

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10328 HOUSE LABOR & COMMERCE

**HB**

**176**

# Alaska State Legislature

*SESSION ADDRESS:*  
State Capitol  
Juneau, Alaska 99801-1182  
Phone (907) 465-2693  
Toll Free 800-463-2693  
Fax 907-465-3835



*INTERIM ADDRESS:*  
35477 Suite 101-B Spur Hwy  
Soldotna, Alaska 99669  
Phone 907-260-5236  
Fax 907-260-3044

## Representative Ken Lancaster District 8

### Sponsor Statement

For

### HOUSE BILL 176

"An act making an appropriation to the Alaska Industrial Development and Export Authority for a power transmission intertie between Kake and Petersburg;

This project would connect Kake into the 4-dam pool system and would make surplus energy from the Tyee hydropower project available to Kake. The transmission line would be an overhead route that would be roughly 55 miles in length and cost approximately \$19 million. Kake is presently a Power Cost Equalization (PCE) community being served by Tlingit-Haida Regional Electric Authority (THREA). Construction of the intertie would remove Kake from the PCE Program.

The benefit of this transmission line would allow Kake, now presently dependent on high cost diesel generation, to access much less expensive hydropower from the Tyee hydropower project that provides wholesale electricity to Wrangell and Petersburg. In addition, 4-dam pool members will benefit from the increased sales of power from Tyee. The intertie is essential for Kake to retain and expand its fish processing operations, on which it almost exclusively depends since the demise of logging in the Togass National Forest. In addition to the economic benefits, the environmental quality of the Kake environment will be enhanced from the annual reductions of nitrogen oxide, sulfur dioxide and particulate matter that is vented to the community from the diesel generators.

This legislation will create approximately \$300,000 savings annually from the PCE Program.

## **Kake/Petersburg Regional Transmission Intertie**

**Current Situation:** The community of Kake with about 850 residents presently receives all of its electric power from diesel generation provided by Tlingit-Haida Regional Electric Authority (THREA). The system is not interconnected to any other community and because of its size it cannot benefit from economy of scale. This results in its cost of electricity being approximately 35 cents/kWh, almost four times the cost of electricity in urban communities. Kake is heavily dependent on Power Cost Equalization, but none of the commercial business receive this benefit resulting in a depressed economy. Eighty million kWh of surplus energy is available from the Tyee hydropower project that presently brings power to Wrangell and Petersburg, just 32 miles from Kake.

**Project Description:** The Alaska Power Authority proposed building a transmission interconnection between Petersburg and Kake (and a second link to the Swan Lake hydropower project) as a component of the market for the Tyee hydropower project. Funding constraints at the time precluded this from happening. The present proposal is to interconnect the city of Kake on Kupreanof Island with Petersburg on the neighboring Mitkof Island. The 55-mile intertie will allow Kake to discontinue its use of diesel power entirely. The transmission line would consist of wood pole structures and 69 kV conductors.

**Cost of the System:** The total cost of the 55 mile project including associated substation upgrades and mitigation measures is estimated at \$19 million.

**Benefits:** The transmission line would allow Kake, now presently dependent on high cost diesel generation, to access much less expensive hydropower from the Tyee hydropower project that provides wholesale electricity to Wrangell and Petersburg. In addition, 4-dam pool members will benefit from the increased sales of power from Tyee. The intertie is essential for Kake to retain and expand its fish processing operations, on which it almost exclusively depends since the demise of logging in the Tongass National Forest. In addition to the economic benefits, the environmental quality of the Kake environment will be enhanced from the annual reduction of nitrogen oxide, sulfur dioxide and particulate matter that is vented to the community from the diesel generators.



## Organized Village of Kake

P.O. Box 316

Kake, Alaska 99830-0316

Telephone 907-785-6471

Fax 907-785-4902 / Email ovkgovt@seaknet.alaska.edu

(Federally Recognized Tribal Government serving the Kake, Alaska area)



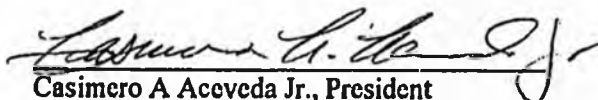
Resolution No. 2001-06

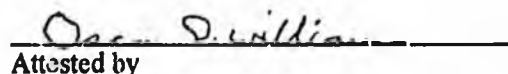
Kake/Petersburg Regional Transmission Intertie

- WHEREAS, the Organized Village of Kake (hereinafter (OVK), a federally recognized Indian Tribe, is organized pursuant to the authority of the Federal Indian Reorganization Acts (hereinafter IRA) of 1934 & 1936 with the IRA Council as the duly elected governing body formed under its *Constitution and By-laws* to execute agreements and contracts with the United States to benefit its members; and,
- WHEREAS, the community of Kake is presently dependent on high cost diesel generation provided by Tlingit-Haida Regional Electrical Authority (T-H REA) to provide electrical power; and,
- WHEREAS, T-H REA's electric system in Kake is isolated and is not interconnected with any other communities, so because of its size cannot benefit from economy of scale; and,
- WHEREAS, the community of Kake is presently a Power Cost Equalization (PCE) community, costing PCE approximately \$300,000 per year; and,
- WHEREAS, the high cost of power at the most recent figure of 41 cents per kWh, is nearly four times the cost of electricity in urban communities; and,
- WHEREAS, the high cost of power limits economic ventures (since they are not eligible for PCE benefits), thus contributing to high seasonal unemployment; and
- WHEREAS, the high cost of power provides increased economic burdens on households even with PCE benefits, especially households that have seasonal unemployment.
- WHEREAS, House Bill 176, "An act making an appropriation to the Alaska Industrial Development and Export Authority for a power transmission intertie between Kake and Petersburg", introduced by Representative Lancaster addresses the aforementioned issues.
- THEREFORE BE IT RESOLVED, the OVK Council supports HB176 for the design and construction of a power transmission intertie between Kake and Petersburg.

### CERTIFICATION

This resolution was duly adopted at an IRA Council meeting held this 4<sup>th</sup> day of APRIL, 2001 by a quorum vote of 6 (includes president as non-voting chairperson except in case of tie vote) with 5 yes votes, 0 no votes, and 0 abstaining.

  
Casimero A. Aceveda Jr., President

  
Attested by

**HB**

**182**

# ALASKA STATE LEGISLATURE

*Chair:*  
LABOR AND COMMERCE

*Member:*  
MILITARY AND VETERANS AFFAIRS  
COMMUNITY AND REGIONAL AFFAIRS  
LEGISLATIVE COUNCIL  
JOINT ARMED SERVICES



**REPRESENTATIVE LISA MURKOWSKI**  
Government Hill • Elmendorf • East Anchorage

*Session:*  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-3783  
FAX: (907) 465-2293  
Representative\_Lisa\_Murkowski@legis.state.ak.us

*Interim:*  
716 WEST 4TH AVENUE  
ANCHORAGE, AK 99501-2133  
PHONE: (907) 269-0174  
FAX: (907) 269-0177

## Sponsor Statement HB 182 Motor Vehicle Sales and Dealers

Alaska is the only state in the nation without a comprehensive motor vehicle act. HB 182, as requested by the Alaska Automobile Dealers Association (AADA), addresses the need to regulate and license motor vehicle manufacturers, motor vehicle dealers, and other persons engaged in selling, repairing, and purchasing vehicles in this state.

HB 182 establishes a motor vehicle advisory board to advise the commissioner of the Department of Administration on appeals and disputes between manufacturers and dealers, manufacturer's changes to new vehicle franchises, proposed regulations, and violations by licensees. Presently, legal disputes between manufacturers and dealers are governed by, interpreted, and adjudicated by out-of-state courts. This can often be an uncertain and expensive proposition for Alaska dealers. HB 182 brings agreements made between manufacturers and dealers under jurisdiction of the Alaska courts. And, since not all dealers and others engaged in the automobile business are licensed by the state, HB 182 mandates a comprehensive licensing structure for all those engaged in automobile business in Alaska.

Some franchise agreements are only offered for short durations and require periodic renewal, even though dealers may be required to invest millions of dollars to obtain or expand their franchises. Many auto dealers are reluctant to make such substantial investments without some assurance from their manufacturer. HB 182 sets forth uniform processes to renew, amend, gain, or terminate franchise agreements. Additionally, HB 182 provides uniform guidelines for designating successors in case of death or incapacity of franchisees.

