

HB

415

Alaska State Legislature



HOUSE TRANSPORTATION COMMITTEE

Representative Kyle Johansen, Chair

HB 415 – 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.

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.

25-LS1546\C
Bannister
3/17/08

CS FOR HOUSE BILL NO. 415(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to disclosures required for the sale of a used motor vehicle, including a**
2 **trailer, by a motor vehicle dealer."**

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

4 *** Section 1.** AS 45.25.465(c) is repealed.

5 *** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **RETROACTIVE APPLICATION.** (a) To the extent allowed by law, and except as
8 provided by (b) of this section, sec. 1 of this Act applies to the sale by a motor vehicle dealer
9 of a used motor vehicle or a current model used motor vehicle that occurred on or after
10 October 24, 2004, and is retrospective under AS 01.10.090 to that extent.

11 (b) Retroactivity under (a) of this section does not apply to the sale by a motor vehicle
12 dealer of a used motor vehicle or a current model used motor vehicle if the sale is or has been
13 the subject of a court action, including an appeal, based on AS 45.25.465(c), as repealed by
14 sec. 1 of this Act, and the court action is pending on, or was completed before, January 1,

1 2008.

2 (c) In this section,

3 (1) "motor vehicle" has the meaning given in AS 45.25.590;

4 (2) "motor vehicle dealer" has the meaning given in AS 45.25.990;

5 (3) "sale" has the meaning given in AS 45.25.990;

6 (4) "used motor vehicle" has the meaning given in AS 45.25.990.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: HB415-LAW-CIV-03-17-08
 Bill Version: HB415
 () Publish Date: _____

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

HB 415 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: Roberti Meiners, Administrative Services Manager
 Division: Administrative Services Division
 Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-5427
 Date/Time 3/17/08 8:25 AM
 Date 3/17/2008

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 45.25.465 (c)

(window disclosure)

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.

DISTRIBUTED BY KAR KARE

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

FORM FTCHT

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.

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.

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 manufacturers 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 manufacturers 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

Alaska Auto Dealers Association

P.O. Box 71577

Fairbanks, AK 99707

March 4, 2008

Senator Hollis French

Sent Via Email

Re: SB 164

Dear Senator French:

I would like to clarify the AADA's rationale for requesting the retroactivity provision of SB 164.

Recent testimony in the Senate Judiciary Committee from myself and Ed Sniffen, Senior Assistant Attorney General for the State of Alaska, regarding AS.45.25.465 Subsection (C) noted that the requirements contained in that section are either unnecessary or redundant. We also testified that the current statute does not benefit consumers, dealers or the State of Alaska. Actually, the current statute places many dealerships at significant risk of closure or bankruptcy which is why we are asking for retroactive application "to the extent allowed by law".

The only people who stand to benefit from Subsection (C) are class action attorneys who have or could sue Alaskan dealerships who do not or did 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.

SB 164 calls for retroactive application "to the extent allowed by law." We spent a great deal of time discussing this provision with our legal counsel and Ed Sniffen before agreeing upon this compromise language. We all felt that the broad language regarding retroactivity would allow the matter to be decided by the courts for any current or future claims. We are aware of three class action suits against the same defendant with a portion of the claims relating to the statute in question.

We are more concerned about future claims which could arise under AS.45.25.465 Subsection (C). Without retroactive application, plaintiff's attorneys could pursue class action suits against dealerships going back two years from the effective date of SB 164 being signed into law given the look back allowed for unfair trade practice violations. We believe there is a significant risk of this occurring which is the main reason we're asking for retroactive application. Most Alaska dealerships were not even aware of the

requirements of AS.45.25.465 Subsection (C) until the three class action suits were filed as it was never the intent of the drafter of the statute, Mr. Sniffen, or the AADA, that used cars be included in these requirements back in 2004.

Potentially, thousands of dealership jobs are at risk due to a law that provides no benefit to consumers and which allows class action suits to proceed with the threat of treble damages and full legal costs even if the consumers have not suffered any actual harm or damages. These unintended consequences were not anticipated by anyone at the time the bill was passed back in 2004. To date, there has been no opposition to SB 164. I ask you and your fellow legislators to support and protect Alaskan owned businesses and jobs by passing SB 164.

Please do not hesitate to call me at 322-0362 should you or your staff have any questions regarding this matter.

Sincerely,

Jon Cook
Legislative Director

**DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL**

SARAH PALIN, GOVERNOR

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.

Senator Lesil McGuire
Alaska State Legislature

February 19, 2008
Page 2 of 2

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.

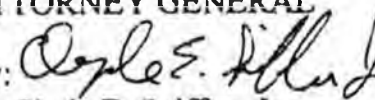
The second approach, and the one adopted by SB 164, is to simply repeal this section. This makes sense for several reasons. First, the disclosure concerning the applicability of the manufacturer's warranty has been addressed by most manufacturers. We understand from the Automobile Dealer's Association 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 "Lemon" Law

Article 06. MOTOR VEHICLE WARRANTIES

Sec. 45.45.300. Repairs required.

If a new motor vehicle does not conform to an express warranty that is applicable to it and the owner of the vehicle reports the defect or condition to the manufacturer of the vehicle or to the manufacturer's or distributor's dealer during the term of the warranty, the manufacturer, distributor, dealer, or a repairing agent shall make the necessary repairs to conform the vehicle to the express warranty.

Sec. 45.45.305. Replacement or refund.

