

**HB**

**136**

<TARGET><BILL>HB 136</BILL><SUBJECT>HB  
136</SUBJECT><COMM>HTRA30</COMM></TARGET>



# 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

### House Bill 136

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

#### Sponsor Statement

HB 136 updates Alaska statutes dealing with franchise agreements between Alaska's auto dealers and outside automobile manufacturers. HB 136 would bring the auto dealer franchise agreements in line with existing law in other states by addressing six main areas.

- 1) Addresses what constitutes good cause for termination of 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 set procedures for returning inventory to the manufacturer, including vehicles, parts and signage previously required by the manufacturer.
- 3) Establishes procedures to determine fair compensation to dealers for warranty work, governing manufacture 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.

The adoption of House Bill 136 will provide protection to Alaskan businesses and consumers and will bring Alaskan auto dealers' franchise agreements up to date with standards adopted in other states, while adding language for Alaska specific circumstances.



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

#### Sectional Summary

##### **Section 1**

*Adds section to uncodified law:*

Legislative findings: It is in the public interest to prevent fraudulent activities between automobile manufacturers and motor vehicle dealers, and to protect Alaskans’ investments by regulating the manufacturers and the dealers.

##### **Section 2**

*Amends AS 45.25.110(a):*

Manufacturer may not terminate franchise agreements unless they have met notice requirements shown good cause and acted in good faith, or the dealer has systematically engaged in fraud against consumers.

##### **Section 3**

*Adds new subsection to AS 45.24.110:*

Outside of franchise agreement terms, manufacturers may not to terminate a franchise if a dealer sells or is invested in other lines or makes of new vehicles, intends to relocate fleet to another facility within the market area, or fails to make substantial changes to the number of franchises on dealership premises.

##### **Section 4**

*Amends AS 45.25, adds new section:*

Sec 45.25.115: “Good cause: burden of proof”. Adds detailed description of “good cause” and notice requirements for termination of franchise. Adds requirements that the manufacturer provide dealer with reasonable performance goals.

##### **Section 5**

*Amends AS 45.25.120(a):*

(a) “Before termination of a franchise agreement” Further addresses notice requirements for termination of franchise, Manufacturers must give 90 days of notice unless dealer is insolvent, has failed to conduct business for seven consecutive days, is convicted of a felony, or has license revoked or suspended for more than 30 days, in which case they must only provide 15 days. If discontinuing sale and distribution of product, manufacturer must provide 180 days notice.

##### **Section 6**

*Amends AS 45.25 and adds new section:*

Sec 45.25.135: The dealer may terminate the franchise agreement by giving the manufacturer 90 days notice.

#### **Section 7**

*Repeals and reenacts 45.25.140:*

Sec. 45.25.140: At the time of termination, the manufacturer must pay the cost of unsold new vehicles, parts and accessories, and their distribution and delivery, as well as the market value of all equipment and computers.

#### **Section 8**

*Repeals and reenacts 45.25.150:*

Sec. 45.25.150: Requires manufacturer, upon dealer request, to pay dealer for costs of relocating dealership or updating facilities within 3 years of termination if required by manufacturer as condition for maintaining franchise.

#### **Section 9**

*Amends AS 45.25 and adds new section:*

Sec. 45.25.155: Application of payment provisions. The payment provisions of Section 8 and Section 9 don't apply if dealer is insolvent, subject of a bankruptcy proceeding, or has not opened for seven consecutive business days, except in circumstances beyond dealer's control.

#### **Section 10**

*Repeals and reenacts AS 45.25.160:*

A manufacturer may not withhold consent to the sale of franchise if the buyer meets manufacturer standards and is capable of being licensed as a new motor vehicle dealer in the state. The buyer provide their financial information if requested by the manufacturer. If the manufacturer refuses to approve the sale, they shall provide written notice as to reasoning no more than 60 days after date of request from dealer. Failure to respond within 60 days to initial request for sale is considered consent.

#### **Section 11**

*Amends AS 45.25 by adding a new section:*

AS 45.25.165: Dealers are not relieved of obligation to mitigate dealer damages upon termination.

#### **Section 12**

*Repeals and reenacts AS 45.25.170:*

Dealer may appoint successor to franchise in circumstances of death or incapacity, or if the franchise has been owned by the same persons for 5 consecutive years or more. A person may succeed the ownership of the franchise if the successor is qualified and meets manufacturer standards, provides written notice of intent to succeed ownership and agrees to be bound by terms of existing franchise. Manufacturers are required to provide specific grounds for refusal to honor succession, and failure to do so within 60 days is considered approval of successor.

#### **Section 13**

*Repeals and reenacts AS 45.25.180:*

A manufacturer must provide 90 days written notice if establishing or relocating additional dealers into a dealer's relevant market area. The manufacturer must establish good cause to do so.

#### **Section 14**

*Amends AS 45.25 by adding a new section:*

Sec 45.25.185: Dealers may file action in superior court within 30 days of receiving notice of termination to determine whether good cause for termination exists. If manufacture refuses to approve sale, dealers have 20 days from receipt of notice to file action.

#### **Section 15**

*Amends AS 45.25 by adding new sections:*

Sec 45.25.200: The manufacturer shall pay for all warranty work done by dealer if the dealer has submitted claims within 90 days of work completion. The manufacture must approve or deny claim within 15 days or receipt of notice and provide written reasons for denial.

Sec 45.25.210: The manufacturer shall provide dealer with schedule of compensation for warranty work, policy work and other services that manufacturer requires. The manufacturer may not dictate average retail percentage markup.

Sec 45.25.220: If a certified technician isn't available within one business day of delivery, dealer may use non-certified technician to perform repair under supervision of certified technician. Manufacturer will pay dealer same price as if certified technician had completed repair. If vehicle is in location off the road system or more than 100 miles from certified dealer, a dealer may arrange to have a non-certified technician where the vehicle is located.

Sec 45.25.230: If manufacturer discontinues or reduces vehicle line to the extent the franchise is no longer economically viable, dealer may consider the termination or reduction a termination of the franchise agreement.

#### **Section 16**

*Repeals and reenacts AS 45.25.300:*

Outside of franchise agreement terms, manufacturers may not: offer incentive programs that sell vehicles cheaper to one dealer than another, change methods for delivery and allocation if unreasonable, prevent dealer's ability to collect documentation service fee, withhold parts or accessories, require unreasonable advertising displays, refuse to offer all models manufactured, bypass the dealer and sell directly to the client, require a dealer to make material alteration to dealership facility.

#### **Section 17**

*Repeal and reenacts AS 45.35.990(19):*

Defines terminate.

#### **Section 18**

*Amends AS 45.25.990:*

Defines line or make and relevant market area

#### **Section 19**

*Repeals AS 45.25.110(b) and AS 45.25.110(c):*

Repeals franchise agreement termination due to death or incapacity. Must provide 'good cause'.

#### **Section 20**

*Adds a new section to uncodified law:*

This is an applicability section regarding to whom the bill may be applicable and the effective date and following definitions.

**Section 21**

*Adds a new section to uncodified law:*

This is basically a transition schedule of compensation and definition section.

30-LS0561\R  
Bannister  
3/21/18

**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

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

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

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

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

25 (A) the spouse of an owner of the dealership;

26 (B) the child, stepchild, grandchild, brother, sister, or parent of  
27 an owner of the dealership; or

28 (C) a spouse of a person identified in (B) of this paragraph;

29 (2) the manufacturer or distributor notifies the new motor vehicle  
30 dealer in writing of the intent to exercise the right of first refusal; within 30 days after  
31 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;

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

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

9 (4) the permanency of the investment of the protesting new motor  
10 vehicle dealer; [AND]

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

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

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

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

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

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

27 **Sec. 45.25.190. Arbitration.** In a controversy between a manufacturer and a  
28 new motor vehicle dealer under AS 45.25.010 - 45.25.310 [AS 45.25.010 - 45.25.320],  
29 neither the manufacturer nor the new motor vehicle dealer is required to submit the  
30 controversy to arbitration. If both the manufacturer and the new motor vehicle dealer  
31 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

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

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

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

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

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

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

25 (d) To establish the retail percentage markup, the new motor vehicle dealer  
 26 shall submit to the manufacturer 100 sequential chronologically issued retail service  
 27 repair orders paid by customers for warranty-like repairs, or 90 consecutive days of  
 28 retail service repair orders paid by customers for warranty-like repairs, whichever  
 29 number of retail service repair orders is less. The retail service repair orders that the  
 30 new motor vehicle dealer submits must cover retail repairs that the new motor vehicle  
 31 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.

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

3 **Sec. 45.25.220. Performance and reimbursement of certain repairs.** (a)  
4 Except as provided in (b) of this section, if a new motor vehicle needs repairs that are  
5 covered under a manufacturer's warranty, and if the new motor vehicle is located in a  
6 remote location, the manufacturer shall make reasonable efforts to arrange for the new  
7 motor vehicle to be repaired in the remote location.

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

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

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

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

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

29 (1) the specific obligations of the new motor vehicle dealer to prepare  
30 and service new motor vehicles and products before delivery of the new motor  
31 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.



# 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.



# 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."*

#### 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*

# Fiscal Note

State of Alaska  
2017 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)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
<b>OPERATING EXPENDITURES</b>	<b>FY 2018</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</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 (FY2017) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2018) 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:**

Not applicable, initial version.

Prepared By: Valerie Rose, Budget Analyst	Phone: (907)465-3674
Division: Administrative Services	Date: 03/10/2017 11:52 AM
Approved By: Jahna Lindemuth, Attorney General	Date: 03/10/17
Agency: Department of Law	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2017 LEGISLATIVE SESSION

BILL NO. HB 136

**Analysis**

The bill proposes revisions to AS 45.25.110 through AS 45.25.120, motor vehicle transactions, by inserting a new section, AS 45.25.115, relating to the standard of good cause for terminating franchise agreements between automobile dealers and manufacturers and placing the burden of proof in a good cause determination on the manufacturer. The bill amends AS 45.25.120 by prohibiting a manufacturer from terminating a franchise agreement unless it proves certain factors relating to underperformance by the dealer. The manufacturer must provide notice to the dealer, provide specific performance standards or goals with a timetable for reaching the goals of not less than 180 days, and supply the dealer with an adequate supply of new motor vehicles. A new section is added for termination by a dealer (AS 45.25.135). AS 45.25.140 is repealed and reenacted to revise payment obligation on termination.

AS 45.25.150 would be repealed and reenacted to provide payments for dealership facilities upon termination. A new section, AS 45.25.155 would address application of the payment provisions changed in the previous sections. AS 45.25.160 is proposed to be repealed and reenacted to revise the terms of sale, transfer or exchange of a franchise. A new section, AS 45.25.165, would add a duty to mitigate damages for the dealer upon termination. AS 45.25.170 would be repealed and reenacted to revise rules for succession while AS 45.25.180 would be repealed and reenacted to revise the terms for creation of new dealerships or relocation of existing dealerships. The bill proposes a new sections (AS 45.25.185) providing for court action allowing a dealer to seek a declaratory judgment of whether good cause exists in superior court, a new section (AS 45.25.200) provides for payment and approval of claims submitted to a manufacturer by a dealer for repairs performed under warranty and other circumstances, a new section (AS 45.25.210) providing for rates for warranty and other work, a new section (AS 45.25.220) providing for the performance and reimbursement of certain repairs, and a new section (AS 45.25.230) providing that discontinuation or reduction of a motor vehicle line may be considered a termination of the franchise agreement by the dealer.

The bill repeals and reenacts AS 45.25.30, unfair practices by a manufacturer of a motor vehicle.

The Department of Law does not anticipate a fiscal impact to the department from this legislation.

**CHEVROLET  
OF SOUTH ANCHORAGE  
A LITHIA STORE**

March 4, 2017

The Honorable Matt Claman  
Alaska, State Capitol  
Juneau, Alaska 99801

RE: House Bill No. 136

Dear Representative Claman:

My name is Jamie Turner and I am a general manager for Lithia Motors who serves as the executive manager at Chevrolet of South Anchorage and reside in Anchorage, Alaska. I'm writing this letter in support of HB No. 136. This is a comprehensive bill that fairly expands legislative protections for automobile dealers, consumers and dealership employees.

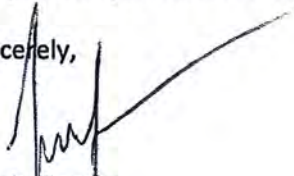
Representing a dealership owned by a publicly held and traded company (NYSE: LAD), there are sections that do not relate to my day to day business. However, I fully support the language in the bill that gives family owned dealerships the protections they deserve, specifically related to unwarranted terminations and succession plans. My business, consumers and employees will benefit most from the provisions related to fair compensation, reasonable warranty terms related to Alaska conditions and audit limitations.

Alaska is one of the last remaining states to pass a bill like HB No. 136, which creates a fair playing field between the manufacturer and automobile dealers. There are two sections which will affect my business the most:

- Section 15:
  - Will allow dealers to charge and collect labor and parts at retail for all warranty work performed, as well as limit the consumer's responsibility. This will allow me to pay my most skilled technicians a better wage and limit the expenses forced onto the consumer to transport the vehicle to and from the dealership for warranty repairs.
  - Will limits the time that a manufacturer may initiate a claims audit.
- Section 16: Will prohibit the manufacturer from selling parts to a third party distributor for a lower price than offered to a dealer. This will allow me to stock more parts inventory and become less dependent on third party providers, which makes repairs more efficient for the consumer.

I appreciate your time and hope you have successful Thirteenth Legislative Session.

Sincerely,



Jamie Turner  
16751 Carl Street  
Anchorage, AK 99516

9100 Old Seward Hwy, Anchorage, AK 99515 ♦ (907) 365-8600





February 27, 2017

Rep. Matt Claman  
Alaska House of Representatives  
State Capitol, Room 118  
Juneau, Alaska 99801

Re. HB 136

Dear Representative Claman,

I'd like to express my support for HB 136. In particular I'd like to explain the importance of Section 15 as it applies to warranty and policy work and Section 16 as it applies to unfair practices.

Because we are in Alaska many of our customers are more than 100 road miles from our dealerships or in some cases not even accessible by road. The problem arises when these vehicles that are under warranty need to be repaired. Continental has had customers as far away as Valdez and Fairbanks required by the manufacture to drive their cars back to the dealership in Anchorage. The manufactures contend that the repairs need to be performed at the dealership by a manufacture certified technician. This is both an inconvenience and is costly to the customer. HB 136 simply states that the dealer can arrange to have the repairs performed by another reasonably qualified technician where the vehicle is located. This is much more acceptable than burdening the customer to get their vehicle back to the dealership.

On October 7, 2015 I attended a meeting with Nissan representatives in Anchorage. The meeting mainly covered regional marketing plans and goals. During this meeting a Nissan representative stated, "grow or go" referring to Nissan's stance that if a Nissan dealer isn't growing they should get out of the Nissan franchise. This same representative asked me "Do you want to be a Nissan dealer or should we find a new one?" I took considerable offense to this considering the amount of time, energy and millions of dollars we've invested in our Nissan franchise. Nissan's attitude is completely unfair and unreasonable. The manufactures expectations are in most cases out of the control of the dealers. I received a letter dated February 1, 2016 (the letter is hereby attached) from Nissan North America. In the letter Nissan recognized that our "year-over-year sales performance is below the average of the Northwest Region". Nissan further states that it is imperative you make the operational improvements necessary to address

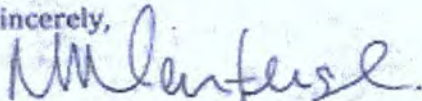
this issue". I would argue that our Nissan sales are down because Nissan discontinued our second highest volume vehicle the Nissan Xterra and the Nissan Titan truck is so outdated (10 years without a redesign) that it doesn't even compete in the largest segment of the Alaska market which is trucks. Of course the biggest factor is Alaska's current state of the economy. Year to date we are already considerably behind last years sales volume. By my experience the manufactures don't take into consideration what sells in Alaska let alone the economic climate in a small market like Alaska.

With the ever shrinking profit margins of new car sales, the manufactures contend that they "help" dealers by offering bonus incentives if the dealer achieves certain objectives set by them of course. This the manufactures way of controlling what we sell and what we market. In 2016 Continental didn't achieve any of the annual sales objectives that Subaru, Honda, Acura, Nissan, Mazda and Volvo set for us. There are many factors that can contribute to achieving these objectives or the failure to do so. For instance we didn't even receive enough Subaru inventory in 2016 to reach the objective that they set for us. All of the manufactures listed above have programs that they force us to participate in and thereby control how much inventory we are allocated and how our dealerships should look. Demanding that a dealer upgrade their dealership image program in a recession or penalizing them because their new car volume is down is again unfair. Under HB 136 manufactures may not unreasonably require a dealer to remodel or renovate an existing facility or thereby withhold new car inventory.

In 2008 when the U.S. economy was in the midst of the worst recession the country had experienced in the past 50 years, the automotive industry was affected tremendously. General Motors and Chrysler filed for bankruptcy and required a government bail out to survive. During this time, GM and Chrysler terminated dealerships with total disregard to the dealers and the people that worked for them. Warranty work was scrutinized to the point that dealers where being audited by the manufactures and penalized millions of dollars because dealership personal didn't dot an "i" or cross a "t". It prompted new car dealership associations around the country to take action to support dealer franchise protection through legislation. Since 2008, 39 states have passed new car dealer franchise laws similar to HB 136. As a member of the Alaska Auto Dealers Association we have been working on this for sometime. We feel that HB 136 is fair and reasonable and necessary to protect our local interests from corporate manufactures that are becoming increasingly anti-franchise dealers.

We greatly appreciate your support and sponsorship of HB 136.

Sincerely,



Marten Martensen  
Continental Auto Group  
Anchorage, AK



NISSAN NORTH AMERICA, INC.  
Northwest Region  
11900 NE 1st Street, Suite 300  
Bellevue, WA 98005

February 1, 2016

Continental Car and Truck, LLC  
Continental Nissan of Anchorage  
5115 Old Seward Hwy.  
Anchorage, AK 99503

**RE: Declining Sales Performance**

Dear Mr. Martensen:

It is critical and in the mutual interests of Nissan North America, Inc. and its dealers for the Nissan brand to be represented by a highly competitive dealer network that is effective in both sales and customer satisfaction.

We are contacting you today because of Nissan's concern regarding your dealership's year-over-year sales performance trend. As reflected below, your dealership's year-over-year sales performance is below the average of the Northwest Region.

**2015 VS. 2014 - SALES DATA**

2014 Total	2015 Total	DEALER % Change	REGION % Change
530	460	-13%	+2%

Accordingly, it is imperative you make the operational improvements necessary to address this issue. Your field team is available to help you in this endeavor. There is substantial opportunity available for incremental volume and profit in your dealership, and it is in our mutual best interest that you take steps to capture this opportunity.

Respectfully,

Josh Batie  
Regional Vice President  
Northwest Region

February 27, 2017

Dear Rep Matt Claman,

The wording contained in HB136 is very important to protecting local companies, Alaskan jobs, and our community. The manufacturers are concerned with global forces and Wall Street. They know very little about Alaska's economy, Alaska's people. The local franchisees, the local dealers, are the ones supporting thousands of families, contributing to local schools and charities, and who have invested their livelihoods in support of long term positive growth for our state.

In the past, our laws have sought a level the playing field, address local needs and to protect the lesser party, and that is exactly what this bill seeks to do. The manufacturers have almost unlimited resources and without legislative protections, local businesses and the livelihoods of the Alaskans rest with the decisions of the manufacturers. This bill provides regulations protecting consumers and local businesses which are standard in most states and which have yet to be addressed in our state.

The industry regulations which this bill addresses and for good reason. We have had a manufacturer charged us back more than \$120,000 for rebates which the customers received, because we didn't cross our T's or Dot our I's as a example we have invoices showing the customer purchased signage on their vehicles and received the appropriate rebate to account for the signage but we did not have proof of payment the manufacturer charged us back, not the consumer and nowhere in the rules does it state we needed to provide such proof. Under these conditions, dealers are uncertain what work or rebates they will be paid for, and if they are paid, they don't know if the manufacturer will construct an arbitrary reason to charge the dealer back.

Manufacturers do not treat dealers the same. They can provide additional inventory to the dealer of they choose, subsidizing that dealer by paying them hundreds of thousands of dollars in extra incentives for the additional sales the dealer made using their own allocation process. The competing



dealers could have their franchise terminated for not attaining their market share of vehicles which they did not receive or allocated. Without this bill, auto dealers which have been employee local Alaskans and serving the community since statehood, can be eliminated by the manufacturer without cause.

In closing these manufactures self-interests have too much control over our local businesses. When the manufacturers are allowed to have this much legal control without oversight, dealers are in jeopardy, the consumer will pay the end cost, local businesses lose. We are asking for your support, and with this bill, you can bring fairness back to the market and ensure local jobs and a stable economy we desperately need now in Alaska.

As a lifelong Alaskan I am asking for your support of this bill and on behalf of the Auto dealers of Alaska and all the employees our future depends on it. Thank you for your support.

A handwritten signature in black ink, appearing to read "Troy Jarvis". The signature is stylized and written over the printed name.

Troy Jarvis

General Manager

Lithia Chrysler Jeep Dodge Ram Fiat of Anchorage



ALASKAN OWNED &amp; OPERATED SINCE 1944

February 28, 2017

Representative Matt Claman  
Alaska State Capitol  
Room 118  
Juneau, AK 99801-1182

Re: HB 136

Dear Representative Claman,

I want to thank you for your time to meet with some of us automobile dealers on Feb. 7<sup>th</sup>! We know with the very busy schedule you folks are on, every minute is valuable, so we thank you! And especially, on behalf of all new franchised automobile dealers in Alaska for introducing HB 136, a bill that will bring our automobile franchise laws more in line with the rest of the states in the nation.

