

SB

164



HOUSE JUDICIARY COMMITTEE

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Rep. Lindsey Holmes
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MEMORANDUM

Date: March 28, 2008

To: Representative John Coghill
Chair House Rules Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for CSSB164(JUD) 25-LS0867M

-
- Sponsor Statement
 - CSSB164(JUD) 25-LS0867M
 - Amendment #1 and HCR re: Title Change (withdrawn)
 - Fiscal Note LAW - 0
 - Relevant Statutes
 - Back-up
 - Letters of Support
 - HJUD Committee Report

ALASKA STATE LEGISLATURE

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Chair
Senate State Affairs
Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 164 – Used Motor Vehicle Sales

SB 164 repeals part of the Automobile Dealer Act of 2004 and removes language that is no longer of any benefit to consumers, dealerships, or the state.

SB 164 repeals subsection (c) of AS 45.25.465, which requires that all used vehicles for sale by a dealer are posted with a notice that the vehicle:

- (1) is not subject to Alaska's "lemon law"
- (2) is not covered under a manufacturers warranty
- (3) was not manufactured for sale in Canada or another foreign country.

While subsection (c) was enrolled with good intentions, it has since become obsolete. This provision was added to Alaska law in 2004 in response to an influx of Canadian vehicles that, while technically used, were being sold as new. The market has since corrected itself and vehicles manufactured for sale in Canada are no longer being sold in Alaska as new vehicles.

The provisions of subsection (c) now provide no additional consumer protection in that:

- (1) Alaska's "lemon law" applies only to new vehicles
- (2) the Federal Trade Commission already requires dealers to disclose that the vehicle is not covered under a manufacturers warranty
- (3) AS 45.25.470 already requires dealers to "disclose in writing whether a motor vehicle was originally manufactured for sale in Canada or another foreign country."

One unintended consequence of subsection (c) is that it may be leaving auto dealers exposed to law suites that were never the intent of the Automobile Dealer Act of 2004. Not posting the information outlined in subsection (c) amounts to an unfair trade practice and allows for law suites that demand treble damages and reimbursement of full legal costs, even though consumers have not suffered any actual harm or damages. The retroactive clause of SB 293 addresses this problem without affecting current litigation.

While one might argue that you can never have too much consumer protection, when the state starts unnecessarily burdening Alaskan businesses while providing no additional consumer protection, it is time to reevaluate. We have reevaluated Subsection (c) and found that it no longer provides the consumer protections it once did and now merely places unnecessary requirements on auto dealers. For these reasons we urge you to support SB 164.

w/D

AMENDMENT #1

Holmes

OFFERED IN THE HOUSE
TO: CSSB 164(JUD)

1 Page 1, line 1, following "Act":

2 Insert "**limiting motor vehicle dealer charges for fees and costs, and**"

4 Page 1, following line 3:

5 Insert a new bill section to read:

6 "*** Section 1.** AS 45.25.440 is amended to read:

7 **Sec. 45.25.440. Additional fees and costs [ADVERTISED PRICE].** (a)

8 When selling a motor vehicle, a motor vehicle dealer may not charge any dealer fees
9 or costs **in addition to the advertised or negotiated price**, except for

10 (1) fees actually paid to a state agency for licensing, registration, or
11 title transfers;

12 (2) **charges for optional equipment, for substantial additions to the**
13 **motor vehicle, for warranties, for services, and for style, design, or color features**
14 **[, UNLESS THE FEES OR COSTS ARE INCLUDED IN THE ADVERTISED**
15 **PRICE]**

16 (b) In this section, "dealer fees or costs" includes dealer preparation
17 fees, document preparation fees, surcharges, charges, and other dealer-imposed fees
18 and costs."

20 Page 1, line 4:

21 Delete "Section 1"

22 Insert "Sec. 2"

1 Renumber the following bill sections accordingly:

2
3 Page 1, line 2:

4 Delete "sec. 1"

5 Insert "sec. 2"

6

7 Page 1, line 14:

8 Delete "sec. 1"

9 Insert "sec. 2"

w/D

LEGISLATIVE
COUNCIL
32701

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Introduced:

Referred:

A RESOLUTION

1 Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State
2 Legislature, concerning Senate Bill No. 164, relating to disclosures required for the sale
3 of a used motor vehicle, including a trailer, by a motor vehicle dealer.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
6 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
7 changes to the title of a bill, are suspended in consideration of Senate Bill No. 164 relating to
8 disclosures required for the sale of a used motor vehicle, including a trailer, by a motor
9 vehicle dealer.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 164
 (S) Publish Date: 2/15/08

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act relating to disclosures on used motor vehicles. RDU Civil
 Component Commercial & Fair Business
 Sponsor SENATOR(S) MCGUIRE
 Requester SENATE TRANSPORTATION Component Number _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

SB 164 will repeal AS 45.25.465(c). This statute requires motor vehicle dealers to make certain disclosures when selling used cars. The language in AS 45.25.465(c) was originally intended to apply only to "current model" used vehicles. In 2006, AS 08.66.015 was amended to delete reference to "current model vehicles" so all motor vehicles are considered either new or used for purposes of application of Alaska's "Lemon Law" and manufacturer warranties. Given other disclosure requirements already required in Alaska and federal law, the requirements of AS 45.25.465(c) are no longer necessary. There should be no fiscal impact to the Department of Law from this bill.