If during the term of the express warranty or within one year from the date of delivery of the motor vehicle to the original owner, whichever period terminates first, the manufacturer, distributor, dealer, or repairing agent is unable to conform the motor vehicle to an applicable express warranty after a reasonable number of attempts, the manufacturer or distributor shall accept the return of the nonconforming motor vehicle, and, at the owner's option, shall replace the nonconforming vehicle with a new, comparable vehicle or shall refund the full purchase price to the owner less a reasonable allowance for the use of the motor vehicle from the time it was delivered to the original owner. A refund under this section shall be made to a lienholder of record, if any, and the owner, as their interests may appear.

Sec. 45.45.310. Notice by owner.

In order to claim a refund or replacement under AS 45.45.305, the owner shall give written notice by certified mail to the manufacturer and its dealer or repairing agent at any time before 60 days have elapsed after the expiration of the express warranty or the one-year period after the date of delivery of the motor vehicle to the original owner, whichever period terminates first, (1) stating that the vehicle has a nonconformity; (2) providing a reasonable description of the nonconformity; (3) stating that the manufacturer, distributor, dealer, or repairing agent has made a reasonable number of attempts to conform the vehicle; and (4) stating that the owner demands a refund or replacement vehicle to be delivered on the 60th day after the mailing of the written notice. Within 30 days after receiving the notice required by this section the manufacturer may make a final attempt to conform the vehicle before a refund or replacement is made under AS 45.45.305.

Sec. 45.45.315. Exceptions.

An owner may not receive a refund or replacement under AS 45.45.300 - 45.45.360 if the manufacturer or distributor shows that the nonconformity complained of

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

(2) is the result of

(A) alteration of the motor vehicle by the owner or a person other than a dealer or repairing agent that is not authorized by the manufacturer or distributor; or

(B) abuse or neglect by the owner or a person other than the dealer or repairing agent.

Sec. 45.45.320. Presumption.

A presumption that a reasonable number of attempts have been made to conform a motor vehicle under an applicable express warranty is established if:

(1) the same nonconformity has been subject to repair three or more times by the manufacturer, distributor, dealer, or repairing agent during the term of the express warranty or the one-year period after delivery of the motor vehicle to the original owner, whichever period terminates first, but the nonconformity continues to exist; or

(2) the vehicle is out of service for repair for a total of 30 or more business days during the express warranty term or the one-year period referred to in (1) of this section, whichever period terminates first; any period of time that repairs are not performed for reasons that are beyond the control of the manufacturer, distributor, dealer, or repairing agent is excluded from the 30-day time period referred to in this paragraph.

Sec. 45.45.325. Parts availability.

A manufacturer whose vehicles are sold in the state through an authorized dealer shall provide its dealer or repairing agent with any part necessary to make a repair of a nonconformity covered under an express warranty, as soon as possible, without additional charge for freight or handling, if the part is not in the dealer's or agent's inventory when the nonconforming vehicle is brought to the dealer or repairing agent for repair.

Sec. 45.45.330. Failure to replace or refund.

A manufacturer or distributor who fails to refund the full purchase price of a motor vehicle or replace the motor vehicle when there is a requirement to do so under AS

45.45.300 - 45.45.360 is presumed to have committed an unfair trade practice under AS 45.50.471.

Sec. 45.45.335. Resale without disclosure prohibited.

A motor vehicle returned under AS 45.45.305 may not be resold by the manufacturer or distributor in the state unless full disclosure of the reason for the return is made to the prospective buyer before the resale is concluded.

Sec. 45.45.340. Other rights and remedies.

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

Sec. 45.45.345. Repair facilities.

A manufacturer or distributor of motor vehicles who authorizes the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership facilities within the state that are able to perform the service and make the repairs required by the manufacturer's express warranty and by AS 45.45.300 - 45.45.360.

Sec. 45.45.350. Reimbursement of shipping costs.

A manufacturer or distributor who accepts the return of a nonconforming motor vehicle under AS 45.45.305 shall reimburse the owner for any reasonable cost incurred in shipping the vehicle to and from the nearest authorized facility for warranty service and repair of a nonconformity that causes the return of the vehicle.

Sec. 45.45.355. Arbitration or mediation.

If a manufacturer or distributor has established an informal dispute settlement procedure that substantially complies with the requirements of 16 C.F.R. 703, as that section may be amended, or if the manufacturer or distributor, after receipt of notice required by AS 45.45.310, offers in writing to participate in an arbitration or mediation process with the owner and the arbitration or mediation decision is binding on the manufacturer or distributor but not on the owner, and if the informal dispute settlement or arbitration or mediation process is approved by the attorney general, the provisions of AS 45.45.305 concerning refund or replacement or AS 45.45.350 concerning shipping costs do not apply to an owner who has not first resorted to the informal dispute settlement procedure or arbitration or mediation process.

Sec. 45.45.360. Definitions.

In AS 45.45.300 - 45.45.360,

(1) "dealer" means a person who has obtained a franchise from, or is authorized by, a motor vehicle manufacturer to engage in the retail sale and warranty repair of the manufacturer's new motor vehicles in the state;

(2) "distributor" means a person who is authorized by a manufacturer to engage in the wholesale distribution of the manufacturer's new motor vehicles in the state;

(3) "express warranty" or "warranty" means an express written warranty provided by the manufacturer of a new motor vehicle;

(4) "full purchase price" means the total price paid for a motor vehicle by the original owner, including costs added to the retail price, such as original registration fees, transportation fees, dealer preparation, and dealer installed options;

(5) "manufacturer" means a person who by labor transforms raw materials and component parts into motor vehicles for wholesale or retail sale;

(6) "motor vehicle" or "vehicle" means a land vehicle having four or more wheels, that is self-propelled by a motor, is normally used for personal, family, or household purposes, and is required to be registered under AS 28.10; but does not include a tractor, farm vehicle, or a vehicle designed primarily for off-road use;

