

**SEB**

**164**

# ALASKA STATE LEGISLATURE

**Session**  
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**Interim**  
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**Chair**  
Senate State Affairs  
Administrative Regulation Review

**Member**  
Senate Judiciary Committee  
Senate Resources Committee

**SENATOR LESIL MCGUIRE**

## MEMORANDUM

**To:** Senator Albert Kookesh  
Chair, Senate Transportation Committee

**From:** Senator Lesil McGuire 

**Date:** January 31, 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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## SPONSOR STATEMENT

### SB 164 – Used Motor Vehicle Sales

SB 164 addresses unintended consequences brought about by a recent update to state statutes that govern used motor vehicle sales.

Subsection (c) of AS 45.25.465 requires that all used vehicles for sale by a dealer be stickered with a notice that the vehicle:

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

All three of these conditions are unnecessary or redundant 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 manufactures warranty
- (3) the Canadian vehicle problem was corrected by the market and is no longer an issue.

While subsection (c) was enrolled with good intentions, it has unfortunately opened the door for baseless and costly class action law suits. Not displaying the sticker is considered an unfair trade practice and thus allows for law suits that demand treble damages and reimbursement of full legal costs, even though consumers have not suffered any actual harm or damages. Furthermore, there is a two year look-back on unfair trade practices, which gives attorneys two years to solicit enough car buyers to eventually justify a class action suite.

Two class action suits of this nature are progressing in the state at this time. Dealerships are still predominantly family owned small businesses and this sort of frivolous litigation could well bankrupt many of them.

By removing unnecessary and harmful language that is of no benefit to dealers, consumers, or the state, SB 164 closes a legal loop-hole that currently allows for ill-founded and potentially very damaging class action suits.

**SENATE BILL NO. 164**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY SENATOR MCGUIRE**

**Introduced: 4/27/07**

**Referred: Transportation, Judiciary**

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

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

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

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

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

**Revisions To AS.45.25.465  
Prepared By Alaska Auto Dealer Association  
Jon Cook, Legislative Director**

The Alaska Auto Dealers Association, with the full support of the State of Alaska Department of Law, is proposing the attached revisions to AS.45.25.465. Our revisions 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.

At the time the original legislation was drafted, there was a flood of new vehicles manufactured for sale in Canada which were being refitted with US odometer clusters and being sold in Alaska for several thousands of dollars less than identical new vehicles on dealer lots. These "gray market" vehicles were a source of contention for new car dealers nationwide and certainly in the state of Alaska. The Alaska Attorney General's office was also concerned, because some consumers apparently purchased these "grey market" vehicles not understanding that the vehicles were "used." These customers later learned that, in some instances, the vehicles were not covered under manufacture warranties. Since the vehicles were used, they were also not subject to the protections provided consumers under Alaska's "Lemon Law."

Subsection C was specifically adopted to deal only with Canadian vehicles, even though the statute refers to "used" vehicles. Canadian cars were not specifically mentioned because to do so could have raised issues under laws governing international trade.

Subsection (C) requires a separate sticker be posted on **all** used vehicles. This sticker is unnecessary and redundant. Subsection (C)(1) requires that dealers inform the consumer that the vehicle is not subject to Alaska's "Lemon Law." Since Alaska's "Lemon Law" only applies to new vehicles, this requirement is unnecessary. Subsection (C)(2) requires that the dealer advise a customer that a vehicle is not subject to a manufacturer's warranty. The presumption is that most used vehicles are not subject to a warranty, since most used vehicles are sold "as is." The disclosure is only necessary in connection with the sale of "grey market" vehicles, which appear to be new and which apparently caused consumers to erroneously assume the vehicle is covered by a manufacturer's warranty. 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. Finally, subsection (C)(3) requires dealerships to disclose whether the used vehicle was originally manufactured for sale in Canada or another foreign country. The "Canadian" vehicle problem was short term in nature and the market took care of the price imbalance anomaly. I have not seen a Canadian vehicle influx in well over three years.

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. We appreciate your support of these amendments.

Sincerely,

Jon Cook  
Alaska Auto Dealers Association  
Legislative Director

## **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.

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