

**HB**

**136**

<TARGET><BILL>HB 136</BILL><SUBJECT>HB  
136</SUBJECT><COMM>HL&C30</COMM></TARGET>



# Alaska State Legislature

## Representative Matt Claman

Session: State Capitol, Rm 405 Juneau, AK 99801 Phone: 465-4919  
Interim: 716 W. 4<sup>th</sup> Ave, Rm 312 Anch, AK 99501 Phone: 269-0130

To: Representative Sam Kito, Chair  
House Labor and Commerce Committee

From: Representative Matt Claman  
HB 136 Prime Sponsor

A handwritten signature in blue ink, appearing to read "Matt Claman".

Subject: Hearing Request for HB 136

Date: March 29, 2017

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I respectfully request that you calendar the House Transportation committee substitute for HB 136 for a hearing in the House Labor and Commerce Committee. You have received a copy of the most recent version of the bill, the sponsor statement, the sectional analysis, and additional supporting material.

The bill updates Alaska statutes dealing with franchise agreements between Alaska's auto dealers and outside automobile manufacturers. HB 136 brings the auto dealer franchise agreements in line with existing law in other states with particular focus on franchise termination, succession and warranty work.

The staff assigned to this bill is Sara Perman who can be reached at 465-6597. Please do not hesitate to contact my office if we can provide any additional information.



# Alaska State Legislature

## Representative Matt Claman

Session: State Capitol, Rm 118 Juneau, AK 99801 Phone: 465-4919  
Interim: 1500 W. Benson Blvd., Anch, AK 99503 Phone: 269-0130

### Work Draft for Committee Substitute to House Bill 136 Version R

*“An Act relating to motor vehicle franchises, motor vehicle dealers, motor vehicle manufacturers, and motor vehicle distributors.”*

#### Sponsor Statement

House Bill 136 updates Alaska statutes dealing with franchise agreements between Alaska’s auto-dealers and the automobile manufacturers and distributors. The need for a change in franchise agreements became apparent after the 2008 market crash when General Motors and Chrysler terminated roughly 2,000 dealerships. As of 2016, Alaska dealerships directly or indirectly employed 6,876 people. In the same year, car sales accounted for 14.1% of total retail sales in Alaska. House Bill 136 recognizes the contributions of auto-dealers and manufacturers to Alaska’s economy and updates Alaska statute to update protections for both.

The work draft – CS HB 136 Version R - is a product of extensive negotiations between the Alaska Automobile Dealers Association and the Alliance of Automobile Manufacturers. Both groups have worked together to find solutions that protect the consumer, protect the investments of Alaska’s auto-dealers, and maintain the brands of the manufacturers.

House Bill 136 updates statutes relating to warranty repair work, requiring a manufacture to pay for warranty work at a competitive rate that is consistent with the retail rate for non-warranty work. It also outlines the requirements for warranty repairs for consumers who are 100 miles or more away from a dealership. The bill expands upon dealership terminations. It sets out good cause for terminations and sets out the manufacturers and auto-dealers’ financial responsibilities during terminations. The bill also updates the provisions and terms for transferring or selling a dealership. Manufactures may not unreasonably prevent the transfer of a dealership to someone who meets their standards. Manufacturers may use the right of first refusal except in circumstances involving the transfer of a dealership to family members or managing employees owning more than 15% of the dealership. Lastly, the bill defines certain unfair practices.

House Bill 136 brings the auto dealer franchise agreements in-line with similar laws in other states. It is the intent that with this legislation, we may provide support for an industry that services and employs thousands of Alaskans.



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*“An Act relating to motor vehicle franchises, motor vehicle dealers, motor vehicle manufacturers, and motor vehicle distributors.”*

#### Sectional Summary

##### **Section 1**

*Adds legislative intent language to uncodified law:*

It is in the public interest to protect have warranty service for new motor vehicles and maintain fair competition among auto manufacturers and auto dealers.

##### **Section 2**

*Amends AS 45.25.010:*

Applicability: AS 45.25.020 -045.25.310 apply to franchise agreements between manufacturers and Alaska auto dealers.

##### **Section 3**

*Amends AS 45.25.110(a):*

Manufacturers may not terminate an auto dealer unless they have complied with notice requirements and shown good cause for termination. Auto dealers have up to 120 days to correct areas out of compliance with the franchise agreement. The manufacturer may terminate a franchise if the dealer has systemically engaged in fraud.

##### **Section 4**

*Adds new subsection to AS 45.25.110:*

Good cause to terminate a franchise does not include the failure of an auto dealer to meet sales or service goals due to factors beyond the control of the dealer including market conditions or insufficient supply of new motor vehicles.

##### **Section 5**

*Amends AS 45.25.140(a):*

Updates and amends the manufacturers repurchase requirements upon termination of a franchise agreement. The manufacturer must repurchase current year models of new motor vehicles, certain new motor vehicle models from the prior year, parts, trademark signs and equipment, special tools, computer, printers, and electronic hardware.

##### **Section 6**

*Amends AS 45.25.150(b)*

If a franchise termination occurs, auto dealers have an obligation to mitigate damages under a lease and mitigate the costs of facility relocations, alterations or remodels.

#### **Section 7**

*Adds new subsection to AS 45.25.150:*

If a franchise termination occurs, manufacturers must pay the costs of relocation, alteration or remodeling of an auto dealers facilities if they were required by the manufacturer and were completed within three years of termination.