(7) "nonconformity" means a defect or condition in a motor vehicle caused by a manufacturer, distributor, dealer, or repairing agent that substantially impairs the use or market value of a vehicle;

(8) "owner" means a purchaser, other than for resale, of a new motor vehicle, and a person to whom ownership of the motor vehicle is transferred in conformity with AS 28;

(9) "reasonable allowance" means an amount attributable to an owner's use of a motor vehicle; a "reasonable allowance" may not exceed an amount equal to the depreciation in value of the vehicle for the period during which the vehicle is available for use by the owner, calculated by a straight line depreciation method over seven years, plus an amount equal to the depreciation in value of the vehicle that is caused by

(A) any neglect or abuse by the owner; or

(B) body damage not caused by a nonconformity;

(10) "repairing agent" means a person who has been specifically authorized by a motor vehicle manufacturer or distributor to perform warranty repairs in the state on one or more of the manufacturer's or distributor's motor vehicles;

(11) "substantially impairs the market value" means a nonconformity that substantially decreases the dollar value of a vehicle to the owner when compared to the dollar value of a similar vehicle that does not have the nonconformity;

(12) "substantially impairs the use" means a nonconformity that prevents a motor vehicle from being operated or makes the vehicle unsafe to operate.

Chapter 45.25. MOTOR VEHICLE TRANSACTIONS

Article 01. APPLICABILITY; JURISDICTION; VENUE; CORPORATE AFFILIATES

Sec. 45.25.010. Applicability.

AS 45.25.020 - 45.25.320 apply to franchise contracts between a manufacturer and its new motor vehicle dealers in this state.

Sec. 45.25.020. Jurisdiction; venue.

(a) The courts of this state have jurisdiction over a legal dispute between a manufacturer located in or outside this state and a new motor vehicle dealer located in this state, and the dispute is governed by and interpreted and adjudicated under the law of this state.

(b) Venue for a dispute under (a) of this section is in the judicial district of this state where the new motor vehicle dealer's principal place of business is located.

Sec. 45.25.030. Corporate affiliates.

(a) A manufacturer may not use a subsidiary corporation, affiliated corporation, partnership, association, or other person to accomplish what would be prohibited for the manufacturer under this chapter.

(b) This section does not limit the right of a person included within the scope of this section to engage in reasonable and appropriate business practices consistent with an existing trade practice that is not prohibited by this chapter.

Article 02. FRANCHISE AGREEMENTS

Sec. 45.25.100. Consistency with state law.

The terms and conditions in an agreement between a manufacturer and a new motor vehicle dealer in this state, including a motor vehicle franchise agreement, that are inconsistent with the law of this state do not have any force or effect in this state.

Sec. 45.25.110. Termination of franchise agreements.

(a) A manufacturer may not terminate a franchise with a new motor vehicle dealer unless

(1) the manufacturer has

(A) satisfied the notice requirements of this chapter;

(B) shown that there is good cause for the termination of the franchise, and, if the reasons underlying the good cause can be corrected by the new motor vehicle dealer, the new motor vehicle dealer has failed for 60 days after delivery of the notice required by AS 45.25.120 to make the corrections; the circumstances identified under AS 45.25.120 (a)(2) for which a 15-day notice of termination is required do not qualify as reasons for which correction is allowed under this paragraph; or

(2) the new motor vehicle dealer has systematically engaged in fraud against consumers or the manufacturer or in the operation of the new motor vehicle dealership.

(b) Notwithstanding (a)(1) of this section, a manufacturer may not terminate a franchise agreement with a new motor vehicle dealer because of the death or incapacity of an owner if the owner is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(c) In this section, "good cause" includes when the new motor vehicle dealer fails to comply with or observe a material provision of the franchise agreement. For the purposes of determining good cause under this subsection, reasonable sales and service performance criteria and capital and facility requirements may be considered material provisions only if the criteria or requirements were communicated in writing to the new motor vehicle dealer within a reasonable period before the effective date of the termination or nonrenewal so that a reasonable opportunity was afforded over a period of not less than six months to comply with the criteria or requirements.

Sec. 45.25.120. Notice of termination.

(a) A manufacturer shall furnish a notice of termination of a franchise agreement to a new motor vehicle dealer at least

(1) 90 days before the effective date of a termination, except as required under (2) or (3) of this subsection;

(2) 15 days before the effective date of a termination when the new motor vehicle dealer

(A) is insolvent or is the subject of a bankruptcy or receivership proceeding;

(B) has failed to conduct its customary sales and service operations during its customary business hours for seven consecutive business days; this subparagraph does not apply to closures due to acts of God or circumstances beyond the direct control of the new motor vehicle dealer; or

(C) is convicted of a felony involving moral turpitude or fraud under the law of this state, another state, the federal government, a territory of the United States, or the District of Columbia;

(3) 180 days before the effective date of the termination if the manufacturer or distributor is discontinuing the sale of the product line.

(b) Notice required under (a) of this section must be in writing, shall be sent by certified mail or personally delivered to the new motor vehicle dealer, and must contain

- (1) a statement of intention to terminate the franchise;
- (2) a statement of the reasons for the termination; and
- (3) the date on which the termination takes effect.

Sec. 45.25.130. Threat of termination.

(a) A manufacturer or manufacturer representative may not coerce or attempt to coerce a new motor vehicle dealer to enter into an agreement with the manufacturer or a subsidiary of the manufacturer, or to do any other act unfair to the new motor vehicle dealer, by threatening to terminate a franchise agreement between the manufacturer or subsidiary of the manufacturer and the new motor vehicle dealer.

