

HOUSE CS FOR CS FOR SENATE BILL NO. 105(JUD) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/15/93

Offered: 4/8/93

Sponsor(s): SENATORS TAYLOR, Duncan

REPRESENTATIVE Phillips

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to motor vehicle dealers and to agents for motor vehicle
2 buyers; and providing for an effective date."

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

4 * **Section 1. AS 08.66 is amended by adding a new section to read:**

5 **Sec. 08.66.015. SALE OF MOTOR VEHICLE. (a) A person who does**
6 **business as a dealer in the state may not offer to sell or sell a motor vehicle as a new**
7 **or current model motor vehicle unless the motor vehicle retains the manufacturer's**
8 **certificate of origin.**

9 **(b) A person who does business as a dealer in the state may not offer to sell**
10 **or sell a motor vehicle as a new or current model motor vehicle having a**
11 **manufacturer's warranty unless**

12 **(1) the dealer has a current sales and service agreement with the**
13 **manufacturer and the agreement requires the dealer, upon demand of the motor vehicle**
14 **buyer, to perform or arrange for, within a reasonable distance of the dealer's place of**

1 business in the state, the repair and replacement work required of the manufacturer
2 under the warranty; or

3 (2) the dealer offers to give the buyer a rebate to cover the repair and
4 replacement work that the dealer cannot perform or arrange for within a reasonable
5 distance of the dealer's place of business.

6 * Sec. 2. AS 08.66.030 is amended to read:

7 Sec. 08.66.030. FORM OF APPLICATION. The Department of Public Safety
8 shall prescribe and furnish the form of application for dealer registration. The
9 application must contain

10 (1) the name under which the business is conducted;

11 (2) the location of business;

12 (3) the name and address of all persons having an interest in the
13 business [,] and, in the case of a corporation, the application shall contain the name
14 and address of the two principal officers;

15 (4) the name and make of all vehicles handled;

16 (5) whether or not used vehicles are handled;

17 (6) a statement that the applicant is a bona fide dealer in motor
18 vehicles, trailers, or semi-trailers with an established business at the location given;

19 (7) if the applicant sells a motor vehicle as a new or current model
20 motor vehicle having a manufacturer's warranty, the name of the manufacturer
21 of the motor vehicle and the date and duration of the applicant's sales and service
22 agreement with the manufacturer;

23 (8) other information the Department of Public Safety requires to
24 administer AS 08.66.010 - 08.66.090 [THIS CHAPTER].

25 * Sec. 3. AS 08.66.080 is amended to read:

26 Sec. 08.66.080. PENALTIES. A dealer who fails to register and file a bond
27 as required by AS 08.66.010 - 08.66.090 is guilty of a violation [THIS CHAPTER
28 SHALL PAY A PENALTY OF \$100]. A dealer who knowingly [WILFULLY]
29 violates a provision of AS 08.66.010 - 08.66.090 [THIS CHAPTER] is guilty of a
30 class A misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE
31 OF NOT MORE THAN \$300].

1 * Sec. 4. AS 08.66.090 is amended to read:

2 Sec. 08.66.090. DEALER DEFINED. In AS 08.66.010 - 08.66.090, [THIS
3 CHAPTER] "dealer" means a person, or an agent, broker, or salesman of a person who
4 is engaged in buying, selling, or dealing in new or used motor vehicles, trailers, or
5 semi-trailers in the state, but does not include a buyer's agent when acting in the
6 capacity of a buyer's agent. In this section, "buyer's agent" has the meaning
7 given in AS 08.66.350.

8 * Sec. 5. AS 08.66 is amended by adding new sections to read:

9 ARTICLE 2. BUYERS' AGENTS.

10 Sec. 08.66.200. REGISTRATION OF BUYER'S AGENT. A person may not
11 do business in the state by negotiating on behalf of a buyer the purchase of a motor
12 vehicle from a motor vehicle dealer unless the person is registered with the Department
13 of Public Safety.

14 Sec. 08.66.210. APPLICATION, BOND, AND FEE. (a) In order to register
15 under AS 08.66.200, a person shall file with the department an application, a bond
16 required by AS 08.66.240, and an application fee established by the department by
17 regulation.

18 (b) The department shall prescribe and furnish the form of application for the
19 registration. The application must contain

20 (1) the name under which the business is conducted;

21 (2) the address of the main office of the business;

22 (3) the name and address of all persons having an interest in the
23 business, and in the case of a corporation the application shall contain the name and
24 address of the two principal officers; and

25 (4) other information the department requires.

26 Sec. 08.66.220. DEPARTMENT APPROVAL. The department shall approve
27 an application for registration under AS 08.66.210 if the application contains the
28 information required by AS 08.66.210 and the bond complies with AS 08.66.240.

29 Sec. 08.66.230. RENEWAL OF REGISTRATION. A buyer's agent shall
30 renew the registration required by AS 08.66.200 every two years by filing with the
31 department a request for renewal, the bond required by AS 08.66.240, and a renewal

1 fee established by the department by regulation.
2 **Sec. 08.66.240. BOND.** (a) An applicant for registration under AS 08.66.210
3 or for renewal of a registration under AS 08.66.230 shall file with the application or
4 request for renewal, and shall maintain in force while registered, a \$10,000 bond that
5 is in favor of the state and that is executed by an authorized corporate surety approved
6 by the department.