#### **Section 8**

*Repeals and reenacts AS 45.25.160:*

This section establishes a procedure for the proposed transfer of a dealership.

- Manufacturers may not prevent the sale of a franchise to a potential buyer who is capable of being licensed as an auto dealer and who meets the manufacturers' standards.
- Upon receipt of the notice to transfer the franchise, manufacturers have 30 days to request supplemental information after which the manufacturer has 75 days to give notice of rejection of the transfer.
- The manufacturer has the right of first refusal to a transfer with limitations. The manufacturer has the same notice requirements for the right of first refusal as they have for rejecting the transfer outright. A manufacturer may not exercise the right of first refusal if the transfer of the franchise is to a family member or a managerial employee owning 15% or more of the dealership. If a manufacturer exercises the right of first refusal, then the manufacturer must provide the auto dealer with the same compensation as offered by the proposed buyer. The manufacturers must also pay the legal fees incurred for the preparation of the void transfer agreement.

#### **Section 9**

*Amends AS 45.25.180(d)*

Expands the factors that the superior court must consider in a lawsuit addressing whether good cause exists to establish or relocate a dealership.

#### **Section 10**

*Adds new subsection to AS 45.25.180*

Establishes the burden of proof in a franchise lawsuit. A manufacturer has the burden of proof to establish good cause for establishing or relocating a dealership that the manufacturer has proposed. An auto dealer must establish good cause for any establishment or relocation that the auto dealer proposes.

#### **Section 11**

*Amends AS 45.25.190*

This section updates the statutory references in the arbitration section.

#### **Section 12**

*Adds new sections to article 2 of AS 45.25*

This section addresses warranty work and pay rates for warranty work:

**Sec 45.25.200:** A manufacturer must pay an auto dealer for all warranty work if the auto dealer provides documentation of the need for the repairs. The auto dealer must submit the claim within 90 days of the completed warranty work, and a manufacturer must approve the claim within 30 days of receipt. If the manufacturer rejects the claim they

must provide notice of their reasons to the auto dealers, who may correct the issues within 30 days of receipt of the rejection. A manufacturer may conduct an audit of warranty repairs performed, which must be done within a year of the claim. Only one audit can be performed per year.

**Sec 45.25.210:** A manufacturer must provide auto dealers with a schedule of compensation for warranty work. The rates may not be less than the rates that the auto dealer charges customers for similar retail work. To establish this warranty rate, auto dealers shall submit 100 sequentially ordered claims. Rates for special events and manufacturer specials are not considered in this calculation.

**Sec 45.25.220:** If a vehicle needs warranty repairs and is located in a remote location, the manufacturer shall make reasonable efforts to repair the vehicle in the remote location. If the repairs cannot be made on site, the manufacturer may arrange, at no cost to the owner, to ship the vehicle to a location where repairs can be completed. The manufacturer is responsible for returning the repaired vehicle to the remote location. The manufacturer may direct auto dealers to refer customers in remote locations to the manufacturer. Auto dealers may subcontract warranty work in a remote location. 'Remote location' refers to a location that is not accessible by road or is 100 road miles or more from an auto dealer.

**Sec 45.25.230:** Manufacturers shall provide auto dealers with specific instructions for the preparation of new vehicles before delivery to buyers, compensation for the preparation, and the amount of time allowed for preparation.

### **Section 13**

*Repeals and reenacts AS 45.25.300*

Regarding unfair practices, manufacturers may not:

- Require or coerce auto dealers to relocate or remodel their facilities if the changes are unreasonable.
- Require auto dealers to purchase a set number of certified pre-owned vehicles or lease return vehicles
- Refuse to deliver for sale a line or make of vehicles that manufacturer makes.
- Require auto dealers to purchase unreasonable advertising displays or an unreasonable number of signs.
- Require auto dealers to accept vehicles, parts, accessories or equipment they did not voluntarily order.
- Increase the price of a vehicle ordered by the auto dealer between the time of order and the time of payment.
- Require or coerce auto dealers to join an advertising association or contribute to an advertising campaign.

### **Section 14**

*Repeals and reenacts AS 45.25.990(19)*

Defines "terminate" for this chapter.

### **Section 15**

*Adds new paragraph to AS 45.25.990*

Defines 'schedule of compensation' and "warranty work" for this chapter.

### **Section 16**

*Repeals AS 45.25.320*

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**CS FOR HOUSE BILL NO. 136( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**THIRTIETH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES CLAMAN, Reinbold**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to motor vehicle franchises, motor vehicle dealers, motor vehicle**  
2 **manufacturers, and motor vehicle distributors."**

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

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

- 6 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that
- 7 (1) the distribution and sale of motor vehicles in the state affects the general
  - 8 economy of the state and the interests and welfare of the residents of the state;
  - 9 (2) providing warranty service for new motor vehicles is a matter of
  - 10 substantial concern to the residents of the state;
  - 11 (3) the maintenance of fair competition among new motor vehicle dealers is in
  - 12 the public interest;
  - 13 (4) maintaining strong and sound new motor vehicle dealerships in the state is
  - 14 essential to providing the consuming public with continuing and reliable services necessary

1 for their motor vehicles; and

2 (5) strong and sound new motor vehicle dealerships with active service  
3 departments will provide stable employment opportunities to the residents of the state.