(b) This section does not prohibit a voluntary agreement between a manufacturer and a new motor vehicle dealer or between a distributor and a new motor vehicle dealer to settle legitimate disputes.

Sec. 45.25.140. Repurchase obligations on termination.

(a) Upon the termination of a new motor vehicle dealer's franchise agreement by the manufacturer or distributor, the manufacturer or distributor shall repurchase from the new motor vehicle dealer at

(1) the new motor vehicle dealer's net acquisition cost, if the motor vehicles have not been materially altered or damaged, all inventory consisting of unsold new motor vehicles that are current models and models that have been acquired from the manufacturer within the past two model years before receipt of the notice of termination;

(2) the new motor vehicle dealer price listed in the current parts catalog, less applicable allowances, new unused undamaged parts in their original, unbroken packaging, listed in the current price catalog and acquired from the manufacturer or distributor;

(3) fair market value, signs, equipment, and furnishings that bear a trademark or trade name, that have not been altered or damaged, and that were required by the manufacturer or distributor within five years preceding the notice of termination; and

(4) the new motor vehicle dealer's net acquisition cost, special tools that have not been altered or materially damaged that were purchased from the manufacturer or distributor within three years preceding the date of the termination.

(b) Within 90 days after the effective date of the termination, the new motor vehicle dealer shall return the property required by (a) of this section to be repurchased to the manufacturer or distributor at the manufacturer's or distributor's expense. The manufacturer or distributor shall pay the compensation for the property within 60 days after the tender of inventory and other items if the new motor vehicle dealer has clear title to the property and is in a position to convey that title to the manufacturer or distributor. If the property is subject to a security interest, the manufacturer or distributor may make payment jointly to the new motor vehicle dealer and the holder of the security interest, and the manufacturer or distributor may offset these payments.

Sec. 45.25.150. Required compensation for new motor vehicle dealer facilities.

(a) Upon termination by the manufacturer or distributor, the manufacturer or distributor shall compensate the new motor vehicle dealer for new motor vehicle dealer facilities a sum equivalent to the

(1) rent for the unexpired term of the lease or 18 months, whichever period is shorter, if the new motor vehicle dealer is leasing the new motor vehicle dealership facilities from a lessor other than the manufacturer or distributor; or

(2) reasonable rental value of the new motor vehicle dealership facilities for 18 months or until the facilities are leased or sold, whichever period is shorter, if the new motor vehicle dealer owns the new motor vehicle dealership facilities; the sum may be paid in monthly installments at the election of the manufacturer or distributor.

(b) This section does not relieve a new motor vehicle dealer of the obligation to mitigate damages under a lease, prevent a manufacturer from occupying and using the new motor vehicle dealer's facilities while paying rent, or preclude a manufacturer from negotiating a lease termination, sublease, or new lease.

(c) This section does not apply to a termination for

(1) insolvency of the new motor vehicle dealer or the filing of any petition by or against the new motor vehicle dealer under a bankruptcy or receivership law;

(2) failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days;

(3) conviction of the new motor vehicle dealer or its principal owners of a felony or a misdemeanor regardless of the punishment if the crime involves theft, dishonesty, or false statement;

(4) revocation of a license required for the new motor vehicle dealer to operate; or

(5) a fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor that is material to the new motor vehicle dealer's agreement.

(d) The payment required under (a) of this section is only required to the extent that the facilities were used for activities under the franchise agreement and only to the extent the facilities were not leased for unrelated purposes.

(e) If payment under (a) of this section is made, the manufacturer or distributor is entitled to possession and use of the new motor vehicle dealership facilities for the period for which the payment is paid.

Sec. 45.25.160. Prevention of or refusal to honor transfer of new motor vehicle dealership ownership.

A manufacturer may not unreasonably prevent or refuse to honor a transfer of ownership of a new motor vehicle dealership.

Sec. 45.25.170. Succession.

(a) A manufacturer or distributor may not prevent or refuse to honor the succession to a new motor vehicle franchise of an heir or devisee under a will of a franchisee, under a written instrument filed with the manufacturer or distributor designating any person as the successor franchisee, or under AS 13.06 - AS 13.36 (Uniform Probate Code), except that

(1) a designated successor must, within 60 days after the owner's death or incapacity, give the manufacturer or distributor written notice of the intent to succeed, and the designee must agree to be bound by all the terms and conditions of the current franchise agreement;

(2) the manufacturer or distributor may request from the designated successor personal and financial data that are reasonably necessary to determine the qualifications of the designated successor; the designated successor shall provide the information within 60 days after receiving the request;

(3) the manufacturer or distributor may not unreasonably withhold approval of the succession; if the manufacturer or distributor refuses to honor the succession, the manufacturer or distributor shall send written notice to the proposed successor within 60 days after receiving the information requested in (2) of this subsection or within 60 days after receiving the notice of the proposed successor's intent to succeed, whichever is later.

(b) The notice required by (a)(3) of this section must state the specific grounds for not approving the proposed successor. Within 30 days after the proposed successor's

receipt of the notice, the proposed successor may file a protest with the superior court to determine whether the manufacturer or distributor has unreasonably withheld approval.

(c) This section does not preclude the owner of a new motor vehicle dealership from filing with the manufacturer or distributor a written instrument designating any person as a successor. If there are competing successors, the written instrument governs who may submit a proposal as a successor.

Sec. 45.25.180. New dealerships.