The automobile industry is a very dynamic industry, in particular from the standpoint of a franchised new automobile dealer. We are tethered to our particular manufacturers by a Sales and Service Agreement (SSA), a pretty unilateral agreement that, at least with my manufacturer General Motors (GM) is consistent for all their dealers. If you want to represent a particular brand, you must meet the manufacturer's qualifications and sign the agreement for that brand. GM's SSA's are the same for each of their brands; there are no negotiations allowed for change by the dealer.

My company, Alaska Sales and Service, Inc. (AS&S) has been in business in Alaska since 1944. I have been employed with AS&S since 1969 and have been fortunate enough with my oldest son to now be the owners of the company. It has always been Alaskan owned and operated by family business people. AS&S has represented virtually every brand GM has had with the exception of Saturn. When GM discontinued Saturn, AS&S agreed to be the service center for owners of Saturn automobiles when the then dealer discontinued his business relationship with GM.

To accommodate the requirements of the SSA's, AS&S over the years has invested millions of dollars in land and facilities, furniture, fixtures, equipment, and our continual employee base of 210-280 full-time employees.

As mentioned earlier, the automobile industry is very dynamic and has been through some rough periods especially in more recent years. In 2005, AS&S invested millions of dollars in a new state-of-the-art dealership to meet all GM's facility requirements in the Mat-Su Valley to accommodate our Pontiac, Buick and GMC franchises at that location.

Then, to our dismay, in April 2009 GM decided to discontinue the Pontiac brand worldwide. Unfortunately the loss of this successful brand for both our Valley and Anchorage dealerships was a big financial blow to AS&S, especially to our new dealership in the Mat-Su where Pontiac made up 28% of its new vehicle sales. While the existing AS 45.25.140 has provisions for GM to repurchase their branded automobiles, parts, signs, equipment and furnishings that bear their trademark or trade name required by the manufacturer within the last five years, and required special tools purchased in the last three years, there was no provision for compensation to the dealer for investment in his owned real estate to include the buildings and land to accommodate the franchise requirements.

In early May 2009, GM notified 1,100 of its 6,000 dealers that they were going to be terminated. June 1, 2009 GM declared bankruptcy. All the GM dealers received a notice stating that if they wanted to continue to be a GM Dealership, then they must sign a "participation agreement" for the non-discontinued brands and a "wind-down" agreement for the discontinued Pontiac line. The agreements were to be returned in less than 2 weeks. GM offered a small pittance to the dealers for the "wind-down" After those notices came out, about June 8, 2009 GM also discontinued the Chevrolet and GMC medium-duty truck lines followed in February 2010 with the discontinued production of the Hummer brand all of which were accompanied by a "wind-down" agreement. Although the existing provisions of AS 45.25.140 and 45.25.150 should have applied to the "wind-down" (discontinuance) of the Pontiac, Chevrolet Medium Duty, GMC Medium Duty and Hummer, the provisions didn't apply.

The manufacturer compensated AS&S - Valley less than \$55,000 for the discontinuance ("wind-down") of the Pontiac brand, all inclusive of all provisions of the existing law (parts, signs, special tools etc.) AS&S - Anchorage received less than \$100,000 for the discontinuance of Pontiac, Chevrolet Medium Duty, GMC Medium Duty and Hummer. In both dealerships, we had invested millions of dollars to accommodate those brands.

Although HB 136 does not address a manufacturers' bankruptcy, it does have much better provisions if the manufacturer discontinues the sale and distribution of a new motor vehicle line on a nationwide basis.

Other provisions of HB 136 that not only help the dealers stay on a more even playing field with the manufacturers, but also benefit consumers and employees. The most apparent provision is the issue of payment to dealers for warranty repairs. At this time, the manufacturers have their own labor time guide (a guide stipulating how many hours they will pay the dealer for to perform a particular job), which is significantly fewer hours or tenths of hours less than the industry labor time guides for the same job done for a customer, non-warranty. This impacts not only the amount the dealer receives for a similar job done under warranty, but also the amount that their service technician is paid for the job. Dealers are required under their SSA to perform warranty on brands for which they hold a franchise. In many cases, the technician performing the repair must be certified by the manufacturer to perform a particular service, or the manufacturer will not pay the dealer. Many times the dealers must send their technicians outside of Alaska for specialized training, a costly investment in their technicians. Additionally, the technician gets penalized for performing the warranty job because it pays fewer hours or tenths of hours than a non-warranty repair would pay.

Many other provisions of HB 136 have been elaborated on in Alaska Automobile Dealers Association response to the letters from the Auto Alliance in March 2016 against the 2016 bill SB 197.

We graciously thank you for your support and introduction of HB 136 in the 30<sup>th</sup> Legislature of Alaska.

Sincerely,

A handwritten signature in blue ink that reads "Diana Pfeiffer". The signature is written in a cursive style with a large, stylized 'D' and 'P'.

Diana Pfeiffer  
President/CEO  
Alaska Sales & Service Anchorage and Valley



**Alaska Automobile  
Dealers Association**

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

## 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.”

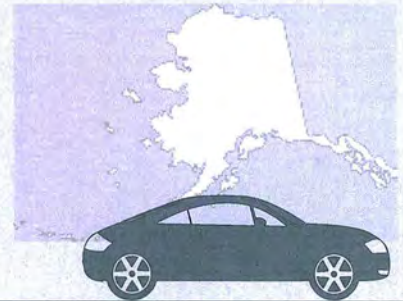
The National Automobile Dealers Association also explained the compelling need for state franchise laws in its recent comments to the FTC:

“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 2015.



# 29

**DEALERSHIPS**  
(new car)



# 6,609

**TOTAL JOBS**  
(created by dealerships)

Includes 2,968 direct jobs and  
3,641 indirect and induced jobs.



# 76

**EMPLOYEES**  
(average per dealership)



# \$125M

**PAYROLL**

## \$56,775

Average Annual  
Earnings

## \$47M

State and Federal  
Income Taxes Paid

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



# \$1.4B

**TOTAL SALES**

## 12.6%

Share of Total  
Retail Sales in State



NATIONAL AUTOMOBILE DEALERS ASSOCIATION

NADA Industry Analysis | 8400 Westpark Drive, Tysons, VA 22102 | 703.821.7010 | [industryrelations@nada.org](mailto:industryrelations@nada.org)

NADA Legislative Affairs | 412 First Street, SE | Washington, DC 20003 | 800.563.5500 | [legislative@nada.org](mailto:legislative@nada.org)



## 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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Anchorage, Alaska  
99520-1305

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



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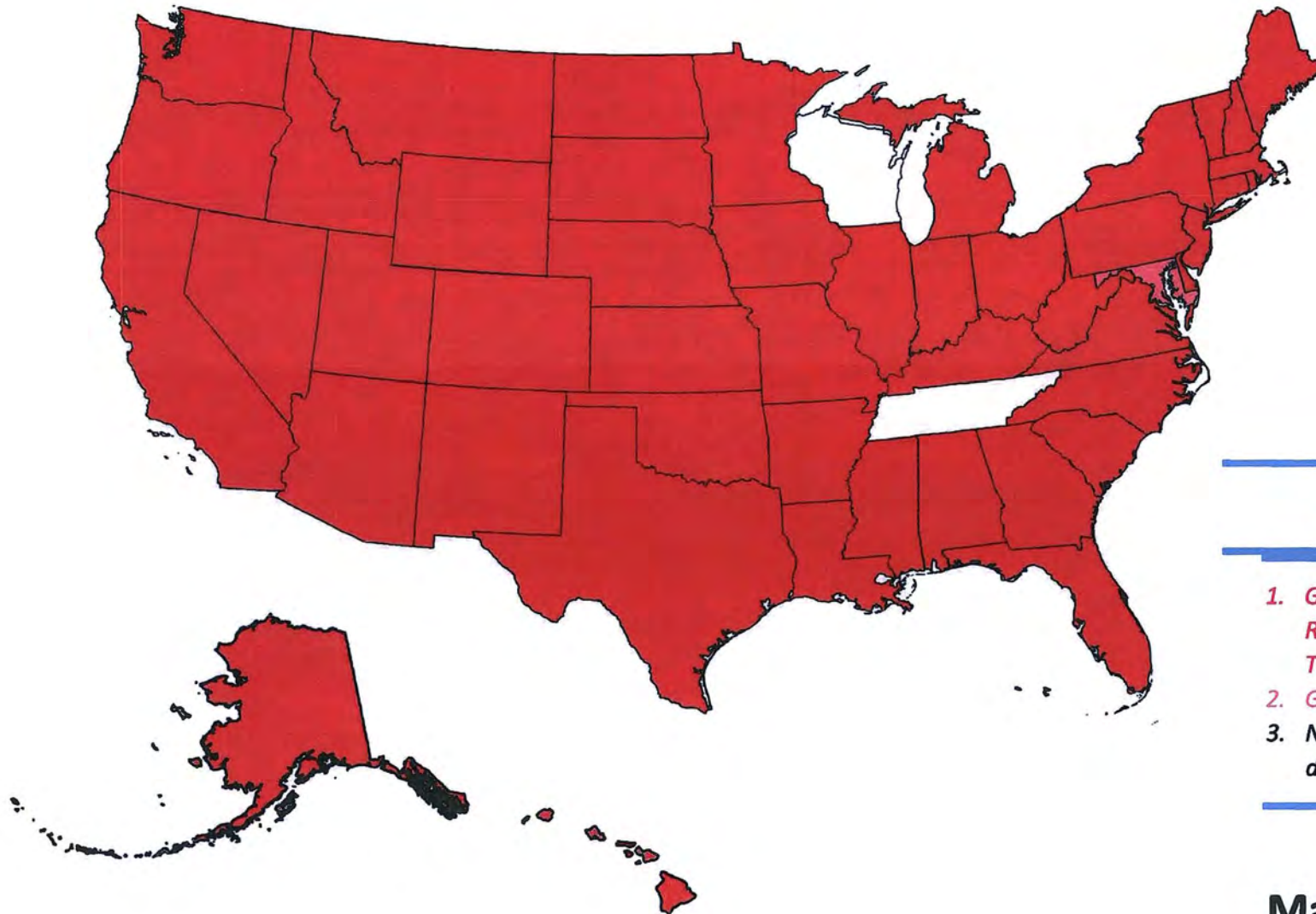
## Section 2: Good Cause Required for Termination

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AADA

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### Guide

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1. *Good Cause Required for Termination*
  2. *Good faith only*
  3. *No Color – Statute does not address*
- 

**Map 1**



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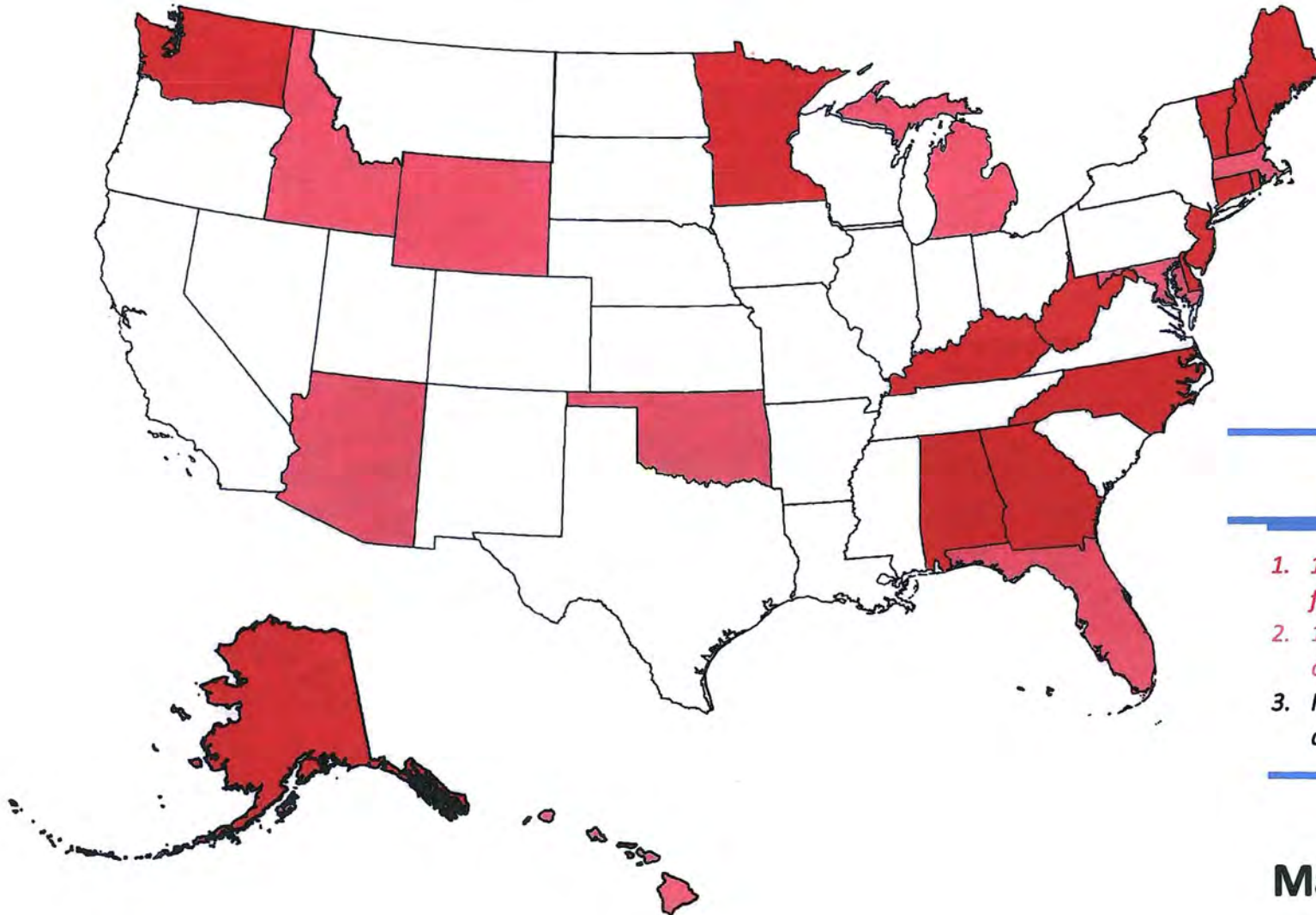
## Section 4: 180 day requirement for cure and from discovery

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AADA

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### Guide

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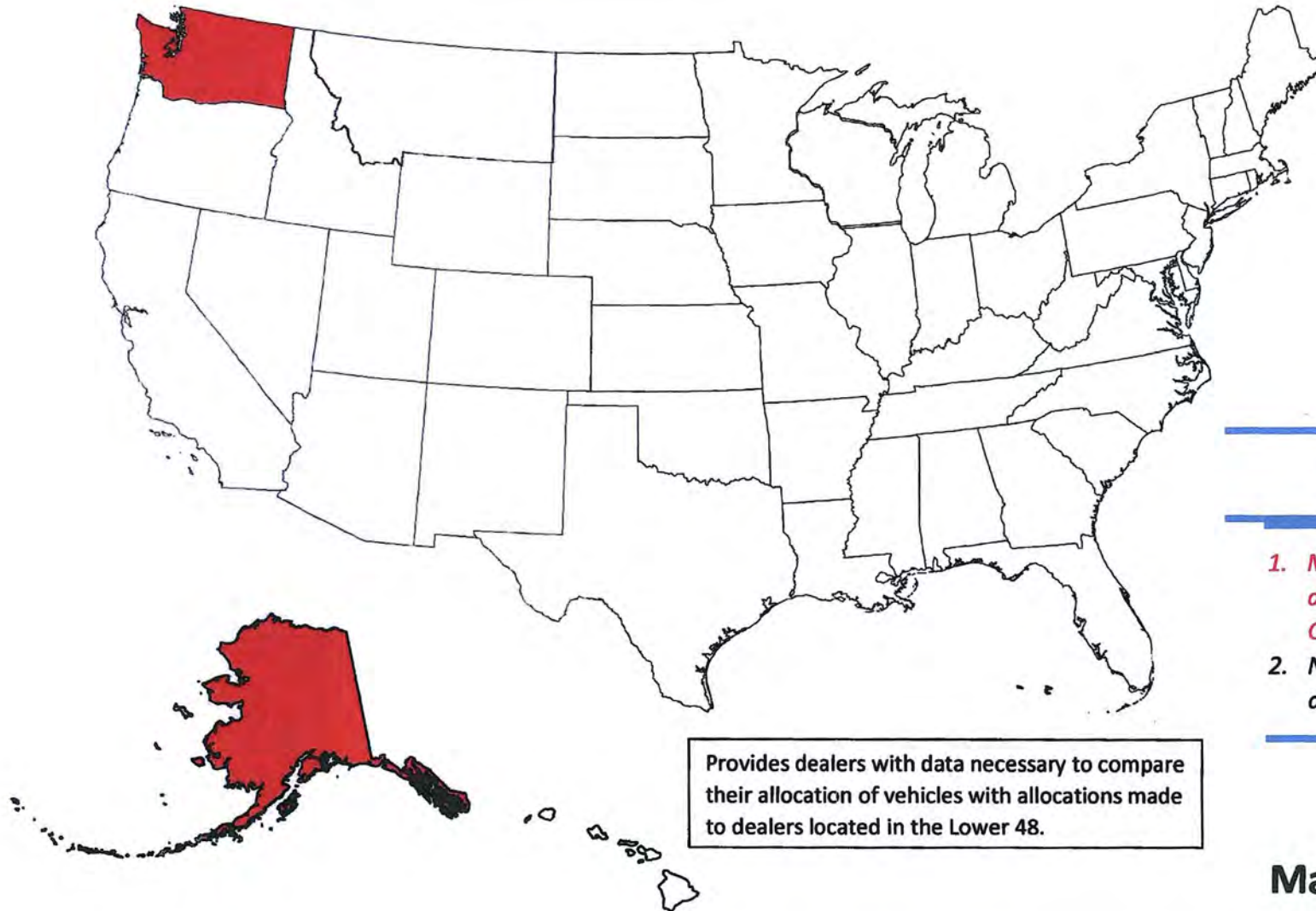
1. 180 day period from discovery
  2. 180 day cure period only
  3. No Color – Statute does not address
- 

**Map 2**



## Section 4: Market Analysis

AADA



### Guide

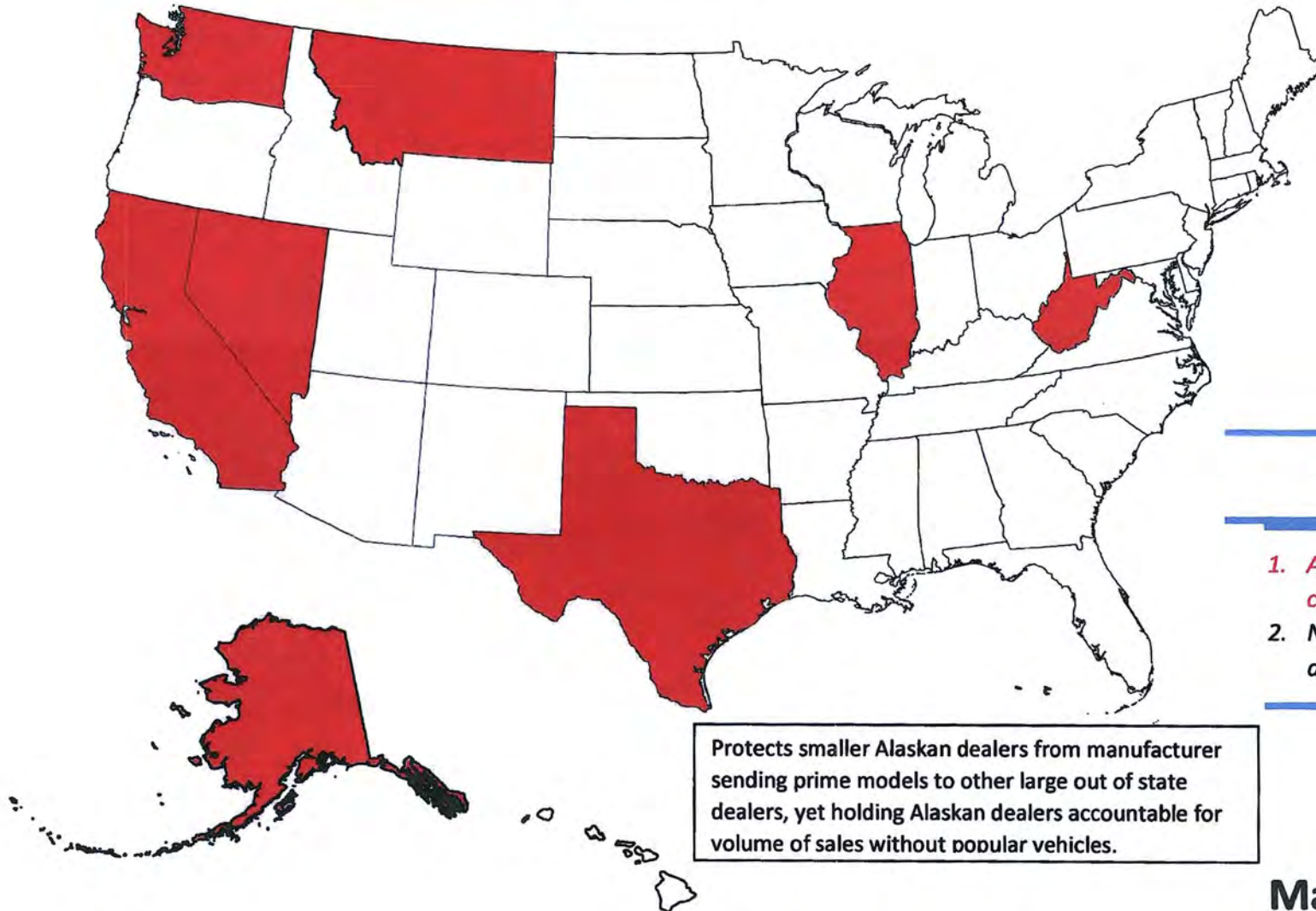
1. *Market Analysis a defense to Good Cause*
2. *No Color – Statute does not address*