Dealers are generally dependent on manufacturers as their sole-source supplier. Such dependence gives rise to policies that are otherwise of no value to the dealer—commonly called franchise insurance. Additionally, manufacturers, in order to reduce warranty expenses, require dealerships to perform certain administrative and other functions, oftentimes without reasonable reimbursement. In both instances, dealers have no choice but to pass along the expenses to the consumer. HB 182 clearly defines areas of manufacturer responsibility and mandates fair payment for all incurred expenses relating to warranty and extended service contract repairs. HB 182 also prohibits such manufacturer abuses as franchise insurance.

HB 182 is a comprehensive motor vehicle act that provides guidelines to protect dealers and consumers from abuses within the automobile industry. I urge your favorable support.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 22, 2002

**SUBJECT:** Sectional summary of CSHB 182( ) relating to certain vehicles  
(Work Order No. 22-LS0239\B)

**TO:** Representative Lisa Murkowski, Chair  
House Labor and Commerce Committee  
Attn: Amy

**FROM:** *TLB*  
Theresa L. Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Makes changes to conform to the definition of certain terms provided by sec. 8 of the bill.

**Section 2.** Makes changes to conform to the definitions provided by sec. 8 of the bill and the repealer in sec. 13 of the bill. Makes some stylistic changes.

**Section 3.** Makes a change to conform to the addition of a definition of "department" in sec. 8 of the bill.

**Section 4.** Makes a change to conform to the repealer in sec. 13 of the bill.

**Section 5.** Rewrites AS 08.66.060 relating to the bond to be filed by a dealer, conditions on the bond, cancellation of the bond, liability on the bond, and application of the bond to dealer registration renewals.

**Section 6.** Expands the types of violations that give a person a right of action against a dealer and the dealer's bond surety. Makes a change to conform the statutory reference to the repealer in sec. 13 of the bill and makes some stylistic changes.

**Section 7.** Makes changes to conform to the repealer in sec. 13 of the bill.

**Section 8.** Defines certain terms used in AS 08.66.

**Section 9.** Adds a new chapter, AS 45.25, relating to motor vehicle transactions.

Sec. 45.25.010. Indicates the applicability of secs. 45.25.020 - 45.25.320 of the new chapter.

Sec. 45.25.020. States that the courts of this state have jurisdiction over, and the law of this state governs, a legal dispute between manufacturers, whether in this state or outside this state, and new motor vehicle dealers located in this state.

Sec. 45.25.030. Prohibits a manufacturer from using other entities and persons to do what is prohibited to the manufacturer under this chapter. States that this section does not limit the rights of certain persons to engage in reasonable and appropriate business practices that are consistent with an existing trade practice not prohibited by this chapter.

Sec. 45.25.100. States that the terms in an agreement between a manufacturer and a new motor vehicle dealer in this state that are inconsistent with this state's law do not have any force or effect in this state.

Sec. 45.25.110. Prohibits a manufacturer from terminating a franchise unless certain requirements are met. Prohibits a manufacturer from terminating a franchise agreement because of the death or incapacity of certain owners.

Sec. 45.25.120. Requires a manufacturer terminating a franchise to provide a notice of termination meeting certain requirements to the new motor vehicle dealer.

Sec. 45.25.130. Prohibits a manufacturer or a manufacturer's representative from coercing a new motor vehicle dealer to enter into an agreement or to do another act unfair to the dealer by threatening to terminate a franchise agreement.

Sec 45.25.140. Establishes the manufacturer's and distributor's repurchase obligations when a franchise agreement is terminated by the manufacturer or distributor.

Sec. 45.25.150. Establishes the compensation to be paid to a new motor vehicle dealer for dealer facilities when a manufacturer or distributor terminates a franchise. Exempts certain terminations.

Sec. 45.25.160. Prohibits a manufacturer from unreasonably preventing or refusing to honor a transfer of ownership of a new motor vehicle dealership.

Sec. 45.25.170. Prohibits a manufacturer or distributor from preventing or refusing to honor the succession to a franchise of certain persons. Establishes certain conditions and exceptions to this prohibition. Gives a proposed successor a right to superior court review on whether approval has been unreasonably withheld.

Sec. 45.25.180. Requires a manufacturer or distributor to give notice before establishing new or relocated dealers within a relevant market area where the same line make is

Representative Lisa Murkowski

March 22, 2002

Page 3

represented. Permits a dealer to bring a declaratory judgment action in the superior court to determine whether good cause exists for the establishment or relocation. Prohibits the establishment or relocation until the court decision is made. Lists certain activities that are not prohibited by the section. Lists certain factors that the court is to consider when determining whether good cause exists.

Sec. 45.25.190. States that neither the manufacturer nor the new motor vehicle dealer is required to submit a controversy to arbitration. If the parties do agree to arbitration, states that arbitration is to be conducted under the state's Uniform Arbitration Act and establishes how the arbitrators are to be selected.

Sec. 45.25.300. Prohibits a manufacturer from requiring or coercing a new motor vehicle dealer to change the location of the dealership or to make substantial alterations to the dealership premises or facilities under certain circumstances.

Sec. 45.25.310. Prohibits a manufacturer from unfairly discriminating among new motor vehicle dealers regarding warranty reimbursements and warranty adjustment authority.

Sec. 45.25.320. Prohibits a manufacturer or distributor from taking certain actions relating to a claim after 18 months from submission of the claim by the new motor vehicle dealer.

Sec. 45.25.400. Prohibits a dealer from using certain terms in advertisements. Allows a dealer to use certain terms in advertisements under certain conditions.

Sec. 45.25.410. Prohibits dealers from advertising vehicles and related goods and services at specified dealer prices without intending to supply reasonably expected demand, unless the advertisement discloses the number of vehicles in stock at the advertised price.

Sec. 45.25.420. Requires a dealer to display all advertised vehicles during the sale period in a conspicuous and clearly visible location on the dealer's premises. Requires that the advertised sale price be clearly marked on the vehicle.

Sec. 45.25.430. Prohibits a dealer from refusing to sell a vehicle on the advertised terms and conditions, except in certain circumstances.

Sec. 45.25.440. Prohibits a dealer selling a motor vehicle from charging certain fees and costs unless the fees and costs are included in the advertised price.

Sec. 45.25.450. Prohibits a dealer from making price comparisons, price reductions, or price discounts in an advertisement unless they comply with this section.

Representative Lisa Murkowski

March 22, 2002

Page 4

Sec. 45.25.460. Lists certain advertising and selling practices that a dealer may not engage in. Requires a dealer to disclose beginning and ending dates in all motor vehicle sale advertisements.

Sec. 45.25.470. Establishes certain requirements for a dealer to satisfy before selling a used motor vehicle, including reasonable inquiries and inspections, and certain follow-up inspections, if required. Requires a dealer to make all information obtained by the dealer under this section available to sales staff and in writing to prospective buyers before sale, including all information relating to repairs made by the dealer.

Sec. 45.25.480. Requires a dealer to disclose in writing before sale whether a vehicle was originally manufactured for sale in a foreign country.

Sec. 45.25.490. Prohibits a dealer from knowingly buying or selling a vehicle with an altered or removed identification number plate or to alter or remove a vehicle identification number plate.

Sec. 45.25.500. Prohibits a dealer from selling or offering to sell a vehicle unless the dealer holds a manufacturer's statement of origin, a title, or another properly executed document reasonably necessary to obtain the statement of origin or title for transfer of the vehicle to the buyer.

Sec. 45.25.510. Prohibits a dealer from transferring the title of or performing repairs or reconditioning on a trade-in vehicle before the sales transaction is completed.

Sec. 45.25.520. Requires a new motor vehicle dealer, before entering into a new motor vehicle sale contract, to make a written disclosure to the buyer of any known damage and repair to the vehicle that exceed a specific amount. Provides that if disclosure is not required under this section, a buyer may not revoke or rescind a sale due to damage or repair of the vehicle before completion of the sale.

Sec. 45.25.530. Establishes the form for advertisement disclosures required by this chapter.

Sec. 45.25.590. Defines certain terms for secs. 45.25.400 - 45.25.590.

Sec. 45.25.600. Prohibits a dealer from transferring a vehicle title to a buyer before all of the sale documents, including any finance contract arranged by the seller, are complete and signed.

Sec. 45.25.610. Establishes certain requirements that a motor vehicle sales contract must satisfy. Requires the contract to be completed as to all essential provisions before the buyer signs and before the vehicle is delivered to the buyer. Prohibits a dealer from obtaining a signed sales contract until any financing terms reflected in the installment contract are final and complete. Allows a dealer who arranges financing to deliver the

Representative Lisa Murkowski

March 22, 2002

Page 5

vehicle before final approval by the financing entity if certain conditions are met. Requires the dealer to return the entire down payment and any trade-in if the sales transaction is not completed because the financing is not approved within seven business days of the separate agreement.

