

Introduced: 2/14/86
Referred: Transportation
and Judiciary

1 IN THE SENATE

BY JOSEPHSON

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SENATE BILL NO. 416

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to warranties for used motor
vehicles."

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

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* Section 1. AS 45.45 is amended by adding new sections to read:

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ARTICLE 7. USED MOTOR VEHICLE WARRANTIES.

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Sec. 45.45.400. WRITTEN WARRANTY REQUIRED. (a) A dealer who
sells a used motor vehicle for a total price in excess of \$2,000 shall
provide to the consumer a written warranty that applies to the vehi-
cle.

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(b) A warranty provided under this section shall apply for a
minimum of 60 days of ownership or 3,000 miles of use after the date
of purchase from the dealer if, on that date, the vehicle has fewer
than 36,000 miles on its odometer.

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(c) A warranty provided under this section shall apply for a
minimum of 30 days of ownership or 1,000 miles of use after the date
of purchase from the dealer if, on that date, the vehicle has 36,000
miles or more on its odometer.

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(d) If a new motor vehicle warranty that complies with AS 45.-
45.300 - 45.45.360 is in effect at the time of sale of the used
vehicle, the used motor vehicle warranty required under this section
shall be in effect only between the expiration date of the new motor
vehicle warranty and the end of a period established under this sec-
tion.

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Sec. 45.45.410. REPAIRS UNDER WARRANTY. (a) A used motor

1 vehicle warranty shall require that a dealer or the dealer's agent
2 repair or replace a part covered by the warranty or, at the election
3 of the dealer, reimburse the consumer for repair or replacement of the
4 part.

5 (b) Parts covered by a used motor vehicle warranty shall include
6 at a minimum

- 7 (1) all engine parts;
- 8 (2) all transmission and transfer case parts;
- 9 (3) drive axle parts;
- 10 (4) all brake parts;
- 11 (5) all cooling system parts;
- 12 (6) all steering parts;
- 13 (7) all electrical system parts; and
- 14 (8) all emission control system components.

15 (c) A dealer's obligation under this section regarding a covered
16 part continues after the warranty period expires if the consumer
17 notified the dealer of the failure of the part within the warranty
18 period.

19 Sec. 45.45.420. WARRANTY EXCLUSIONS. A used motor vehicle
20 warranty may exclude coverage

- 21 (1) for a failure of a covered part caused by collision,
22 abuse, negligence, theft, vandalism, fire or other casualty and damage
23 from the environment;
- 24 (2) if the odometer was stopped or altered after the date
25 of sale and as a result the vehicle's actual mileage cannot be readily
26 determined;
- 27 (3) if an alteration after the date of sale caused a
28 covered part to fail;
- 29 (4) for maintenance services and the parts used in

1 connection with maintenance services unless required in connection
2 with the repair of a covered part;

3 (5) for a failure that results from racing or other compe-
4 tition;

5 (6) for a failure caused by towing a trailer or another
6 vehicle unless the used motor vehicle was designed for this use
7 according to the manufacturer or was represented by the dealer as fit
8 for the use;

9 (7) for repair of valves or rings to correct low compres-
10 sion or oil pressure that results from normal wear unless the wear is
11 beyond the manufacturer's service limits;

12 (8) to the extent otherwise permitted by law, for property
13 damage related to the failure of a covered part; and

14 (9) to the extent otherwise permitted by law, for loss of
15 the use of the vehicle under warranty, inconvenience, commercial loss,
16 or consequential damages.

17 Sec. 45.45.430. FAILURE TO HONOR WARRANTY. (a) If a dealer or
18 the dealer's agent fails to correct a malfunction or defect within a
19 reasonable time as required by a used motor vehicle warranty and the
20 malfunction or defect substantially reduces the value of the vehicle
21 to the consumer, the dealer shall within 30 days of receipt of notice
22 under AS 45.45.440 accept return of the vehicle and refund to the
23 consumer the full purchase price including sales tax, if any. The
24 full purchase price may be adjusted for damage not attributable to
25 normal wear and usage and for modifications since the date of sale
26 that increase or decrease the market value of the vehicle.

27 (b) The contract of sale for a used motor vehicle must include
28 conspicuous language that indicates that if the consumer is entitled
29 to a refund under this section, the value of a vehicle traded-in that

1 is not returned to the consumer shall be its wholesale value as
2 adjusted for mileage, improvements, and major physical or mechanical
3 defects in the vehicle at the time of trade-in according to the
4 National Auto Dealers Association Used Car Guide.

5 (c) A refund under this section shall be made to the consumer
6 and to the lienholder of record, if any, as their interests may
7 appear.

8 (d) If the amount to be refunded to a lienholder under (c) of
9 this section is insufficient to discharge the lien, the dealer shall
10 notify the consumer in writing by certified mail that the consumer has
11 30 days to pay the lienholder the amount that, together with the
12 amount to be refunded by the dealer, will be sufficient to discharge
13 the lien. The notice shall contain conspicuous language that warns
14 the consumer that failure to pay the difference to the lienholder
15 within 30 days will terminate the dealer's obligation to provide a
16 refund. If the consumer fails to pay the difference within 30 days
17 after receipt of the notice, the dealer shall have no further
18 responsibility to provide a refund under this section.

