

**SB**

**164**

**CS FOR SENATE BILL NO. 164(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATOR MCGUIRE**

**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 AS 45.25.465(c) is repealed.**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13 **the subject of a court action, including an appeal, based on AS 45.25.465(c), as repealed by**  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.

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3/10/08

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# ALASKA STATE LEGISLATURE

**Session**  
State Capitol Building, Room 125  
Juneau, Alaska 99801-1182  
Phone (907) 465-2995  
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716 West Fourth Avenue, Suite 430  
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**Chair**  
Senate State Affairs  
Administrative Regulation Review

**Member**  
Senate Judiciary Committee  
Senate Resources Committee

**SENATOR LESIL MCGUIRE**

## MEMORANDUM

**To:** Senator Hollis French  
Chair, Senate Judiciary Committee

**From:** Senator Lesil McGuire

**Date:** February 14, 2008

**Re:** Request for hearing, SB 164 – *Used Motor Vehicle Sales*

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I respectfully request that SB 164 – *Used Motor Vehicle Sales* be scheduled for a hearing at your earliest convenience. Attached you will find the most current version of the resolution, the sponsor statement, and background information.

If you have any questions or concerns please feel free to contact me personally, or my staff, Trevor Fulton at x3579. Thank you for your time and consideration.

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**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.

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.

STATE OF ALASKA

**SARAH PALIN, GOVERNOR**

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

1031 WEST 4<sup>TH</sup> AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-5903  
PHONE (907)269-5100  
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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.

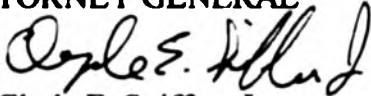
The second approach, and the one adopted by SB 164, is to simply repeal this section. This makes sense for several reasons. First, the disclosure concerning the applicability of the manufacturer's warranty has been addressed by most manufacturers. We understand from the Automobile Dealer's Association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

## **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.**

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 financing fee (subject to state 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 fail 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

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 (Mfg. spec.)  
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.

## **AS 08.66.015 Sale of motor vehicle (Pre-2006)**

(a) A person who does business as a dealer in the state may not offer to sell or sell a motor vehicle as a new or current model motor vehicle unless the motor vehicle retains the manufacturer's certificate of origin.

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

(1) the dealer has a current sales and service agreement with the manufacturer and the agreement requires the dealer, upon demand of the motor vehicle buyer, to perform or arrange for, within a reasonable distance of the dealer's place of business in the state, the repair and replacement work required of the manufacturer under the warranty; or

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

## **AS 08.66.015 Sale of motor vehicle (Current Law)**

(a) A person who does business as a dealer in the state may not offer to sell or sell a motor vehicle as a new motor vehicle unless

(1) the motor vehicle retains the manufacturer's certificate of origin; and

(2) the dealer has a current sales and service agreement with the manufacturer of the motor vehicle for sales in this state.