Sec. 45.25.620. Establishes certain requirements for vehicle service contracts. Prohibits a dealer from disclaiming or limiting implied warranties for a vehicle for which the dealer is a maker of a service contract sold for that vehicle. Allows disclaimers or limiting implied warranties under certain conditions if the dealer is merely the seller of the service contract.

Sec. 45.25.900. States that if a provision of this chapter conflicts with another provision of AS 45, this chapter controls.

Sec. 45.25.910. States that this chapter is remedial.

Sec. 45.25.990. Defines certain terms for the chapter.

**Section 10.** Adds a violation of AS 08.66 to the list of prohibited practices under the state's unfair trade practices act.

**Section 11.** Adds a violation of AS 45.25.400 - 45.25.590 to the list of prohibited practices under the state's unfair trade practices act.

**Section 12.** States that the state's monopoly and restraint of trade provisions do not apply to actions that a person takes or refrains from taking in order to comply with the new chapter

**Section 13.** Repeals certain statutes.

**Section 14.** States that secs. 9, 11, and 12 of this Act apply to a franchise entered into on or after the effective date of this Act.

**Section 15.** Gives the Act an effective date of July 1, 2002.

If I may be of further assistance, please advise.

TLB:med  
02-308.med

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 6, 2001

**SUBJECT:** Sectional Summary of CSHB 182( ) relating to motor vehicles  
(Work Order No. 22-LS0239F)

**TO:** Representative Lisa Murkowski  
Attn: Amy

**FROM:**   
Theresa L. Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Makes certain legislative findings for the bill.

**Section 2.** Adds a new chapter, AS 45.25, relating to motor vehicle transactions.

Sec. 45.25.010. Declares the chapter to be remedial and indicates its coverage.

Sec. 45.25.020. States that the courts of this state have jurisdiction over, and the law of this state governs, a legal dispute between manufacturers, whether in this state or outside this state, and dealers in this state.

Sec. 45.25.030. Prohibits a manufacturer from using certain entities and persons to do what is prohibited under this chapter.

Sec. 45.25.100. Prohibits a person from acting as a motor vehicle dealer, salesperson, manufacturer, or manufacturer representative without being licensed under this chapter.

Sec. 45.25.110. Deals generally with the application and issuance of a license under this chapter.

Sec. 45.25.120. Allows the commissioner to issue a manufacturer license. Indicates certain items that must be contained in or accompany the application for the license. Requires certain applicants to file with the commissioner a copy of the applicant's franchise form agreement, including addenda and supplements. Establishes the annual fee for the license.

Sec. 45.25.130. Allows the commissioner to issue a manufacturer representative license. Indicates certain items that must be contained in the application for the license. Establishes the annual fee for the license.

Sec. 45.25.140. Allows the commissioner to issue a dealer license. Indicates certain dealer licensees may also operate as motor vehicle salespersons without obtaining the salesperson license. Directs that the dealer license is to be issued for two fiscal years and establishes the fee.

Sec. 45.25.150. Requires a dealer license applicant to have a principal place of business in this state. Addresses the situation when a dealer changes the site or location of a principal place of business or ceases to be in possession of a principal place of business.

Sec. 45.25.160. Prevents interpretation of the chapter to prevent a dealer from conducting the licensed business at certain licensed supplemental lots or locations not contiguous to the principal place of business

Sec. 45.25.170. Allows the commissioner to issue a motor vehicle salesperson license. Makes the license valid for three years. Establishes the fee for the license and the fee for changing the employing dealer's name. Provides for a temporary license.

Sec. 45.25.180. Establishes how and where a dealer is to display the dealer's license. Provides for the issuance, contents, use, and display of a pocket card issued by the commissioner to dealers and salespersons.

Sec. 45.25.190. Requires a salesperson license to conspicuously show the name of the dealer that employs the salesperson. Prohibits a salesperson from working for more than one dealer at a time.

Sec. 45.25.200. Provides for the issuance of a duplicate license, pocket card, or other licensing documents upon request and for a fee. Prohibits the fee if the reissuance results from department error.

Sec. 45.25.210. Provides for sanctions, for the denial, revocation, and suspension of licenses, and for the probation or reprimand of a licensee. Requires a hearing for action under the section.

Sec. 45.25.300. Requires motor vehicle franchise agreements to be consistent with the law of this state. Requires licensed manufacturers to file form agreements with the commissioner. Requires form agreement revisions, modifications, and additions to be filed with the commissioner and to include certain additional items. Requires compliance with this section before offering franchise agreements, or an addendum or supplement, to a dealer. Allows the commissioner to investigate or prevent violations of this section.

Representative Lisa Murkowski

April 6, 2001

Page 3

Sec. 45.25.310. Allows a franchised new motor vehicle dealers to file a petition with the commissioner regarding a manufacturer's violation of this chapter. Provides procedures for handling the petition.

Sec. 45.25.320. Prohibits a manufacturer or manufacturer representative from granting certain additional franchises or relocating certain franchises without notifying the commissioner and certain dealers in the market area. Allows a dealer in the market area to file a protest with the commissioner. Establishes procedures for reviewing and resolving the protest. Prohibits a manufacturer from granting or relocating the franchise if there is good cause for not permitting the new or relocated franchise. Identifies certain factors to be considered when determining whether there is good cause.

Sec. 45.25.330. Prohibits a manufacturer from terminating, cancelling, or failing to renew a franchise unless certain requirements are met, including good cause and good faith. Allows a new motor vehicle dealer to petition the commissioner to determine whether the requirements are met. Provides for the review and resolution of the petition. Identifies certain factors to be considered when determining whether there is good cause. Places the burden of proof on the manufacturer to show that good cause exists.

Sec. 45.25.340. Requires a manufacturer to provide notice of termination, cancellation, or nonrenewal of a franchise to a dealer and sets certain deadlines for giving the notice, depending on the circumstances. Establishes certain requirements for the contents, form, and delivery of the notice.

Sec. 45.25.350. Requires a manufacturer to purchase certain items from a new motor vehicle dealer if a franchise is terminated, not renewed, or canceled by the manufacturer. Identifies what the manufacturer must purchase in order to compensate the dealer. Sets a due date for paying the compensation.

Sec. 45.25.360. Requires a manufacturer to compensate a new motor vehicle dealer for certain facility-related expenses if a franchise is terminated, not renewed, or canceled by the manufacturer. Does not relieve the dealer of the obligation to mitigate damages. Does not prevent a manufacturer from using the facilities while paying rent. Does not prevent a manufacturer from negotiating a lease termination, sublease, or new lease. Exempts certain situations from the section.

Sec. 45.25.370. Addresses the transfer of the ownership of a dealer.

Sec. 45.25.400. Itemizes certain practices that a manufacturer may not engage in, even if the franchise agreement says otherwise.

Sec. 45.25.410. Establishes certain warranty and service contract obligations for manufacturers, manufacturer subsidiaries, administrators, dealers, and repair facilities.

Sec. 45.25.420. Establishes who has the risk of loss for damages to a new motor vehicle before delivery to a carrier and while in transit to the dealer and procedures for handling the matter. Requires a manufacturer to disclose certain damages and repairs to the dealer. Requires a new motor vehicle dealer to make certain damage and repair disclosures to a purchaser. Prohibits a purchaser from revoking or rescinding a sales contract due to damage or repair before completion of the sale if disclosure is not required under subsection (c).

Sec. 45.25.430. Identifies certain other unfair methods of competition that a motor vehicle manufacturer may not engage in.

Sec. 45.25.500. Establishes how a motor vehicle installment contract is to be handled. Requires it to be in writing, signed, and complete before the vehicle contract is signed. Requires the financing terms to be final and complete before the dealer obtains a signed installment contract containing the financing terms from the buyer. Allows for delivery of the motor vehicle to the buyer before financing is complete under certain conditions. Addresses short-term and single-payment contracts. Requires return of the entire down payment and trade-in under certain conditions.

Sec. 45.25.510. Prohibits a manufacturer, or certain related persons, from coercing or attempting to coerce a dealer to sell, assign, or transfer a motor vehicle installment contract to a specified finance company or to certain other persons. Prohibits a manufacturer or certain related persons from offering to provide certain information to a dealer and conditioning the provision of the information on the agreement of the dealer to use certain persons to handle the financing. Identifies certain situations that are excluded from the coverage of the previous sentence.