4 (b) The legislature declares that this Act is remedial, and, to the extent permitted by  
5 the Constitution of the State of Alaska and the United States Constitution, it is the intent of  
6 the legislature that the provisions of this Act apply to all franchise agreements between  
7 manufacturers and new motor vehicle dealers.

8 \* **Sec. 2.** AS 45.25.010 is amended to read:

9 **Sec. 45.25.010. Applicability.** AS 45.25.020 - 45.25.310 [AS 45.25.020 -  
10 45.25.320] apply to franchise **agreements** [CONTRACTS] between a manufacturer  
11 and its new motor vehicle dealers in this state.

12 \* **Sec. 3.** AS 45.25.110(a) is amended to read:

13 (a) A manufacturer may not terminate a franchise **agreement** with a new  
14 motor vehicle dealer unless

15 (1) the manufacturer has

16 (A) **complied with** [SATISFIED] the notice requirements of  
17 this chapter; **and**

18 (B) shown that there is good cause for the termination of the  
19 franchise **agreement**, and, if the reasons underlying the good cause can be  
20 corrected by the new motor vehicle dealer, the new motor vehicle dealer has  
21 failed for **120** [60] days after delivery of the notice required by AS 45.25.120  
22 to make the corrections; the circumstances identified under AS 45.25.120(a)(2)  
23 for which a 15-day notice of termination is required do not qualify as reasons  
24 for which correction is allowed under this **subparagraph** [PARAGRAPH]; or

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

28 \* **Sec. 4.** AS 45.25.110 is amended by adding a new subsection to read:

29 (d) A failure of a new motor vehicle dealer under (a) of this section that relates  
30 to the performance of the new motor vehicle dealer in sales, service, or level of  
31 customer satisfaction does not amount to good cause under this section if the new

1 motor vehicle dealer failed to comply and the failure to comply was caused by

2 (1) an insufficient supply of new motor vehicles; or

3 (2) market, economic, or other factors that exist within the new motor  
4 vehicle dealer's relevant market area and that were beyond the control of the new  
5 motor vehicle dealer.

6 \* **Sec. 5.** AS 45.25.140(a) is amended to read:

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

10 (1) the new motor vehicle dealer's net acquisition cost, if the motor  
11 vehicles have not been materially altered or damaged, all inventory consisting of  
12 unsold new motor vehicles that are current models;

13 **(2) the new motor vehicle dealer's net acquisition cost, new motor**  
14 **vehicle** [AND] models **from the previous year** that have been acquired from the  
15 manufacturer within the past two [MODEL] years before receipt of the notice of  
16 termination, **but an adjustment based on mileage over 500 miles may be made;**

17 **(3)** [(2)] the new motor vehicle dealer price listed in the current  
18 **manufacturer's** parts catalog, less applicable allowances, new unused undamaged  
19 parts in their original, unbroken packaging [, LISTED IN THE CURRENT PRICE  
20 CATALOG] and acquired from the manufacturer or distributor;

21 **(4)** [(3)] fair market value, signs, equipment, and furnishings that bear  
22 **the manufacturer's** [A] trademark or trade name, that have not been altered or  
23 damaged, and that were required by the manufacturer or distributor within five years  
24 preceding the notice of termination;

25 **(5)** [AND (4)] the new motor vehicle dealer's net acquisition cost,  
26 special tools that have not been altered or materially damaged **and** that were  
27 purchased from the manufacturer or distributor within three years preceding the date  
28 of the termination; **and**

29 **(6) the lesser of the fair market value or the depreciated value, all**  
30 **manufacturer required computers, printers, and other electronic hardware, and**  
31 **electronic software, except, if the new motor vehicle dealer leases the computers,**

1 **printers, or other electronic hardware, or electronic software, the manufacturer**  
2 **shall pay the new motor vehicle dealer the amount of money that is required for**  
3 **the new motor vehicle dealer to terminate the lease under the lease agreement.**

4 \* **Sec. 6.** AS 45.25.150(b) is amended to read:

5 (b) This section does not relieve a new motor vehicle dealer of the obligation  
6 to mitigate

7 (1) damages under a lease, prevent a manufacturer from occupying and  
8 using the new motor vehicle dealer's facilities while paying rent, or preclude a  
9 manufacturer from negotiating a lease termination, sublease, or new lease; **or**

10 (2) **the costs of the relocation, substantial alteration, and**  
11 **remodeling of the new motor vehicle dealer's facilities for which payments are**  
12 **required under (f) of this section.**

13 \* **Sec. 7.** AS 45.25.150 is amended by adding a new subsection to read:

14 (f) In addition to the payment required under AS 45.25.140 and (a) of this  
15 section, upon termination of a franchise agreement by the manufacturer under this  
16 chapter, the manufacturer shall, at the request and option of the new motor vehicle  
17 dealer, pay the new motor vehicle dealer the new motor vehicle dealer's cost for a  
18 relocation, substantial alteration, or remodeling of the new motor vehicle dealer's  
19 facilities to the extent used for the manufacturer's franchise, if

20 (1) the manufacturer required the relocation, substantial alteration, or  
21 remodeling of the new motor vehicle dealer's facilities for a continuation or renewal of  
22 the franchise agreement; and

23 (2) the relocation, substantial alteration, or remodeling of the new  
24 motor vehicle dealer's facilities was completed within three years before the  
25 termination or is in process when the new motor vehicle dealer receives the notice of  
26 termination.