(a) Before a manufacturer or distributor enters into a franchise establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the manufacturer or distributor shall give 90 days' written notice to each new motor vehicle dealer of the same line make in the relevant market area of the intention to establish an additional new motor vehicle dealer or to relocate an existing new motor vehicle dealer within that relevant market area.

(b) Within 30 days after receiving the notice required under (a) of this section or within 30 days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer may bring a declaratory judgment action in the superior court of this state to determine whether good cause exists for the establishment or relocation of a proposed new motor vehicle dealer. If an action is filed, the manufacturer or distributor may not establish or relocate the proposed new motor vehicle dealer until the court has rendered a decision on the matter.

(c) This section does not prohibit

(1) the relocation of an existing new motor vehicle dealer to a new location not within four miles of an existing new motor vehicle dealer;

(2) the appointment of a successor new motor vehicle dealer at the same location as its predecessor or within a two-mile radius from any boundary of the predecessor's former location within two years from the date when the predecessor ceased operations or was terminated, whichever occurred later; or

(3) the entering into of a renewal of, replacement of, or succeeding franchise agreement with an existing new motor vehicle dealer whose operations will continue at the existing new motor vehicle dealer's current location.

(d) When determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line make, the superior court shall consider the existing circumstances, including

(1) whether the establishment of an additional franchise or relocation of the existing new motor vehicle dealer appears to be warranted by economic and marketing conditions, including anticipated future changes;

(2) the retail sales and service business transacted by the protesting new motor vehicle dealer and other new motor vehicle dealers of the same line make with a place of business in the relevant market area to be served by the additional franchise or proposed new location of an existing new motor vehicle dealer during the three-year period immediately preceding the notice;

(3) the investment necessarily made and obligations incurred by the protesting new motor vehicle dealer to perform the protesting new motor vehicle dealer's obligations under existing franchise agreements;

(4) the permanency of the investment of the protesting new motor vehicle dealer;
and

(5) whether it is beneficial or injurious to the public welfare for an additional franchise to be established or for the existing new motor vehicle dealer to be relocated.

(e) In this section,

(1) "relevant market area" means the greater of the area

(A) within a radius of 14 miles around an existing new motor vehicle dealer; or

(B) of responsibility defined in a governing franchise agreement;

(2) "relocate" and "relocation" do not include the relocation of a new motor vehicle dealer within two miles of the new motor vehicle dealer's established place of business.

Sec. 45.25.190. Arbitration.

In a controversy between a manufacturer and a new motor vehicle dealer under AS 45.25.010 - 45.25.320, neither the manufacturer nor the new motor vehicle dealer is required to submit the controversy to arbitration. If both the manufacturer and the new motor vehicle dealer agree to submit a controversy under AS 45.25.010 - 45.25.320 to arbitration, the arbitration shall be conducted under AS 09.43.020 - 09.43.180 (Uniform Arbitration Act), the manufacturer and the new motor vehicle dealer shall each select one arbitrator, and both the manufacturer and the new motor vehicle dealer shall select the third arbitrator.

Article 03. MANUFACTURER AND DISTRIBUTOR PRACTICES

Sec. 45.25.300. New motor vehicle dealership location and facilities.

A manufacturer may not require, coerce, or attempt to coerce a new motor vehicle dealer to change the location of the new motor vehicle dealership or to make any substantial alterations to the new motor vehicle dealership premises or facilities if the change or

alteration would be unreasonable or if there is not a sufficient supply of new motor vehicles to justify the expansion in light of the current market and economic conditions.

Sec. 45.25.310. Discrimination.

A manufacturer may not unfairly discriminate among new motor vehicle dealers with respect to warranty reimbursements or authority granted new motor vehicle dealers to make warranty adjustments with retail customers.

Sec. 45.25.320. Time limits on claim audits, claim denials, claim reductions, and charge backs.

(a) A manufacturer or distributor may not audit a claim, deny a claim, reduce the amount of a claim to be reimbursed to a new motor vehicle dealer, or charge back a portion of the claim to a new motor vehicle dealer if 18 or more months have passed since the new motor vehicle dealer submitted the claim or if 18 or more months have passed from the end of a manufacturer-sponsored incentive program related to the claim, whichever 18-month period ends later.

(b) The time restriction in (a) of this section does not apply if the manufacturer reasonably suspects that fraud is involved in the claim.

(c) In this section, "claim" means a claim made by a new motor vehicle dealer for compensation by the manufacturer or distributor for sales incentives, warranty repairs, and service incentives.

Article 04. DEALER PRACTICES

Sec. 45.25.400. Prohibited use of advertising terms.

(a) A motor vehicle dealer may not use the term "invoice," "factory invoice," "dealer invoice," "dealer cost," "wholesale price," or any other term of similar meaning in an advertisement for the sale of a motor vehicle.

(b) A motor vehicle dealer may use the term "manufacturer's suggested retail price," "MSRP," or "list price" in an advertisement for the sale of a motor vehicle, subject to the restriction on price comparisons in AS 45.25.450 and the following:

(1) the advertised price must reference the final price listed by the manufacturer on the monroney sticker, including accessories and options physically attached to the vehicle at the time of delivery to the dealer, plus any transportation charges, and minus all manufacturer discounts and savings;

(2) the manufacturer's suggested retail price or the list price does not include charges added by the dealer or options added to the vehicle by the dealer; and

(3) whenever using the term "manufacturer's suggested retail price," "MSRP," or "list price," the dealer may not represent that a buyer would save money by paying a price that is lower than the "manufacturer's suggested retail price," "MSRP," or "list price."

Sec. 45.25.410. Availability of advertised items.

