

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE
BY REQUEST

2 SENATE BILL NO. 635

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act licensing motor vehicle, motor home, trailer,
7 and semi-trailer dealers."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08.66.010 is amended to read:

10 Sec. 08.66.010. DEALERS TO BE LICENSED [REGISTER]. Every dealer
11 in [MOTOR] vehicles [, TRAILERS OR SEMI-TRAILERS] shall, as a condition
12 to engaging in business in this state, be licensed by [REGISTER ANNUALLY
13 WITH] the Department of Public Safety.

14 * Sec. 2. AS 08.66.020 is amended to read:

15 Sec. 08.66.020. APPLICATION, BOND, AND FEE. Application for
16 dealer licensure [REGISTRATION] shall be accompanied by an annual
17 license [REGISTRATION] fee of \$100 [\$25] and a bond required by sec. 60
18 of this chapter.

19 * Sec. 3. AS 08.66.030 is repealed and re-enacted to read:

20 Sec. 08.66.030. FORM OF APPLICATION. The Department of Public
21 Safety shall prescribe and furnish the form of application for dealer
22 licensure. The application shall contain

23 (1) the name and address of the applicant and the trade name,
24 if any, under which he intends to conduct his business and

25 (A) if the applicant is a partnership, the name and resi-
26 dence of each member, whether a limited or general partner, and the
27 name under which the partnership business is to be conducted,

28 (B) if the applicant is a corporation, the name of the
29 corporation and the name and residence of each of its principal of-

1 ficers and directors;

2 (2) the address, including the street and number, if any, of
3 the established place of business of the applicant and of any additional
4 places of business operated and maintained by the applicant in conjunc-
5 tion with the established place of business;

6 (3) the trade names of vehicles that the applicant has been
7 enfranchised to sell or exchange;

8 (4) the name and address of the manufacturer or distributor
9 who has enfranchised the applicant, and written verification of the
10 enfranchisement executed by the manufacturer or distributor;

11 (5) a statement signed by the applicant that the applicant is
12 a bona fide dealer in vehicles, with an established place of business at
13 the location given;

14 (6) such other information as the Department of Public Safety
15 requires to administer this chapter.

16 * Sec. 4. AS 08.66.040 is amended to read:

17 Sec. 08.66.040. LICENSING [FILING APPLICATION FOR REGISTRATION].

18 (a) The application shall be filed with the Department of Public
19 Safety. Upon receipt of the application the department shall examine it
20 and may make an investigation of the information in it. If the depart-
21 ment is satisfied that the applicant is a bona fide dealer in vehicles
22 with an established place of business [DEALER IS ENTITLED TO REGISTRA-
23 TION], and the fees have been paid and a bond filed, the department
24 shall assign a distinctive license [REGISTRATION] number to the dealer
25 and file his application and index it alphabetically and numerically. A
26 dealer is licensed [REGISTERED] when the department assigns a license
27 [REGISTRATION] number.

28 * Sec. 5. AS 08.66.040 is amended by adding a new subsection to read:

29 (b) Following the assignment of a license number, the department

1 shall remit to the dealer a card showing the dealer's name, address,
2 terms of the license and license number, and may forward dealer's demon-
3 stration registration plates upon payment of the fees specified under AS
4 28.10.250. The license number shall be displayed on the dealer's demon-
5 stration registration plates, together with a number or symbol indi-
6 cating the type of motor vehicle sold by the dealer.

7 * Sec. 6. AS 08.66.050 is amended to read:

8 Sec. 08.66.050. RENEWAL OF LICENSE [REGISTRATION]. (a) Each
9 dealer shall renew his license [REGISTRATION] annually before January 1
10 of each year.

11 * Sec. 7. AS 08.66.050 is amended by adding new subsections to read:

12 (b) Application for renewal shall be made in the same manner pre-
13 scribed for original applications under sec. 30 of this chapter.

14 (c) The department may deny an application for renewal of a li-
15 cense in accordance with sec. 76 of this chapter.