Map 3



## Section 4: Adequate Supply Consideration for Good Cause

AADA



### Guide

1. *Adequate Supply considered*
2. *No Color – Statute does not address*

Map 4







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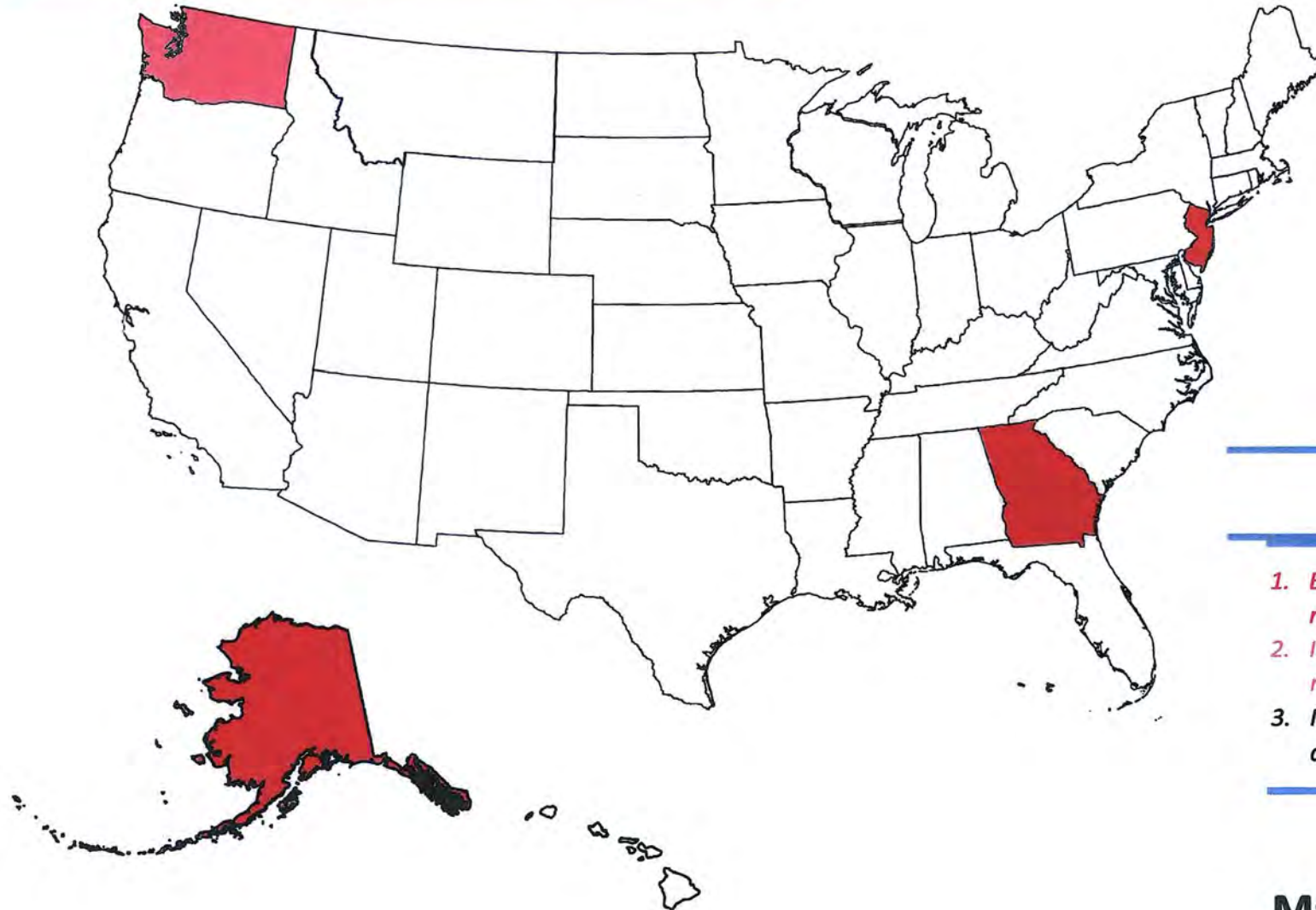
## Sections 6-9: Display or demonstration vehicle reimbursement

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## AADA

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### Guide

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1. *Explicit requirement*
  2. *Implied requirement*
  3. *No Color – Statute does not address*
- 

## Map 7





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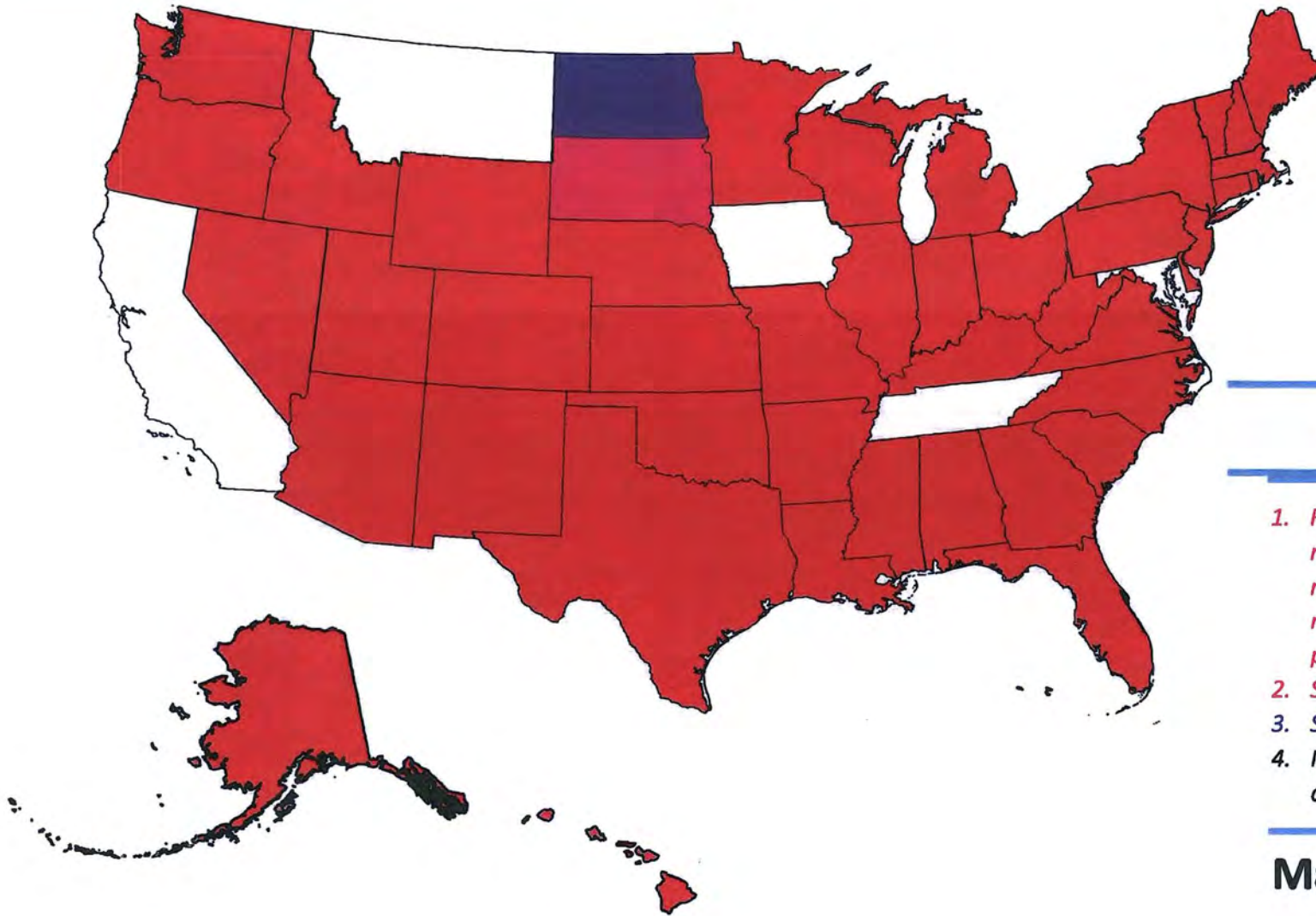
## Sections 6-9: Reimbursement for equipment, furnishings, and special tools

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AADA

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### Guide

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1. *Reimbursement required (if manufacturer required purchased)*
2. *Special tools – 75%*
3. *Special tools – 50%*
4. *No Color – Statute does not address*

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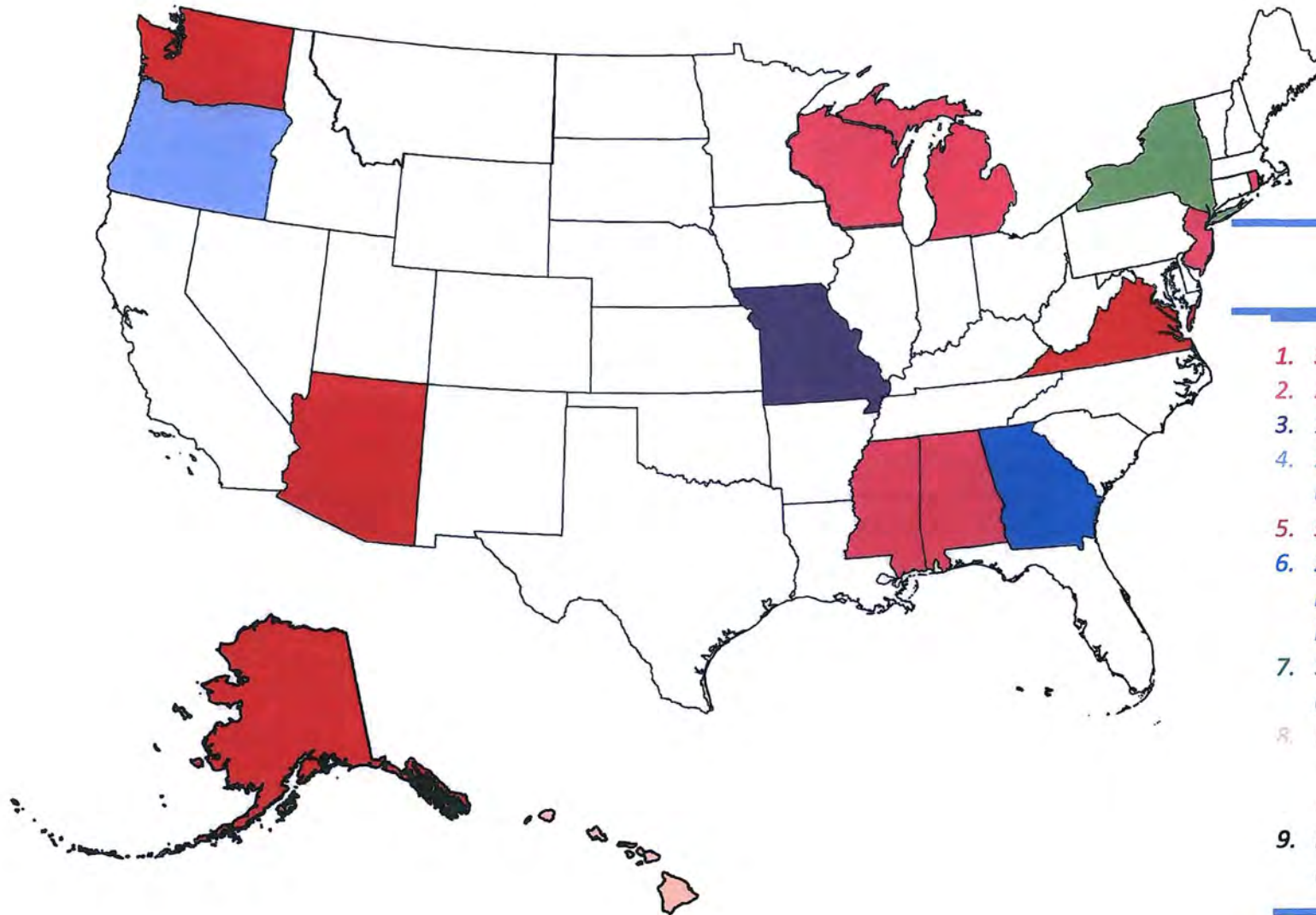
**Map 9**





## Section 6-9: Reimbursement for Alterations and Remodeling

## AADA



### Guide

1. 3 years
2. 2 years
3. 1 year
4. 2 years if line make discontinuation
5. 5 years
6. 2 years if manufacturer bankruptcy
7. 3 years if line make discontinuation
8. If no good cause or a part of line make discontinuation
9. No Color – Statute does not address

Map 11



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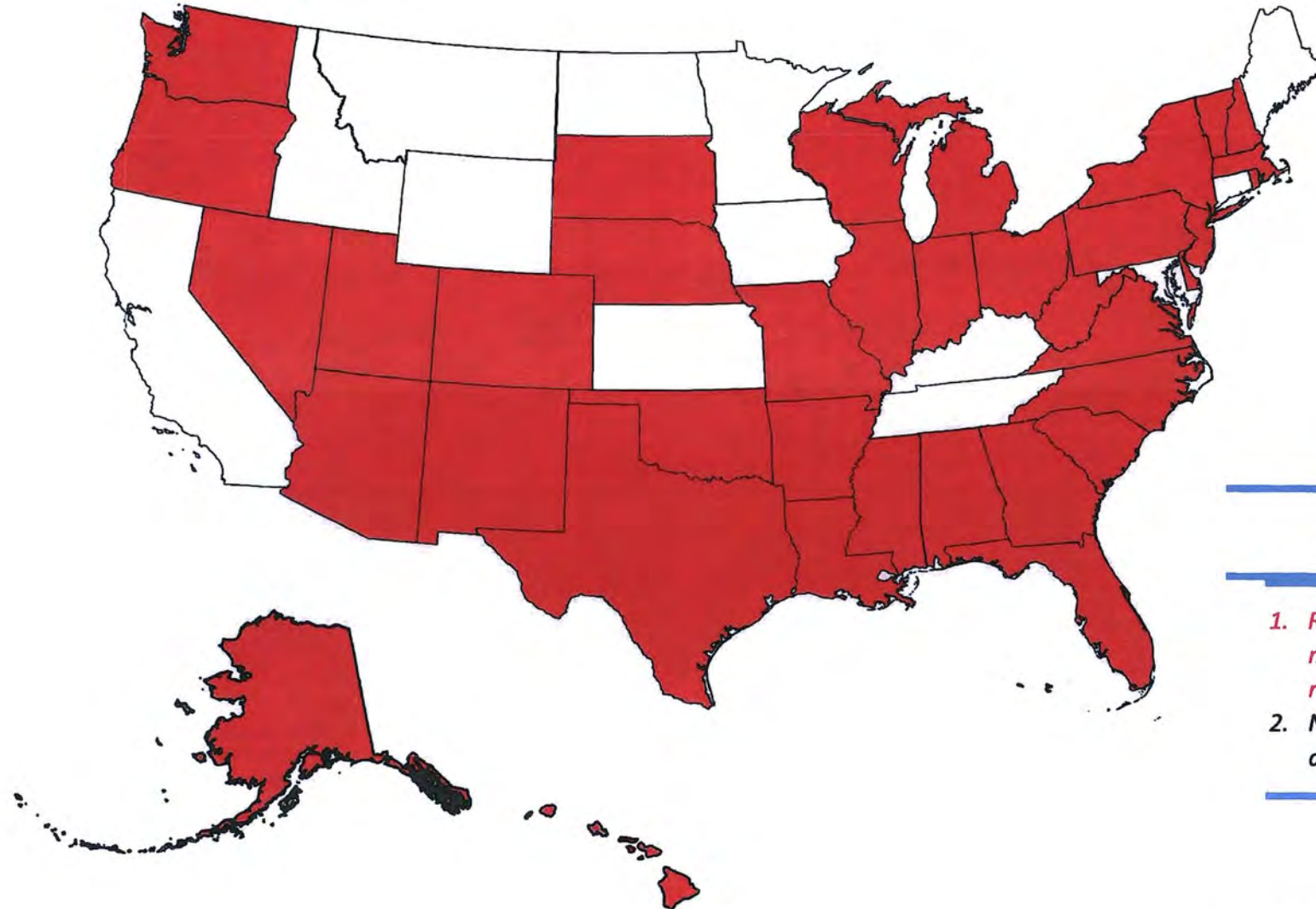
## Sections 6-9: Reimbursement for signage required by manufacturer

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AADA

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### Guide

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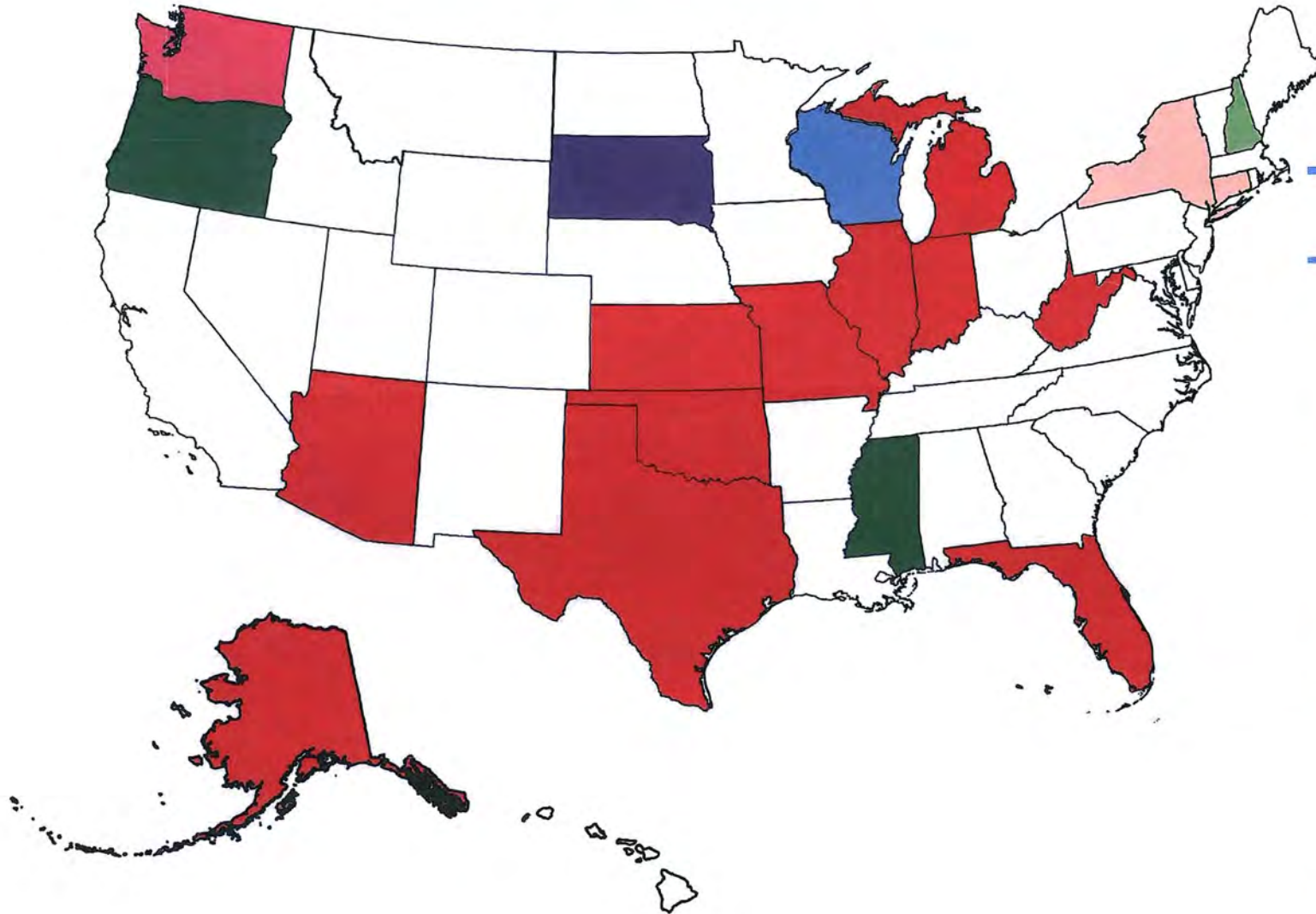
1. *Reimbursement for manufacturer required signage*
  2. *No Color – Statute does not address*
- 

**Map 12**



## Sections 6-9: Reimbursement for Computers and Software

AADA



### Guide

1. *Reimbursable if required by manufacturer*
2. *Implied*
3. *Reimbursable less 20%*
4. *Reimbursable for a lease up to 18 months*
5. *Reimbursable if leased*
6. *Reimbursable for a lease up to 1 year*
7. *Reimbursable only for line make discontinuation*
8. **No Color – Statute**

