

AMENDMENT #4

OFFERED IN THE HOUSE  
TO: CSHB 233(TRA)

BY REPRESENTATIVE SUMNER

1 Page 1, line 1 (title amendment):

2 Delete "and"

3

4 Page 1, line 2, following "manufacturers":

5 Insert "; and relating to repairs to new motor vehicles under warranty performed  
6 by shops"

7

8 Page 3, following line 26:

9 Insert new bill sections to read:

10 \*\* Sec. 6. AS 45.45.300 is amended to read:

11 **Sec. 45.45.300. Repairs required.** If a new motor vehicle does not conform to  
12 an express warranty that is applicable to it and the owner of the vehicle reports the  
13 defect or condition to the manufacturer of the vehicle or to the manufacturer's or  
14 distributor's dealer during the term of the warranty, the owner may choose to have  
15 the necessary repairs made to conform the vehicle to the warranty performed by

16 (1) the manufacturer, distributor, or dealer [,] or a repairing agent; or

17 (2) a shop that has received a schedule of compensation from the

18 manufacturer or distributor [SHALL MAKE THE NECESSARY REPAIRS TO  
19 CONFORM THE VEHICLE TO THE EXPRESS WARRANTY].

20 \* Sec. 7. AS 45.45.300 is amended by adding new subsections to read:

21 (b) If a manufacturer receives a report from an owner under (a) of this section  
22 and the owner chooses to have repairs performed under (a)(1) of this section, the  
23 manufacturer, distributor, dealer, or repairing agent shall make the necessary repairs to

1 conform the vehicle to the express warranty.

2 (c) If a manufacturer is sent a report from an owner under (a) of this section  
3 and the owner chooses to have repairs performed under (a)(2) of this section, a shop  
4 may perform the necessary repairs to conform the vehicle to the express warranty.

5 \* **Sec. 8.** AS 45.45.305 is amended to read:

6 **Sec. 45.45.305. Replacement or refund.** If, during the term of the express  
7 warranty or within one year from the date of delivery of the motor vehicle to the  
8 original owner, whichever period terminates first, the person performing repairs  
9 under AS 45.45.300 [MANUFACTURER, DISTRIBUTOR, DEALER, OR  
10 REPAIRING AGENT] is unable to conform the motor vehicle to an applicable  
11 express warranty after a reasonable number of attempts, the manufacturer or  
12 distributor shall accept the return of the nonconforming motor vehicle, and, at the  
13 owner's option, shall replace the nonconforming vehicle with a new, comparable  
14 vehicle or shall refund the full purchase price to the owner less a reasonable allowance  
15 for the use of the motor vehicle from the time it was delivered to the original owner. A  
16 refund under this section shall be made to a lienholder of record, if any, and the owner,  
17 as their interests may appear.

18 \* **Sec. 9.** AS 45.45.310 is amended to read:

19 **Sec. 45.45.310. Notice by owner.** In order to claim a refund or replacement  
20 under AS 45.45.305, the owner shall give written notice by certified mail to the  
21 manufacturer and the person performing repairs under AS 45.45.300 [ITS  
22 DEALER OR REPAIRING AGENT] at any time before 60 days have elapsed after  
23 the expiration of the express warranty or the one-year period after the date of delivery  
24 of the motor vehicle to the original owner, whichever period terminates first, (1)  
25 stating that the vehicle has a nonconformity; (2) providing a reasonable description of  
26 the nonconformity; (3) stating that [THE MANUFACTURER, DISTRIBUTOR,  
27 DEALER, OR REPAIRING AGENT HAS MADE] a reasonable number of attempts  
28 to conform the vehicle have been made and identifying who made those attempts  
29 under AS 45.45.305(a); and (4) stating that the owner demands a refund or  
30 replacement vehicle to be delivered on the 60th day after the mailing of the written  
31 notice. Within 30 days after receiving the notice required by this section, the

1 manufacturer may make a final attempt to conform the vehicle before a refund or  
2 replacement is made under AS 45.45.305.

3 \* **Sec. 10.** AS 45.45.315 is amended to read:

4 **Sec. 45.45.315. Exceptions.** An owner may not receive a refund or  
5 replacement under AS 45.45.300 - 45.45.360 if the manufacturer or distributor shows  
6 that the nonconformity complained of

7 (1) does not substantially impair either the use or the market value of  
8 the motor vehicle; or

9 (2) is the result of

10 (A) alteration of the motor vehicle by the owner or a person  
11 other than a **person permitted to make the alteration under AS 45.45.300**  
12 [DEALER OR REPAIRING AGENT THAT IS NOT AUTHORIZED BY  
13 THE MANUFACTURER OR DISTRIBUTOR]; or

14 (B) abuse or neglect by the owner or a person other than **a**  
15 **person permitted to perform repairs on the motor vehicle under**  
16 **AS 45.45.300** [THE DEALER OR REPAIRING AGENT].