16 * Sec. 8. AS 08.66.060 is amended to read:

17 Sec. 08.66.060. BOND. (a) Every applicant for dealer licensure
18 [REGISTRATION] or for renewal of dealer licensure [REGISTRATION] shall
19 file with the application or request for renewal, and shall maintain in
20 force while licensed [REGISTERED], a bond in favor of the state, exe-
21 cuted by an authorized corporate surety approved by the commissioner of
22 public safety, in the amount of \$50,000 [\$10,000], except that a dealer
23 who sells only motor scooters, mopeds, trailers of unladen weight of
24 less than 1,000 pounds, or motorcycles shall maintain in force while
25 licensed [REGISTERED] a bond in favor of the state, executed and ap-
26 proved in the same manner as bonds required of other dealers under this
27 section, in the amount of \$5,000 [\$3,000]. Instead of a corporate
28 surety bond the commissioner may, in his sole discretion, accept a cash
29 bond in the amount required of a corporate surety bond, or a bond in the

1 same amount with at least two individual sureties, each justifying with
2 real property not exempt from execution and valued at [IN] twice the
3 amount of the bond. The commissioner shall make the investigation
4 necessary to determine the actual financial responsibility of the in-
5 dividual sureties. The condition of the bond shall be that the appli-
6 cant will conduct his business in accordance with [SECS. 10 - 90 OF]
7 this chapter, AS 28.10, and regulations adopted under these chapters,
8 and will not commit fraud or make fraudulent representations in the
9 course of business.

10 (b) The bond shall be filed in the office of the commissioner of
11 public safety. A surety may cancel the bond upon 30 days advance notice
12 in writing filed with the commissioner. However, cancellation does not
13 relieve a surety of liability arising on the bond from a sale made by
14 the bonded dealer before cancellation or a liability which has accrued
15 upon the bond before cancellation. The commissioner shall retain the
16 cancelled bond on file and may not relieve a surety of a liability
17 arising before cancellation. A cash bond provided in lieu of a surety
18 bond may be cancelled upon 30 days notice filed in writing with the
19 commissioner of public safety. However, the cash bond is subject to any
20 liability which has accrued upon the bond before cancellation and for
21 that reason a cash bond shall be held in force for a period of seven
22 years after cancellation.

23 * Sec. 9. AS 08.66.070 is amended to read:

24 Sec. 08.66.070. ACTION ON BOND. (a) If a person (1) suffers loss
25 or damage by reason of (A) fraud or [,] fraudulent representations on
26 the part of a dealer, or an employee or agent of the dealer acting
27 within the scope of his employment, or (B) violation of any provision of
28 this chapter by a dealer, or (2) is not paid for a vehicle purchased by
29 a dealer, he has a right of action against the dealer, his employees,

1 agents, or any or all of them, or [AND A RIGHT OF ACTION IN HIS OWN NAME
2 AGAINST] the surety upon the bond, in an amount not to exceed the value
3 of the vehicle purchased or sold by the dealer. [THE AGGREGATE LIA-
4 BILITY OF THE SURETY DOES NOT EXCEED THE AMOUNT OF THE BOND.]

5 (b) The rights of action created in (a) of this section are in
6 addition to and do not limit actions at common law or under other state
7 statutes.

8 * Sec. 10. AS 08.66 is amended by adding new sections to read:

9 Sec. 08.66.071. TEMPORARY PERMITS. The Department of Public
10 Safety may issue a temporary permit authorizing a person to act as a
11 dealer; however, a temporary permit is not valid for a period of more
12 than 120 days and shall be cancelled upon issuance of a dealer's license
13 number or denial of an application for a dealer's license.

14 Sec. 08.66.072. NOTIFICATION OF THE DEPARTMENT REQUIRED. A dealer
15 shall immediately notify the Department of Public Safety if he

16 (1) changes the location of his established place of busi-
17 ness;

18 (2) ceases to be in possession of an established place of
19 business;

20 (3) switches franchises or adds another franchise for the
21 sale of new vehicles, or cancels or loses his franchise for the sale of
22 new vehicles.