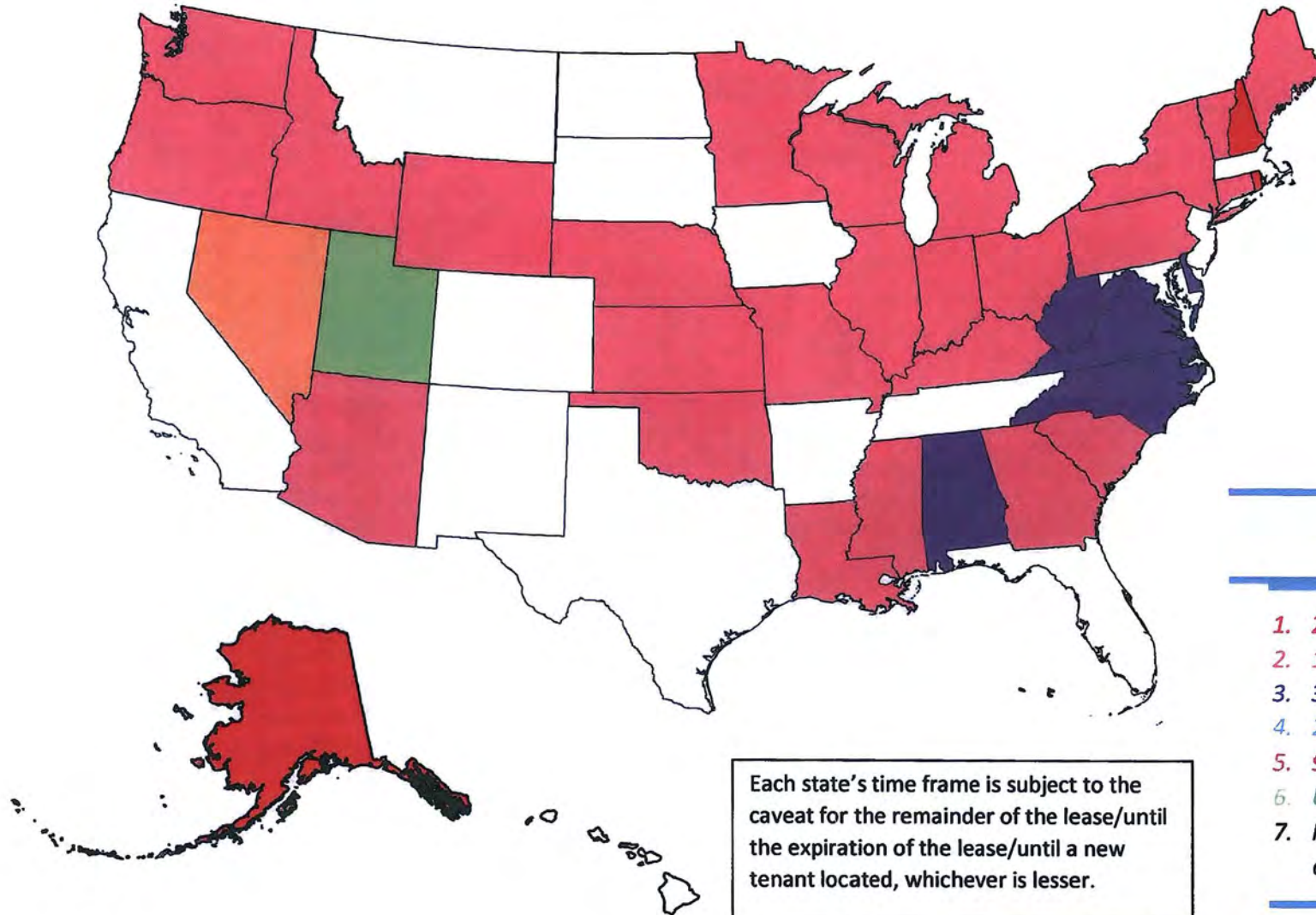
**Map 13**





## Sections 6-9: Reimbursement for leases

AADA



### Guide

1. 24 months
2. 1 year
3. 3 years
4. 2 years
5. 90 days
6. Until lease expires
7. No Color – Statute does not address

Map 15



# Section 10: Sale or Transfer of the Dealership

# AADA

## Guide

1. *Substantially similar Qualified Buyer Restriction*
2. *ROFR allowed if not sale to family member*
3. *ROFR allowed if not sale to family member and authorized in contract*
4. *ROFR allowed if in separate contract w/ add'l consideration*
5. *No unreasonable withholding consent*
6. *No unreasonable withholding and No ROFR*
7. *Unless substantially detrimental*
8. *unless no license; No ROFR allowed*
9. *ROFR allowed; no unreasonable withholding*
10. *No Color – Statute does not address*

Colorado/Kansas – ROFR still allowed, but must pay attorney's fees and expenses before using ROFR.

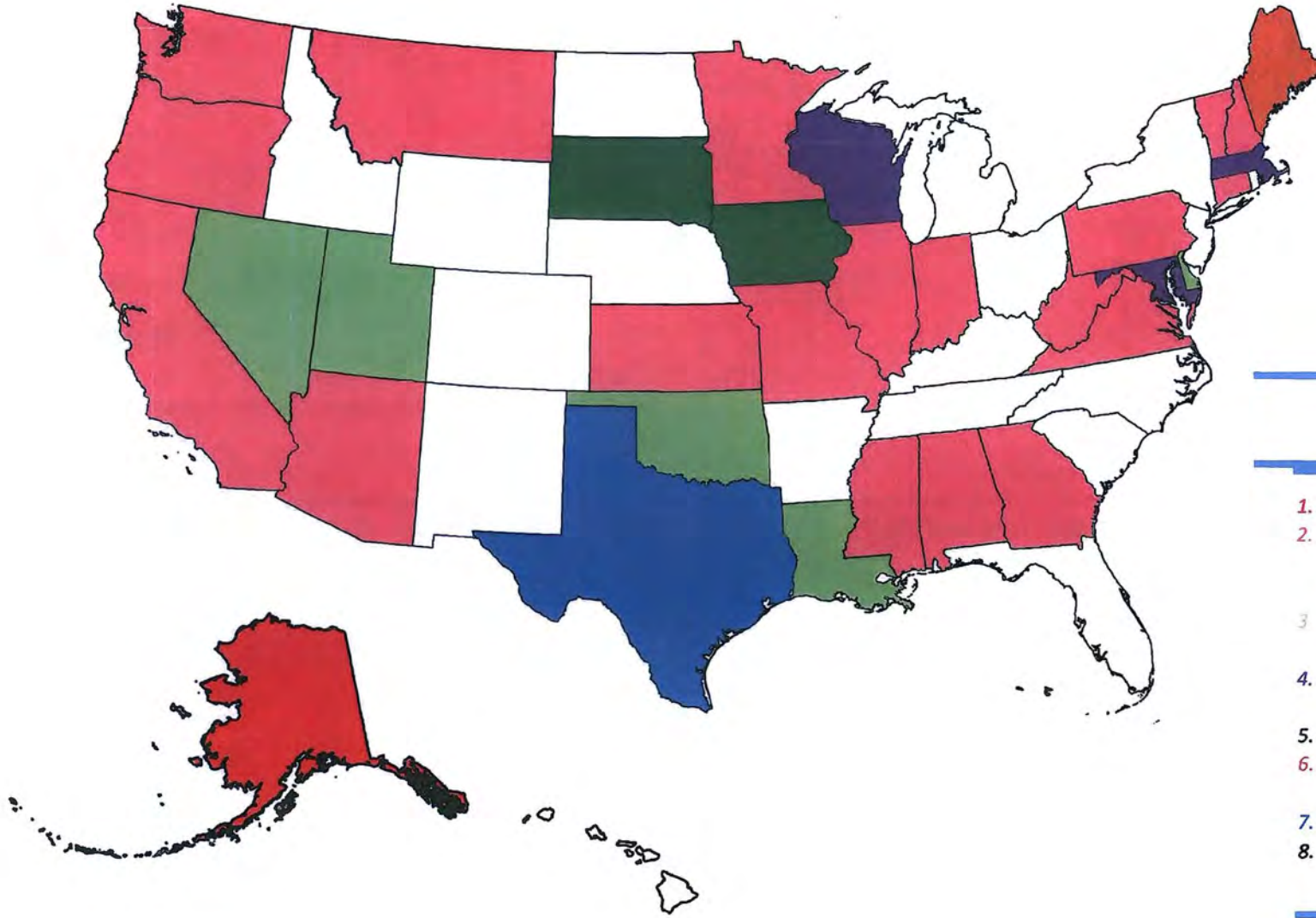
States that allow ROFR still have provisions for unreasonable withholding of consent and for transfer to qualified buyers.

**Map 16**



## Section 12: Succession-When Right of First Refusal Not Allowed

AADA



### Guide

1. *First or Second Degree*
2. *First Degree; Grandchildren; Spouses of those designated*
3. *General Family Member*
4. *Immediate Family Member*
5. *No ROFR*
6. *ROFR allowed except for succession*
7. *Must honor succession*
8. *No Color – Statute does not address*

Map 17

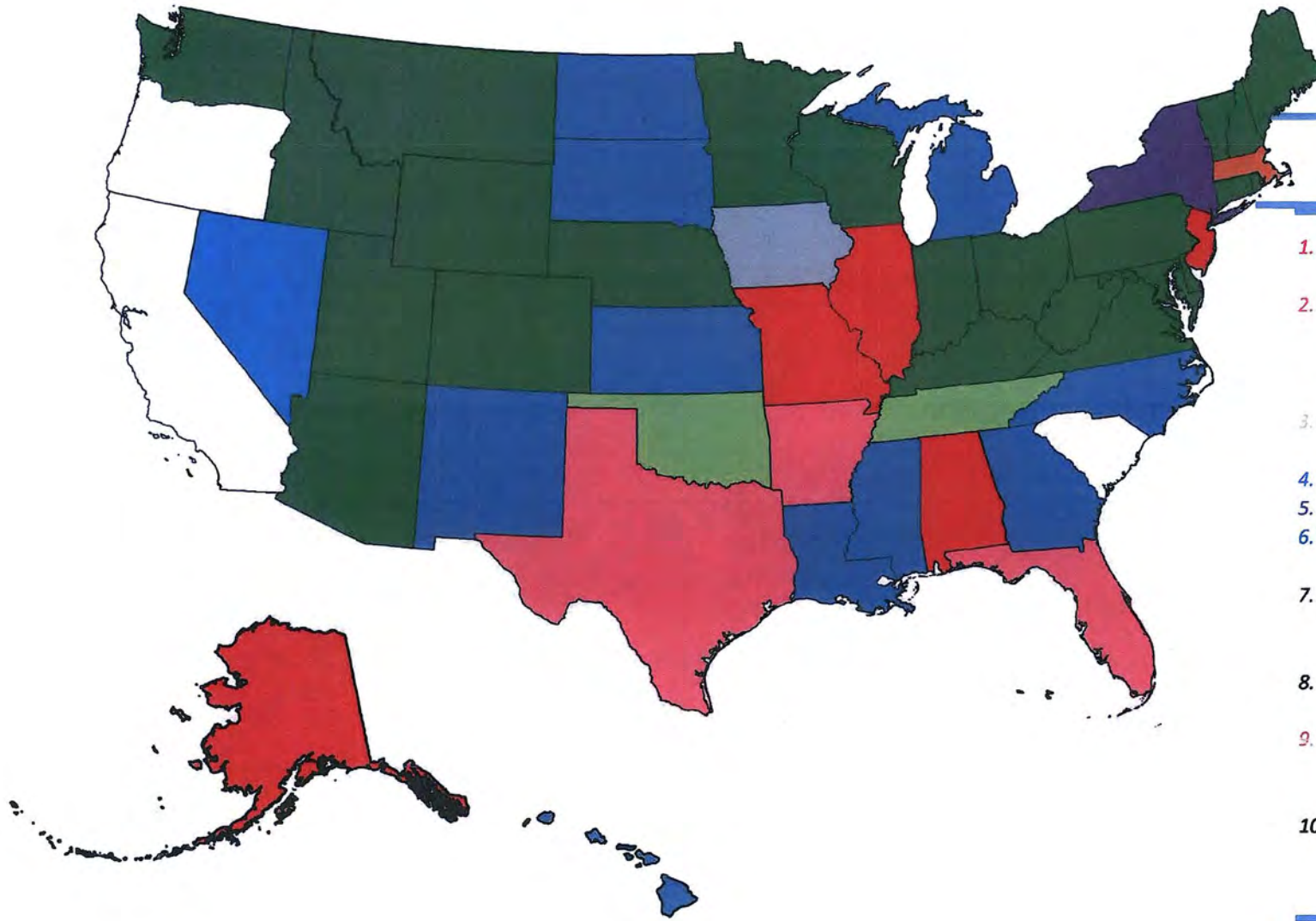


## Section 12: Succession- to a qualified successor

AADA

### Guide

1. *Successor must be qualified*
2. *Must honor successor unless detrimental to public interest or representation*
3. *Legal heir unless good cause*
4. *Spouse or adult child*
5. *Legal heir if qualified*
6. *Any devisee unless good cause*
7. *Designated Family member unless good cause*
8. *Successor must be able to obtain license*
9. *Legal heir honored as long as qualified manager*
10. *No Color – Statute does not address restrictions on ROFR*



Map 18





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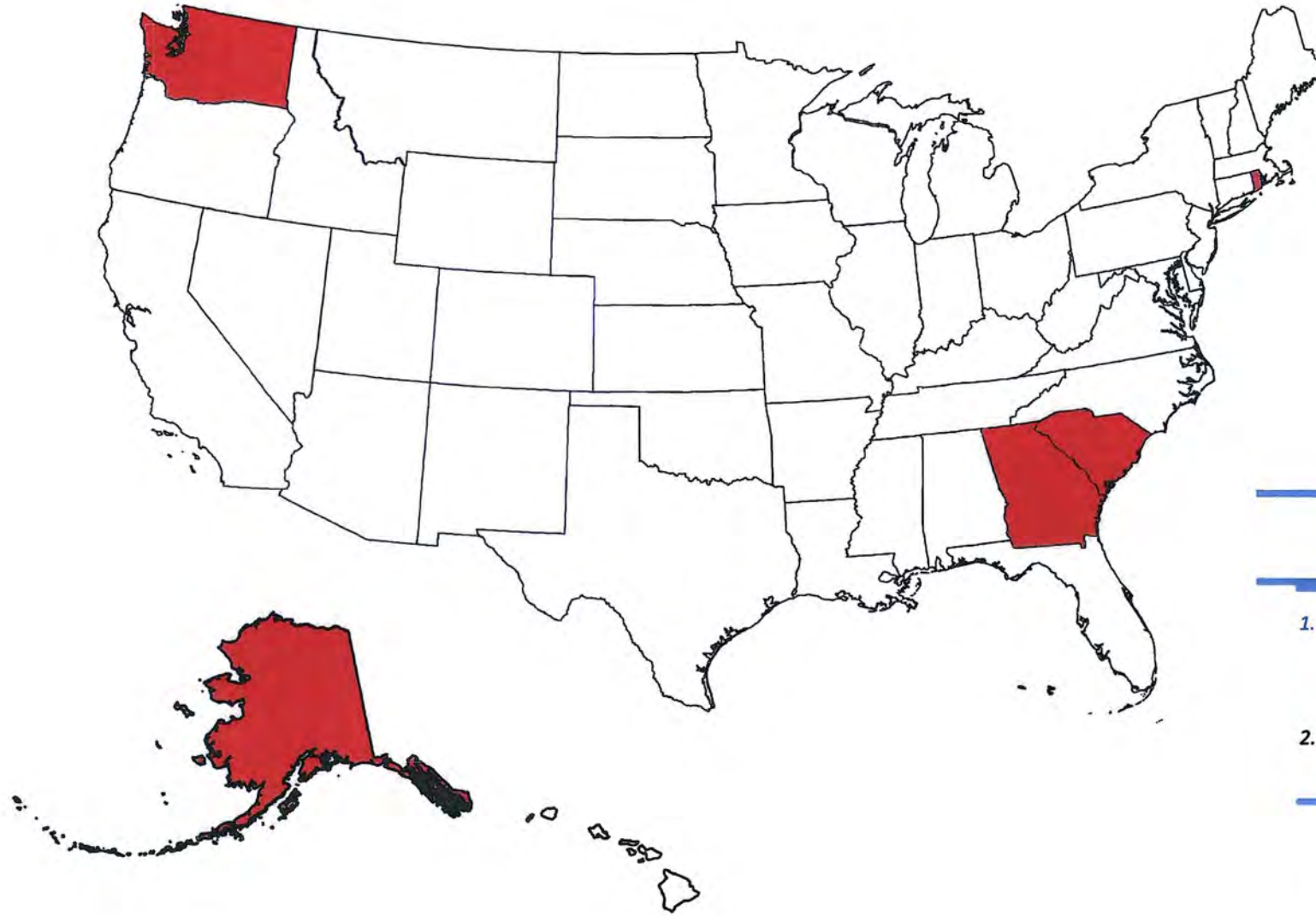
## Section 13: Adding or Relocating Dealerships, Factor Similar to (c)(10)

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AADA

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### Guide

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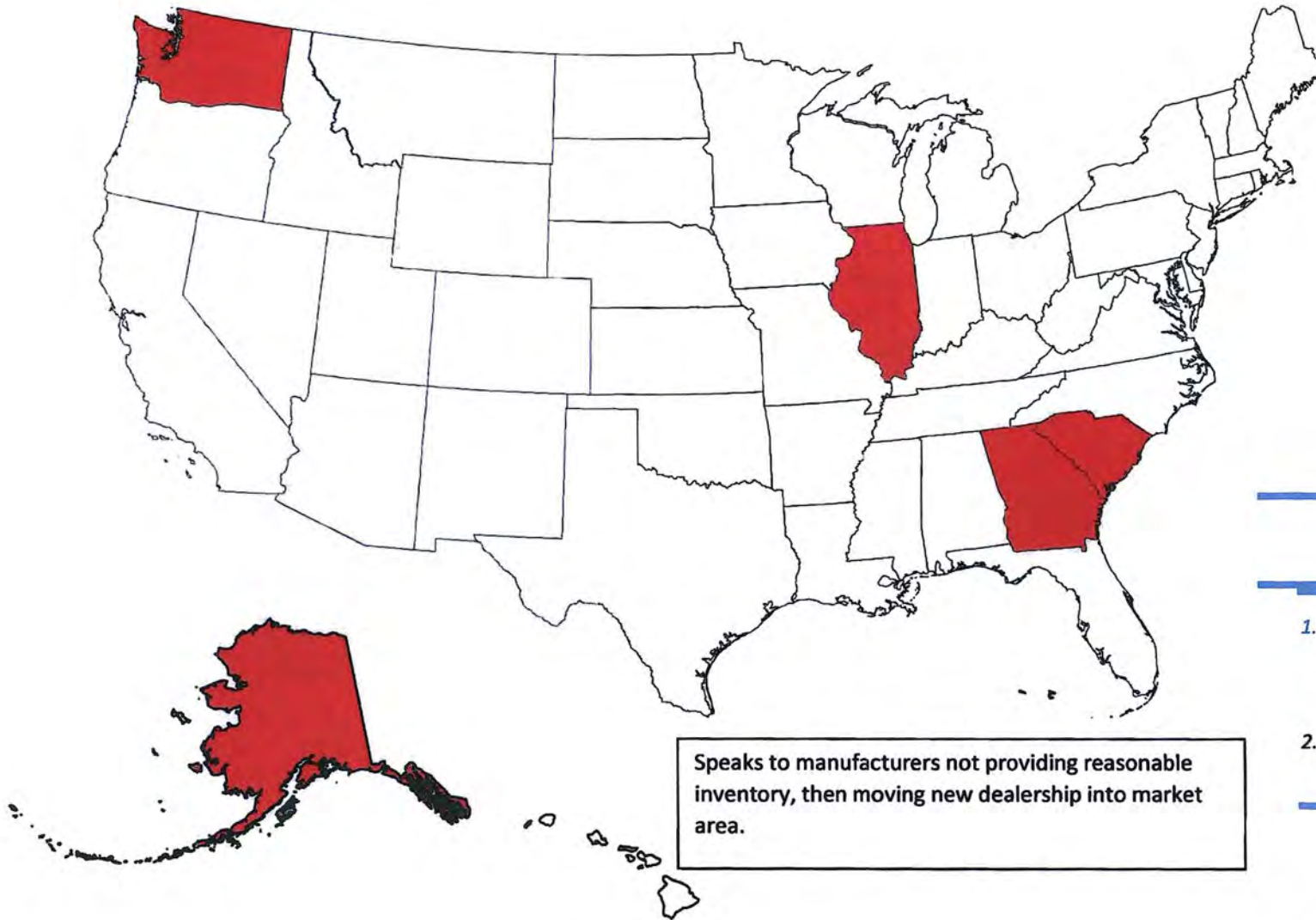
1. *Factor substantially similar to (c)(10) considered in good cause*
  2. *No Color – Statute does not address*
- 

**Map 20**



## Section 13: Adding or Relocating Dealerships, Factor similar to (C)(11)

AADA



### Guide

1. *Factor substantially similar to (c)(11) considered in good cause*
2. *No Color – Statute does not address*