Sec. 45.25.520. Establishes certain requirements for and related to motor vehicle service contracts. Includes the form and content of the contracts and certain disclosures. Prohibits a dealer from making certain disclaimers or limitations of implied warranties for a vehicle for which the dealer is a maker of a service contract sold for that vehicle.

Sec. 45.25.600. Prohibits a manufacturer or a manufacturer representative from engaging in certain listed prohibited trade practices.

Sec. 45.25.610. States that it is unlawful for a licensed motor vehicle dealer to engage in certain listed activities.

Sec. 45.25.620. States that it is unlawful for a person other than a licensed dealer to perform certain acts relating to the display, sale, or lease of a motor vehicle.

Sec. 45.25.700. Provides that a license may be denied, suspended, or revoked due to the certain actions or omissions of the licensee's officers, directors, partners, members, or managers. Holds a dealer or manufacturer responsible for the acts of a representative or salesperson while the person is acting as the dealer's or manufacturer's agent. States that

a manufacturer is responsible for the acts of its employees, agents, or representatives while they are acting in the manufacturer's business.

Sec. 45.25.710. Authorizes the commissioner to prevent or investigate allegations of violations of the chapter, to take certain procedural steps, and to make recommendations to the attorney general regarding violations of this chapter.

Sec. 45.25.720. Requires the commissioner to give reasonable notice of a hearing and allows for appeal of the commissioner's decision.

Sec. 45.25.730. Establishes the Motor Vehicle Advisory Board in the department. Describes the purposes and functions of the board. Prevents a member of the board from being held civilly liable for acts or omissions while acting as a board member.

45.25.740. Provides for a civil penalty for manufacturer and dealer violations of this chapter.

Sec. 45.25.750. Describes what constitutes a principal place of business under this chapter.

Sec. 45.25.760. Authorizes the commissioner to adopt regulations for the chapter. Requires the commissioner to mail proposed regulations to licensed dealers before the regulations become effective.

Sec. 45.25.900. Provides for this chapter to control if another provision of AS 45 conflicts with this chapter.

Sec. 45.25.950. Definitions.

**Section 3.** Adds the executive director of the Motor Vehicle Dealers Advisory Board to the exempt service of state government.

**Section 4.** Adds the Department of Community and Economic Development's licensing and regulation activities under AS 45.25, the new chapter, to the activities that are subject to the administrative adjudication portion of the state's Administrative Procedure Act.

**Section 5.** Exempts compliance with AS 45.25 from the state's antitrust provisions.

**Section 6.** Repeals certain statutes.

**Section 7.** Transition provision relating to motor vehicle salesrooms.

**Section 8.** Applies the Act to franchises that are entered into or renewed before, on, or after the effective date of this Act.

Representative Lisa Murkowski  
April 6, 2001  
Page 6

**Section 9.** Effective date.

If I may be of further assistance, please advise.

TLB:jhb  
01-008.jhb

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 15, 2002

**SUBJECT:** CSHB 182( ) relating to motor vehicle transactions  
(Work Order No. 22-LS0239\S)

**TO:** Representative Lisa Murkowski  
Attn: Amy

**FROM:**  Theresa L. Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Sec. 45.25.500. Since this section occurs in an article dealing with "dealer" practices, and since it does not appear that the intent of this bill is to extend its coverage to any person who sells a car, the draft uses "motor vehicle dealer" rather than "person" in this section.
2. Sec. 45.25.600. Since it does not appear that the intent of this bill is to extend its prohibitions to any person who happens to sell a car, the draft uses "motor vehicle dealer" rather than "person" in this section.
3. Brokers. Since it appears to be the intent of this version to delete all references to "brokers" or "broker," the draft also deleted the term in AS 45.25.990's definition of "motor vehicle dealer" and definition of "motor vehicle salesperson," even though these were not requested.
4. Definition of "demonstrator model." Because the term, "demonstrator model," only appeared to apply in sec. 45.25.460(a)(13), the term is defined in that section and not in the main definitions section.
5. Opportunity to correct. The language clarifying the application of the right to correct certain reasons underlying termination for good cause is found at sec. 45.25.110 (1)(1)(C), not where its placement was suggested.
6. Repurchase obligations on termination. In sec. 45.25.140(b), the compensation is to be paid within 60 days after the tender of the inventory and other items. The rest of the subsection addresses return and delivery of the items but not tender. Should the 60 days be calculated from the receipt of the items, rather than the tender of the items?

Representative Lisa Murkowski  
March 15, 2002  
Page 2

7. "Bona fide price" and "reference price." In sec. 45.25.450, per your request the definitions of "bona fide price" and "reference price" were deleted, possibly because another subsection was deleted where they occurred. However, "bona fide price" remains in (c) of the section, and "reference price" remains in (c) and (d) of the section. Do you want to reinsert these definition for these subsections?

8. "Ordinary consumer." Do you want to describe what "ordinary" means?

9. Unfair trade practices violations. As requested, sec. 11 now refers only to the consumer protection sections found at secs. 45.25.400 - 45.25.590. Sections 45.25.600 - 45.25.620 also appear to protect the consumer. Do you want these sections included in sec. 11, too? Please keep in mind that there is no remedy for violation of a provision in the new chapter, unless the provision (or a related provision) itself provides the remedy, or unless the provision is covered by sec. 11.

10. Inconsistency in definitions. While "arranges" has been deleted from AS 08.66.090's definition of "dealer," "arranges for sale or lease" occurs in AS 45.25.990's definition of "motor vehicle dealer," and the AS 45.25.990 definition also includes additional language in AS 45.25.990(14)(F). Are these differences consistent with your intent? Also, in AS 45.25.990's definition of "motor vehicle salesperson," that definition includes "exchange." Is this consistent with your intent?

11. Federal regulation. Please be aware that federal law preempts certain state regulation of used car sales (see 16 CFR 455.6) unless the state law is more protective of the buyer than the federal law. Although the used car provisions in this bill do not appear to conflict with the provisions of the federal law, this conclusion is the result of a very quick review and might require modification after a thorough review.

If I may be of further assistance, please advise.

TLB:med  
02-274.med

Enclosure

22-LS0239F  
Bannister  
4/6/01

**CS FOR HOUSE BILL NO. 182( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE MURKOWSKI**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to motor vehicles; and providing for an effective date."**

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

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

5 **LEGISLATIVE FINDINGS.** The legislature finds that

6 (1) the manufacture, distribution, and sale of motor vehicles in the state vitally  
7 affects the general economy of the state and the public interest and public welfare;

8 (2) motor vehicle distributors and the manufacturers of motor vehicles whose  
9 physical manufacturing facilities are not located in the state are in fact doing business in the  
10 state through their control over, relationships with, and transactions with their dealers in the  
11 state;

12 (3) the geographical location of the state makes it necessary to ensure the  
13 availability of motor vehicles and parts and dependable service for motor vehicles throughout  
14 the state to protect and preserve the transportation system, the public safety and welfare, and  
15 the investments of residents; and

1 (4) it is necessary to regulate and license motor vehicle manufacturers and  
2 distributors and their branches and representatives, motor vehicle dealers, and other persons  
3 engaged in the business of selling, repairing, or purchasing vehicles in the state in order to  
4 prevent fraud and other abuses against residents and to protect and preserve the economy, the  
5 transportation system, the public safety and welfare, and the investments of residents.

6 \* **Sec. 2.** AS 45 is amended by adding a new chapter to read:

7 **Chapter 25. Motor Vehicle Transactions.**

8 **Article 1. Applicability; Venue; Corporate Affiliates.**

9 **Sec. 45.25.010. Applicability.** The provisions of this chapter are declared to  
10 be remedial and apply to a contract, franchise, or other agreement between a  
11 manufacturer and its respective dealers in this state.

12 **Sec. 45.25.020. Jurisdiction; choice of law.** The courts of this state have  
13 jurisdiction over a legal dispute between a manufacturer located in or outside this state  
14 and a dealer located in this state, and the dispute is governed by and interpreted and  
15 adjudicated under the law of this state.

16 **Sec. 45.25.030. Corporate affiliates.** A manufacturer may not use a  
17 subsidiary corporation, affiliated corporation, partnership, association, or other person  
18 to accomplish what would otherwise be prohibited conduct under this chapter. This  
19 section does not limit the right of an entity included within the scope of this section to  
20 engage in reasonable and appropriate business practices consistent with an existing  
21 trade practice that is not prohibited by this chapter.

22 **Article 2. Licensing.**

23 **Sec. 45.25.100. Licenses required.** A person may not act as a new motor  
24 vehicle dealer, a used motor vehicle dealer, a motor vehicle salesperson, a motor  
25 vehicle manufacturer, or a manufacturer representative without first obtaining a  
26 license as provided in this chapter.

