establishment of an
12 additional new motor vehicle dealer or relocation of an existing new motor vehicle
13 dealer.

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

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

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

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

31 (c) Within 30 days after receipt of a notice of disapproval of succession under

1 AS 45.25.170(d), the proposed successor may file an action with the superior court to
 2 determine whether the manufacturer has unreasonably withheld approval.

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

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

12 **Sec. 45.25.200. Payment and approval of claims.** (a) A manufacturer shall
 13 pay a new motor vehicle dealer for all repairs performed by a new motor vehicle
 14 dealer that are covered under a manufacturer's warranty, policy, or service contract.
 15 The manufacturer shall pay for the repairs whether the owner or the dealership
 16 personnel identified the need for the repair. A manufacturer shall pay the dealer for the
 17 repairs in accordance with the new motor vehicle dealer's schedule of compensation
 18 that applies to the repairs when the new motor vehicle dealer made the repairs.

19 (b) A new motor vehicle dealer shall submit a claim for warranty work, policy
 20 work, or predelivery service to the manufacturer within 90 days after the owner
 21 reclaims the motor vehicle following the new motor vehicle dealer's completion of
 22 work on the motor vehicle. The new motor vehicle dealer shall submit the claim in the
 23 manner that the manufacturer requires.

24 (c) Within 15 days after the manufacturer receives a claim from a new motor
 25 vehicle dealer under (b) of this section, the manufacturer shall approve or deny the
 26 claim in writing or electronically. If a manufacturer does not disapprove a claim as
 27 required by this subsection, the manufacturer is considered to have approved the claim
 28 and the manufacturer shall pay the claim within 30 days after the manufacturer
 29 received the claim.

30 (d) If a manufacturer disapproves a claim that the new motor vehicle dealer
 31 submits under (b) of this section, a manufacturer shall notify the new motor vehicle

1 dealer in writing or electronically and shall set out the reasons for disapproving the
2 claim. A new motor vehicle dealer may correct and resubmit the claim within 30 days
3 after the new motor vehicle dealer receives the written or electronic notice that the
4 manufacturer disapproved or denied the claim.

5 (e) Notwithstanding the other provisions of this section, within 15 days after a
6 manufacturer receives a consumer or dealer incentive claim from a new motor vehicle
7 dealer, the manufacturer shall approve or deny the claim by a written or electronic
8 notice of denial. If a manufacturer does not deny the claim in writing or electronically,
9 as required by this subsection and (f) of this section, within 15 days after the
10 manufacturer receives the claim, the manufacturer is considered to have approved the
11 claim, and the manufacturer shall pay the claim within 30 days after the manufacturer
12 received the claim.

13 (f) If the manufacturer denies a claim under (e) of this section, the
14 manufacturer shall set out the reasons for the denial in the notice of denial. A new
15 motor vehicle dealer may correct and resubmit the claim within 30 days after the new
16 motor vehicle dealer receives the written or electronic notice that the manufacturer
17 disapproved the claim.

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

24 (h) A manufacturer may not deny or charge back to a new motor vehicle
25 dealer a warranty or policy claim after the initial submission or resubmission of the
26 claim, or as a result of an audit, if the new motor vehicle dealer can reasonably
27 demonstrate that the reason for the repair existed, the repair was performed, and the
28 cause for the repair was cured.

29 (i) A manufacturer may not recover all or a portion of its costs for
30 compensating its dealers for parts and labor provided by a new motor vehicle dealer
31 under AS 45.25.210 and this section by using offsets against amounts owed to the new

1 motor vehicle dealer or by making a separate charge, surcharge, or other imposition.

2 **Sec. 45.25.210. Rates for warranty and other work.** (a) A manufacturer shall
3 provide each of its new motor vehicle dealers with the schedule of compensation that
4 the manufacturer shall pay to the new motor vehicle dealer for warranty work, policy
5 work, predelivery service, or other service that the manufacturer requires the new
6 motor vehicle dealer to perform for the manufacturer's products.

7 (b) The schedule of compensation must be contained in the franchise
8 agreement or in a separate agreement with the new motor vehicle dealer. The schedule
9 of compensation must include compensation for parts, labor, and diagnostic work and
10 must comply with this section.

11 (c) The rates in the schedule of compensation may not be less than the rates
12 that the new motor vehicle dealer charges retail customers for similar service for
13 nonwarranty service, labor on diagnostic work, and repairs. The rates for parts must
14 include the price paid for the part, shipping charges, other charges incurred for the
15 parts, and the average retail percentage markup that the new motor vehicle dealer
16 charges. The rates for labor on diagnostic work must also include any documentation
17 work or contact time that the new motor vehicle dealer spends and the manufacturer
18 requires to authorize or verify the work, including providing photographs, paperwork,
19 consultation, and electronic data.