19 (e) A dealer shall be presumed to have had reasonable time to
20 correct a malfunction or defect in a motor vehicle under this section
21 if

22 (1) the malfunction or defect has been subject to repair
23 three or more times by the dealer during the warranty period and the
24 malfunction or defect continues to exist; or

25 (2) the vehicle is out of service by reason of repair for a
26 malfunction or defect for a cumulative total of 30 or more days during
27 the warranty period.

28 (f) It is an affirmative defense to a claim made under this
29 section that

1 (1) a malfunction or defect does not substantially impair
2 the use or market value of the vehicle;

3 (2) a malfunction or defect is the result of abuse, neg-
4 lect, or unreasonable modifications or alterations of the vehicle by
5 the consumer.

6 (g) The term of a used motor vehicle warranty shall be extended
7 by a time period during which the covered vehicle is in the possession
8 of the dealer or the dealer's authorized agent for the purpose of
9 repairing the vehicle under the terms of the warranty.

10 (h) In this section, "full purchase price" means the cash paid
11 for the used motor vehicle plus, at the dealer's option, the return of
12 any vehicles traded in on the used motor vehicle or the wholesale
13 value of any traded-in vehicles as adjusted for mileage, improvements,
14 and major physical or mechanical defects at the time of trade-in
15 according to the National Auto Dealers Association Used Car Guide.

16 Sec. 45.45.440. NOTICE BY OWNER. (a) In order to claim a
17 refund under AS 45.45.430, the consumer shall give written notice by
18 certified mail to the dealer at any time before 30 days have elapsed
19 after the expiration of the used motor vehicle warranty. The notice
20 must include

21 (1) a statement that the warranted vehicle continues to
22 suffer a malfunction or defect that existed during the warranty
23 period;

24 (2) a description of the malfunction or defect;

25 (3) a statement containing the date and description of
26 efforts made by the dealer to conform a malfunction or defect to the
27 requirements of the warranty; and

28 (4) a statement that the consumer demands a refund of the
29 full purchase price of the vehicle within 30 days after the mailing of

1 the written notice.

2 (b) Within 30 days after receiving a written notice required
3 under this section a dealer may make a final attempt to correct the
4 malfunction or defect complained of before making a refund under
5 AS 45.45.430.

6 Sec. 45.45.450. REPLACEMENT VEHICLE. In the event a dealer
7 required to provide a refund under AS 45.45.430 offers to replace the
8 defective used motor vehicle with another vehicle, the consumer may
9 accept the replacement vehicle as an alternative to a refund.

10 Sec. 45.45.460. FAILURE TO REPLACE OR REFUND. A dealer who
11 fails to refund the full purchase price of a used motor vehicle when
12 required to do so under AS 45.45.400 - 45.45.500 or to replace the
13 vehicle as an alternative under AS 45.45.450 is presumed to have
14 committed an unfair trade practice under AS 45.50.471.

15 Sec. 45.45.470. WAIVER VOID. An agreement entered into for the
16 purchase of a used motor vehicle that waives, limits, or disclaims the
17 rights set out under AS 45.45.400 - 45.45.500 shall be void as against
18 public policy.

19 Sec. 45.45.480. REMEDIES NOT LIMITED. The provisions of AS 45.-
20 45.400 - 45.45.500 do not limit other rights and remedies that may be
21 available to a consumer under other provisions of law.

22 Sec. 45.45.490. ARBITRATION OR MEDIATION. If a dealer has
23 established an informal dispute settlement procedure that substan-
24 tially complies with the requirements of 16 C.F.R. 703, as that
25 section may be amended, or if the dealer, after receipt of a notice
26 required under AS 45.45.440, offers in writing to participate in an
27 arbitration or mediation process with the consumer and the arbitration
28 or mediation decision is binding on the dealer but not on the con-
29 sumer, and if the informal dispute settlement or arbitration or

1 mediation process is approved by the attorney general, the provisions
2 of AS 45.45.400 - 45.45.500 concerning refunds do not apply to a
3 consumer who has not first resorted to the informal dispute settlement
4 procedure or arbitration or mediation process.

5 Sec. 45.45.500. DEFINITIONS. In AS 45.45.400 - 45.45.500,

6 (1) "consumer" means the purchaser, other than for the
7 purpose of resale, of a used motor vehicle normally used for personal,
8 family, or household purposes; the spouse or child of the purchaser if
9 the motor vehicle is transferred to the spouse or child during the
10 duration of a warranty that applies to the motor vehicle; and any
11 other person entitled by the terms of the warranty to enforce the
12 obligations of the warranty;

13 (2) "dealer" means a person or business that sells or
14 offers for sale a used motor vehicle after selling or offering for
15 sale five or more used motor vehicles in the previous 12-month period;
16 "dealer" does not include a bank or financial institution, a business
17 that sells a used vehicle to an employee of the business, a lessor
18 that sells a leased vehicle to the vehicle's lessee or to a family
19 member or employee of the lessee, or the state, a state agency or a
20 political subdivision of the state;

21 (3) "used motor vehicle" means a passenger car, station
22 wagon, or pick-up truck designated as three-quarter ton or less that
23 has been driven for more than the distance necessary to move or road
24 test a vehicle prior to delivery; it does not include a vehicle that
25 qualifies as a historical vehicle under AS 28.10.181(b);

26 (4) "warranty" means an undertaking in connection with the
27 sale by a dealer of a used motor vehicle to refund, repair, replace,
28 maintain or take other action with respect to the used vehicle and
29 provided at no extra charge beyond the price of the motor vehicle.