Prepared by: Robert Meiners, Administrative Services Manager
 Division Administrative Services Division
 Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-5427
 Date/Time 2/12/08 2:50 PM
 Date 2/12/2008

AS 45.25.465. Sales of Used Motor Vehicles; Required Disclosures.

(a) Before the sale of a used motor vehicle, a motor vehicle dealer shall,

(1) when obtaining a used motor vehicle from an individual consumer, make a reasonable inquiry of the seller into the condition of the vehicle, including the accident and repair history of the vehicle; the information shall be recorded in writing and verified by the seller; the dealer shall provide this information to a prospective purchaser of the vehicle;

(2) when a motor vehicle dealer obtains a used motor vehicle from another motor vehicle dealer, a wholesaler, or an auction, disclose to a prospective purchaser of the vehicle that the vehicle was purchased from another dealer, a wholesaler, or an auction.

(b) Nothing in this section creates an express warranty by the dealer.

(c) When a motor vehicle dealer sells a used motor vehicle or a current model used motor vehicle, the motor vehicle dealer shall disclose to the buyer in writing in a manner that is clear and conspicuous and posted in the window of the vehicle

(1) that the warranty provisions of AS 45.45.300 - 45.45.360 do not apply to the purchase of the motor vehicle;

(2) that, if applicable, the vehicle is not subject to a manufacturer's warranty; and

(3) that, if applicable, the vehicle was originally manufactured for sale in Canada or another foreign country.

AS 45.25.470 Sales of vehicles manufactured for sale in a foreign country

Before sale, a motor vehicle dealer shall disclose in writing whether a motor vehicle was originally manufactured for sale in Canada or another foreign country.

YEAR _____ MAKE _____ MODEL _____

VIN _____ MILEAGE _____

NOTICE TO CONSUMER. This vehicle was previously owned. Consequently, the provisions of AS 45.45.300 through 45.45.360 (commonly referred to as the Alaska "lemon law") do not apply to the purchase of this vehicle. In addition, **This vehicle is / is not subject to a manufacturer's warranty.** **This vehicle was / was not manufactured for sale in Canada or another foreign country.**

*The purchase price is for the vehicle only. Price listed does not include licensing fee (subject to plate expiration) or finance charges. Optional products such as gap waivers and extended service contracts can be added for an additional charge.

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (optional) _____

WARRANTIES FOR THIS VEHICLE:

AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about this vehicle.

WARRANTY

FULL **LIMITED WARRANTY.** The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fall during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:

DURATION:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

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Reorder (714) 891-1497 - Outside Ca. 1-(800) 331-4836

Frame & Body

Frame—cracks, corrective welds, or rusted through
Dogtracks—bent or twisted frame

Engine

Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft lifters and push rods
Abnormal exhaust discharge

Transmission & Drive Shaft

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty transmission or drive shaft
Improper shifting or functioning in any gear
Manual clutch slips or clatters

Differential

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty differential

Cooling System

Leakage including radiator
Improperly functioning water pump

Electrical System

Battery leakage
Improperly functioning alternator, generator, battery, or starter

Fuel System

Visible leakage

Inoperable Accessories

Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System

Failure warning light broken
Pedal not firm under pressure (DOT spec.)
Not enough pedal reserve (DOT spec.)
Does not stop vehicle in straight (DOT spec.)
Hoses damaged
Drum or rotor too thin (Mfr. specs)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Steering System

Too much free play at steering wheel (DOT specs.)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System

Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires

Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

Wheels

Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System

Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

I HAVE READ AND ACKNOWLEDGED RECEIPT OF A COPY OF THIS BUYER'S GUIDE.

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE (907)269-5100
FAX (907)276-8554

February 19, 2008

Senator Lesil McGuire
State Capitol, Room 125
Juneau, AK 99801-1182

Re: SB 164 re Sale of Used Motor Vehicles

Dear Senator McGuire:

Thank you for sponsoring SB 164. As you know, this bill will repeal AS 45.25.465(c), a provision of the Automobile Dealer Act that requires used motor vehicle dealers to post a written disclosure in the window of every used vehicle that: (1) Alaska's "lemon law" does not apply, (2) the manufacturer's warranty may not apply, and (3) whether the vehicle was originally manufactured for sale in Canada or another foreign country. These provisions were added to Alaska law in 2004 to address a common practice at the time (which does not appear to be continuing today) involving the sale of "current model" used vehicles.

A "current model" used vehicle is a vehicle still within the manufacturer's current model year (i.e. still manufactured and offered for sale), but has been previously sold so that it is considered "used." Typically, these vehicles were purchased from dealers in Canada to take advantage of favorable exchange rates, then brought to Alaska with very low miles (sometimes 10 or less) and sold as "new." Because the vehicle had been sold once, it is no longer considered a new vehicle. This, in turn, excludes application of Alaska's lemon law, which only applies to new vehicles. In addition, some manufacturers would not honor warranties on vehicles manufactured for sale in Canada that were titled in Alaska.