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

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

1 transaction-by-transaction calculations.

2 (f) A manufacturer may not include in the calculation of the rates in the
3 schedule of compensation

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

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

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

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

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

14 (6) vehicle reconditioning.

15 (g) The average retail percentage markup calculated under (d) of this section
16 may not take effect more than 30 days after the new motor vehicle dealer submits the
17 information required in (d) of this section to the manufacturer.

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

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

25 (j) In this section, "average retail percentage markup" means the average retail
26 percentage markup established under (d) of this section.

27 **Sec. 45.25.220. Performance and reimbursement of certain repairs.** (a) If a
28 manufacturer requires that a certified technician perform a repair on a motor vehicle,
29 and if a certified technician is not available to begin the repair within one business day
30 after the delivery of the motor vehicle to a new motor vehicle dealer, an uncertified
31 technician may perform the repair if the uncertified technician performs the repair

1 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 (b) 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
 13 compensation, plus any freight or shipping charges, or at the retail rate that is in effect
 14 when, and in the community where, the repairs are made, whichever amount is less.

15 **Sec. 45.25.230. Discontinuation or reduction of line.** In this chapter, if a
 16 manufacturer discontinues the sale and distribution of a new motor vehicle line, or if a
 17 manufacturer materially reduces the selection of new motor vehicle lines that the
 18 manufacturer is offering to the extent that it is not economically viable for a new
 19 motor vehicle dealer to continue to retail the new motor vehicle line, the new motor
 20 vehicle dealer may consider the discontinuation or reduction a termination of the
 21 franchise agreement between the manufacturer and the new motor vehicle dealer.

22 **Sec. 45.25.290. Definition.** In AS 45.25.200 - 45.25.230, "schedule of
 23 compensation" means the schedule of compensation provided under AS 45.25.210.

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

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

27 (1) sell, offer to sell, or deliver a new motor vehicle to a new motor
 28 vehicle dealer at a lower price than the price offered to another new motor vehicle
 29 dealer for the same model of new motor vehicle that is similarly equipped;

30 (2) sell, offer to sell, or deliver parts, accessories, equipment, or other
 31 items to a new motor vehicle dealer at a lower price than the price offered to another

1 new motor vehicle dealer;

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

4 (A) result in one new motor vehicle dealer being charged a
5 lower price on new motor vehicles, parts, accessories, or other items than
6 another new motor vehicle dealer; or

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

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

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

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

27 (B) "documentation service fee" means a fee for filling out and
28 filing paperwork in connection with the sale of a new motor vehicle;

29 (6) refuse or fail to deliver, in reasonable quantities and within a
30 reasonable period after receipt of an order, to a new motor vehicle dealer holding a
31 franchise for a line or make of new motor vehicles sold or distributed by the

1 manufacturer, distributor, factory branch, or manufacturer representative a new motor
 2 vehicle, part, or accessory, if the vehicle, part, or accessory is being delivered to other
 3 motor vehicle dealers;

4 (7) require a dealer to purchase unreasonable advertising displays or
 5 other materials;

6 (8) unreasonably require a dealer to remodel or renovate existing
 7 facilities as a prerequisite to receiving a model or series of vehicles;

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

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

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

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

26 (11) own, operate, or control, whether directly or indirectly, a new
 27 motor vehicle dealership in this state, except that a manufacturer may own or operate a
 28 new motor vehicle dealership

29 (A) for a temporary period, not to exceed two years, during the
 30 transition from one owner of the dealership to another owner if a franchised
 31 new motor vehicle dealer previously owned the dealership and the dealership is

1 currently for sale at a fair and reasonable price to a qualified person who is
 2 independent of the manufacturer, distributor, factory branch, or manufacturer
 3 representative; or

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

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

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

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

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

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

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

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

12 (14) coerce or attempt to coerce a new motor vehicle dealer to refrain
13 from or prohibit or attempt to prohibit a new motor vehicle dealer from acquiring,
14 owning, having an investment in, participating in the management of, or holding a
15 franchise agreement for the sale or service of another line or make of new motor
16 vehicles or related products, or establishing another line or make of new motor
17 vehicles or service in the same dealership facilities;

18 (15) require, by contract or otherwise, a new motor vehicle dealer to
19 make a material alteration to, expansion of, or addition to a dealership facility, unless
20 the manufacturer uniformly requires similarly situated new motor vehicle dealers of
21 the same motor vehicle line or make to make the alteration, expansion, or addition and
22 the alteration, expansion, or addition is reasonable in light of all existing
23 circumstances, including economic conditions and local market considerations; if an
24 alteration, expansion, or addition is required under this paragraph, the new motor
25 vehicle dealer may select the person to make the alteration, expansion, or addition;