27 \* **Sec. 8.** AS 45.25.160 is repealed and reenacted to read:

28 **Sec. 45.25.160. Prevention of or refusal to honor transfer of new motor**  
29 **vehicle dealership ownership.** (a) A manufacturer may not unreasonably prevent or  
30 refuse to honor the transfer of ownership of a new motor vehicle dealership to a buyer  
31 who is capable of being licensed as a new motor vehicle dealer in this state and who

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meets the standards established by the manufacturer, if the standards are reasonable and applied uniformly.

(b) Within 30 days after receipt of a written request from a new motor vehicle dealer for transfer of the ownership of a new motor vehicle dealership, a manufacturer may request, and the new motor vehicle dealer shall promptly provide, supplementary information that is reasonably necessary for the manufacturer to determine whether the manufacturer will approve the request for the transfer. If a manufacturer refuses to approve the transfer, the manufacturer shall give written notice to the new motor vehicle dealer of the refusal. The manufacturer shall give the notice to the new motor vehicle dealer within 75 days after the date the manufacturer has received both the written transfer request and supplementary information requested under this subsection. The notice must state the specific grounds for the refusal to approve the transfer. The manufacturer shall give the notice under this subsection by personal service or certified mail with return receipt requested. If the manufacturer does not give the notice within the time allowed under this subsection and does not exercise a right of first refusal under (c) of this section, the request shall be considered approved.

(c) A manufacturer or distributor may exercise a contractual right of first refusal with respect to the proposed sale or other transfer of the interest of the dealer in a new motor vehicle dealership if

(1) the sale or other transfer is to a person who is not a family member of an owner of the dealership, a managerial employee of the dealership owning 15 percent or more of the dealership, or a corporation, partnership, or other legal entity owned by the existing owners of the dealership; in this paragraph, "family member" means

- (A) the spouse of an owner of the dealership;
- (B) the child, stepchild, grandchild, brother, sister, or parent of an owner of the dealership; or
- (C) a spouse of a person identified in (B) of this paragraph;

(2) the manufacturer or distributor notifies the new motor vehicle dealer in writing of the intent to exercise the right of first refusal; within 30 days after receipt of a written request from a new motor vehicle dealer for transfer of the

1 ownership of a new motor vehicle dealership, a manufacturer or distributor may  
2 request, and the new motor vehicle dealer shall promptly provide, related information  
3 generally used by a manufacturer or distributor to conduct its review of a proposed  
4 intent to exercise the right of first refusal and supplementary information that is  
5 reasonably necessary for the manufacturer or distributor to determine whether the  
6 manufacturer or distributor will exercise the right of first refusal; if the manufacturer  
7 or distributor decides to exercise the right of first refusal, the manufacturer or  
8 distributor shall give written notice to the new motor vehicle dealer of the decision  
9 within 75 days after receiving the completed transfer request, related information, and  
10 requested supplementary information; the manufacturer or distributor shall give the  
11 notice under this subsection by personal service or certified mail with return receipt  
12 requested; if the manufacturer or distributor fails to notify the dealer within the 75-day  
13 period that the manufacturer or distributor will exercise the right of first refusal, the  
14 manufacturer or distributor may not exercise the right of first refusal;

15 (3) the exercise of the right of first refusal provides to the new motor  
16 vehicle dealer the same compensation as, or greater compensation than, the new motor  
17 vehicle dealer had negotiated to receive from the proposed buyer or other transferee;  
18 and

19 (4) the manufacturer or distributor agrees to pay the reasonable  
20 expenses, including reasonable attorney and accountant fees that do not exceed the  
21 usual, customary, and reasonable fees charged for similar work done in the state for  
22 other clients, incurred before the manufacturer or distributor exercised its right of first  
23 refusal by the proposed buyer or transferee to negotiate and implement the terms of  
24 the contract for the sale or transfer.

25 \* **Sec. 9.** AS 45.25.180(d) is amended to read:

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

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

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(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;

**(6) whether the manufacturer has denied the manufacturer's existing new motor vehicle dealer of the same line make the opportunity for reasonable growth, market expansion, or relocation; and**

**(7) whether the proposed relocation is farther away from the protesting new motor vehicle dealer.**

\* **Sec. 10.** AS 45.25.180 is amended by adding a new subsection to read:

(f) Under this section, a manufacturer has the burden of proving that good cause exists for permitting the proposed establishment or relocation of a new motor vehicle dealer that the manufacturer has proposed, and the new motor vehicle dealer has the burden of proving that good cause exists for permitting the proposed establishment or relocation of a new motor vehicle dealer that the new motor vehicle dealer has proposed.

\* **Sec. 11.** AS 45.25.190 is amended to read:

**Sec. 45.25.190. Arbitration.** In a controversy between a manufacturer and a new motor vehicle dealer under **AS 45.25.010 - 45.25.310** [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 - 45.25.310** [AS 45.25.010 -

1 45.25.320] to arbitration, the arbitration shall be conducted under AS 09.43.010 -  
 2 09.43.180 (Uniform Arbitration Act) or AS 09.43.300 - 09.43.595 (Revised Uniform  
 3 Arbitration Act), as applicable, the manufacturer and the new motor vehicle dealer  
 4 shall each select one arbitrator, and both the manufacturer and the new motor vehicle  
 5 dealer shall select the third arbitrator.