23 Sec. 08.66.073. POSTING OF LICENSE. A dealer shall post in a
24 conspicuous location at his established place of business and at any
25 other locations maintained in conjunction with his established place of
26 business a copy of the dealer's license and any other information neces-
27 sary to enable a person doing business with the dealer to identify him
28 properly. A sign shall be erected or posted at a dealer's established
29 place of business and at any other locations maintained in conjunction

1 with his established place of business, displaying the name of the
2 dealer in lettering of sufficient size to enable the sign to be read
3 from a distance of 50 feet.

4 Sec. 08.66.074. REQUIRED MAINTENANCE CAPABILITY. A new vehicle
5 dealer shall maintain at his established place of business the equipment
6 necessary to provide the maintenance and repair services which the
7 dealer is obligated to provide under the warranty supplied by the manu-
8 facturer.

9 Sec. 08.66.075. LIMITATION OF AUTHORITY TO NEW VEHICLE DEALERS.
10 Only a dealer authorized to sell new vehicles under the terms of a
11 license issued under sec. 40 of this chapter may execute a manufac-
12 turer's statement of origin.

13 Sec. 08.66.076. SUSPENSION, REVOCATION AND NONRENEWAL; PROBA-
14 TIONARY STATUS. (a) The Department of Public Safety, in accordance
15 with AS 44.62.330 - 44.62.630, may suspend, revoke, or deny renewal of a
16 license issued a dealer under sec. 40 of this chapter if

17 (1) the dealer has made a false statement or concealed any
18 material fact in the application for a license, whether or not the truth
19 of the statement or disclosure of the fact would have resulted in the
20 denial of the original application;

21 (2) the department becomes aware of facts which would have
22 resulted in the denial of the original application under sec. 40 of this
23 chapter, had those facts been known at the time of application;

24 (3) the dealer has used a false or fictitious name, made any
25 false statement, concealed any material fact, or otherwise committed a
26 fraud, in any application for the registration or title of a vehicle;

27 (4) the dealer has knowingly purchased, sold or otherwise
28 acquired or disposed of a vehicle which is stolen;

29 (5) in the opinion of the commissioner the dealer has engaged

1 in any conduct constituting an unlawful trade practice or unfair method
2 of competition under AS 45.50.471, whether or not a court has entered a
3 judgment finding violation of those sections;

4 (6) the dealer has submitted a check, draft, or money order
5 to the department for any obligation or fee due the state which is dis-
6 honored or refused payment upon presentation;

7 (7) the dealer has caused any person to suffer damage by
8 reason of a fraud practiced on the person in the sale or purchase of a
9 vehicle or parts or accessories;

10 (8) the dealer intentionally or negligently uses or permits
11 the use of the special plates issued to the dealer under sec. 40 of this
12 chapter for any purpose other than that permitted by AS 28.10.250.

13 (b) For the purposes of this section, "fraud" means an intentional
14 misrepresentation of a material fact or the intentional failure to dis-
15 close a material fact.

16 (c) If mitigating circumstances exist, the Department of Public
17 Safety may, instead of suspending, revoking, or denying renewal of a
18 dealer's license for commission of the acts prohibited under (a)(1) and
19 (a)(3) - (9) of this section, place the dealer's license on probationary
20 status for such period of time and under such conditions as the depart-
21 ment may determine. At the end of the probationary period, the depart-
22 ment shall review the dealer's conduct during the probationary period,
23 and may either remove probationary status, or suspend, revoke, or deny
24 renewal of the license.

25 Sec. 08.66.077. CANCELLATION OF LICENSURE. A dealer's license
26 shall be cancelled, without notice or hearing, upon

27 (1) abandonment of the established place of business, or
28 change in the address of the established place of business without
29 notifying the department in accordance with sec. 72 of this chapter;

1 (2) failure to maintain in force a bond as required by sec.
2 60 of this chapter;

3 (3) surrender of the license; however such surrender does not
4 prevent the Department of Public Safety from proceeding to determine
5 whether grounds exist which would justify a suspension or revocation of
6 the license.