26 (16) require a new motor vehicle dealer to order or accept delivery of a
27 new motor vehicle, part, accessory, piece of equipment, promotional material, display
28 device, display decoration, or other item that is not otherwise required by law and that
29 the dealer does not voluntarily order; this paragraph does not apply to the recall of
30 safety and emissions campaign parts unless the dealer voluntarily ordered them, or to a
31 motor vehicle feature, part, accessory, or other component required by federal law, the

1 law of this state, or local law;

2 (17) coerce or attempt to coerce a new motor vehicle dealer to join,
3 contribute money to, or affiliate with an advertising association, or to participate
4 monetarily in an advertising campaign, or, if a new motor vehicle dealer chooses to
5 join, contribute monetarily to, or affiliate with an advertising association, require the
6 new motor vehicle dealer to use the association funding allocated to the new motor
7 vehicle dealer to run prepackaged radio, television, or newspaper advertising that
8 identifies the association as the advertiser rather than the contributing new motor
9 vehicle dealer;

10 (18) prevent or attempt to prevent by contract or another method a new
11 motor vehicle dealer from changing the executive management of the new motor
12 vehicle dealer unless the manufacturer meets the burden of proof to show that a
13 proposed change of executive management will result in executive management by a
14 person who does not have good moral character or who does not meet reasonable,
15 preexisting, and equitably applied standards of the manufacturer; if a manufacturer
16 rejects a proposed change in the executive management, the manufacturer shall give
17 written notice of its reasons for the rejection to the new motor vehicle dealer within 60
18 days after receiving written notice from the new motor vehicle dealer of the proposed
19 change and all related information reasonably requested by the manufacturer; if the
20 manufacturer does not give the written notice within the 60 days, the manufacturer is
21 considered to have approved the change in executive management;

22 (19) condition the sale, transfer, relocation, or renewal of a franchise
23 agreement, or condition manufacturer sales, services, or parts incentives on the

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

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

28 (20) coerce, threaten, intimidate, or require a new motor vehicle dealer,
29 as a condition of granting or renewing a franchise agreement, to waive, limit, or
30 disclaim a right that the new motor vehicle dealer may have to protest the
31 establishment or relocation of another motor vehicle dealer in the relevant market

1 area;

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

6 (22) increase the price of a new motor vehicle that the new motor
7 vehicle dealer has ordered from the manufacturer and for which there exists at the time
8 of the order a bona fide sale to a retail or fleet purchaser if the order was made before
9 the manufacturer provided the dealer with an official written price increase
10 notification;

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

15 (24) fail to indemnify and hold harmless a new motor vehicle dealer

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

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

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

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

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

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

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

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

1 identifier code.

2 (c) In this section,

3 (1) "control" means to possess

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

7 (B) directly or indirectly, the power to direct or cause the
8 direction of the management or policies of a person, whether through the
9 ownership of voting securities, through the power to direct directors, by
10 contract, or by another method, except as expressly provided under the
11 franchise agreement;

12 (2) "operate" means to manage a new motor vehicle dealership directly
13 or indirectly;

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

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

20 (19) "terminate" includes to cancel, not to renew, or to discontinue or
21 make a reduction under AS 45.25.230;

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

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

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

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

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

31 **APPLICABILITY.** (a) Except to the extent that the application under this section

1 would impair valid contractual agreements in violation of a provision of the Constitution of
 2 the State of Alaska or the Constitution of the United States, this Act applies to franchise
 3 agreements between manufacturers and new motor vehicle dealers in the state if the franchise
 4 agreement is

- 5 (1) in existence on the effective date of this Act;
- 6 (2) renewed or amended on or after the effective date of this Act; or
- 7 (3) entered into on or after the effective date of this Act.

8 (b) In this section,

- 9 (1) "franchise" has the meaning given in AS 45.25.990;
- 10 (2) "manufacturer" has the meaning given in AS 45.25.990;
- 11 (3) "new motor vehicle dealer" has the meaning given in AS 45.25.990.

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

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

- 18 (1) "franchise" has the meaning given in AS 45.25.990;
- 19 (2) "manufacturer" has the meaning given in AS 45.25.990;
- 20 (3) "new motor vehicle dealer" has the meaning given in AS 45.25.990;
- 21 (4) "schedule of compensation" means the schedule of compensation provided
 22 under AS 45.25.210.