17 \* **Sec. 11.** AS 45.45.320 is amended to read:

18 **Sec. 45.45.320. Presumption.** A presumption that a reasonable number of  
19 attempts have been made to conform a motor vehicle under an applicable express  
20 warranty is established if [:]

21 (1) the same nonconformity has been subject to repair three or more  
22 times **under AS 45.45.300** [BY THE MANUFACTURER, DISTRIBUTOR,  
23 DEALER, OR REPAIRING AGENT] during the term of the express warranty or the  
24 one-year period after delivery of the motor vehicle to the original owner, whichever  
25 period terminates first, but the nonconformity continues to exist; or

26 (2) the vehicle is out of service for repair for a total of 30 or more  
27 business days during the express warranty term or the one-year period referred to in  
28 (1) of this section, whichever period terminates first; any period of time that repairs  
29 are not performed for reasons that are beyond the control of the **person performing**  
30 **repairs under AS 45.45.300** [MANUFACTURER, DISTRIBUTOR, DEALER, OR  
31 REPAIRING AGENT] is excluded from the 30-day time period referred to in this

1 paragraph.

2 \* **Sec. 12.** AS 45.45.325 is amended to read:

3 **Sec. 45.45.325. Parts availability.** A manufacturer whose vehicles are sold in  
4 the state through an authorized dealer shall provide a person performing repairs  
5 under AS 45.45.300 [ITS DEALER OR REPAIRING AGENT] with any part  
6 necessary to make a repair of a nonconformity covered under an express warranty, as  
7 soon as possible, without additional charge for freight or handling, if the part is not in  
8 the person's [DEALER'S OR AGENT'S] inventory when the nonconforming vehicle  
9 is brought to the person [DEALER OR REPAIRING AGENT] for repair.

10 \* **Sec. 13.** AS 45.45.340 is amended to read:

11 **Sec. 45.45.340. Other rights and remedies.** The provisions of AS 45.45.300 -  
12 45.45.360 do not limit other rights and remedies that may be available to the owner of  
13 a motor vehicle under other provisions of law. This section does not create a new  
14 cause of action against a dealer or repairing agent who sells or against a person who  
15 attempts to repair under AS 45.45.300 a motor vehicle found to be nonconforming  
16 under AS 45.45.300 - 45.45.360.

17 \* **Sec. 14.** AS 45.45 is amended by adding new sections to read:

18 **Sec. 45.45.356. Schedule of compensation for shops.** (a) A shop may request  
19 a schedule of compensation from a manufacturer or distributor. Upon receiving a  
20 request that complies with this section, the manufacturer or distributor shall provide  
21 the shop with the schedule of compensation that the manufacturer or distributor will  
22 pay to the shop to perform necessary repairs under AS 45.45.300(a)(2).

23 (b) The schedule of compensation must include compensation for parts and  
24 labor. The compensation for parts must include the average retail percentage markup  
25 that the shop charges. The compensation for labor must include the rates and time  
26 allowances for labor performed under AS 45.45.300(a)(2).

27 (c) Unless otherwise agreed to by the manufacturer or distributor and the shop,  
28 the schedule of compensation may not contain

29 (1) rates less than the rates that the shop charges retail customers for  
30 similar nonwarranty service work; and

31 (2) time allowances less than time allowances provided in independent

1 labor time guides.

2 (d) To establish the retail percentage markup, the shop shall submit to the  
3 manufacturer or distributor 100 sequential chronologically issued retail service repair  
4 orders paid by customers for warranty-like repairs or 90 consecutive days of retail  
5 service repair orders paid by customers for warranty-like repairs, whichever number of  
6 retail service repair orders is fewer. The retail service repair orders that the shop  
7 submits must cover retail repairs that the shop made less than 180 days before the shop  
8 submits the orders to the manufacturer or distributor.

9 (e) A manufacturer or distributor may not require a shop to establish the retail  
10 percentage markup by a method other than the method required by (d) of this section.  
11 When establishing the retail percentage markup, the manufacturer or distributor may  
12 not require the shop to provide information that is unduly burdensome or time  
13 consuming to provide, including part-by-part or transaction-by-transaction  
14 calculations.