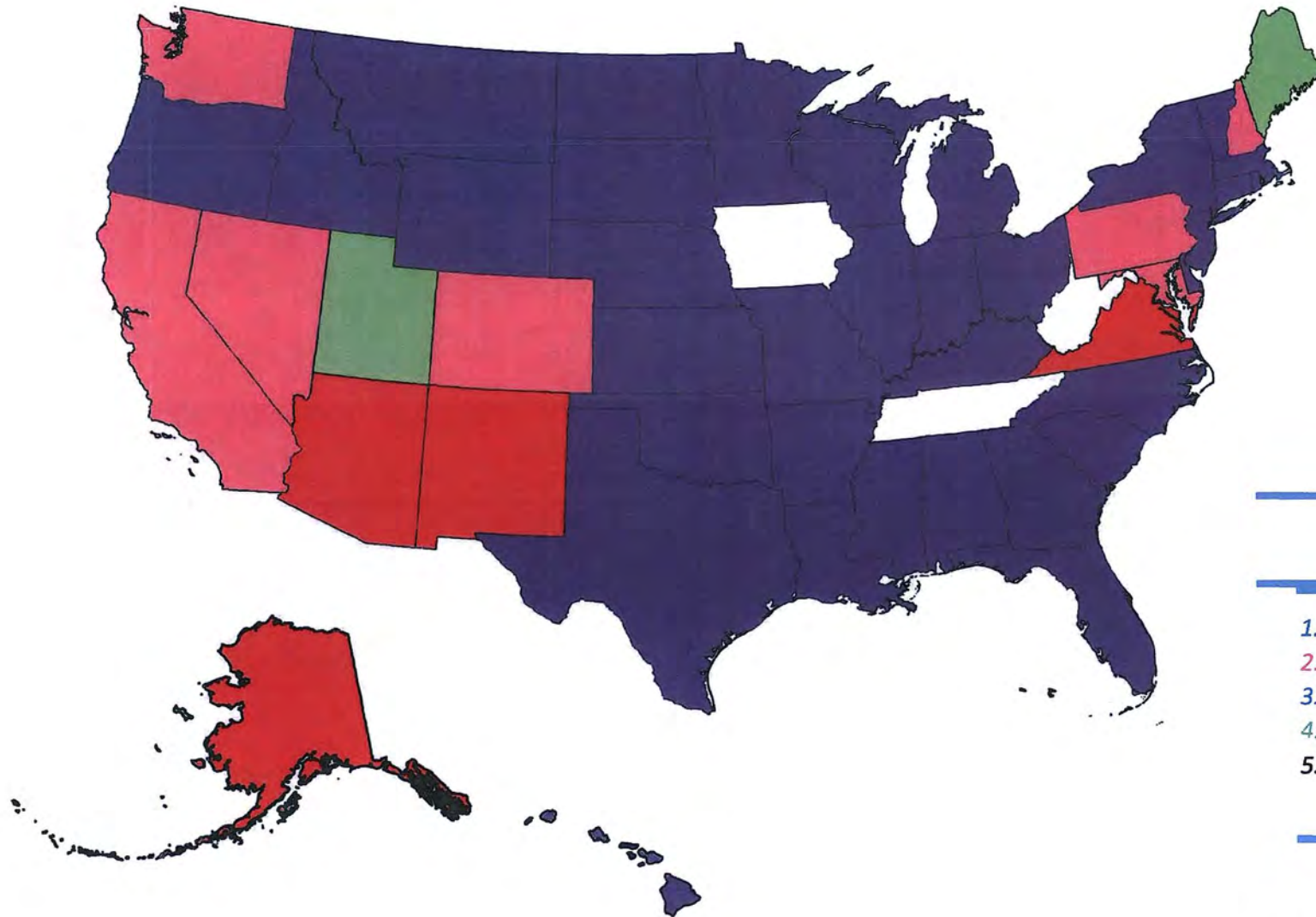
Map 21





## Section 15: Timeline for Warranty Audits

AADA



### Guide

1. 6 months
2. 9 months
3. 1 year
4. Reasonable basis
5. No Color – Statute does not address

Map 23



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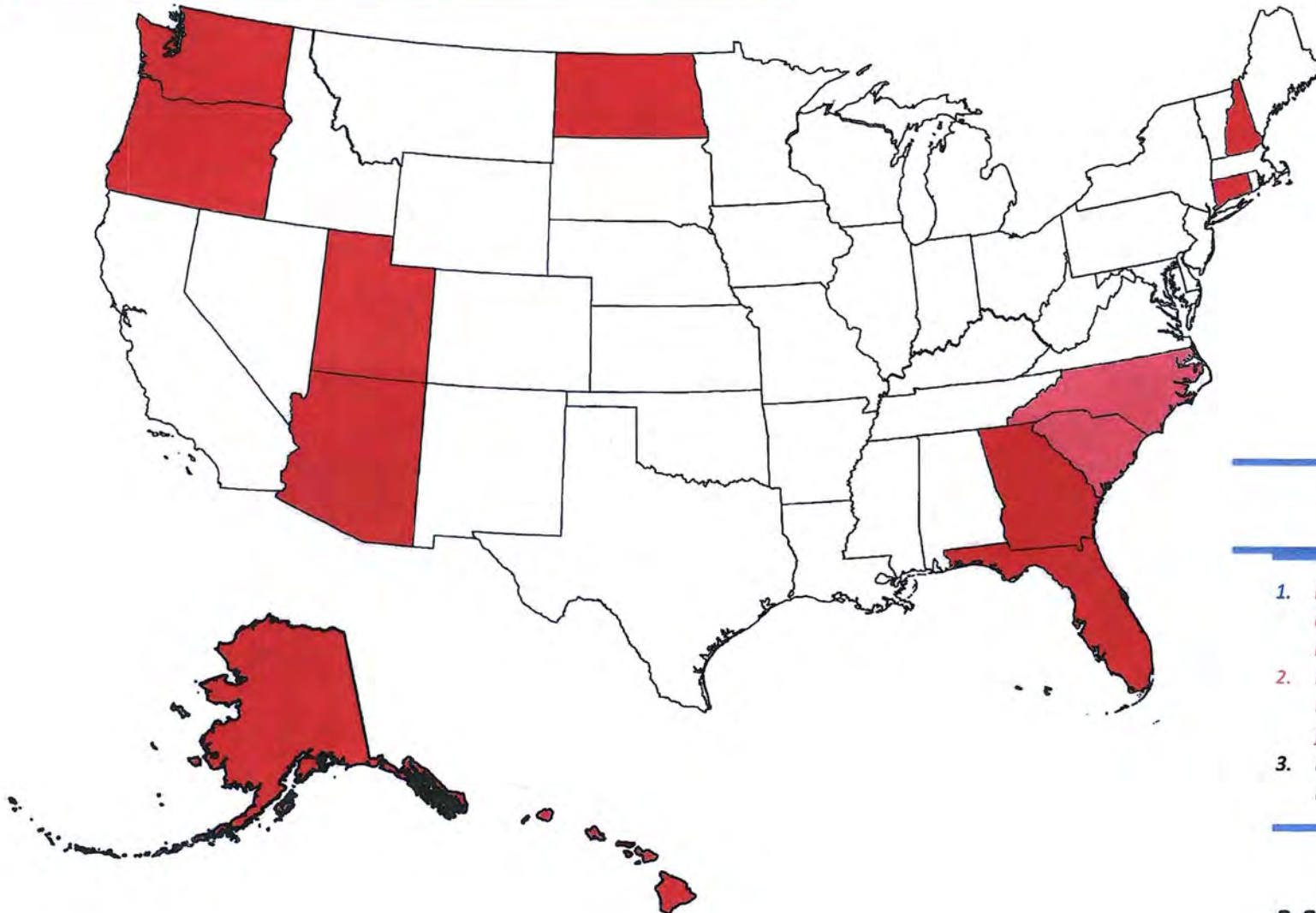
## Section 15: Prohibiting Recoupment of Costs for Compliance with Warranty Reimbursement

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AADA

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### Guide

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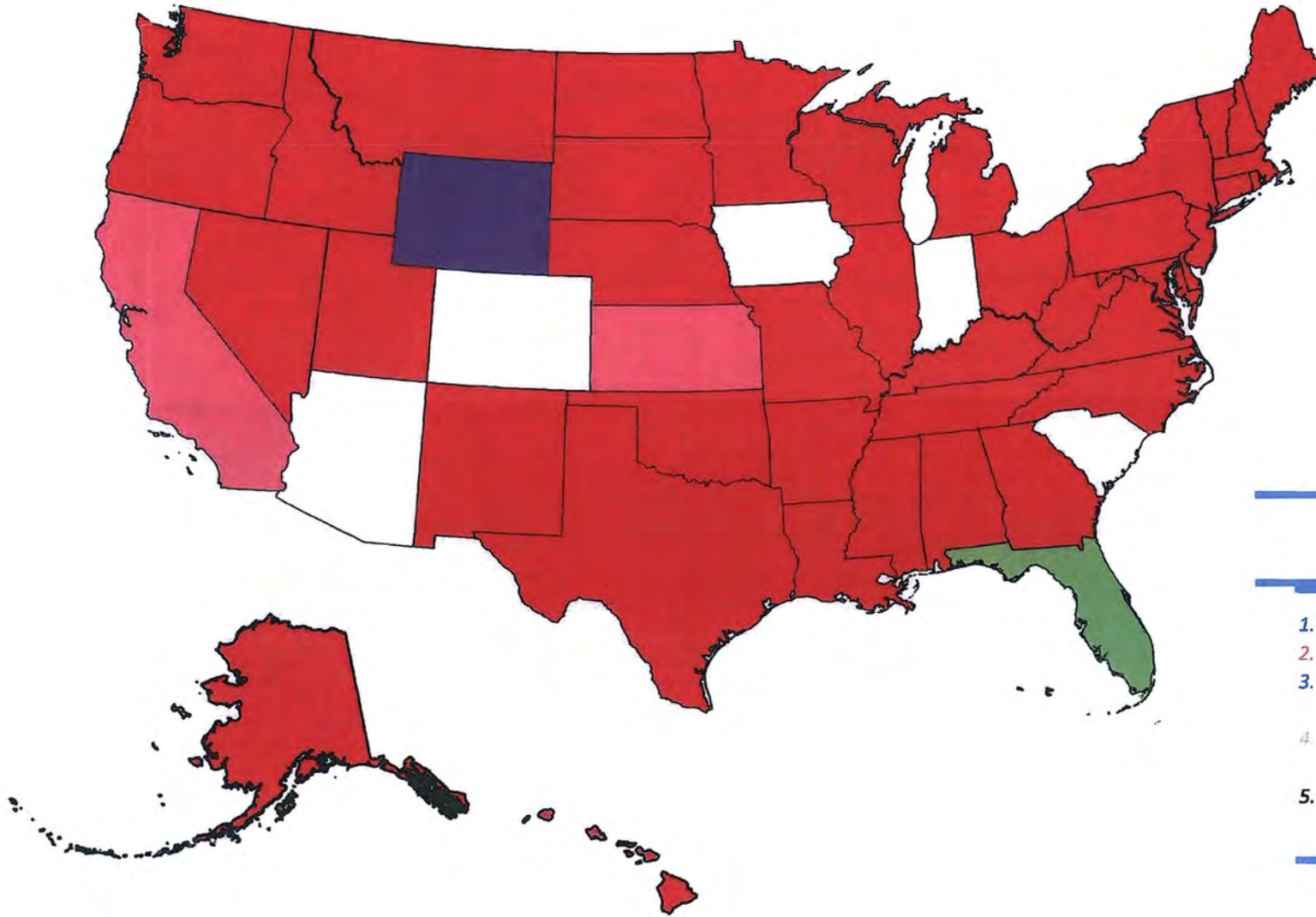
1. *Prohibits recoupment of compliance with requirements*
  2. *Prohibits charging of restocking or handling fees*
  3. *No Color – Statute does not address*
- 

**Map 24**



## Section 15: Warranty Reimbursement at Retail Rates

AADA



### Guide

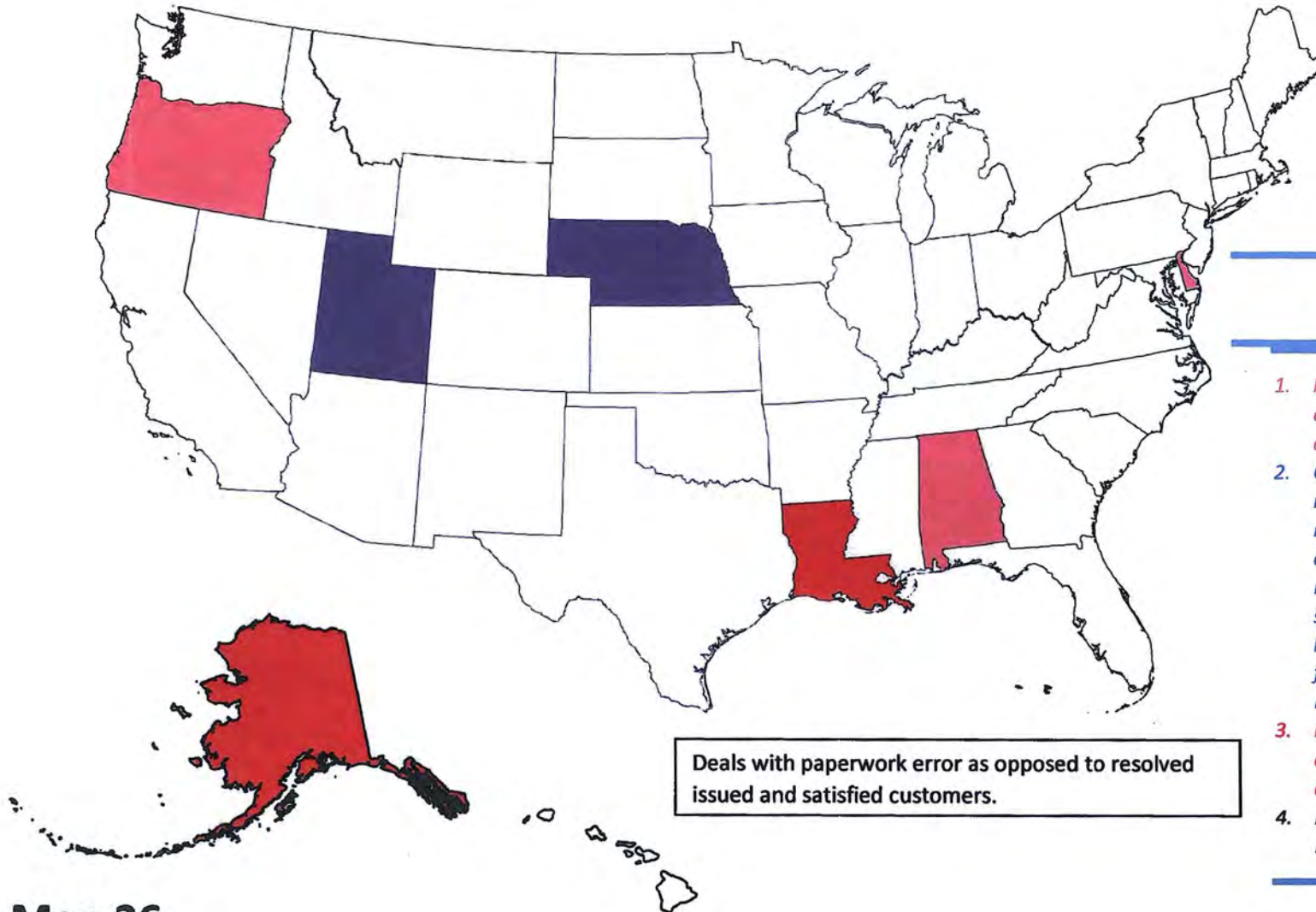
1. *Requires retail rates*
2. *Considers retail rates*
3. *Not exceed retail; parts at dealer cost plus 30%*
4. *Retail rates, but parties can agree otherwise*
5. *No Color - Statute does not address*

Map 25



## Section 15: Prohibiting Chargebacks or Denial for Noncompliance

AADA



### Guide

1. Prohibits chargeback if clerical/admin. omission
2. Only deny if nonwarranty; no material documentation; fails to material comply with substantial terms; belief that it is false, fraudulent, misrepresentation
3. Paid if repair covered and it resolved the condition
4. No Color – Statute does not address

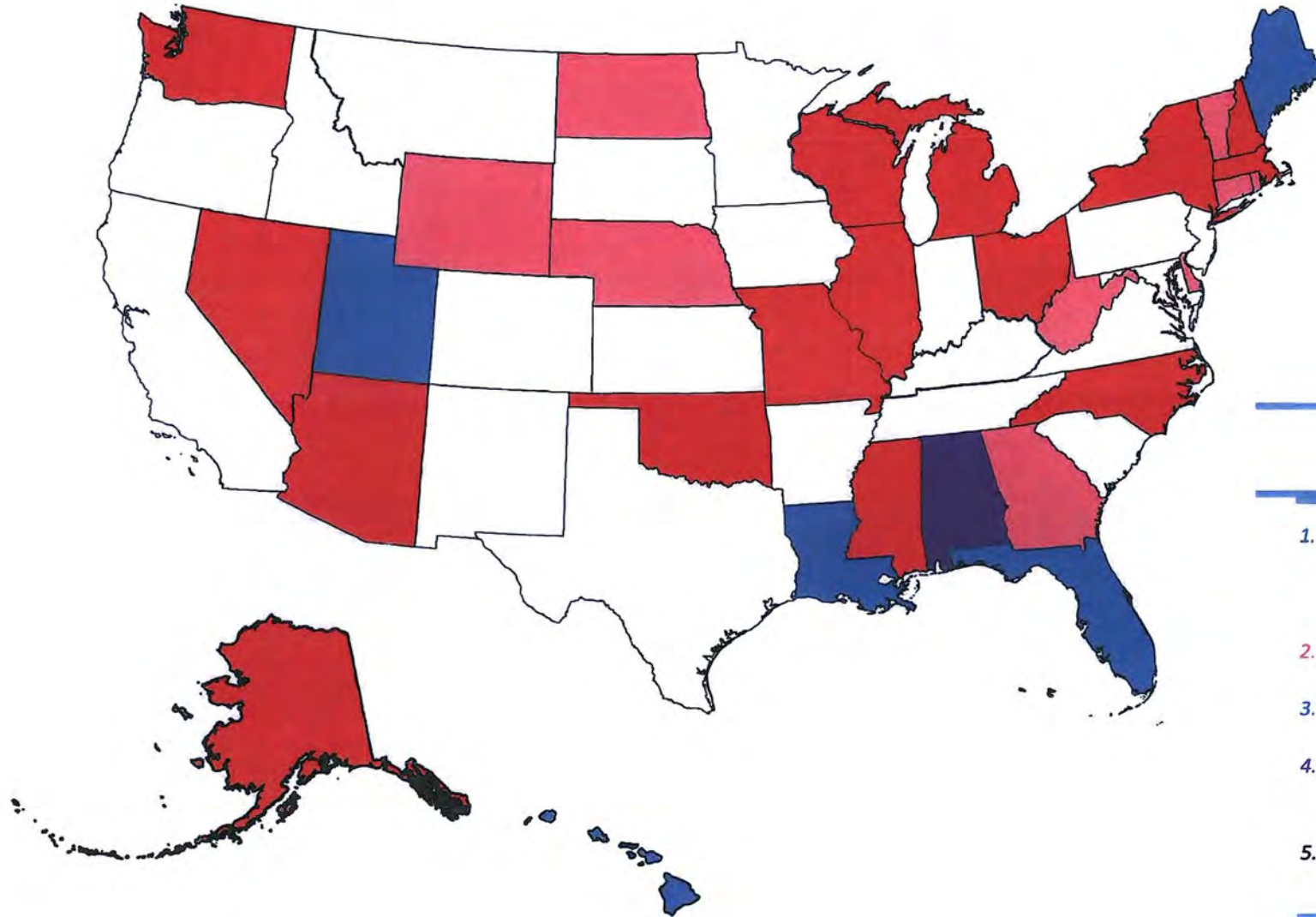
Map 26





## Section 16: (4) Allocation

## AADA



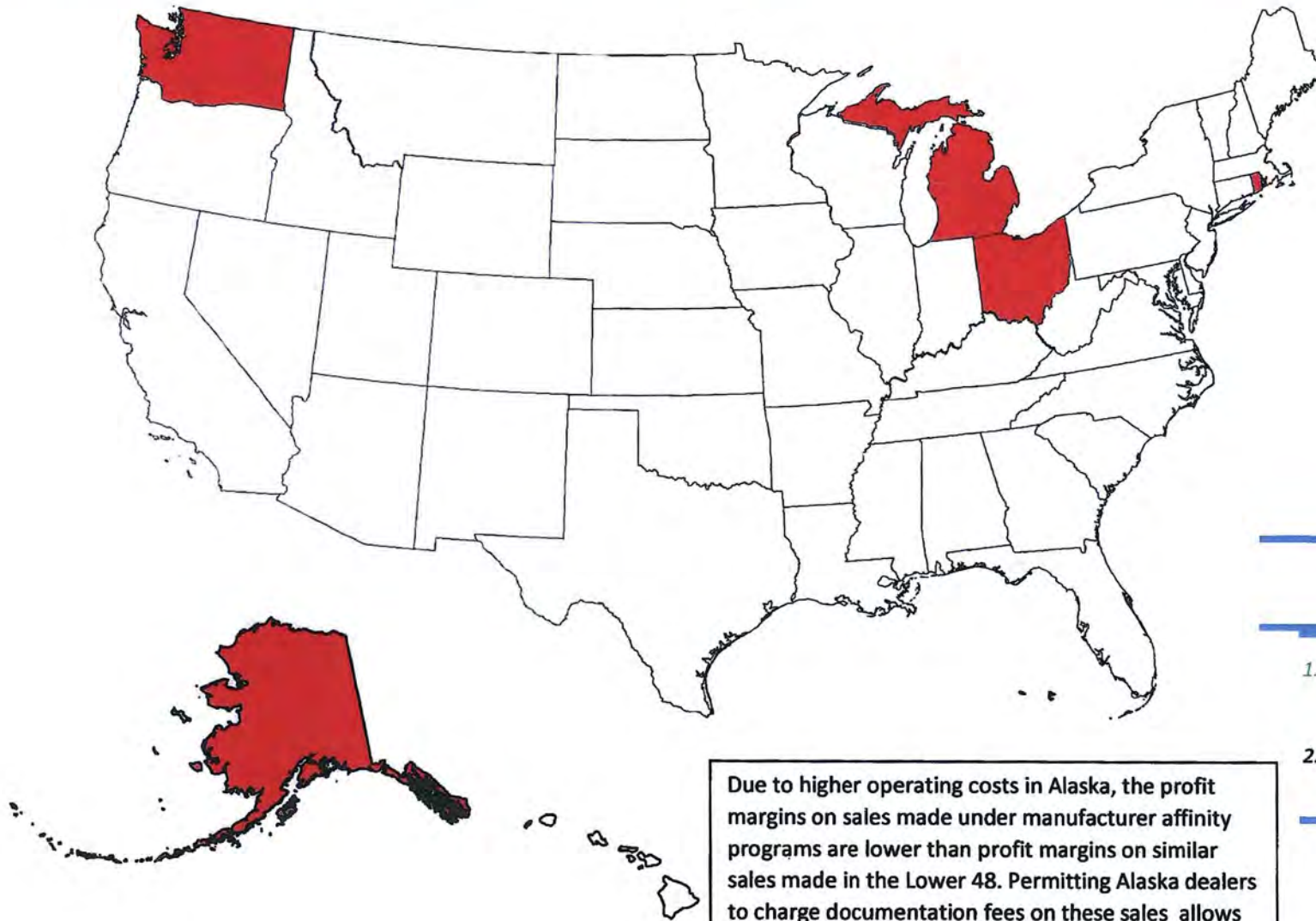
### Guide

1. *No unreasonable allocation and must provide allocation information*
2. *Must provide basis for allocation*
3. *No unreasonable allocation*
4. *May not enter into agreement to decrease allocation*
5. *No Color - Statute does not address*



## Section 16: (5) Documentation Fee

AADA



Due to higher operating costs in Alaska, the profit margins on sales made under manufacturer affinity programs are lower than profit margins on similar sales made in the Lower 48. Permitting Alaska dealers to charge documentation fees on these sales allows Alaska dealers to make up some of this difference.