6 \* **Sec. 12.** AS 45.25 is amended by adding new sections to article 2 to read:

7 **Sec. 45.25.200. Payment and approval of claims.** (a) A manufacturer shall  
 8 pay a new motor vehicle dealer for all warranty work. The manufacturer may not deny  
 9 a claim for warranty work to resolve a condition discovered and properly repaired by  
 10 the dealer during the course of a separate repair, if the dealer provides the required  
 11 documentation demonstrating the need for the repair. A manufacturer shall pay the  
 12 new motor vehicle dealer for the approved warranty repairs in accordance with the  
 13 schedule of compensation that applies to the repairs when the new motor vehicle  
 14 dealer makes the repairs.

15 (b) A new motor vehicle dealer shall submit a claim for warranty work to the  
 16 manufacturer within 90 days after the new motor vehicle dealer completes the work on  
 17 the new motor vehicle. The new motor vehicle dealer shall submit the claim in the  
 18 manner that the manufacturer requires.

19 (c) Within 30 days after the manufacturer receives a claim from a new motor  
 20 vehicle dealer under (b) of this section, the manufacturer shall approve or disapprove  
 21 the claim in writing or electronically. If a manufacturer does not disapprove a claim as  
 22 required by this subsection, the claim is considered approved. The manufacturer shall  
 23 pay the claim within 30 days after the approval of the claim.

24 (d) If a manufacturer disapproves a claim that the new motor vehicle dealer  
 25 submits under (b) of this section, a manufacturer shall notify the new motor vehicle  
 26 dealer in writing or electronically and shall state the reasons for disapproving the  
 27 claim. A new motor vehicle dealer may correct and resubmit the claim within 30 days  
 28 after the new motor vehicle dealer receives the written or electronic notice that the  
 29 manufacturer disapproved the claim.

30 (e) A manufacturer may not initiate or conduct an audit to determine the  
 31 validity of paid claims for new motor vehicle dealer warranty work unless the

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manufacturer initiates the audit within one year after the payment of the claim. The manufacturer may not perform more than one audit in a calendar year to determine the validity of paid claims for new motor vehicle dealer warranty work.

(f) A manufacturer may not initiate or conduct an audit to determine the validity of paid incentive claims unless the manufacturer initiates the audit within one year after the payment of the claim or the conclusion of the incentive program, whichever event occurs later. The manufacturer may not perform more than one audit in a calendar year to determine the validity of paid incentive claims.

(g) Notwithstanding the limitations under (e) and (f) of this section, if a manufacturer reasonably suspects fraud, the manufacturer may audit a dealer for fraudulent claims during any period in which an action for fraud may be commenced under applicable state law.

**Sec. 45.25.210. Rates for warranty and other work.** (a) A manufacturer shall provide each of its new motor vehicle dealers with the schedule of compensation that the manufacturer shall pay to the new motor vehicle dealer for warranty work that the manufacturer requires the new motor vehicle dealer to perform for the manufacturer's products.

(b) The schedule of compensation must include compensation for parts and labor and must comply with this section. The compensation for parts must include the average retail percentage markup that the new motor vehicle dealer charges.

(c) Unless otherwise agreed to by the manufacturer and the new motor vehicle dealer, the rates in the schedule of compensation may not be less than the rates that the new motor vehicle dealer charges retail customers for similar nonwarranty service work.

(d) To establish the retail percentage markup, the new motor vehicle dealer shall submit to the manufacturer 100 sequential chronologically issued retail service repair orders paid by customers for warranty-like repairs, or 90 consecutive days of retail service repair orders paid by customers for warranty-like repairs, whichever number of retail service repair orders is less. The retail service repair orders that the new motor vehicle dealer submits must cover retail repairs that the new motor vehicle dealer made less than 180 days before the new motor vehicle dealer submits them to

1 the manufacturer.

2 (e) A manufacturer may not require a new motor vehicle dealer to establish  
3 the retail percentage markup by a method other than the method required by (d) of this  
4 section. When establishing the retail percentage markup, a manufacturer may not  
5 require the new motor vehicle dealer to provide information that is unduly  
6 burdensome or time consuming to provide, including part-by-part or transaction-by-  
7 transaction calculations.

8 (f) A manufacturer may not include in the calculation of the rates in the  
9 schedule of compensation

10 (1) repairs for manufacturer special events, manufacturer specials, or  
11 manufacturer promotional discounts;

12 (2) parts sold at wholesale;

13 (3) routine maintenance not covered under warranty, including the  
14 replacement of fluids, filters, and belts, unless the new motor vehicle dealer provides  
15 the routine maintenance in the course of making a repair;

16 (4) nuts, bolts, fasteners, and similar items that do not have an  
17 individual part number;

18 (5) tires, batteries, and light bulbs;

19 (6) vehicle reconditioning; and

20 (7) repair orders for motor vehicle body repairs if an insurer pays for  
21 the repairs.

22 (g) The retail percentage markup calculated under (d) of this section may not  
23 take effect more than 30 days after the manufacturer approves the dealer's proposed  
24 rate, or after the manufacturer is considered to have approved the dealer's proposed  
25 rate under this section. If a manufacturer does not disapprove the dealer's proposed  
26 rate within 30 days after the new motor vehicle dealer submits the rate application,  
27 then the dealer's proposed rate shall be considered approved.