15 (f) A manufacturer or distributor may not include in the calculation of the  
16 rates in the schedule of compensation

17 (1) repairs for manufacturer or distributor special events, specials, or  
18 promotional discounts;

19 (2) parts sold at wholesale;

20 (3) routine maintenance not covered under warranty, including the  
21 replacement of fluids, filters, and belts, unless the shop provides the routine  
22 maintenance in the course of making a repair;

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

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

26 (6) vehicle reconditioning; and

27 (7) repair orders for motor vehicle body repairs if an insurer pays for  
28 the repairs.

29 (g) The retail percentage markup calculated under (d) of this section may not  
30 take effect more than 30 days after the manufacturer or distributor approves the shop's  
31 proposed rate, or after the manufacturer or distributor is considered to have approved

1 the shop's proposed rate under this section. If the manufacturer or distributor does not  
2 disapprove the shop's proposed rate within 30 days after the shop submits the rate  
3 application, then the shop's proposed rate shall be considered approved.

4 (h) A manufacturer or distributor may disapprove a rate proposed by a shop  
5 under this section if the manufacturer or distributor demonstrates that the proposed  
6 rate is materially miscalculated or unreasonable compared to other similarly situated  
7 shops, dealers, or repairing agents in this state.

8 (i) A shop may not receive more than one rate increase under this section in a  
9 calendar year.

10 (j) In this section,

11 (1) "rate" means the dollar amount that a manufacturer pays a shop for  
12 one hour of labor;

13 (2) "time allowance" has the meaning given in AS 45.25.210(j).

14 **Sec. 45.45.358. Payment and approval of claims from shops.** (a) A  
15 manufacturer or distributor shall pay a shop for approved repairs performed under  
16 AS 45.45.300(a)(2) in accordance with the schedule of compensation that applies to  
17 the repairs when the shop makes the repairs.

18 (b) A shop shall submit a claim for a repair performed under  
19 AS 45.45.300(a)(2) to the manufacturer or distributor within 90 days after the shop  
20 completes the work on the new motor vehicle. The shop shall submit the claim in the  
21 manner that the manufacturer or distributor requires.

22 (c) Within 30 days after the manufacturer or distributor receives a claim from  
23 a shop under (b) of this section, the manufacturer or distributor shall approve or  
24 disapprove the claim and notify the shop of the reasons for disapproving the claim in  
25 writing or electronically. The shop may correct and resubmit the claim within 30 days  
26 after the shop receives the written or electronic notice that the manufacturer or  
27 distributor disapproved the claim. If a manufacturer or distributor does not disapprove  
28 a claim as required by this subsection, the claim is considered approved. The  
29 manufacturer or distributor shall pay the claim within 30 days after the approval of the  
30 claim.

31 (d) Notwithstanding the reporting requirement of AS 45.45.300, a

1 manufacturer or distributor may not deny a claim for a repair performed under  
 2 AS 45.45.300(a)(2) that was discovered and properly repaired by the shop during the  
 3 course of a separate repair if the shop

4 (1) has already received a schedule of compensation from the  
 5 manufacturer or distributor; and

6 (2) provides to the manufacturer or distributor the required  
 7 documentation demonstrating the need for the repair.

8 (e) A manufacturer or distributor may initiate or conduct an audit to determine  
 9 the validity of paid claims for repairs performed under AS 45.45.300(a)(2) only if the  
 10 manufacturer or distributor initiates the audit within one year after the payment of the  
 11 claim. The manufacturer or distributor may audit a shop performing repairs under  
 12 AS 45.45.300(a)(2) once in a calendar year to determine the validity of claims paid to  
 13 the shop.

14 (f) Notwithstanding the limitations under (e) of this section, if a manufacturer  
 15 or distributor reasonably suspects fraud, the manufacturer or distributor may audit a  
 16 shop for fraudulent claims during any period in which an action for fraud may be  
 17 commenced under applicable state law.

18 (g) In this section, "fraud" has the meaning given in AS 45.25.990.

19 \* **Sec. 15.** AS 45.45.360 is amended by adding new paragraphs to read:

20 (13) "schedule of compensation" means a schedule established under  
 21 AS 45.45.356 that includes parts, rates for labor, and time allowances for labor;

22 (14) "shop" has the meaning given in AS 45.45.240, but does not  
 23 include a dealer or repairing agent when performing warranty repairs in the state on a  
 24 motor vehicle under a franchise agreement with or under the specific authority of a  
 25 manufacturer or dealer.

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

28 **APPLICABILITY.** This Act applies to an express warranty for a new motor vehicle  
 29 provided on or after the effective date of this Act."