Because these vehicles had all the earmarks of a new vehicle, consumers were sometimes misled about the vehicle, buying what appeared to be a new vehicle when in fact it was used. Thus, the disclosure requirements of AS 45.25.465(c) were added to the statute in 2004 to protect consumers from this practice. Unfortunately, there appears to have been a drafting error when the statute was finalized. Instead of applying these requirements only to "current model" vehicles, the statute was passed with the language "used motor vehicle or current model vehicle." As the primary drafter of the statute, it was not the intent to require application of these disclosure requirements to all used vehicle sales.

In 2006, another statute was amended that addressed the sale of "current model" vehicles. AS 08.66.015 was amended to remove reference to the sale of current model vehicles. Instead, in order to sell a motor vehicle as "new," the vehicle must have a certificate of origin (which is lost upon first sale), and the dealer must have a franchise agreement with the manufacturer. The effect of this amendment was to treat all used vehicles the same, regardless of whether the vehicle happens to be a current model year vehicle.

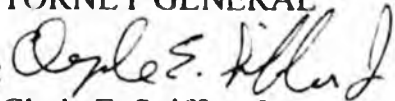
Considering amendments to AS 08.66.015, we considered two potential "fixes" to address the over-broad requirements of AS 45.25.465(c). The first was to simply remove language in the statute that applies the disclosure requirement to all used vehicles, making the statute only applicable to "current model" vehicles. With the amendment of AS 08.66.015, however, this was problematic because all reference to current model vehicles was removed from the law. Thus, we would need to develop a definition of "current model vehicle" if this language were to remain.

The second approach, and the one adopted by SB 164, is to simply repeal this section. This makes sense for several reasons. First, the disclosure concerning the applicability of the manufacturer's warranty has been addressed by most manufacturers. We understand from the Automobile Dealer's Association that major manufacturers are honoring warranties on vehicles manufactured for sale in Canada. Second, the disclosure relating to vehicles manufactured for sale in Canada is already required by AS 45.25.470, so this disclosure is duplicative. Third, manufacturers have taken action to prohibit Canadian auto dealers from selling vehicles that are intended for resale in the United States. Finally, with the removal of the "current model" language of AS 08.66.015, it would add unnecessary requirements on auto dealers that will not add significant consumer protections.

The Department of Law supports this repeal, and is available to answer questions as this bill moves through the legislative process.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: 
Clyde E. Sniffen, Jr.

Senior Assistant Attorney General

CES/ljt

cc: Russ Kelly
Mike Ford
Deborah Behr

Alaska Automobile Dealers Association

May 11, 2007

Senator Lesil McGuire
Alaska State Capitol Building #125
Juneau, Alaska 99801

Dear Senator McGuire,

The Alaska Auto Dealers Association, with the full support of the State of Alaska Department of Law, supports SB 164. SB 164 will clean up unintended consequences of the Dealer Practices Act which was passed several years ago. The language that will be deleted does not benefit dealers or consumers and is only being used to generate frivolous lawsuits against dealers.

AS.45.25.465 Subsection (C) requires a separate sticker be posted on **all** used vehicles. This sticker is unnecessary and redundant. Subsection (C)(1) requires that dealers inform the consumer that the vehicle is not subject to Alaska's "Lemon Law." Since Alaska's "Lemon Law" only applies to new vehicles, this requirement is unnecessary. Subsection (C)(2) requires that the dealer advise a customer that a vehicle is not subject to a manufacturer's warranty. The presumption is that most used vehicles are not subject to a warranty, since most used vehicles are sold "as is". Further, required FTC postings for used vehicles (commonly known as the As-Is sticker) require dealerships to disclose whether the vehicle is sold as is or if the vehicle has any remaining manufacturer's warranty. Finally, subsection (C)(3) requires dealerships to disclose whether the used vehicle was originally manufactured for sale in Canada or another foreign country. There was a "Canadian" vehicle influx of several years ago which was short term in nature. This portion of the separate sticker is also redundant as AS.45.25.470 requires a separate disclosure if a vehicle was originally manufactured for sale in Canada.

The only people who stand to benefit from Subsection (C)(1) are class action attorneys who have sued Alaskan dealerships who do not display this unnecessary and redundant sticker. Not displaying this sticker is an unfair trade practice violation which means the plaintiff's attorney can sue for treble damages and full legal costs even though the consumers have not suffered any actual harm or damages. There is a two year look back on unfair trade practices so a class action attorney can search for enough car buyers to create a class and then subpoena all records going back two years.

Two class action suits of this nature are progressing in Anchorage at this time. Dealerships are still predominantly family owned small businesses in the State of Alaska and frivolous litigation as described above could well bankrupt many well run and respected dealerships.

The Alaska Auto Dealers Association and Senior Assistant Attorney General Ed Sniffen all agree that there is no benefit to consumers or dealers provided by Subsection C which is why all parties have agreed that these amendments should be retroactive to the extent allowed by law. For the reasons outlined above, we support SB 164.

Sincerely,

Jon Cook
Alaska Auto Dealers Association
Legislative Director