A motor vehicle dealer may not advertise a new motor vehicle at a specified dealer price with the intent not to supply reasonably expected demand, unless the advertisement discloses the number of vehicles in stock at the advertised price.

Sec. 45.25.420. Display of motor vehicles.

A motor vehicle dealer shall display all vehicles advertised for sale for the duration of the sale period in a conspicuous and clearly visible location on the dealer's premises. The advertised sale price for each vehicle must be clearly marked on the vehicle so the consumer can readily identify the advertised price for the vehicle.

Sec. 45.25.430. Refusal to sell on advertised terms and conditions.

A motor vehicle dealer may not refuse to sell a motor vehicle on the terms and conditions that the dealer has advertised. This section does not apply if

(1) the dealer can document that the advertised term or condition was the result of an error on the part of the advertising medium or an outside advertising agent; or

(2) the refusal is based on an error that was made in good faith by the dealer and was clearly and conspicuously a mistake, and the dealer corrected the error as soon as the dealer knew or reasonably should have known of the error.

Sec. 45.25.440. Advertised price.

(a) When selling a motor vehicle, a motor vehicle dealer may not charge dealer fees or costs, except for fees actually paid to a state agency for licensing, registration, or title transfers, unless the fees or costs are included in the advertised price.

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

Sec. 45.25.450. Advertised price comparisons, reductions, and discounts.

(a) A motor vehicle dealer may not make a price comparison, price reduction, or price discount in an advertisement unless the comparison, reduction, or discount complies with this section.

(b) A motor vehicle dealer may advertise a price comparison for a new motor vehicle with the manufacturer's suggested retail price only if

(1) the dealer only uses the term "manufacturer's suggested retail price," "MSRP," or "list price";

(2) the advertised price references the final price listed by the manufacturer on the mononey sticker;

(3) the manufacturer's suggested retail price, MSRP, or list price does not include charges added by the dealer or options added to the vehicle by the dealer;

(4) the dealer clearly discloses that the manufacturer's suggested retail price, MSRP, or list price may not reflect the actual selling price for the vehicle in the dealer's trade area; and

(5) the dealer does not make a representation in the advertisement, including a reference to a "sale," "reduction," or "discount," that the comparison represents a saving to the consumer.

(c) A motor vehicle dealer may not use a competitor's price as a reference price unless

(1) the reference price is the competitor's current, bona fide price in the trade area of the dealer making the comparison;

(2) the comparison is to an identical or nearly identical vehicle that does not materially differ in model, style, design, name, brand, kind, or quality from the advertised product; and

(3) the dealer includes in the advertised price all charges that the competitor includes in the competitor's price.

(d) A motor vehicle dealer shall be in possession of documents and all other information necessary to substantiate all reference price claims when the claims are made and shall maintain this information in a readily accessible place for two years after the time the reference price claims are made.

Sec. 45.25.460. Advertising and selling practices generally.

(a) In addition to the provisions of AS 45.50.471 and regulations adopted under AS 45.50.471, a motor vehicle dealer

(1) shall include in an advertisement of a motor vehicle for sale all fees or charges, except fees or charges to be paid to a third party;

(2) may not represent the dealer document preparation fee as a government fee;

(3) may not advertise a specific motor vehicle for sale without identifying the vehicle by either its vehicle identification number, vehicle stocking number, or license number;

(4) may not advertise that free merchandise, gifts, or services will be provided by the dealer if a vehicle is purchased; in this paragraph, "free" includes merchandise or services offered for sale at a price less than the dealer's cost for the merchandise or services;

(5) may not use the term "rebate," "cash back," or a similar term in advertising the sale of a motor vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail buyer of the vehicle;

(6) may not require a person, in order to receive the advertised credit terms, to pay a higher price for a motor vehicle and any related goods or services than the cash price the same person would have to pay to purchase the same vehicle and related goods or services;

(7) may not advertise a guaranteed trade-in allowance or range of allowances unless the guarantee is provided by the manufacturer or distributor;

(8) may not affix to a new motor vehicle a supplemental price sticker containing a price that represents the dealer's asking price if the supplemental price sticker exceeds the manufacturer's suggested retail price, unless the supplemental sticker

(A) clearly and conspicuously, in the largest print appearing on the sticker other than the print size used for the dealer's name, discloses that the supplemental sticker price is the dealer's asking price, or words of similar meaning, and is not the manufacturer's suggested retail price;

(B) clearly and conspicuously discloses the manufacturer's suggested retail price; and

(C) states, if the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, the difference and describes it as additional dealer mark-up;

(9) may not advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of the dealer, that a down payment is not required in connection with the sale of a motor vehicle when a down payment is in fact required;

(10) may not advertise an offer for the sale, lease, or purchase of a motor vehicle that does not contain the name of the dealer;

(11) may not represent and sell as a new motor vehicle a demonstrator vehicle or a motor vehicle that is a used motor vehicle; in this paragraph, "demonstrator vehicle"

(A) means a motor vehicle

(i) that has been assigned by a dealer for use by the dealership as an executive vehicle for promotional purposes, including being driven in the community;

(ii) that has not been licensed by a retail buyer; and

(iii) the title of which has not been transferred to a retail buyer;

(B) does not include a motor vehicle that has only been driven to demonstrate the motor vehicle to a prospective buyer;

(12) may not advertise that the dealer finances any person or does not reject any person's credit, or make similar claims;

(13) may not advertise or make a statement, declaration, or representation in an advertisement that cannot be substantiated in fact; the burden of proof of the factual basis for the statement, declaration, or representation is on the dealer.

(b) [Repealed, Sec. 9 ch 171 SLA 2004].

Sec. 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.

Sec. 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.