27 **Sec. 45.25.110. Application and issuance of license.** (a) An application for  
28 a license required under this chapter shall be made on a form prescribed by the  
29 commissioner and must contain the information that the commissioner reasonably  
30 believes is necessary for the issuance of the license.

31 (b) An applicant for a license may apply for issuance of a license by

1 complying with the application process specified in this chapter and the regulations  
2 adopted by the commissioner.

3 (c) The commissioner shall issue a license applied for in compliance with the  
4 provisions of this chapter when the commissioner determines that the applicant meets  
5 the requirements of this chapter and regulations adopted by the commissioner. A  
6 license shall be timely issued and may not be unreasonably withheld.

7 **Sec. 45.25.120. Manufacturer license.** (a) The commissioner may issue a  
8 manufacturer license that permits the licensee to engage in the business of

9 (1) constructing or assembling vehicles of the type subject to  
10 registration under AS 28.10 at an established place within the state;

11 (2) selling and distributing the licensee's vehicles, parts, accessories,  
12 and services to its franchised dealers; and

13 (3) contacting prospective authorized dealers for the purpose of  
14 making or promoting the sale of the licensee's vehicles, parts, accessories, and  
15 services.

16 (b) An application for a license for a manufacturer must contain the address of  
17 the manufacturer's principal place of business, the address where notices may be sent,  
18 and the address of the manufacturer's registered agent in this state and must be  
19 accompanied by the manufacturer's annual report, a list of its franchised new motor  
20 vehicle dealers in this state, and the annual fee.

21 (c) An applicant for licensing by the commissioner as a manufacturer that uses  
22 an identical or substantially similar franchise form agreement for its dealers or  
23 distributors in this state shall, as a condition for the issuance of a license, file with the  
24 commissioner a copy of the franchise form agreement and all addenda and  
25 supplements to the agreement.

26 (d) The annual fee for a fiscal year or part of a fiscal year for a manufacturer  
27 license is \$1,500.

28 **Sec. 45.25.130. Manufacturer representative license.** (a) The  
29 commissioner may issue a manufacturer representative license that permits the  
30 licensee to engage in the business of contacting the manufacturer's respective  
31 franchised dealers for the purpose of making or promoting the sale of the

1 manufacturer's vehicles, parts, accessories, and services.

2 (b) An application for a manufacturer representative license must contain the  
3 name and address of the manufacturer, the name of the manufacturer representative, a  
4 list of the franchised new motor vehicle dealers the representative contacts in this  
5 state, and the annual fee.

6 (c) The annual fee for each fiscal year or part of a fiscal year for a  
7 manufacturer representative license is \$50.

8 **Sec. 45.25.140. Dealer license.** (a) The commissioner may issue a motor  
9 vehicle dealer license to a person to engage in the business of a motor vehicle dealer.  
10 The license also permits the licensee to engage in all other business pursuits that are  
11 reasonably associated with a new or used vehicle sales and service business.

12 (b) A motor vehicle dealer license permits a licensee who is an owner or part  
13 owner of the business of the licensee to act as a motor vehicle salesperson without  
14 obtaining a motor vehicle salesperson license.

15 (c) A motor vehicle dealer license shall be issued for a period of two fiscal  
16 years. The fee for all or part of the license period is \$400.

17 **Sec. 45.25.150. Dealer required to maintain principal place of business.**  
18 An applicant for a dealer license must have a principal place of business in this state.  
19 If a dealer changes the site or location of a principal place of business, the dealer shall  
20 immediately upon making the change notify the commissioner, and a new license shall  
21 be granted for the unexpired portion of the term of the existing license if the new  
22 location meets all the requirements for a principal place of business. If a dealer ceases  
23 to be in possession of a principal place of business, the dealer shall immediately notify  
24 the commissioner and, upon demand by the commissioner, shall deliver the dealer  
25 license to the commissioner. A license delivered to the commissioner shall be retained  
26 until the commissioner determines that the licensee has a principal place of business in  
27 this state. An unexpired dealer license delivered to the commissioner and returned to  
28 the dealer as required by this section shall be returned to the dealer without charge.

29 **Sec. 45.25.160. Multiple dealer locations.** This chapter may not be  
30 construed to prevent a dealer from conducting the business for which the dealer is  
31 licensed at one or more licensed supplemental lots or locations not contiguous to the

1 dealer's principal place of business but operated and maintained in conjunction with it.

2 **Sec. 45.25.170. Salesperson license.** (a) The commissioner may issue a  
3 motor vehicle salesperson license to a person who is employed as a salesperson or  
4 sales representative by a motor vehicle dealer to be a motor vehicle salesperson.

5 (b) A motor vehicle salesperson license is valid for three years. The fee for a  
6 motor vehicle salesperson license is \$60. The fee for changing the name of the dealer  
7 by whom the salesperson is employed is \$40.

8 (c) An applicant for a motor vehicle salesperson license may be allowed to act  
9 as a salesperson under a temporary license issued by the commissioner for a maximum  
10 period of 60 days from the date of application. The fee for a temporary license is \$20.

11 **Sec. 45.25.180. Display and custody of dealer and salesperson licenses;**  
12 **pocket cards.** (a) A dealer shall conspicuously display the motor vehicle dealer  
13 license in the dealer's principal place of business and a copy of the license at any other  
14 lot or location of the dealer.

15 (b) The commissioner shall prepare and deliver a pocket card that will certify  
16 that the person whose name appears on the card is a licensed dealer or licensed motor  
17 vehicle salesperson, as the case may be. The pocket card of a licensed motor vehicle  
18 salesperson must also contain the name and address of the salesperson's employing  
19 dealer, a current photograph of the salesperson, and the expiration date of the  
20 salesperson's license. A licensed motor vehicle salesperson shall, on request, display  
21 the pocket card.

22 **Sec. 45.25.190. Restrictions on salesperson licenses.** A motor vehicle  
23 salesperson license must conspicuously show the name of the motor vehicle dealer  
24 that employs the salesperson. A salesperson may not be employed by more than one  
25 dealer at a time.

26 **Sec. 45.25.200. Duplicate license fee.** The department may issue a duplicate  
27 license, salesperson or dealer pocket card, or other licensing documents at a licensee's  
28 request upon payment of a fee of \$20. A fee may not be imposed if the license card or  
29 document is required to be reissued as a result of an error by the department.

30 **Sec. 45.25.210. Sanctions, denial, revocation, suspension, probation, and**  
31 **reprimand.** (a) The commissioner may deny an application for a license, revoke or

1 suspend a license, place on probation a person whose license has been suspended, or  
2 reprimand a licensee for any of the following reasons:

3 (1) material misrepresentation on an application or in other  
4 information filed under this chapter or regulations of the commissioner;

5 (2) conduct for which the person may be held responsible under  
6 AS 45.25.700; or

7 (3) failure to maintain the qualifications of the license.

8 (b) An existing license may not be denied, revoked, or suspended and  
9 disciplinary action may not be taken under this section except after a hearing  
10 conducted by the department as provided by AS 44.62.330 - 44.62.630.

### 11 Article 3. Franchise Agreements.

12 **Sec. 45.25.300. Content, filing, and review of franchise agreements and**  
13 **amendments.** (a) The terms and conditions in a motor vehicle franchise agreement  
14 that are inconsistent with the law of this state do not have any force or effect.

15 (b) A manufacturer who is licensed by the commissioner under this chapter  
16 and who uses an identical or substantially similar franchise form agreement for its  
17 franchisees in this state shall file with the commissioner a copy of the franchise form  
18 agreement and all addenda and supplements to the agreement.

19 (c) A manufacturer or the manufacturer's subsidiary licensed by the  
20 commissioner under this chapter shall, not later than 60 days before the date of a  
21 revision, modification, or addition to the franchise form agreement, file a copy of the  
22 revision, modification, or addition with the commissioner and include with the  
23 notification

24 (1) a copy of the franchise form agreement, which must include all of  
25 the proposed revisions, modifications, and additions to the agreement and all addenda  
26 and supplements to the agreement; and

27 (2) an affidavit from the manufacturer that confirms that a copy of the  
28 proposed revisions, modifications, and additions have been delivered to the  
29 manufacturer's or subsidiary's dealers and distributors in this state; and

30 (3) a separate statement that identifies all proposed substantive  
31 revisions, modifications, and additions.

1 (d) A manufacturer or the manufacturer's subsidiary licensed under this  
2 chapter may not offer a franchise agreement or an addendum or supplement to the  
3 agreement to a dealer in the state until the manufacturer or the manufacturer's  
4 subsidiary has complied with this section.