7 Sec. 08.66.078. UNLAWFUL ACTS. (a) No dealer may, directly or
8 indirectly, through officers, employees, or agents,

9 (1) knowingly publish, disseminate, or display, or cause,
10 directly or indirectly, to be published, disseminated or displayed in
11 any manner or by any means, including solicitation or dissemination by
12 mail, telephone, or door-to-door contacts, false, deceptive or mis-
13 leading advertising with actual knowledge of the facts which make the
14 advertising false, deceptive, or misleading, for a business, trade, or
15 commercial purpose or for the purpose of inducing, or which is likely to
16 induce, directly or indirectly, the public to purchase, consume, lease,
17 dispose of, utilize or sell a vehicle or service, or to enter into an
18 obligation or transaction relating to a vehicle or service;

19 (2) advertise a vehicle with intent not to sell the vehicle,
20 or intent not to sell at the price advertised;

21 (3) advertise or offer for sale or exchange a vehicle not for
22 sale at the place of business of the dealer, or not available to the
23 dealer from the manufacturer or distributor of the vehicle at the time
24 the advertisement or offer is made;

25 (4) include in the selling price of a vehicle as an added
26 cost an amount for taxes or fees, if such taxes or fees are not required
27 by law or are not required to be paid by the transferor of the vehicle;

28 (5) knowingly advertise or otherwise represent or allow to be
29 advertised or represented on his behalf or at his place of business that

1 no down payment is required in conjunction with the sale of a vehicle
2 when a down payment is in fact required and a buyer is advised and
3 induced to finance the down payment by a loan in addition to any other
4 loan financing the remainder of the purchase price of the vehicle.

5 (b) The acts prescribed by (a) of this section are unfair methods
6 of competition and unfair or deceptive acts or practices within the
7 meaning and for the purposes of AS 45.50.471 - 45.50.566.

8 Sec. 08.66.079. ACTS CRIMINALLY PUNISHABLE. (a) No person, nor
9 any employee or agent of that person may

10 (1) act as a dealer unless

11 (A) a license has been issued under sec. 40 of this
12 chapter and has not been cancelled, suspended, revoked, invali-
13 dated, or expired, or a temporary permit issued;

14 (B) the bond required under sec. 60 of this chapter is
15 in force and effect; and

16 (C) an established place of business as required by sec.
17 40 of this chapter is being maintained, either in his own name or
18 in the name of a person for whom he is an employee or agent;

19 (2) use or permit the use of special plates issued to the
20 person for any purpose other than that permitted by sec. 40 of this
21 chapter;

22 (3) permit the use of a license issued under sec. 40 of this
23 chapter or supplies, books, or other material owned by a license holder
24 by a person neither licensed under this chapter nor an employee or agent
25 of a person licensed under this chapter if that person has no legal or
26 equitable interest in the vehicles sold by the license holder or the
27 license holder's business other than commissions, compensations, or
28 fees.

29 (b) A person who knowingly and with intent violates (a) of this

1 section is guilty of a misdemeanor.

2 Sec. 08.66.081. LICENSURE PENDING DISPOSAL OF DEALERSHIP. The
3 Department of Public Safety may issue a license to the executor or
4 administrator of the deceased holder of a license issued under sec. 40
5 of this chapter permitting the executor or administrator to act as a
6 dealer for the period of time necessary to sell or liquidate the busi-
7 ness. The department may attach such conditions to the license as in
8 its judgment the protection of the public requires.

9 Sec. 08.66.082. FEES. The Department of Public Safety shall
10 charge for and collect the following:

- 11 (1) application for a dealer's license, \$100;
12 (2) application, after the deadline established by the de-
13 partment, \$100 in addition to the fee established in (1) of this sec-
14 tion.