Sec. 45.25.480. Identification number plates.

A motor vehicle dealer may not knowingly purchase or sell a vehicle that has an altered or removed vehicle identification number plate, or alter or remove a vehicle identification number plate.

Sec. 45.25.490 Required documentation.

A motor vehicle dealer may not sell or offer to sell a motor vehicle unless the motor vehicle dealer holds a manufacturer's statement of origin, a title, or another properly executed document reasonably necessary to obtain the statement of origin or title for transfer of the vehicle to the buyer.

Sec. 45.25.500. Trade-ins.

A motor vehicle dealer may not transfer title to a trade-in vehicle or perform any repairs or reconditioning on a trade-in vehicle before the completion of the sales transaction for which the vehicle is a trade-in.

Sec. 45.25.510. Disclosure of damages.

(a) Before entering into a new motor vehicle sales contract, a new motor vehicle dealer shall disclose in writing to a buyer of the new motor vehicle any known damage and repair to the new motor vehicle if the damage exceeds five percent of the manufacturer's suggested retail price as calculated at the dealer's authorized warranty rate for labor and parts, or \$1,000, whichever amount is greater. A new motor vehicle dealer is not required to disclose to a buyer that glass, tires, bumpers, or cosmetic parts of a new motor vehicle were damaged at any time if the damaged item has been replaced with original or comparable equipment. A replaced part is not part of the cumulative damage required to be disclosed under this subsection.

(b) If disclosure is not required under this section, a buyer may not revoke or rescind a sales contract due to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

(c) In this section,

(1) "cosmetic parts" means parts that are attached by and can be replaced in total through the use of screws, bolts, or other fasteners without the use of welding or thermal cutting and includes windshields, bumpers, hoods, or trim panels;

(2) "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer and includes the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle.

Sec. 45.25.520. Form of disclosures.

Except as provided in AS 45.25.460(a)(8)(A), if a disclosure is required by this chapter with respect to a motor vehicle advertisement, the disclosure must be made in a clear and conspicuous manner.

Sec. 45.25.530. Disclosure regarding receipt of commissions.

If a motor vehicle dealer's service operations employees receive a commission for the amount of work they perform, the motor vehicle dealer shall post a conspicuous sign that is visible to service customers that the dealer's service operations employees work on commission.

Sec. 45.25.590. Definitions.

In AS 45.25.400 - 45.25.590,

(1) "advertise," "advertised," "advertising," and "advertisement" include representations, whether made on or off store premises, made to persons in the print media, in the broadcast media, on the computer, in a brochure, in a flyer, by direct mail, by sign, or on a tag;

(2) "monroney sticker" means the window sticker required by 15 U.S.C. 1231 - 1233 (Automobile Information Disclosure Act);

(3) "motor vehicle," notwithstanding the definition of "motor vehicle" in AS 45.25.990, means a vehicle, including a trailer, that is required to be registered under AS 28.10, but does not include a motorcycle;

(4) "new motor vehicle," notwithstanding the definition of "new motor vehicle" in AS 45.25.990, means a motor vehicle that has not been titled to anyone and still retains the original manufacturer's certificate of origin.

Article 05. SALES AND SERVICE CONTRACTS

Sec. 45.25.600. Title transfer.

A motor vehicle dealer may not transfer the title for a motor vehicle to a buyer before all of the sale documents, including any finance contract arranged by the seller, are complete and executed in final form by all parties to the sale.

Sec. 45.25.610. Sales contracts.

(a) A motor vehicle sales contract must be in writing, signed by both the seller and buyer, and completed as to all essential provisions before the signing of the contract by the buyer and before delivery of the vehicle to the buyer.

(b) *[Repealed, Sec. 9 ch 171 SLA 2004].*

(c) If a motor vehicle dealer arranges financing for a buyer, the motor vehicle dealer may deliver the motor vehicle to the buyer before final approval by the financing entity if

(1) the buyer and seller sign an agreement separate from the motor vehicle installment contract on an 8 1/2 x 11 inch sheet of paper that clearly and conspicuously informs the buyer that final financing arrangements have not yet been approved and that clearly sets out the amount that will be financed, the annual percentage rate of the finance charge, the amount of the finance charge, the number and frequency of payments, and the amount of each payment:

(2) the separate agreement clearly and conspicuously informs the buyer that accepting delivery of the vehicle before final financing approval obligates the buyer to terms of the motor vehicle sales contract if the terms on the separate agreement are identical to the terms finally approved by the financing entity; and

(3) the separate agreement provides that the separate agreement, the motor vehicle sales contract, and any and all other conditions of the purchase will be void if any of the terms contained in the separate agreement are changed by either the motor vehicle dealer or the financing institution as a condition of sale or final financing approval.

(d) If a buyer's final financing is not approved and, as a result, the transaction is not completed, the motor vehicle dealer shall return the buyer's entire down payment, and the buyer's trade-in, if any, shall be returned to the buyer in the same condition and with not more than 100 miles accumulated on the odometer from when the motor vehicle was delivered to the motor vehicle dealer.

(e) In this section, "sales contract" includes an installment sales contract, a short-term sales contract, and a single-payment contract.

Sec. 45.25.620. Service contracts.

(a) A motor vehicle service contract must be in writing and contain all essential provisions regarding the administration of the contract. If a motor vehicle dealer presents a service contract to the customer as an "application" for a contract, it must be clearly and conspicuously marked as an application and must disclose the applicable rules for obtaining a final service contract.