7 (b) Instead of the corporate surety bond required by (a) of this section, the
8 department may, in the department's sole discretion, accept a bond in the same amount
9 with at least two individual sureties. A surety shall provide as security real property
10 that has a fair market value that is equal to two times the amount of the bond. The
11 department shall investigate as necessary the actual financial responsibility of the
12 individual sureties.

13 (c) The bond required by this section is conditioned on the applicant
14 complying with AS 08.66.200 - 08.66.350 and not committing fraud or making
15 fraudulent representations in the course of doing business as a buyer's agent.

16 (d) A surety may cancel the bond after giving the department 30 days' advance
17 written notice. Cancellation does not relieve a surety of liability arising on the bond
18 from a purchase negotiated by the bonded buyer's agent before cancellation or a
19 liability that accrues against the bond before cancellation. The department shall retain
20 the cancelled bond on file.

21 **Sec. 08.66.250. ACTION ON BOND.** If a person suffers loss or damage by
22 reason of a buyer's agent, or a person doing business as a buyer's agent, violating
23 AS 08.66.200 - 08.66.350 or committing fraud or making fraudulent representations
24 in the course of doing business as a buyer's agent, the person may bring an action
25 against the buyer's agent and the surety upon the bond. The aggregate liability of the
26 surety may not exceed the amount of the bond.

27 **Sec. 08.66.260. BUYER'S AGENT CONTRACT REQUIRED.** (a) Before a
28 buyer's agent negotiates on behalf of a buyer the purchase of a motor vehicle from a
29 motor vehicle dealer, the buyer's agent must have a written contract with the buyer.

30 (b) The contract required by (a) of this section must include a description of
31 the specific services to be provided by the buyer's agent, the date when the buyer's

1 agent will provide the services, and a description of the fees that the buyer's agent will
2 charge, including any fee that the buyer is to pay before the motor vehicle is delivered
3 to the buyer.

4 Sec. 08.66.270. PURCHASE AGREEMENT. A buyer's agent shall arrange
5 for the buyer's purchase agreement with the dealer to provide all warranty information,
6 including the warranty expiration date, mileage limitations, and other restrictions. The
7 warranty information must be specific to the motor vehicle being purchased.

8 Sec. 08.66.280. FEES OF BUYER'S AGENT. (a) A buyer's agent may not
9 collect a fee from a buyer before the agent and the buyer enter into the contract
10 required by AS 08.66.260.

11 (b) A buyer's agent may not calculate the fee of the buyer's agent as a
12 percentage of the motor vehicle purchase price or of the savings achieved by the agent
13 for the buyer on the purchase of the motor vehicle.

14 (c) Until the motor vehicle is delivered to the buyer, a buyer's agent shall hold
15 in trust in a bank account a fee that the agent receives before the buyer receives the
16 motor vehicle.

17 Sec. 08.66.290. OWNERSHIP INTEREST PROHIBITED. A buyer's agent
18 may not own an interest in the motor vehicle that is the subject of the purchase that
19 the agent is negotiating for the buyer.

20 Sec. 08.66.300. CERTAIN COMPENSATION PROHIBITED. A buyer's
21 agent may not accept a rebate, kickback, commission, or other form of compensation
22 from a financial institution, motor vehicle dealer, or other person, except the buyer, on
23 a motor vehicle purchase that the agent negotiates for a buyer.

24 Sec. 08.66.310. DUAL AGENCY PROHIBITED. When representing a buyer,
25 a buyer's agent may not act as an agent for the motor vehicle dealer.

26 Sec. 08.66.320. RECORDS OF BUYER'S AGENT. A buyer's agent shall
27 maintain complete records of each motor vehicle purchase the agent negotiates,
28 including the purchase arrangements and monetary transactions. The records must
29 include

30 (1) copies of advertisements, brochures, and pamphlets issued, used, or
31 distributed by the buyer's agent during the sales transaction;

- 1 (2) the original contract between the buyer's agent and the buyer;
- 2 (3) copies of any purchase orders issued by the buyer's agent;
- 3 (4) evidence of the delivery of the motor vehicle to the buyer;
- 4 (5) a copy of the purchase agreement between the buyer and the motor
- 5 vehicle dealer; and
- 6 (6) a copy of any service agreement between the manufacturer and the
- 7 motor vehicle dealer.

8 **Sec. 08.66.330. PENALTY.** A person who knowingly violates AS 08.66.200 -
9 08.66.350 is guilty of a class A misdemeanor.

10 **Sec. 08.66.350. DEFINITIONS.** In AS 08.66.200 - 08.66.350,

11 (1) "buyer's agent" means a person who does business in the state by
12 negotiating on behalf of a buyer the purchase of a motor vehicle from a motor vehicle
13 dealer;

14 (2) "department" means the Department of Public Safety;

15 (3) "motor vehicle dealer" means a person who is engaged in the
16 business of buying, selling, or dealing in new or used motor vehicles and maintains an
17 inventory of motor vehicles for sale.

18 * **Sec. 6.** AS 45.50.471(b) is amended by adding new paragraphs to read:

19 (33) violating AS 08.66.010 - 08.66.090 (motor vehicle dealers);

20 (34) violating AS 08.66.200 - 08.66.350 (motor vehicle buyers' agents).

21 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).