15 * Sec. 11. AS 08.66.090 is repealed and re-enacted to read:

16 Sec. 08.66.090. DEFINITIONS. In this chapter,

17 (1) "advertising" includes the attempt, directly or in-
18 directly by publication, dissemination, solicitation, endorsement or
19 circulation, display in any manner, including solicitation or dissemi-
20 nation by mail, telephone or door-to-door contacts, or in any other way,
21 to induce directly or indirectly a person to enter or not enter into an
22 obligation or acquire title or interest in any merchandise or to in-
23 crease the consumption of it or to make a loan;

24 (2) "dealer"

25 (A) means a person who for commission, money, or other
26 thing of value, sells, exchanges, buys, or offers for sale, nego-
27 tiates or attempts to negotiate a sale or exchange of an interest
28 in a vehicle subject to registration under AS 28.10.040, or induces
29 or attempts to induce any person to buy or exchange an interest in

1 a vehicle and who receives or expects to receive a commission,
2 money, brokerage fees, profit, or any other thing of value, from
3 either the seller or purchaser of the vehicle;

4 (B) means a person who is engaged wholly or in part in
5 the business of selling vehicles or buying or taking in trade,
6 vehicles for the purpose of resale, selling, or offering for sale,
7 or consigned to be sold, or otherwise dealing in vehicles, whether
8 or not the vehicles are owned by the person;

9 (C) does not include

10 (i) insurance companies, banks, finance companies,
11 public officials, or any other person coming into possession
12 of vehicles in the regular course of business, who sell such
13 vehicles under a contractual right or obligation, or in per-
14 formance of an official duty, or in authority of any court of
15 law, as long as the sale is for the purpose of saving the
16 seller from loss or under the authority of a court of com-
17 petent jurisdiction;

18 (ii) a person who sells or distributes vehicles of a
19 type subject to registration on behalf of a manufacturer to
20 vehicle dealers licensed under this chapter, or who is em-
21 ployed by a manufacturer or distributor to promote the sale of
22 vehicles dealt in by the manufacturer or distributor; however,
23 if a person also sells vehicles at retail, he shall be con-
24 sidered to be a vehicle dealer and is subject to this chapter;

25 (iii) a person regularly employed as a salesman by a
26 vehicle dealer licensed under this chapter while acting within
27 the scope of his employment;

28 (iv) a person not engaged in the purchase or sale of
29 vehicles as a business, disposing of vehicles acquired for his

1 own use, or for use in his business when a vehicle has been so
2 acquired and used in good faith, and not for the purpose of
3 avoiding the provisions of this chapter, if he does not sell,
4 trade or otherwise transfer more than three vehicles in any
5 one 12-month period and if a vehicle sold, traded or otherwise
6 transferred is in fact registered and titled in his own name
7 before the sale, trade, or transfer, or if he can present a
8 Vehicle Manufacturer's Fleet Operators Certificate along with
9 one other such good faith use validation as required by the
10 Department of Public Safety;

11 (v) a person temporarily retained as an auctioneer
12 solely for the purpose of disposing of vehicle stock inven-
13 tories on behalf of the owners of those inventories by means
14 of public auctions at the location of an owner's place of
15 business, or as otherwise approved by the department, if
16 intermediate physical possession or control of, or an owner-
17 ship interest in, the inventory, is not conveyed to the person
18 so retained;

19 (3) "established place of business" means a physical location
20 consisting of clearly defined boundaries with adequate space for the
21 sale and display of vehicles;

22 (4) "fraud" includes an intentional misrepresentation of a
23 material fact or the intentional failure to disclose a material fact;

24 (5) "knowingly" means actual awareness of the falsity or de-
25 ception, but actual awareness may be inferred where objective manifes-
26 tations indicate that a person acted with actual awareness;

27 (6) "motor vehicle" means a vehicle which is self-propelled
28 except a vehicle moved by human power;

29 (7) "new vehicle" means a vehicle which has never been sold

1 and operated or registered with the appropriate agency or authority, or
2 sold or operated upon the highways of any other state, District of
3 Columbia, territory or possession of the United States or foreign state,
4 province or country; for the purposes of this paragraph, "sold" does not
5 include or extend to any sale made by a manufacturer or distributor to a
6 dealer or by a dealer to another dealer licensed under this chapter;

7 (8) "new vehicle dealer" means a dealer as defined in (2) of
8 this section who acquires for resale new and unregistered vehicles from
9 manufacturers or distributors of such vehicles;

10 (9) "vehicle" includes a motor vehicle as defined in (6) of
11 this section, and mobile homes, trailers and semi-trailers as defined by
12 the Department of Public Safety.