### Guide

1. *Prohibit disallowing recovery of documentation fee*
2. *No Color – Statute does not address*



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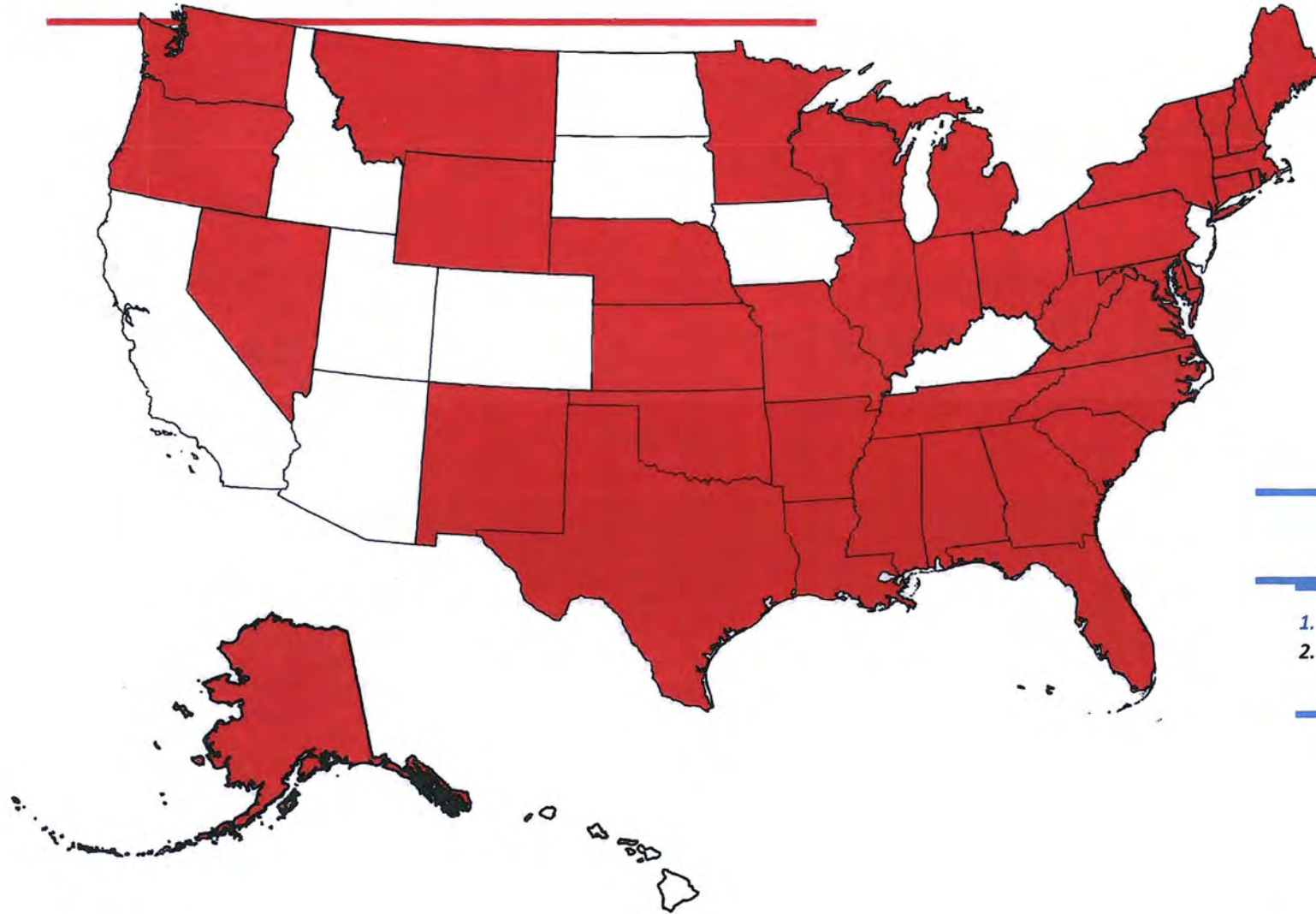
**Section 16: (6) May not refuse to deliver reasonable quantities of vehicles, parts, and accessories**

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**AADA**

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**Guide**

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1. *Substantially similar*
  2. *No Color - Statute does not address*
-



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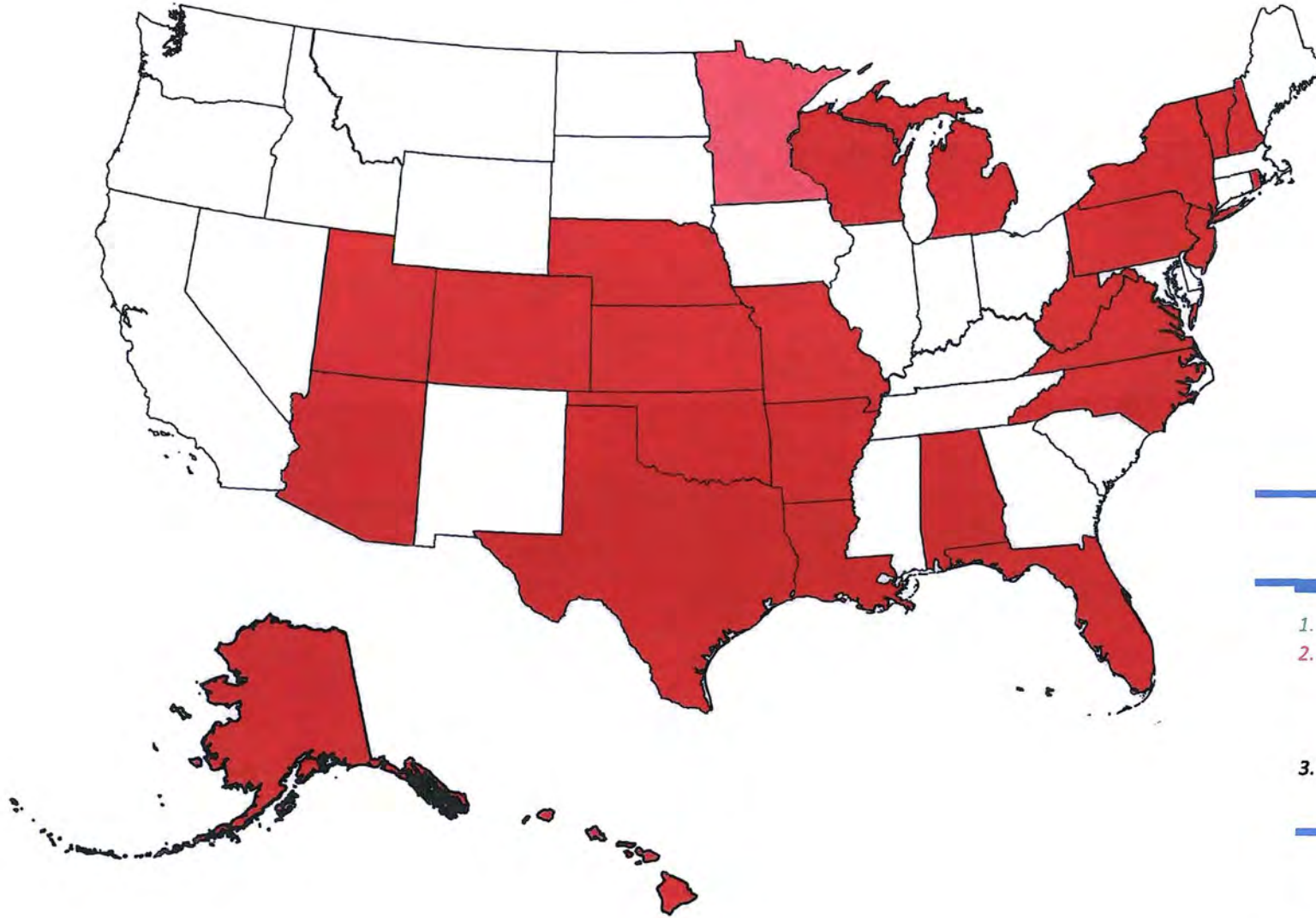
**Section 16: (9) Must make all models available to dealers**

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**AADA**

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**Guide**

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1. *Substantially Similar*
  2. *May not have any prerequisites to receiving a model (other than technology)*
  3. *No Color – Statute does not address*
-



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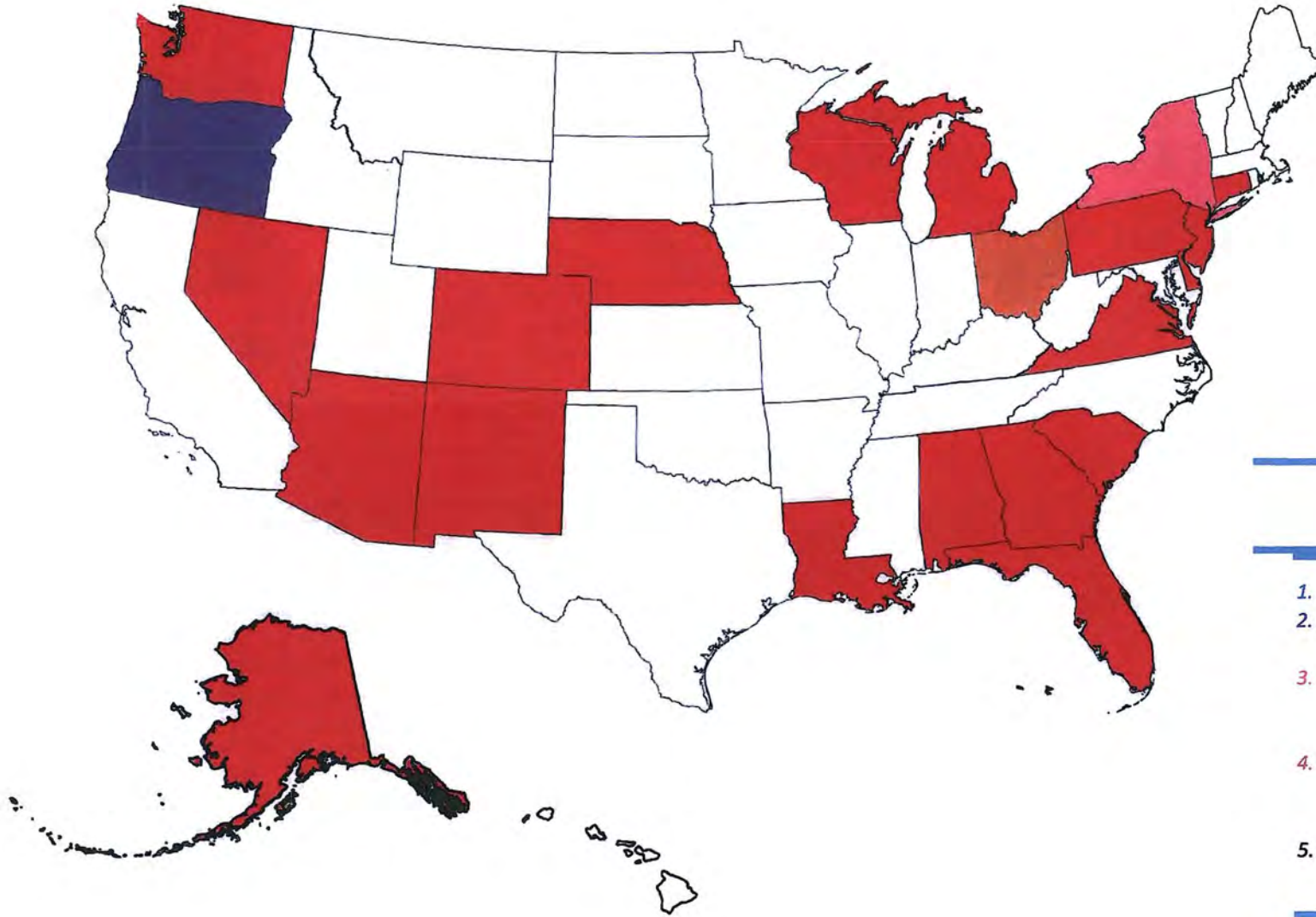
## Section 16: (11) Manufacturer may not operate service facility

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## AADA

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### Guide

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1. *Substantially similar*
  2. *In the relevant market area*
  3. *Cannot have someone perform repair work who is not franchised*
  4. *Cannot compete with a service facility owned by a franchisee*
  5. *No Color – Statute does not address*
- 

## Map 32



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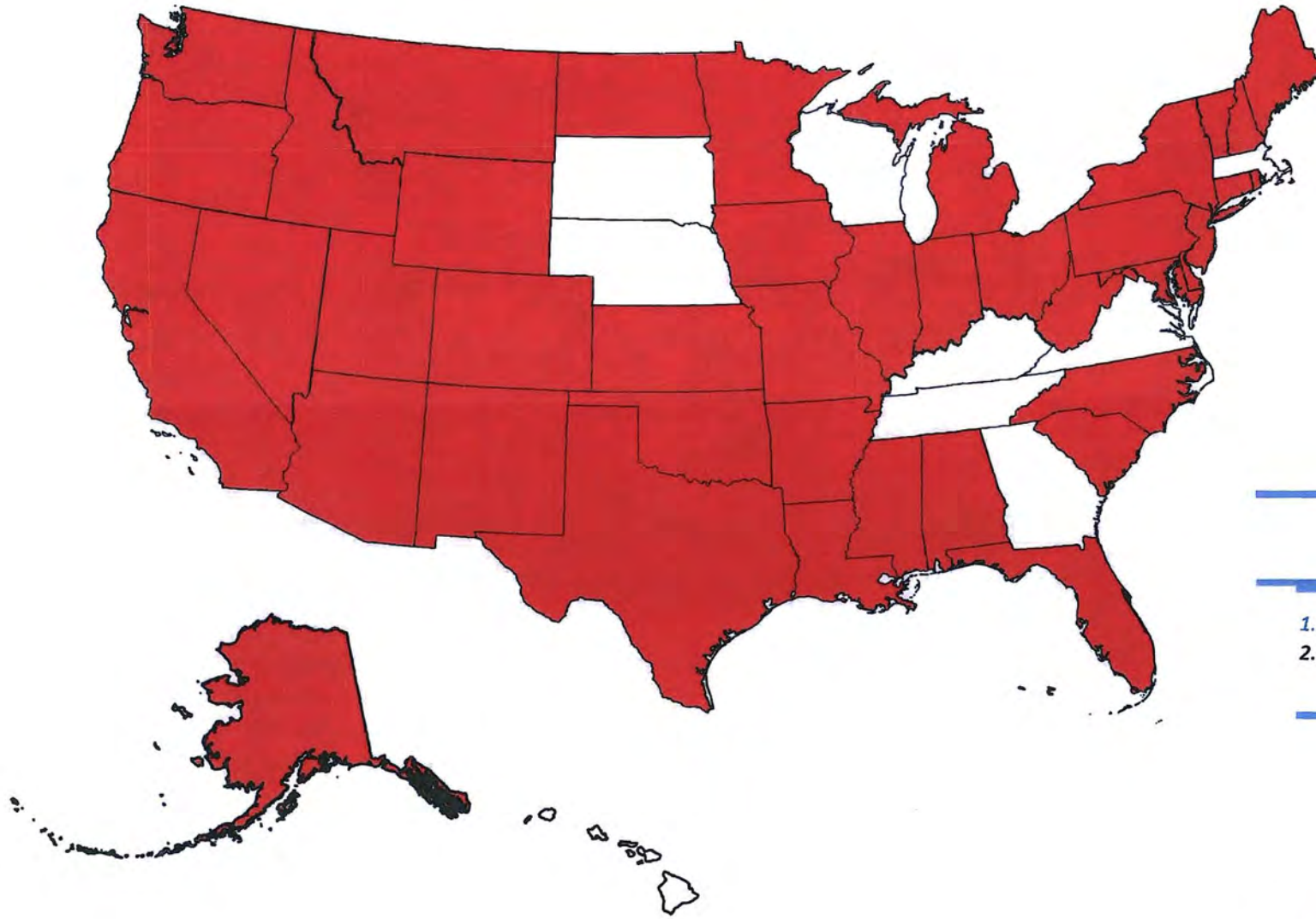
**Section 16: (14) Manufacturer cannot prohibit other line make**

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**AADA**

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*Guide*

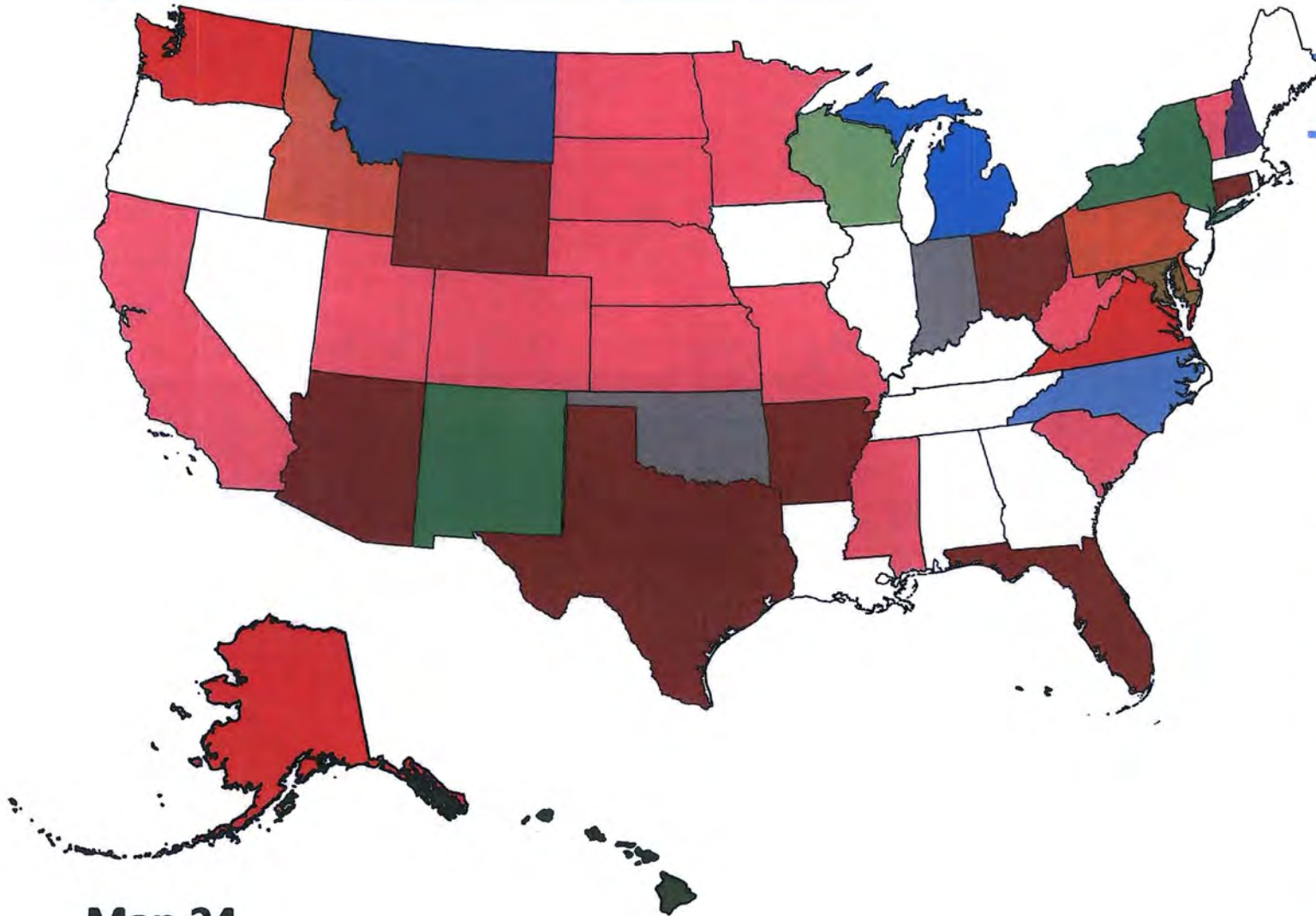
---

1. *Substantially similar*
  2. *No Color - Statute does not address*
-



**Section 16: (15) Manufacturer may not require remodel unless required of all similarly situated or reasonable**

**AADA**



*Guide*

1. *Reasonable or required of all similarly situated*
2. *Reasonable*
3. *Justified*
4. *Reasonable and Justified*
5. *Reasonable or technological*
6. *Reasonable or Health & Safety*
7. *Reasonable and justified or technological*
8. *Health and Safety or Technological*
9. *Can't offer incentive program to remodel*
10. *Can't condition other performance on remodel or alterations*
11. *Guarantee sufficient vehicles and justified by market conditions*
12. *Can't require substantial alterations*
13. *Substantial financial hardship*
14. *No Color – Statute does not address*