5 (e) The commissioner may investigate or prevent violations of this section.

6 **Sec. 45.25.310. Petition by franchised dealer.** (a) A franchised new motor  
7 vehicle dealer who believes that a manufacturer with whom the dealer holds a  
8 currently valid franchise has violated or is violating any provision of this chapter may  
9 file a petition with the commissioner naming the manufacturer and setting out the  
10 factual and legal basis for the petition. The commissioner shall promptly forward a  
11 copy of the petition to the named manufacturer, requesting a reply to the petition  
12 within 30 days.

13 (b) Allowing for sufficient time for the parties to conduct discovery, the  
14 commissioner or a designee may hold an evidentiary hearing and render findings of  
15 fact and conclusions of law based on the evidence presented.

16 **Sec. 45.25.320. Granting or relocating additional franchises.** (a) A  
17 manufacturer or manufacturer representative may not enter into a franchise  
18 establishing an additional new motor vehicle dealer or relocating an existing new  
19 motor vehicle dealer into a market area where the same line-make is already  
20 represented by a dealer unless the manufacturer or manufacturer representative first  
21 provides written notice to the commissioner and each new motor vehicle dealer in that  
22 line-make in the market area of the manufacturer's or manufacturer representative's  
23 intention to establish an additional dealer or to relocate an existing dealer within or  
24 into that market area. Within 30 days after receiving notice from the manufacturer or  
25 manufacturer representative or within 30 days after the end of an appeal procedure  
26 provided by the manufacturer, a new motor vehicle dealer in that market area may file  
27 a protest with the commissioner to the establishment or relocation of the new motor  
28 vehicle dealer. If a protest is timely filed, the commissioner shall promptly provide  
29 notice of the protest to the manufacturer or the manufacturer representative and shall  
30 schedule a hearing on the protest. A manufacturer may not establish or relocate the  
31 proposed new motor vehicle dealer if the commissioner determines that there is good

1 cause for not permitting the addition or relocation of the new motor vehicle dealer.

2 (b) The fact that a manufacturer desires an additional share of the market does  
3 not, by itself, constitute good cause to add a new motor vehicle dealer or relocate an  
4 existing motor vehicle dealer in the market area.

5 (c) In determining whether good cause exists for not permitting the entrance  
6 into or relocation of an additional new motor vehicle dealer for the same line-make,  
7 the commissioner shall take into consideration the existing market circumstances,  
8 including

9 (1) the lasting nature of the existing dealer's investment, the  
10 commitments of the dealer to the dealership, the value of time and effort devoted to  
11 building the business, and any real property of the dealer used by the dealership,  
12 whether or not held in the name of the dealership;

13 (2) growth or decline in population, density of population, and new car  
14 registrations in the market area;

15 (3) effect on the consumers in the market area;

16 (4) whether it is injurious or beneficial to the public welfare for an  
17 additional new motor vehicle dealer to be established;

18 (5) whether the new motor vehicle dealers of the same line-make in  
19 that market area are providing adequate competition and convenient customer care for  
20 the motor vehicles of the same line-make in the market area, including the adequacy of  
21 motor vehicle sales and service facilities, equipment, supply of motor vehicle parts,  
22 and qualified service personnel;

23 (6) whether the establishment of an additional new motor vehicle  
24 dealer or relocation of an existing new motor vehicle dealer in the market area would  
25 increase competition in a manner that is in the long-term public interest; and

26 (7) the effect on the relocating dealer of a denial of its relocation into  
27 the relevant market area.

28 (d) The department shall conduct a protest hearing and render a final  
29 determination within 180 days after a protest is filed. Under this subsection,

30 (1) in a hearing involving a proposed additional new motor vehicle  
31 dealer, the manufacturer or distributor has the burden of proof, and in a proceeding

1 involving the relocation of an existing new motor vehicle dealer, the dealer seeking to  
2 relocate has the burden of proof; and

3 (2) if the commissioner determines, following a hearing, that good  
4 cause does not exist for refusing to permit the proposed additional or relocated new  
5 motor vehicle dealer, the dealer seeking the proposed additional or relocated motor  
6 vehicle dealer shall, within two years after the commissioner's determination, obtain a  
7 license from the commissioner for the sale of vehicles at the proposed site, and shall  
8 actually commence selling at the proposed site new motor vehicles of all line-makes  
9 for which the dealer has a franchise, as allowed by the commissioner; failure to obtain  
10 a license and commence sales within two years after the commissioner's determination  
11 constitutes waiver by the dealer of the dealer's right to operate the additional or  
12 relocated new motor vehicle dealer and requires a new notification, a new hearing, and  
13 a new determination as described in this paragraph.

14 (e) For purposes of this section, the addition, creation, or operation of a  
15 facility that is not physically part of, contiguous to, or within the defined market area  
16 of an existing licensed new motor vehicle dealer, whether or not owned or operated by  
17 a person or other entity holding a franchise, at which warranty service work that is  
18 authorized or reimbursed by a manufacturer is performed or at which new motor  
19 vehicles are offered for sale to the public is considered an additional new motor  
20 vehicle dealer requiring compliance with the provisions of this section.

21 **Sec. 45.25.330. Termination, cancellation, or nonrenewal of franchises.**

22 (a) A manufacturer may not terminate, cancel, or fail to renew a franchise with a new  
23 motor vehicle dealer unless the manufacturer has

24 (1) satisfied the notice requirements of AS 45.25.340;

25 (2) shown that there is good cause for the termination, cancellation, or  
26 nonrenewal of the franchise; and

27 (3) acted in good faith.

28 (b) A new motor vehicle dealer may petition the commissioner for a  
29 determination as to the existence of good cause and good faith for the termination,  
30 cancellation, or nonrenewal of a franchise. A petition must be filed within 10 days  
31 after the dealer receives notice of the termination, cancellation, or nonrenewal from

1 the manufacturer as required under AS 45.25.340. The commissioner shall promptly  
2 give notice to the manufacturer when a timely petition is filed. A franchise that is the  
3 subject of the petition shall continue in effect pending the commissioner's decision.  
4 The department shall conduct a hearing and render a final determination within 180  
5 days after a petition has been filed.

6 (c) Good cause exists, for purposes of a termination, cancellation, or  
7 nonrenewal of a franchise, if there is a failure by the new motor vehicle dealer

8 (1) to comply with a provision of the franchise that is both reasonable  
9 and of material significance to the franchise relationship and the dealer received  
10 written notice of the failure within 180 days after the manufacturer first learned of the  
11 failure;

12 (2) relating to the performance of sales or service by the new motor  
13 vehicle dealer and

14 (A) the new motor vehicle dealer received written notice from  
15 the manufacturer of the failure;

16 (B) the notice stated that the notice of failure in performance  
17 was provided as required by this section;

18 (C) the new motor vehicle dealer was afforded a reasonable  
19 opportunity, for a period of not less than 180 days, to remedy the failure; and

20 (D) the new motor vehicle dealer failed to demonstrate  
21 substantial progress towards compliance with the manufacturer's performance  
22 criteria during the period and the new motor vehicle dealer's failure was not  
23 primarily due to economic or market factors within the dealer's market area  
24 that were beyond the dealer's control.

25 (d) The manufacturer has the burden of proof under this section to show that  
26 good cause exists for a termination, cancellation, or nonrenewal.

27 **Sec. 45.25.340. Notice of termination, cancellation, and nonrenewal.** (a)  
28 A manufacturer shall furnish notice of termination, cancellation, or nonrenewal of a  
29 franchise to a new motor vehicle dealer at least

30 (1) 90 days before the effective date of a termination, cancellation, or  
31 nonrenewal, except as required under (2) or (3) of this subsection;

1 (2) 15 days before the effective date of a termination, cancellation, or  
2 nonrenewal when the new motor vehicle dealer

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

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

9 (C) has had a license revoked and the license is required in  
10 order to operate as a dealer; or

11 (D) is convicted of a felony involving moral turpitude or fraud  
12 under the law of this state, another state, a territory, or the District of  
13 Columbia;

14 (3) 180 days before the effective date of the termination or cancellation  
15 if the manufacturer or distributor is discontinuing the sale of the product line.

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

18 (1) a statement of intention to terminate, to cancel, or not to renew the  
19 franchise;

20 (2) a statement of the reasons for the termination, cancellation, or  
21 nonrenewal; and

22 (3) the date on which the termination, cancellation, or nonrenewal  
23 takes effect.