13 * Sec. 12. AS 28.10.040 is amended by adding a new paragraph to read:

14 (7) a motor vehicle displaying dealer demonstration registra-
15 tion plates issued under sec. 250 of this chapter and AS 08.66.040 if
16 operated exclusively in the manner permitted by sec. 250 of this chap-
17 ter.

18 * Sec. 13. AS 28.10.250 is amended to read:

19 Sec. 28.10.250. SPECIAL TAX ON DEALERS. Upon application for the
20 first set of dealer's demonstration registration plates the tax is
21 \$37.50, and for each additional set, \$18.75. These plates may, until a
22 vehicle is sold, be displayed (1) on vehicles being demonstrated for
23 sale, (2) on vehicles towing or transferring other vehicles for the pur-
24 poses of sale one time only, (3) on dealer-owned vehicles which are used
25 by a dealer licensed under AS 08.66, or his employees or agents, but not
26 on service vehicles owned by a dealer [SHALL BE USED ONLY IN DEMONSTRAT-
27 ING VEHICLES FOR SALE AND SHALL NOT BE USED ON ANY ONE VEHICLE FOR MORE
28 THAN 30 CONSECUTIVE DAYS]. However, if the dealer sells or transfers
29 the vehicle, the demonstration plates may be used on the vehicle by the

1 owner or transferee for a period not exceeding five days after the sale
2 or transfer. The dealer is responsible for the return of the demonstra-
3 tion plates at the end of the five day period. If the dealer fails to
4 effect the return of the plates, the department shall revoke and confis-
5 cate them.

6 * Sec. 14. AS 28.10.260 is amended to read:

7 Sec. 28.10.260. OBTAINING CERTIFICATE OF TITLE AS CONDITION TO
8 REGISTRATION. Except as to vehicles provided for in sec. 60 of this
9 chapter, the department shall not register a vehicle unless the appli-
10 cant for registration at the same time applies for and obtains an offi-
11 cial certificate of title to the vehicle, or presents satisfactory
12 evidence that a certificate of title was previously issued to him. The
13 department shall not accept the application for the original registra-
14 tion or certificate of title to a vehicle unless the vehicle is in the
15 state at the time of application. However, the department may accept an
16 application for registration and certificate of title for a motor ve-
17 hicle which is not in the state when the application is made by a dealer
18 holding a state business license or by a resident of the state when the
19 application is accompanied by a manufacturer's statement [CERTIFICATE]
20 of origin. Except as to vehicles provided for in sec. 60 of this chap-
21 ter, it is unlawful for a person to drive or move, or for an owner
22 knowingly to permit to be driven or moved, upon any highway in the state
23 a vehicle required to be registered for which a certificate of title is
24 not issued.

25 * Sec. 15. AS 28.10.450 is amended to read:

26 Sec. 28.10.450. UNLAWFUL FOR FAILURE TO ENDORSE AND DELIVER CERTI-
27 FICATE. No person may fail or neglect to endorse and deliver a certifi-
28 cate of title or a manufacturer's statement of origin to a transferee or
29 owner lawfully entitled to it.

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* Sec. 16. AS 44.62.330(23) is amended to read:

(23) Department of Public Safety, as to suspension, revocation, and nonrenewal of vehicle dealers' licenses under AS 08.66.076, as to suspension or revocation of a security guard's license under AS 18.-65.400 - 18.65.490, and as to suspension, revocation, cancellation or limitation of driver's licenses, except as to revocations and suspensions under AS 28.35.031 - 28.35.034 and except as to suspensions, revocations, limitations, or denials under AS 28.15.282 - 28.15.288

* Sec. 17. AS 45.50.471(b) is amended by adding new paragraphs to read:

(26) advertising of a new vehicle for sale by a person not licensed as a dealer under AS 08.66.040;

(27) failing to comply with AS 08.66.078.

* Sec. 18. AS 08.66.080 is repealed.

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