**Map 34**



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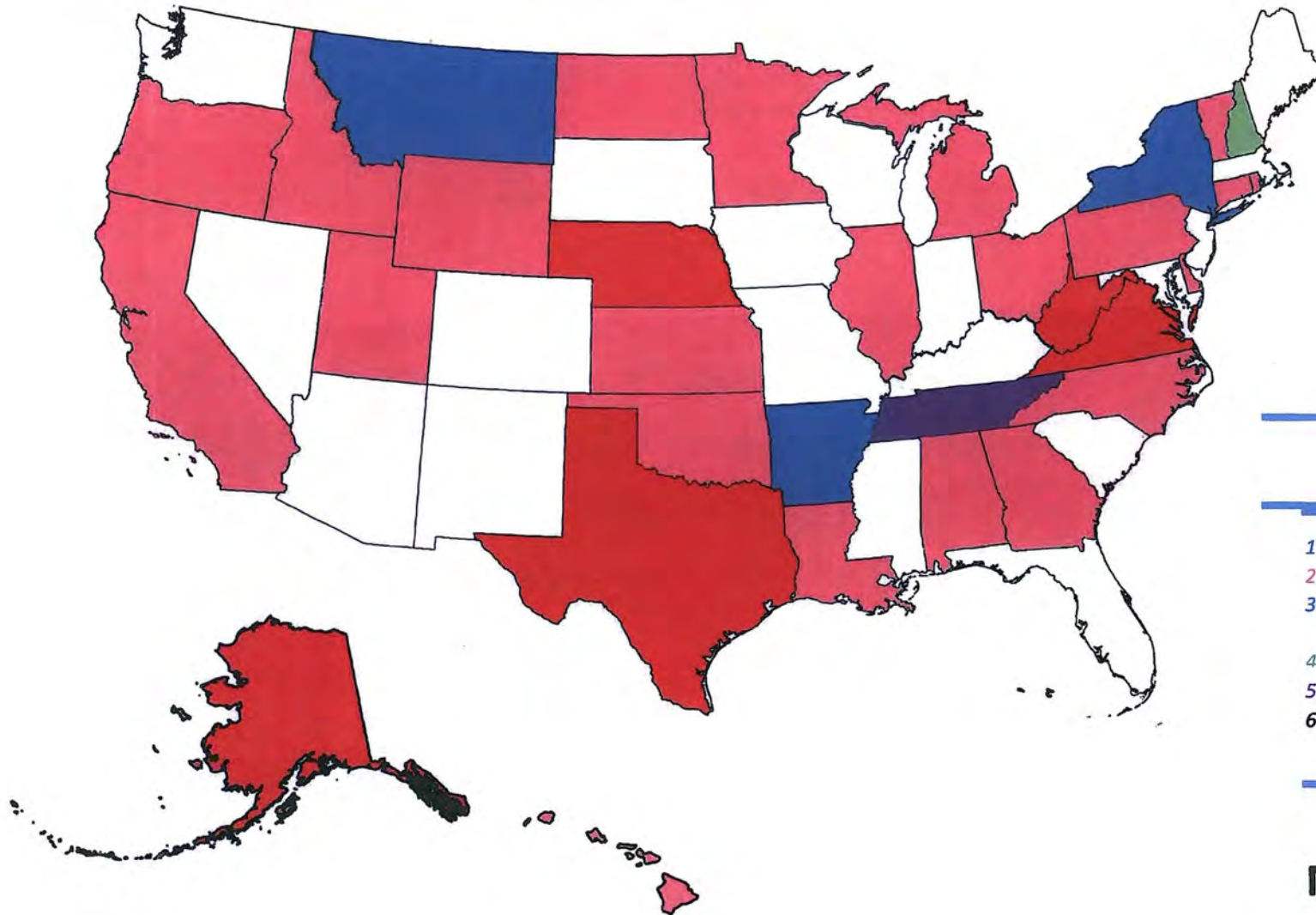
**Section 16: (17) Manufacturer may not require joining/funding advertising association**

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**AADA**

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**Guide**

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1. Advertising association
  2. Advertising campaign
  3. Advertising program or fund
  4. Cost of advertising
  5. Advertising plan
  6. No Color - Statute does not address
- 

**Map 35**



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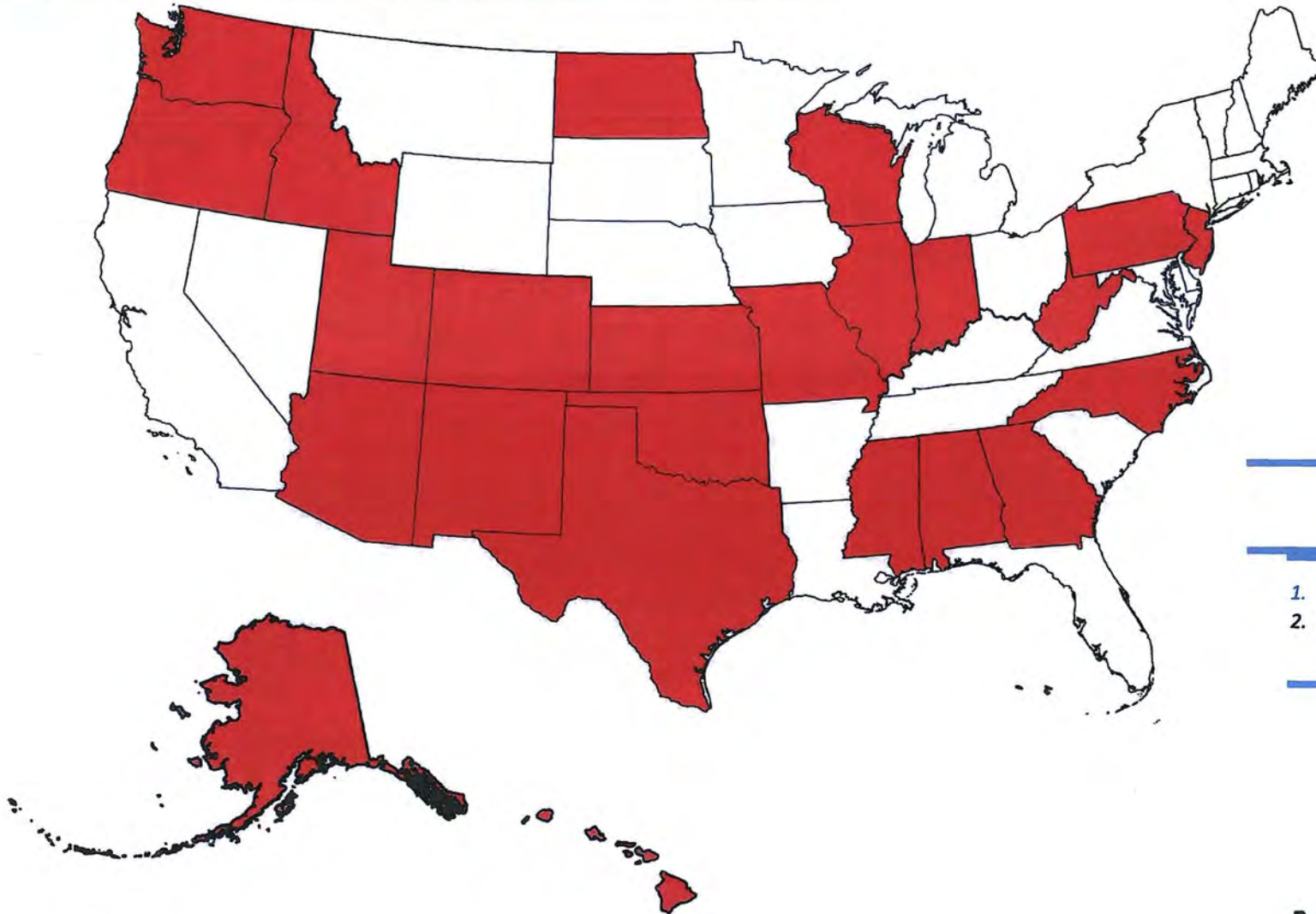
**Section 16: (19) Manufacturer may not condition action on site control agreement**

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**AADA**

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*Guide*

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1. *Substantially similar*
  2. *No Color – Statute does not address*
- 

**Map 36**



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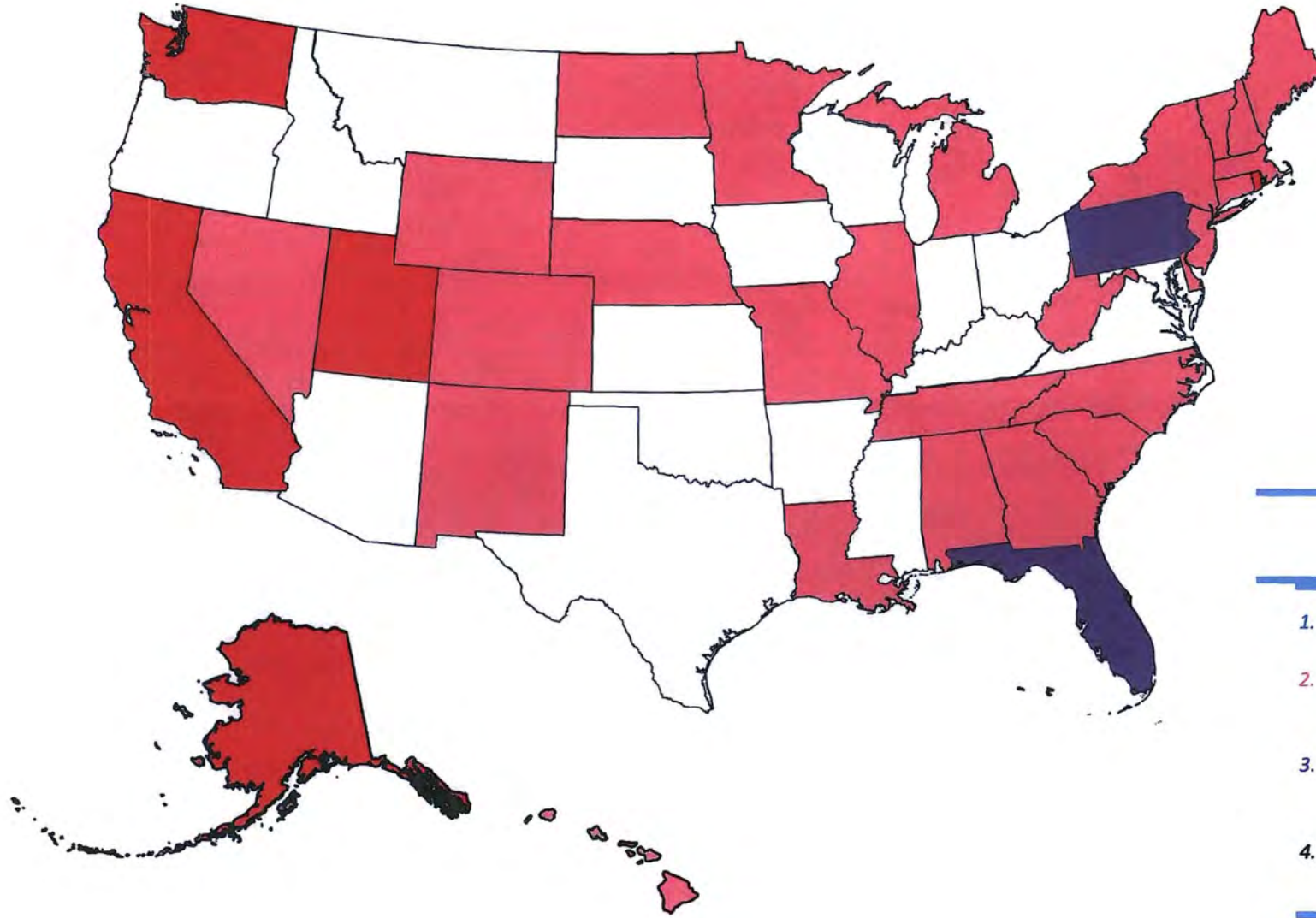
**Section 16: (20) Manufacturer may not require waiver of protest rights**

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**AADA**

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**Guide**

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1. *Require waiver of protest rights*
2. *Require waiver of liability, release, or other legal rights*
3. *Require waiver of protest and/or waiver of liability.*
4. *No Color – Statute does not address*

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**Map 37**





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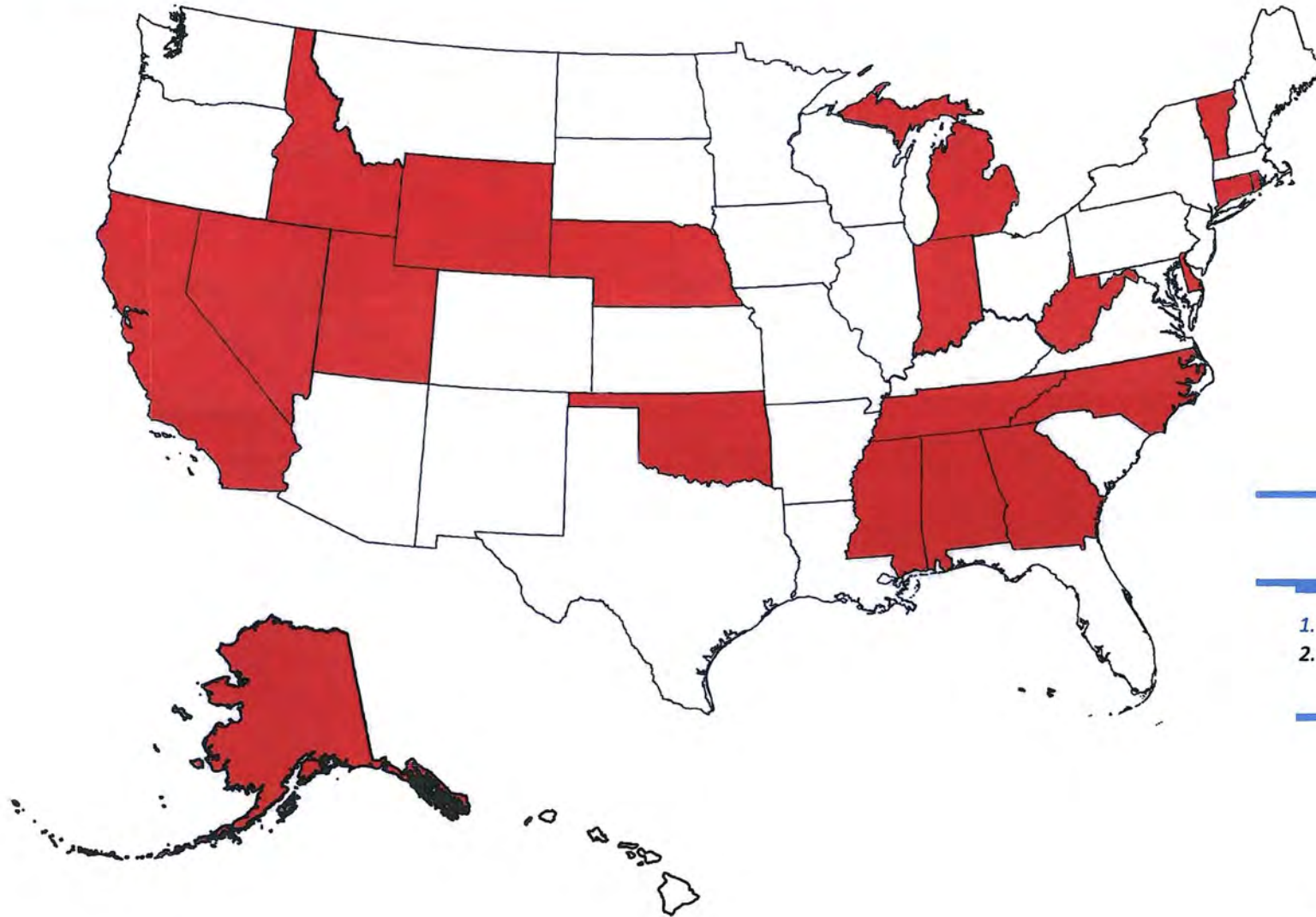
**Section 16: (22) Manufacturer may not raise price after order received**

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**AADA**

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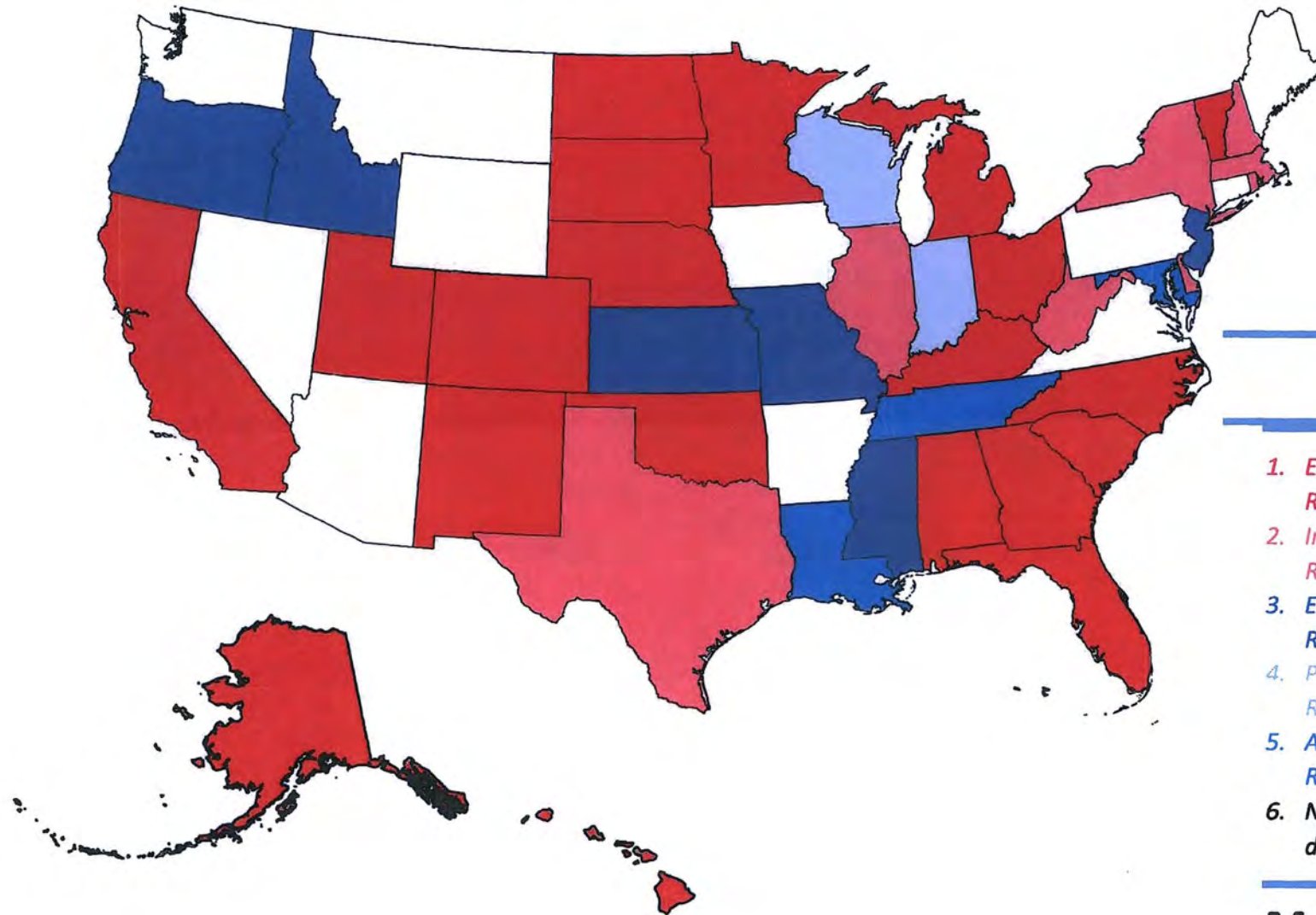
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**Guide**

---

1. *Substantially similar*
  2. *No Color – Statute does not address*
-





Guide

1. *Explicit Retroactivity*
2. *Implied Retroactivity*
3. *Explicit No Retroactivity*
4. *Partial No Retroactivity*
5. *Applies with License Renewal*
6. *No Color – Statute does not address*

Map 41



### Auto Alliance Analysis of the Problematic Issues in House Bill 136

The following is a discussion of the many problems in House Bill 136. The Auto Alliance does not intend this document to be an exhaustive list of every problematic detail in the bill. Instead, the document is meant to provide context for anyone unfamiliar with the issues so that they can more easily see the problems with the bill.

#### Section 1: Legislative Findings

HB 136 asks the Alaska State Legislature to find that this sweeping franchise law is necessary “to prevent the infliction of fraud and other abuses on people in the state.” That is offensive.

#### Section 3: Terminations

This section would prohibit a manufacturer from terminating a dealer in certain situations. For example, dealers would be free to move their current dealership into any existing store in the market area. Manufacturers have an interest in where their franchises are located, but this would give the dealer complete authority to move that location.