28 (h) A manufacturer may disapprove a rate proposed by the new motor vehicle  
29 dealer under this section if the manufacturer demonstrates that the proposed rate is  
30 materially miscalculated or unreasonable compared to other similarly situated new  
31 motor vehicle dealers in this state.

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(i) A new motor vehicle dealer may not receive more than one rate increase under this section in a calendar year.

**Sec. 45.25.220. Performance and reimbursement of certain repairs.** (a)

Except as provided in (b) of this section, if a new motor vehicle needs repairs that are covered under a manufacturer's warranty, and if the new motor vehicle is located in a remote location, the manufacturer shall make reasonable efforts to arrange for the new motor vehicle to be repaired in the remote location.

(b) If a manufacturer determines that repairs cannot reasonably be made in a remote location within the manufacturer's guidelines, the manufacturer may arrange, at no cost to the owner of the new motor vehicle, to ship the new motor vehicle to a repair facility outside of the remote location and to return the new motor vehicle to the remote location after the repairs are completed.

(c) A manufacturer may direct a new motor vehicle dealer of the manufacturer to refer customers of the new motor vehicle dealer to the manufacturer if the new motor vehicles of the customers are located in remote locations and need repairs.

(d) This section does not prohibit a manufacturer from allowing a new motor vehicle dealer to subcontract warranty work for a specific new motor vehicle that is located in a remote location. If the manufacturer allows the new motor vehicle dealer to subcontract the warranty work, the manufacturer shall compensate the new motor vehicle dealer for the subcontracted warranty work paid for by the new motor vehicle dealer.

(e) In this section, "remote location" means a location that is not accessible by road or that is more than 100 road miles from a new motor vehicle dealer that is authorized to perform warranty work on new motor vehicles.

**Sec. 45.25.230. Preparation and service before delivery.** A manufacturer and a distributor shall provide in writing the following information to their new motor vehicle dealers about new motor vehicles and other products received from the manufacturer or distributor:

- (1) the specific obligations of the new motor vehicle dealer to prepare and service new motor vehicles and products before delivery of the new motor vehicles and products to buyers;

1 (2) the compensation that the manufacturer or distributor will pay the  
2 dealer for performing the preparation and service obligations described in (1) of this  
3 section; and

4 (3) the amount of time that the manufacturer or distributor will allow  
5 the new motor vehicle dealer for performing the preparation and service obligations  
6 described in (1) of this section.

7 \* **Sec. 13.** AS 45.25.300 is repealed and reenacted to read:

8 **Sec. 45.25.300. Unfair practices.** A manufacturer may not

9 (1) require, coerce, or attempt to coerce a new motor vehicle dealer to  
10 change the location of the new motor vehicle dealership or to make any substantial  
11 alterations to the new motor vehicle dealership premises or facilities if the alterations  
12 would be unreasonable or if there is not expected to be a sufficient supply of new  
13 motor vehicles to justify the change of location or the alterations because of market  
14 and economic conditions; this paragraph does not apply to alterations that are  
15 necessary to comply with health or safety laws; in this paragraph, "substantial  
16 alterations" does not include erecting signs subject to the manufacturer's intellectual  
17 property rights, doing interior painting that is necessary to keep a new motor vehicle  
18 dealer facility in an attractive condition, or performing routine maintenance;

19 (2) require a new motor vehicle dealer to purchase or include in  
20 inventory a predetermined number or percentage of certified pre-owned motor  
21 vehicles or lease return motor vehicles;

22 (3) except because of reasons beyond the manufacturer's control,  
23 refuse or fail to deliver or offer for sale in reasonable quantities to a new motor vehicle  
24 dealer holding a franchise for a line make of new motor vehicles sold or distributed by  
25 the manufacturer a new motor vehicle, part, or accessory, if the new motor vehicle,  
26 part, or accessory is being delivered to other new motor vehicle dealers; this paragraph  
27 does not apply to limited edition or limited release vehicle parts or accessories;

28 (4) require a new motor vehicle dealer to purchase unreasonable  
29 advertising displays or other materials or an unreasonable number of signs;

30 (5) require a new motor vehicle dealer to order or accept delivery of a  
31 new motor vehicle, part, accessory, piece of equipment, promotional material, display

1 device, display decoration, or other item that is not otherwise required by law and that  
2 the new motor vehicle dealer does not voluntarily order; this paragraph does not apply  
3 to safety and emissions recall campaign parts or to a motor vehicle feature, part,  
4 accessory, or other component required by federal law, the law of this state, or local  
5 law;

6 (6) coerce, attempt to coerce, or require a new motor vehicle dealer to

7 (A) join, contribute money to, or affiliate with an advertising  
8 association; or

9 (B) participate monetarily in an advertising campaign; or

10 (7) increase the price of a new motor vehicle that the new motor  
11 vehicle dealer has ordered from the manufacturer and for which there exists at the time  
12 of the order a bona fide sale to a retail or fleet purchaser if the dealer submitted the  
13 order to the manufacturer before the manufacturer provided the new motor vehicle  
14 dealer with an official written price increase notification.