(b) If a service contract is included in a motor vehicle sale, the seller shall, before delivery of the motor vehicle, give to the buyer a written statement with all pertinent blank spaces filled in that shall be signed by both the buyer and seller and that clearly and conspicuously

(1) explains the difference between a service contract and a warranty;

(2) discloses the maker of or obligor on the service contract;

(3) describes the relationship between the maker and the seller of the service contract;

(4) for a vehicle that is a used vehicle, notifies the buyer that the seller may not disclaim implied warranties if the seller is the maker or obligor of the service contract; and

(5) includes all other disclosures required by law.

(c) A motor vehicle dealer may not disclaim or limit implied warranties for a motor vehicle for which the motor vehicle dealer is a maker of a service contract sold for that motor vehicle. However, a motor vehicle dealer may disclaim or limit implied warranties as otherwise allowed by law, regardless of the make or model of the motor vehicle, if the motor vehicle dealer is merely the seller, not the maker, of the service contract and does not otherwise extend any written warranties on the motor vehicle that is purchased.

(d) In this section, "maker" means the person that makes, frames, and executes a service contract and assumes any obligation due to the buyer, but does not include a motor vehicle dealer who merely sells the service contract as the agent of a service contract company doing business in this state.

Sec. 45.25.630. Discharged amounts in motor vehicle leases.

(a) Notwithstanding another provision of law to the contrary, if the amount to be paid by a lessee under a motor vehicle lease includes a discharged amount, the inclusion of the discharged amount in the amount to be paid under the lease is not a loan of the discharged amount and is not subject to any law that regulates the disclosure of interest, the charging of interest, the amount of interest rates, or the lending of money.

(b) In this section, "discharged amount" means the amount, if any, that the lessor agrees to pay to discharge an outstanding obligation of the lessee under an existing motor vehicle agreement, loan, installment sales contract, or lease.

Article 06. GENERAL PROVISIONS

Sec. 45.25.900. Conflict with other law.

If a provision of this chapter conflicts with another provision of this title, this chapter controls.

Sec. 45.25.910. Remedial purpose.

The provisions of this chapter are remedial.

Sec. 45.25.990. Definitions.

In this chapter,

(1) "dealer" means a new motor vehicle dealer or used motor vehicle dealer;

(2) "dealership" means the business entity that is operated by a motor vehicle dealer;

(3) "distributor" means a person or entity who sells or distributes new or used motor vehicles to motor vehicle dealers or who maintains or sends distributor representatives within or to this state to sell or distribute new or used motor vehicles to motor vehicle dealers in this state; in this paragraph, "distributor representative" means a representative employed by a distributor branch, distributor, or wholesaler who sells or distributes new or used motor vehicles to franchised motor vehicle dealers in this state;

(4) "distributor branch" means a branch office maintained by a distributor or wholesaler who sells or distributes new or used motor vehicles to franchised motor vehicle dealers in this state;

(5) "franchise" means a written arrangement for a definite or indefinite period in which a manufacturer, distributor, or motor vehicle wholesaler grants to a motor vehicle dealer a license, sales and service agreement, or contract of any kind to use a trade name, service mark, or related characteristic, and in which there is a community of interest in the wholesale or retail marketing of related motor vehicles or services;

(6) "franchised" means having a franchise;

(7) "fraud" includes a promise or representation not made honestly or in good faith, and an intentional failure to disclose a material fact;

(8) "good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade;

(9) "lease," except in AS 45.25.150, means a contract by which a person owning a motor vehicle grants to another person the right to possess, use, and enjoy the motor vehicle for a specified period of time in exchange for periodic payment of a stipulated price and in which the use of the vehicle is granted for a period of 12 or more months;

(10) "manufacturer" means a person or the person's subsidiary who manufactures, imports, distributes, or assembles new motor vehicles and includes an administrator, a distributor, a distributor branch, and a factory branch; in this paragraph, "factory branch" means a branch office maintained by a manufacturer for directing and supervising the representatives of the manufacturer;

(11) "manufacturer representative" means any employee or agent of a manufacturer who engages in the business of contacting a manufacturer's respective franchised dealers for the purpose of making or promoting the sale of the manufacturer's vehicles, parts, accessories, or services;

(12) "motor vehicle" means a motor vehicle that is required to be registered under AS 28.10, but does not include a motor home, a recreational vehicle, or a motorcycle;

(13) "motor vehicle dealer" has the meaning given in AS 08 66.350, except that, in this paragraph, notwithstanding the definition of "motor vehicle" given in AS 08.66.350, "motor vehicle" has the meaning given in this section;

(14) "motor vehicle salesperson" means a person who is employed by a motor vehicle dealer as a salesperson or sales representative to solicit, sell, lease, or exchange motor vehicles under the direction of a motor vehicle dealer;

(15) "new motor vehicle" means a motor vehicle that has not been previously sold to and registered to a person except a distributor, wholesaler, or motor vehicle dealer for resale;

(16) "new motor vehicle dealer" means a motor vehicle dealer for new motor vehicles or for new and used motor vehicles;

(17) "sale" means the issuance, transfer, agreement for transfer, exchange, gift, pledge, hypothecation, or mortgage in any form, whether by transfer in trust or otherwise, of a motor vehicle, an interest in a motor vehicle, or a related franchise;

(18) "service contract" means an optional agreement that is separate from a contract for the sale of a motor vehicle and that covers certain repair or maintenance functions beyond coverage provided by a warranty;

(19) "terminate" includes nonrenewal or cancellation;

(20) "used motor vehicle" means a motor vehicle that has been previously sold to and registered to a person other than a distributor, wholesaler, or motor vehicle dealer;

(21) "used motor vehicle dealer" means a motor vehicle dealer for used motor vehicles.