24 **Sec. 45.25.350. Compensation for termination, nonrenewal, or**  
25 **cancellation.** (a) If a franchise is terminated, not renewed, or canceled by a  
26 manufacturer, the manufacturer shall compensate the new motor vehicle dealer by  
27 paying for franchise inventory or other items by purchasing the

28 (1) inventory consisting of new motor vehicles that have been acquired  
29 from the manufacturer within the preceding 24 months at a price not less than the  
30 original manufacturer's price to the dealer, if the motor vehicles have not been altered  
31 or damaged, the motor vehicles have not been driven more than 200 miles, and

1 certificates of title have not been issued;

2 (2) unused, undamaged, and unsold supplies and parts purchased from  
3 the manufacturer or a supplier approved or required by the manufacturer at a price not  
4 less than the manufacturer's or approved supplier's current price to the dealer, if the  
5 supplies and parts are currently offered for sale by the manufacturer or a supplier in a  
6 current parts catalog and are in salable condition;

7 (3) equipment, signs, and furnishings that have not been altered or  
8 damaged and that have been required by the manufacturer to be purchased by the new  
9 motor vehicle dealer from the manufacturer or an approved source at fair market  
10 value; and

11 (4) special tools that have not been altered or materially damaged and  
12 that have been required by the manufacturer or distributor to be purchased by the new  
13 motor vehicle dealer from the manufacturer or distributor or an approved source at fair  
14 market value within five years immediately preceding the termination, nonrenewal, or  
15 cancellation of the franchise.

16 (b) The manufacturer shall pay compensation required under (a) of this section  
17 within 90 days after the effective date of the termination, cancellation, or nonrenewal  
18 if the new motor vehicle dealer has clear title to the inventory and has conveyed title  
19 and possession of all compensable items to the manufacturer.

20 **Sec. 45.25.360. Dealer facilities assistance.** (a) If a manufacturer terminates,  
21 cancels, or does not renew a franchise, the manufacturer shall compensate the dealer  
22 for facilities as follows:

23 (1) if the new motor vehicle dealer is leasing the dealer facilities from  
24 a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle  
25 dealer a sum equal to the rent for the unexpired term of the lease or two years' rent,  
26 whichever is less, or a longer term as is provided in the franchise agreement between  
27 the dealer and manufacturer; or

28 (2) if the new motor vehicle dealer owns the dealer facilities, the  
29 manufacturer shall pay the new motor vehicle dealer a sum equal to the reasonable  
30 rental value of the dealer facilities for two years.

31 (b) This section does not relieve a dealer of the obligation to mitigate damages

1 under the lease, prevent a manufacturer from occupying and using the dealer facilities  
2 while paying rent, or preclude a manufacturer from negotiating a lease termination,  
3 sublease, or new lease.

4 (c) This section does not apply if the termination, nonrenewal, or cancellation  
5 of the franchise agreement is the result of the dealer's

6 (1) voluntary act;

7 (2) insolvency;

8 (3) license revocation; or

9 (4) conviction of a felony involving moral turpitude or fraud.

10 **Sec. 45.25.370. Transfer of dealer ownership.** (a) A manufacturer may not  
11 unreasonably prevent or refuse to honor a transfer of ownership of a dealer.

12 (b) A new motor vehicle dealer may appoint by will or another written  
13 instrument a designated successor to succeed in the ownership interest of the dealer,  
14 including the franchise, upon the death or incapacity of the owner.

15 (c) A manufacturer may object to an owner's appointment of a designated  
16 successor under the following procedure:

17 (1) within 30 days after receiving written notice of the identity of the  
18 owner's designated successor and general information as to the financial ability and  
19 qualifications of the designated successor, the manufacturer shall send the owner and  
20 designated successor notice of the objection, by registered or certified mail, return  
21 receipt requested; a notice of objection must state in detail all facts that constitute the  
22 basis for the contention on the part of the manufacturer or distributor that good cause  
23 exists for rejection of the designated successor; failure by the manufacturer to send a  
24 notice of objection constitutes waiver by the manufacturer of the right to object to the  
25 appointment of the designated successor;

26 (2) within 30 days after receipt of a manufacturer's notice of objection,  
27 the owner or the designated successor may file a written request with the  
28 commissioner that the commissioner determine whether good cause exists for  
29 rejection of the designated successor; if a request is timely filed, the commissioner  
30 shall promptly inform the affected manufacturer that a request has been filed;

31 (3) the commissioner may hold a hearing on the objection and shall

1 make a determination within 180 days after receipt of the written request from the  
2 owner or designated successor; in determining whether good cause exists for rejection  
3 of the owner's appointed designated successor, the manufacturer or distributor has the  
4 burden of proof.

5 (d) Nothing in this section precludes a manufacturer, upon receipt of written  
6 notice from a dealer of the identity of the dealer's designated successor, from requiring  
7 that the designated successor promptly provide personal and financial data reasonably  
8 necessary to determine the financial ability and qualifications of the designated  
9 successor. However, a request for additional information may not delay a time period  
10 imposed under this section.

11 (e) In the event that death or incapacity of the owner occurs before the time a  
12 manufacturer receives notice of the owner's appointment of a designated successor or  
13 before the commissioner had made a determination as provided in (c) of this section,  
14 the existing franchise shall remain in effect, and the designated successor shall  
15 succeed to all of the owner's rights and obligations in the dealer and under the  
16 franchise until a determination is made by the commissioner or the rights of the parties  
17 have otherwise changed as provided in this chapter.

18 (f) Except as provided in (g) of this section, a designated successor of a  
19 deceased or incapacitated owner of a new motor vehicle dealer appointed by an owner  
20 in substantial compliance with this section succeeds at the time of death or incapacity  
21 to all of the ownership rights and obligations of the owner in the new motor vehicle  
22 dealer and under the existing franchise.

23 (g) Within 60 days after the death or incapacity of the owner, a designated  
24 successor appointed in substantial compliance with this section shall give the affected  
25 manufacturer written notice of the succession to the ownership of the new motor  
26 vehicle dealer.

27 (h) A designated successor is bound by all terms and conditions of the  
28 franchise in effect between the manufacturer and the owner at the time of the owner's  
29 death or incapacity if required in writing by the manufacturer subsequent to the  
30 owner's death or incapacity.

31 (i) This section does not preclude an owner of a new motor vehicle dealer

1 from designating a person as a successor by written instrument filed with the  
2 manufacturer. If there is an inconsistency between the successor named in the written  
3 instrument and the designated successor otherwise appointed by the owner consistent  
4 with the provisions of this section, the written instrument filed with the manufacturer  
5 determines the appointment of the successor, unless the written instrument has been  
6 revoked by the owner of the new motor vehicle dealer in writing to the manufacturer.

7 (j) Notwithstanding the terms of the franchise agreement, in the event of a  
8 proposed sale or other transfer of a dealership, the manufacturer may not exercise a  
9 right of first refusal to acquire the dealership or the dealership assets where the  
10 proposed sale or transfer is conditioned on the manufacturer's or dealer's entering into  
11 a franchise with the proposed new owner or other transferee unless all the following  
12 requirements are met:

13 (1) the manufacturer notifies the dealer in writing within 30 days of the  
14 manufacturer's receipt of the completed proposal for the proposed sale or other  
15 transfer;

16 (2) the exercise of the right of first refusal results in the dealer  
17 receiving the same consideration as or greater consideration than the dealer contracted  
18 to receive for the proposed sale or other transfer;

19 (3) the proposed sale or transfer does not involve the sale or other  
20 transfer to

21 (A) a family member of the dealer;

22 (B) a qualified manager;

23 (C) a person who has been employed continuously by the  
24 dealer for at least 10 years; or

25 (D) a person, other than an individual, controlled by a person  
26 described in (A) - (C) of this paragraph; and

27 (4) the manufacturer agrees to pay the reasonable expenses, including  
28 attorney fees that do not exceed the usual, customary, and reasonable fees charged for  
29 similar work done for other clients incurred by the proposed purchaser or transferee  
30 before the manufacturer's exercise of the right of first refusal in negotiating and  
31 implementing the contract for the proposed sale or other transfer; notwithstanding the

1       foregoing, the payment of the expenses is not required if the dealer has not submitted  
2       or caused to be submitted an accounting of the expenses within 30 days of the dealer's  
3       receipt of the manufacturer's written request for the accounting; a manufacturer may  
4       request an accounting before exercising the right of first refusal.