15 \* **Sec. 14.** AS 45.25.990(19) is repealed and reenacted to read:

16 (19) "terminate" includes

17 (A) canceling or not renewing;

18 (B) a manufacturer discontinuing the sale and distribution of a  
19 new motor vehicle line make covered by a franchise;

20 \* **Sec. 15.** AS 45.25.990 is amended by adding new paragraphs to read:

21 (22) "schedule of compensation" means a schedule of compensation  
22 established under AS 45.25.210;

23 (23) "warranty work"

24 (A) means repairs that are covered under a manufacturer's  
25 warranty or a recall;

26 (B) means work that the manufacturer in good will directs be  
27 performed and reimbursed by the manufacturer but that is not covered by the  
28 manufacturer's warranty or a recall;

29 (C) does not mean work under a separate service contract.

30 \* **Sec. 16.** AS 45.25.320 is repealed.



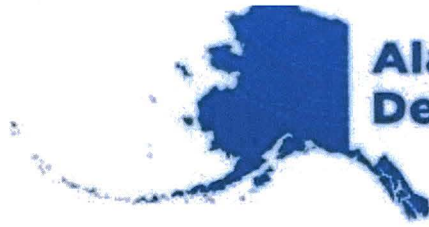
P.O. Box 201305  
Anchorage, Alaska  
99520-1305

## Update Alaska's of Auto Dealer Franchise Act – HB 136

HB 136 updates Alaska's Statutes dealing with franchise agreements between Alaska's auto dealers and outside auto manufacturers. The bill includes provisions dealing with manufacturer policies on warranty service, which will positively impact Alaska consumers and workers.

This legislation brings to Alaska much-needed updates that level the playing field by providing protections to Alaskan businesses and consumers. These protections exist in most other states, however Alaska is behind in updating its laws. Specifically it:

1. Addresses what constitutes good cause for termination or nonrenewal of franchise agreements by adopting good faith standards for the manufacturers, including reasonable performance goals and supplying inventory.
2. Updates notice requirements in cases of termination or nonrenewal of franchise agreements and sets procedures for returning inventory to the manufacturer, including vehicles, parts, and signage previously required by the manufacturer.
3. Establishes procedures determining fair compensation to dealers for warranty work, governing manufacturer audits, and allowing dealers to provide warranty work for consumers over 100 miles from the dealer or not accessible by road.
4. Establishes procedures governing succession planning for dealerships.
5. Provides terms appropriate for rural states rather than large urban centers governing the establishment of new and relocated dealerships.
6. Addresses the sale, transfer or exchange of franchises.



## Alaska Automobile Dealers Association

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99520-1305

Affordable Used Cars, Anchorage	Kendall Porsche, Anchorage
Alaska Sales and Service – Anchorage, Chevrolet	Kendall Toyota, Anchorage
Alaska Sales and Service – Anchorage, Cadillac	Kendall Volkswagen, Anchorage
Alaska Sales and Service – Anchorage Buick	Lithia BMW of Anchorage
Alaska Sales and Service – Anchorage GMC	Lithia Chrysler, Anchorage
Alaska Sales and Service – Valley Buick	Lithia Dodge, Anchorage
Alaska Sales and Service – Valley GMC	Lithia Jeep, Anchorage
Anchorage Chrysler	Lithia Ram, Anchorage
Anchorage Dodge	Lithia Fiat, Anchorage
Anchorage Ram	Lithia Hyundai, Anchorage
Anchorage Jeep	Lithia Kia, Anchorage
Chevrolet of South Anchorage	Lithia Mini of Anchorage
Chevrolet of Wasilla	Lithia Chevrolet of Fairbanks
Continental Acura, Anchorage	Lithia Buick of Fairbanks
Continental Honda, Anchorage	Lithia GMC of Fairbanks
Continental Mazda, Anchorage	Lithia Chrysler, Wasilla
Continental Nissan, Anchorage	Lithia Dodge, Wasilla
Continental Subaru, Anchorage	Lithia Jeep, Wasilla
Continental Volvo, Anchorage	Lithia Ram, Wasilla
Dependable Used Cars, Anchorage	Lyberger Car & Truck Sales, Anc
Fairbanks Nissan	McGee Auto Sales, Anchorage
Gene's Chrysler, Fairbanks	Mendenhall Auto Chevrolet, Juneau
Gene's Dodge, Fairbanks	Mendenhall Auto Chrysler, Juneau
Gene's Jeep, Fairbanks	Mendenhall Auto Dodge, Juneau
Gene's Ram, Fairbanks	Mendenhall Auto Jeep, Juneau
Kendall Ford, Anchorage	Mendenhall Auto Ram, Juneau
Kendall Ford, Kenai	Mendenhall Auto Honda, Juneau
Kendall Ford, Wasilla	Mendenhall Auto Subaru, Juneau
Kendall Lincoln, Anchorage	Mendenhall Auto Toyota, Juneau
Kendall Audi, Anchorage	Quality Auto Sales, Anchorage
Kendall Lexus, Anchorage	Red White and Blue Auto Sales, Anc
Kendall Mercedes, Anchorage	Seekins Ford, Fairbanks
	Seekins Lincoln, Fairbanks



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## Why do Alaska and 49 other states have Auto Dealer Franchise Laws?

In 1978, the United States Supreme Court recognized the need for motor vehicle dealer franchise laws:

**“Dealers are, with few exceptions, completely dependent on the manufacturer for their supply of cars.** When the dealer has invested to the extent required to secure a franchise, he becomes, in a real sense, the economic captive of his manufacturer. The substantial investment of his own personal funds by the dealer in the business, the inability to convert easily the facilities to other uses, the dependence upon a single manufacturer for supply of automobiles, and the difficulty of obtaining a franchise from another manufacturer **all contribute toward making the dealer an easy prey for domination by the factory.** On the other hand, from the standpoint of the automobile manufacturer, any single dealer is expendable. The faults of the factory-dealer system are directly attributable to the superior market position of the manufacturer.”