#### Sections 4: Terminations

This section seeks to make it harder for a manufacturer to terminate a poorly performing dealer. It is important that manufacturers be able to terminate a poorly performing dealer because state law effectively prevents manufacturers from adding another store within an existing dealer’s market area. Manufacturers and consumers rely on every dealer to be effective representatives of the brand because the next dealer could be far away. Consumers rely on the dealer as a place to shop and get their vehicle serviced. It should not be the legislature’s role to protect underperforming businesses from the consequences of poor performance.

Section 4 allows the dealer to challenge a performance termination by relying on market analysis based upon not only that dealer’s vehicle allocation, but also the allocation of that dealer’s competitors. That data is confidential yet the bill would force the manufacturer to disclose it. It is not in the interest of manufacturers or dealers to have a law that would make competing dealers’ confidential information so readily obtainable during litigation that they are not even a party to.

These sections create a system of rules that is ripe for contentious litigation and encourage application of 20/20 hindsight to business decisions. For example, Section 4 requires the manufacturer to have provided an adequate supply of vehicles. First, this idea does not fit well with the allocation system that most manufacturers use which is to send vehicles to the dealers who are selling them the fastest. But what if the dealer refused the vehicles? Or what if the manufacturer is terminating the dealer for terrible customer satisfaction scores and the allocation is irrelevant? This section would apparently allow a dealer to force an Alaska court to consider arguments about a highly technical and fact-intensive product distribution issue even though it is totally irrelevant.

#### Sections 6 to 9: Termination Assistance

These sections spell out a manufacturer’s obligations to pay a dealer various forms of severance fees upon termination. Many of these obligations are simply forms of “risk shifting.” When a franchisee in any industry goes into business, he or she is accepting a certain amount of risk that the business will either succeed or fail. HB 136

seeks to shift that risk of doing business from the dealer to the manufacturer. Indeed a poor performing, ineffective dealer would receive very generous compensation under the bill. It requires the manufacturer to repurchase inventory, demonstrator cars, signage, furnishings, tools, etc. The bill also requires payment for early lease terminations and payment for remodeling or relocation costs from the previous three years. In an instance where a dealer owns the property, the manufacturer would have to pay two years of the rental value of the property. The list of required payments is long and excessively generous. This section also ignores the value that the dealer got out of these items as part of running the business.

These are not an exhaustive list of the ideas in the statutorily-defined golden parachute that HB 136 seeks to create. This list illustrates the dramatic risk shifting that the bill seeks to accomplish. Such risk shifting is entirely unreasonable in light of the incredible long term profitability that car dealers have shown.

Even more astounding is that HB 136 would require the manufacturer to pay these generous benefits to a dealer even if it was the *dealer* that decided to terminate the franchise agreement and quit the business. The Alliance has agreed in other states that manufacturers should have some obligations towards a terminated dealer (although certainly nothing as generous as the windfall contemplated in this bill). But there is certainly no reason that a dealer who voluntarily quits the business should receive the same severance benefits as a dealer who was terminated by the manufacturer. Dealers should not be rewarded for quitting.

#### Section 10: Sale or Transfer of the Dealership

Current law makes it very difficult for a manufacturer to establish a new location for a dealership. In fact, Section 13 of this bill makes it even harder to do so. This means that every point is critical for serving the local population and effectively representing the brand.

In light of these facts, it is very important for manufacturers to be able to exercise a "right of first refusal" when a dealer wants to sell his or her franchise to someone else. That means that a manufacturer has the option to match the buyer's price and then assign the dealership to someone that the manufacturer thinks would be a better dealer. That way a manufacturer can avoid an underqualified candidate from taking the franchise. Right of first refusal provisions are very common in all sorts of commercial contracts. HB 136 would nullify the right of first refusal clause in a franchise contract. There is nothing unique about the automobile industry in this context. There is no reason that a right of first refusal provision in a contract between a manufacturer and a dealer should be unenforceable while a similar provision in another commercial contract should be acceptable.

The drafting of this section creates additional problems through the use of the disjunctive "or" in subsection (a)'s list of instances when a manufacturer may not withhold consent to a sale of the dealership. It means that simply being "capable of being licensed as a new motor vehicle dealer" is enough to prevent a manufacturer from withholding consent. The subsection also means that a manufacturer may not withhold consent if the buyer "already holds a franchise from the manufacturer." That gives the manufacturer no way to prevent a single dealer from consolidating control of area franchises and harming or eliminating intra-brand competition.

#### Sections 13: Adding or Relocating Dealerships

Situations may arise when a manufacturer may seek to add new dealerships to meet consumer demand, or the manufacturer may seek to relocate an existing dealership. Oftentimes, a relocation is at the request of the existing dealer because its location has become less desirable over the years for reasons such as changing traffic patterns or some kind of long term nuisance. Section 13 of HB 136 would add extremely high hurdles for a manufacturer that seeks to add or relocate a dealership. The result will be less competition and underserved consumers.

Section 13 would require a manufacturer to establish "good cause" before it can create or move a dealership. Section 13 then goes on to list 11 factors that determine whether there is good cause.

The first of the two flawed criteria is (c)(10), which would count against good cause if the manufacturer denied the protesting dealer the opportunity to expand and create a satellite location. Yet manufacturers and consumers may have a legitimate reason to want a different dealer in the market. Car dealers often argue that intra-brand competition amongst dealers that sell the same brand of vehicles keeps prices low for consumers. A pre-requisite to intra-brand competition is of course multiple dealerships that are not controlled by the same person. Diverse ownership should be a factor in favor of good cause, yet (c)(10) would cause it to be scored against a finding of good cause. This section clearly does not have the public interest in mind when it allows a dealer to argue, "There should be no new store at that location unless I can have it."

Determination of good cause is fact specific matter for courts to decide. This bill actually creates a constitutional separation of powers issue because it asks the legislature to encroach on the judiciary's decision making ability. These sections create a long list of factors that are presumed to be relevant and required to be met. Equally as troublesome is that HB 136 does not allow the court to weigh these considerations against each other. This is another example of the bill overstepping its bounds.

Finally, Section 13 could strangely require the manufacturer to bear the burden of proof for relocating a dealership when it was the dealer instead of the manufacturer that suggested the move. It would be very unusual to see a manufacturer arguing the case in what would essentially be a dealer v. dealer dispute.

The result of all of these provisions would be that Alaska's dealer network would become more rigid and less able to respond to consumers.

#### Section 14: Court Actions

Section 14 also creates "automatic stays" when a protest is filed in a case involving closing, opening, or relocating a dealership. Rule 65 of the Alaska Rules of Civil Procedure already covers preliminary injunctions and courts have a wealth of experience in applying it. There is no reason to depart from Rule 65 and give special treatment to dealer lawsuits about closing, opening, and relocating dealerships. Departing from Rule 65 would incentivize filing complaints that only delay a manufacturer while wasting court resources in the process.

#### Section 15: Warranty Reimbursement

Manufacturers fulfill their warranty obligations to consumers by relying on dealers to perform the warranty work. This allows the manufacturer to know that qualified technicians are doing the warranty work. It also allows the manufacturer to know that the customer's needs are being met conveniently and with high quality.

The question that arises in this model is how much a manufacturer should pay a dealer to perform this work. Manufacturers and dealers already have agreements in place that provides compensation for both parts and labor. This bill would allow dealers to ignore those agreements and require the manufacturer to pay the dealer the same retail rates that it charges to public. The bill ignores the fact that manufacturers are almost always a dealer's biggest customer for service work. The manufacturer provides a steady stream of work that does not have any advertising or customer retention costs that an ordinary repair shop would have. Section 15 disregards the value of being a bulk purchaser of service work.

It is difficult to see how any regulatory system that sets *minimum* prices could be good for consumers. Indeed, the concept of mandatory retail reimbursement rates creates a threat to Alaska consumers. If a dealer knows that the manufacturer is its largest customer, cannot take its business elsewhere, and that the manufacturer must pay the dealer's retail price, then the dealer will have an incentive to raise the retail prices that it charges consumers. The

dealer will know that the lost revenue from the customers that take their business elsewhere will be more than made up by the increased revenue that the dealer gets from the manufacturer. The consumers that keep going back to the dealer will suffer because of the incentive to raise prices that this bill creates.

Section 15 also limits a manufacturer's ability to claim that a dealer's retail rates are unreasonable. 45.25.210(h) says that a manufacturer would need to demonstrate that a dealer's proposed retail rate "unreasonably exceed[s] the rates and charges of all other franchised new motor vehicle dealers in the same relevant market area offering the same motor vehicle line or a competitive motor vehicle line." That means that a dealer's rate is unreasonable only if it is the highest rate of any dealer in the area. That is a needlessly difficult threshold to meet, and it should not be used as a necessary standard to show unreasonableness.

The bill seeks to establish a higher cost for the manufacturer in doing business in Alaska. But it then goes on to say that despite an Alaska-specific law that raises costs, the manufacturer must distribute that cost across the country rather than having the option to have a surcharge for cars sold into Alaska. States should not pass laws that benefit in-state interests and then pass the costs for them onto other states. The Alliance would ask other states not to do that to Alaska consumers, and the Alliance would also ask Alaska not to do that to consumers in other states.

Section 15's problems do not end there. As previously stated, manufacturers rely on the dealers to perform warranty work and then the manufacturer compensates the dealer. Manufacturers will naturally need some ability to audit to make sure that claims that were paid should have been paid, and to make sure that the repairs were appropriate and performed properly. The ability to audit for warranty is simply a matter of good financial controls. Section 15 would limit a manufacturer's ability to audit to only the previous 6 months, which is too short for an effective and efficient audit program. The large majority of states in the country allow manufacturers 12 months, and only a small minority have adopted the 6 month standard. This bill is even worse however, because in addition to limiting audits to only the last 6 months, the bill would illogically only allow a single audit per calendar year. That means that for a least half of the year, a manufacturer would have no ability to audit a dealer's claims. That idea is an invitation for abuse and sloppiness.

Section 15 incentivizes abuse and sloppiness in other ways as well. For example, 45.25.200(h) would require manufacturers to pay dealers' warranty claims even if the dealer did not follow not follow prescribed procedures. It would allow a dealer to repair a vehicle by doing a different repair than what the warranty manual calls for. Warranties are still the manufacturer's warranty and the manufacturer's obligation. Manufacturers should be able to insist that their procedures are followed.

Finally, Section 15 gives a manufacturer only 15 days to approve or deny a dealer's request for compensation for warranty work. This is half of what most if not all other states allow for.

#### Section 16: "Unfair Practices"

Section 16 creates a list of 24 actions that manufacturers would be prohibited from doing. Most of these are either completely objectionable or have some form of problem in their scope.

(1-3): These subsections seek prohibit a manufacturer from selling to dealers at different prices. The problem is that this prohibits various incentive programs such as those for sales performance or inventory. These three subsections harm good dealers.

(4): This subsection seeks to allow dealers to know more about a manufacturer's method for allocating vehicles. The state should be concerned that this language could be used to force disclosure of confidential business information simply because the dealer would like to know more about the manufacturer's allocation strategy.

(5): Manufacturers often run programs that offer discounts to members of the military, employees, or recent college graduates. These programs are a way to say “thank you” and build brand loyalty. Dealers are not required to participate in these programs. It is not uncommon for these programs to include a provision that sets a maximum document preparation fee that a dealer can charge to someone who is eligible for the discount. The reason is that the manufacturer wants to make sure that the discount goes to the consumer rather than eaten away in fees that the dealer charges. This subsection would prohibit manufacturers from limiting document preparation fees in these programs. It would allow dealers to charge higher fees to members of the military, employees, and recent graduates. The subsection is inappropriate.

(6): This subsection requires manufacturers to deliver parts of vehicles to the dealer if other dealers are receiving the same item. The subsection is more inflexible than it should be. It does not account for situations beyond the manufacturer’s control. It does not account for reasonable technology capabilities to sell or service certain vehicles (e.g. a dealer needs to be able to charge and service an electric vehicle in order to sell it).

(9): This subsection would require manufacturers to offer all models to the dealer. This subsection is also too broad. Some manufacturers do produce exotic or rare models, however it would be impractical to provide one to every dealer because there is not enough consumer demand to justify it.

(12): This subsection would prohibit manufacturers from allowing anyone other than a dealer to do warranty repairs without the local dealer’s consent. It is not uncommon for large fleet customers such as rental car companies to have agreements with manufacturers to do their own warranty work if the fleets have the capability to do it. Those agreements save fleet customers by having vehicles repaired faster and without the need to spend labor hours delivering vehicles to a dealer and picking them up later. Subsection (10) could raise costs for fleet customers if the local dealer did not consent to the fleet doing its own work.

(14): These subsections seeks to allow dealers to sell more than one brand at a location. However, the language is once again too broad. It is not uncommon for manufacturers to incentivize dealers to only sell that manufacturer’s brands out of a location. Subsection (14) should make sure that it does not prohibit those types of agreements that have been beneficial to both manufacturers and dealers.

(15): This subsection seeks to protect dealers from manufacturer requirements to upgrade their facilities unless the same requirement is imposed on all dealers. Once again, this approach is too broad. It unreasonably assumes that every store in Alaska is in the same condition. Subsection (15) should focus on unreasonable requirements rather than all requirements. It should also allow the manufacturer to incentivize dealers to upgrade facilities, and it should also allow manufacturers to incentivize dealers to use a manufacturer’s preferred vendors.

(17): This subsection seeks to protect dealers from being forced to join an advertising association. While the goal is reasonable, the language is again overbroad and could needlessly prevent manufacturers from offering valuable incentives to dealers.

(21): This subsection seeks to limit manufacturer’s ability to change the capital structure of dealerships. Manufacturers must rely on their dealerships being stable and able to borrow effectively. Manufacturers should have input into the capital structure and financing in their dealer network.

(24): This subsection seeks to define when manufacturers must indemnify dealers. This is unnecessary because franchise contracts already have well-defined indemnification clauses. The concern with codifying the indemnification concept is that it could lead to an unreasonable expansion of what dealers should be indemnified for—particularly for suits arising from the dealer’s actions or omissions.

### Sections 17: Definition of "Terminate"

The proposed definition would conflate terminations of a specific dealer with a discontinuation of an entire line make. These are two distinct actions with distinct justifications and distinct compensation for dealers. There is no reason to add confusion.

### Section 18: Definition of "Line Make" and "Relevant Market Area"

"Line Make" is an industry term of art that has proven very difficult to define in state statutes.

Section 19 seeks to make the terms "relevant market area" and "area of responsibility" mean the same thing. It is a mistake to do this. The former term refers to an area within a set distance around an existing dealer. The purpose of the relevant market area is to decide what dealers would have standing to protest a plan to create or relocate a dealer. "Area of responsibility" is entirely different. A dealer's area of responsibility is the geographic area (typically census tracts) that the dealer's sales performance will be measured on. The area of responsibility may include more, less, or different geographic areas than the simple "ring" around that the dealer that makes up the relevant market area.

The two terms are entirely distinct. An important negative consequence of making these terms mean the same thing is that a dealer could get standing to protest new or relocating dealerships in a much larger area than its relevant market area. It is not in the best interest of Alaska consumers to have a single dealer be able to block changes in the locations of other dealerships.

### Section 20: Retroactive Application

This section would make not just this bill retroactive to previously existing contracts, it would make the entire existing franchise code retroactive as well. That is extraordinary. When two parties enter into a contract, they do so based on the law as it is when they sign the contract. HB 136 is a request by car dealers for the Alaska Legislature to rewrite contracts that the dealers signed, and give the dealers an amazing deal in the process. Any business should have confidence that when it signs a contract, that the government will not step in and rewrite it later to advantage a preferred interest group.

The Supreme Court of Alaska recently addressed a similar circumstance involving a bill that retroactively rewrote existing contracts to favor one party over the other. The case is *Hageland Aviation Services v. Harms*, 210 P.3d 444 (Alaska 2009). The Court examined whether a law that retroactively exempted pilots from state overtime laws was constitutional. The Court found that the retroactive law violated the Alaska Constitution's Takings Clause and its Contracts Clause. HB 136 would raise many of the same concerns as the law at the center of the *Hageland* case. Every section of HB 136 is written to benefit dealers at the expense of manufacturers--both financially and in the manufacturer's freedom to make business decisions.

### Section 21: Schedule of Compensation

This section sets a price floor in perpetuity for the dealer's compensation. It says that the schedule of compensation may not be less than it was on the day before the effective date of this bill. That means that if a dealer's costs go down in the future, then the manufacturer cannot decrease the schedule of compensation accordingly. There is no reason to codify a perpetual price floor into Alaska law.

For more information, please contact David Bright at [dbright@autoalliance.org](mailto:dbright@autoalliance.org) or (202) 326-5533.



March 16, 2017

Co-Chair Representative Louise Stutes  
State Capitol, Rm. 406

Co-Chair Representative Adam Wool  
State Capitol, Rm. 412

**Alliance of Automobile Manufacturers Statement of Opposition to House Bill 136**

Dear Representatives Stutes and Wool:

On behalf of the Alliance of Automobile Manufacturers, thank you for the opportunity to register our opposition to HB 136. The Alliance is a trade association representing twelve of the world's leading car and light truck manufacturers, including BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America, and Volvo Car USA. Together, Alliance members account for roughly 70% of the cars and light duty trucks sold in the United States each year.

House Bill 136 seeks to regulate the franchise relationship between automobile manufacturers and dealers. Unfortunately, it does so by using unnecessarily extreme versions of ideas borrowed from other states. The result is a bill that is unfriendly towards business, rewrites existing contracts, and inserts the state in to business to business relationships in a harmful way. HB 136 serves no public purpose. It is only written to intercede in private business to business contracts for the financial benefit of car dealers.

HB 136 seeks to be a wholesale rewrite of the state's automobile franchise code. The bill borrows concepts from other states, but in nearly every instance, the bill uses extreme or uncommon approaches towards each subject. Franchise codes are complex, and in other states are generally the result of manufacturers and dealers negotiating in good faith to reach workable compromises.

HB 136's proponents, the Alaska Automobile Dealers Association, did not take the opportunity to discuss their bill or the problems that they are seeking to address with the Alliance in advance of this legislative session. The Alliance asks this committee to not advance such a controversial bill when there have been no negotiations on it.

HB 136 begins by asking the Alaska State Legislature to make a legislative finding that the bill is necessary "to prevent the infliction of fraud and other abuses on people in the state."<sup>1</sup> It is outrageous that the bill's proponents would ask the legislature to make such an offensive statement about a major industry--implying that without this bill, manufacturers would defraud and abuse Alaskans. Sadly, the bill gets worse for both manufacturers and consumers. For example, the bill would among other things (1) effectively eliminate the opportunity for any new intra-brand competition; (2) prevent manufacturers from limiting the amount of "document fees"

<sup>1</sup> HB 136, Page 1, Paragraph 2.

that dealers may charge consumers as part of discount or cash incentive program; (3) force manufacturers to allow non-certified technicians to perform work on a consumer's car under the manufacturer's warranty; (4) create a warranty reimbursement law that encourages dealers to raise prices charged to consumers in order to maximize the dealer's reimbursement by the manufacturer; and (5) creates a constitutional problem by making the entire bill retroactive to current contracts. The list of problems with this bill is very long, and the Alliance has prepared a separate document discussing the many issues in it.

The Alliance asks this committee to not advance such a controversial bill. HB 136 is a bold request for the legislature to rewrite existing business contracts for the benefit of one side. It poses a risk to consumers as well as a threat to the notion of a free market economy.

Thank you for the opportunity to register the Alliance's opposition to HB 136. Please feel free to contact me at (202) 326-5533 or [dbright@autoalliance.org](mailto:dbright@autoalliance.org) if you would like any additional information. In addition, please feel free to contact the Alliance's West Coast representative, Curt Augustine, at (916) 447-7315 or [caugustine@autoalliance.org](mailto:caugustine@autoalliance.org). Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "David E. Bright".

David E. Bright  
Attorney



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March 16, 2017

Marten Martensen  
President  
Alaska Auto Dealers Association  
PO Box 201305  
Anchorage, AK 99520-1305

Dear Mr. Martensen:

I am writing on behalf of the Alliance of Automobile Manufacturers (Alliance) to follow up on a telephone conversation between our two organizations' lobbyists. It is my understanding that during a March 8 telephone conversation between Alaska Auto Dealers Association (AADA) lobbyist Wendy Chamberlain and Alliance lobbyist Ted Popely it was suggested that the AADA would like to engage in a discussion of some nature regarding the specific terms of the pending legislation regarding franchise law.

Given this is the first time the AADA has expressed any willingness to discuss the legislation despite the Alliance's many attempts to engage the AADA in discussions going back as far as last year, we welcome the opportunity. What was not made clear in the conversation is exactly what issues the AADA was specifically wanting to discuss.

In light of the confusion about any prior communication problems between our two organizations, it is best that the AADA communicate the specific areas of discussion in writing with a return receipt requested. Otherwise, informal phone conversations could be misconstrued and/or mischaracterized in a future hearing before the Legislature, something I hope we would all like to avoid. Please provide the request in a detailed fashion so that our member companies can fully consider a response.

Thank you and we look forward to learning more about the proposed alternative to legislation as we go forward.

If you have any questions or comments regarding this letter, please contact me at (916) 447-7315 or at [caugustine@autoalliance.org](mailto:caugustine@autoalliance.org).

The Alliance of Automobile Manufacturers is a trade association of 12 car and light truck manufacturers including BMW Group, FCA US LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Car USA.

Sincerely,

Curt Augustine  
Senior Director of Policy and Government Affairs  
Alliance of Automobile Manufacturers

cc: Senator Kevin Meyer  
Senator Mia Costello  
Wendy Chamberlain

BMW Group

FCA  
FIAT CHRYSLER GROUP



Mercedes-Benz



PORSCHE

TOYOTA

VOLKSWAGEN  
Beitrag zur Mobilität