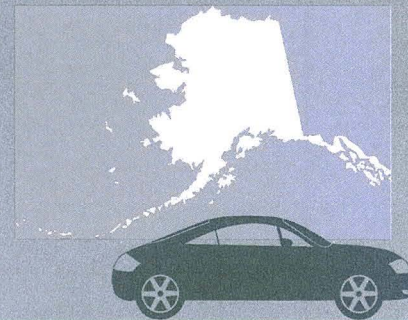
The National Automobile Dealers Association also explained the compelling need for state franchise laws in its recent comments to the FTC:

“the simple fact is that auto manufacturers retain to this day a massive economic power advantage over their franchised dealers, resulting from market structure, manufacturer behavior, and intrusion in the market by the federal antitrust statutes. And manufacturers often use this excess power to overreach and act opportunistically in their relationships with their dealers, to the detriment of dealers and ultimately consumers. **The state franchise laws that have been enacted operate to counteract these anomalies and to afford the dealers a reasonable opportunity to negotiate their economic relationships.**”

# Driving Alaska's Economy

## Annual Contribution of Alaska's New-Car Dealers

Numbers reflect annual economic activity during 2016.



**29**

**DEALERSHIPS**  
(new car)



**6,876**

**TOTAL JOBS**  
(created by dealerships)

Includes 3,088 direct jobs and  
3,788 indirect and induced jobs.



**69**

**EMPLOYEES**  
(average per  
dealership)



**\$1.6B**

**TOTAL SALES**

**14.1%**

Share of Total  
Retail Sales in State



**\$133M**

**PAYROLL**

**\$60,136**

Average Annual  
Earnings

**\$53M**

State and Federal  
Income Taxes Paid

Includes income taxes paid for direct,  
indirect and induced jobs.



**0.2%**

**REGISTRATIONS**

Alaska's Share of Total U.S.  
New-Vehicle Registrations

**13.5** YEARS

**AVERAGE  
VEHICLE AGE**

Sources: Alliance of Automobile Manufacturers, Center for Automotive Research, IHS Markit, NADA Industry Analysis,  
U.S. Bureau of Labor Statistics.



**NATIONAL AUTOMOBILE DEALERS ASSOCIATION**

NADA Industry Analysis | 8400 Westpark Drive, Tysons, VA 22102 | 703.821.7010 | industryrelations@nada.org  
NADA Legislative Affairs | 412 First Street, SE | Washington, DC 20003 | 800.563.5500 | legislative@nada.org

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 136  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB136-LAW-CIV-03-10-17  
Title: MOTOR VEHICLE DEALER FRANCHISES  
Sponsor: CLAMAN  
Requester: House Transportation

Department: Department of Law  
Appropriation: Civil Division  
Allocation: Commercial and Fair Business  
OMB Component Number: 2717

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>	<b>FY 2019</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version/comments:**

Not applicable, initial version.

Prepared By:	Valerie Rose, Budget Analyst	Phone:	(907)465-3674
Division:	Administrative Services	Date:	03/10/2017
Approved By:	Jahna Lindemuth, Attorney General	Date:	03/10/17
Agency:	Department of Law		

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 136  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB136CS(TRA)-LAW-CIV-04-04-18  
Title: MOTOR VEHICLE DEALER FRANCHISES  
Sponsor: CLAMAN  
Requester: House Labor & Commerce

Department: Department of Law  
Appropriation: Civil Division  
Allocation: Commercial and Fair Business  
OMB Component Number: 2717

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates					
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

**Change in Revenues**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version/comments:**

This fiscal note addresses changes to HB 136 due to a Committee Substitute for the bill.

Prepared By: <u>Valerie Rose, Budget Analyst</u>	Phone: <u>(907)465-3674</u>
Division: <u>Administrative Services Division</u>	Date: <u>04/02/2018 10:53 AM</u>
Approved By: <u>Jahna Lindemuth, Attorney General</u>	Date: <u>04/04/18</u>
Agency: <u>Department of Law</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2017 LEGISLATIVE SESSION

BILL NO. HB 136

**Analysis**

This bill amends AS 45.25, related to franchise agreements between manufacturers and new motor vehicle dealers. The bill adds new provisions relating to when good cause exists for termination of franchise agreements, and related to compensation for new motor vehicle dealers. The bill repeals and replaces AS 45.25.160, related to the transfer of a dealership to add more detail regarding the prevention or refusal to transfer a dealership. New sections, AS 45.25.200 and 45.25.210, contain provisions related to payment of warranty claims. The bill repeals and replaces AS 45.25.300, that sets out prohibitions for manufacturers; prohibited acts include requiring or coercing a dealer to change locations, requiring a predetermined number or percentage of vehicles; failure to deliver or offer a dealer new motor vehicles, requiring unreasonable advertising displays, requiring a dealer to accept or order products (motor vehicles, accessories, advertising, for example), requiring contributions or participation to an advertising campaign, or requiring a dealer to increase the price of a new motor vehicle subject to a pending retail sale.

The bill allows a private right of action between a manufacturer and a new motor vehicle dealer, which is consistent with current law. The Department of Law expects no fiscal impact if the bill becomes law.