5                               **Article 4. Manufacturer Practices.**

6               **Sec. 45.25.400. Prohibited manufacturer trade practices.** Notwithstanding  
7       the terms of the franchise agreement, a manufacturer may not

8                       (1) modify or replace a dealer agreement of any kind with a succeeding  
9       dealer agreement that would adversely alter the rights or obligations of a new motor  
10      vehicle dealer under an existing dealer agreement or that substantially impairs the  
11      sales, service obligations, or investment of the new motor vehicle dealer;

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

13                               (A) order or accept delivery of a new motor vehicle with  
14      special features, accessories, or equipment not included in the list price of the  
15      motor vehicles as publicly advertised by the manufacturer;

16                              (B) participate monetarily in an advertising campaign or  
17      contest, or to purchase unnecessary or unreasonable quantities of any  
18      promotional materials, training materials, training programs, or showroom or  
19      other display decorations or materials at the expense of the new motor vehicle  
20      dealer; nothing in this subparagraph precludes a manufacturer from including  
21      an unitemized uniform charge in the base price of the new motor vehicle  
22      charged to the dealer, unless the charge is attributable to advertising costs  
23      incurred or to be incurred by the manufacturer in the ordinary course of its  
24      business, if the uniform charge is in effect for vehicles sold to dealers in all  
25      other states;

26                              (C) change the capital structure of the new motor vehicle dealer  
27      or the means by or through which the new motor vehicle dealer finances the  
28      operation of the dealer if the new motor vehicle dealer at all times meets any  
29      reasonable capital standards determined by the manufacturer under uniformly  
30      applied criteria, except that a change in the capital structure does not cause a  
31      change in the principal management or have the effect of a sale of the franchise

1 without the consent of the manufacturer; consent required under this  
2 subparagraph may not be unreasonably withheld;

3 (D) refrain from participation in the management of,  
4 investment in, or acquisition of another line of new motor vehicles or related  
5 products; this subparagraph applies only if the new motor vehicle dealer  
6 maintains a reasonable line of credit for each make-line of new motor vehicle  
7 and the new motor vehicle dealer remains in compliance with any reasonable  
8 capital standards and facilities requirements of the manufacturer; the  
9 reasonable facilities requirements may not include requirements that a new  
10 motor vehicle dealer establish or maintain exclusive facilities, personnel, or  
11 display space when the requirements would be unreasonable in light of current  
12 economic conditions and would not otherwise be justified by reasonable  
13 business considerations;

14 (E) change the location of the dealership, or to make any  
15 substantial alterations to the dealership premises or facilities, when the change  
16 or alteration would be unreasonable or when the change or alteration is without  
17 written assurance of a sufficient supply of new motor vehicles to justify the  
18 expansion in light of the current market and economic conditions;

19 (F) prospectively assent to a release, assignment, novation,  
20 waiver, or estoppel that would relieve a person from liability to be imposed by  
21 law or to require a controversy between a new motor vehicle dealer and a  
22 manufacturer to be referred to a person other than a court or the commissioner  
23 if the referral would be binding on the new motor vehicle dealer;

24 (G) sell a new motor vehicle at a minimum or maximum price  
25 that has been fixed by the manufacturer;

26 (H) pay more for a delivery or destination charge than for a  
27 delivery or destination charge in the contiguous United States if the  
28 manufacturer has an equalized delivery or destination charge in the contiguous  
29 United States;

30 (I) deliver new motor vehicles or otherwise participate in a plan  
31 where the manufacturer sells new vehicles directly or through a subsidiary to a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

customer through electronic or other means;

(J) offer or adhere to menu prices set by the manufacturer for service, parts, or accessories; or

(K) participate in a manufacturer's national or regional marketing promotion that arbitrarily and adversely economically affects the dealer;

(3) sell or offer to sell dealer-obligor service contracts;

(4) within a reasonable time after receipt of a retail order from a dealer having a franchise for the retail sale of a new motor vehicle sold or distributed by the manufacturer or distributor, delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's market area; the delivery to another dealer of a motor vehicle of the same model as and similarly equipped to the vehicle ordered by a motor vehicle dealer who has not received delivery but who has placed a written order for the vehicle before the order of the dealer receiving the vehicle is evidence of a delayed delivery of or refusal to deliver a new motor vehicle to a new motor vehicle dealer within a reasonable time; this paragraph does not apply to a delay or refusal caused by acts beyond the control of the manufacturer; in this paragraph, "retail order" means an order placed for a buyer who is not a licensed motor vehicle dealer franchised to sell the same line-make;

(5) refuse to disclose to a new motor vehicle dealer handling a line-make the manner and mode of allocation and distribution of that line-make within the state;

(6) count a vehicle that is still in transit between the manufacturing or assembly plant and the dealer as a vehicle available for sale or in the dealer's supply of vehicles for sale if counting that vehicle as available for sale or in the dealer's supply adversely affects a system under which the manufacturer allocates vehicles to its dealers in other states;

(7) require certification of any classification of employee of a dealer in this state for a job-related function or reimbursement unless the manufacturer provides in this state the same or greater frequency, level, quality, and type of training for a

1 dealer or dealership employee in this state that it provides for dealers and dealership  
2 employees in other states;

3 (8) require certification of a dealer or a dealership employee for a job  
4 function if the certification requirement would adversely affect a motor vehicle  
5 owner's or lessee's receiving prompt warranty or service contract repairs at the closest  
6 possible franchised dealership facility or dealer subcontractor facility;

7 (9) refuse to pay its dealer for a category of warranty repair or service  
8 contract repair that was actually performed by the dealer in this state for the line-make  
9 of vehicle for which the dealer has a franchise if the repair was covered by the  
10 manufacturer's warranty or service contract at any other dealership that has a franchise  
11 to sell that line-make of motor vehicle in this state or in a majority of the other 49  
12 states of the United States;

13 (10) award money, goods, services, or any other benefit to an  
14 employee of a new motor vehicle dealer, either directly or indirectly, unless the benefit  
15 is promptly accounted for and transmitted to, or approved by, the new motor vehicle  
16 dealer;

17 (11) increase the price of a new motor vehicle that a new motor vehicle  
18 dealer has ordered and that the manufacturer has accepted for immediate delivery for  
19 private retail or private commercial consumers before the new motor vehicle dealer  
20 receives the manufacturer's written official price increase notification; a sales contract  
21 signed by a private retail consumer or a purchase order signed by a private commercial  
22 customer constitutes evidence of an order if the vehicle is in fact delivered to that  
23 customer; price differences applicable to new models or series may not be considered  
24 a price increase or price decrease; this paragraph does not apply to price changes  
25 resulting from the addition to a new motor vehicle of required or optional equipment,  
26 revaluation of the United States dollar, in the case of foreign-make vehicles or  
27 components, an increase in transportation charges due to increased rates imposed by  
28 carriers, or new tariffs or duties imposed by the United States or another governmental  
29 authority;

30 (12) prevent or attempt to prevent a dealer from receiving fair and  
31 reasonable compensation for the value of a franchised business transferred as required

1 by this chapter;

2 (13) offer a refund or other type of inducement to a person for the  
3 purchase of a new motor vehicle of a certain line-make to be sold to the state or a  
4 political subdivision of the state without making the same offer available upon request  
5 to all other new motor vehicle dealers franchised to sell the same line-make in the  
6 state;

7 (14) release to an outside party, except under subpoena or as otherwise  
8 required by law, confidential business, financial, or personal information that may be  
9 provided by a new motor vehicle dealer to the manufacturer, without the express  
10 written consent of the new motor vehicle dealer;

11 (15) deny or attempt to deny a new motor vehicle dealer the right of  
12 free association with another new motor vehicle dealer for any lawful purpose;

13 (16) unfairly discriminate among new motor vehicle dealers with  
14 respect to warranty reimbursements or authority granted new motor vehicle dealers to  
15 make warranty adjustments with retail customers;

16 (17) engage in an unfair trade practice described in this chapter against  
17 or unfairly compete with a new motor vehicle dealer located in this state;

18 (18) sell a new vehicle to a private purchaser in this state or broker the  
19 sale of a new motor vehicle to a private purchaser in this state;

20 (19) terminate a franchise because of the death or incapacity of an  
21 owner, if the owner is not listed in the franchise as one on whose expertise and  
22 abilities the manufacturer relied in the granting of the franchise;

23 (20) require, coerce, or attempt to coerce a new motor vehicle dealer to  
24 establish or maintain exclusive facilities, personnel, or display space when the  
25 requirement would not be justified by reasonable business considerations;

26 (21) require, coerce, or attempt to coerce a dealer to disclose to the  
27 manufacturer information concerning a customer or a third party if the customer or  
28 third party objects or the disclosure is otherwise unlawful;

29 (22) resort to or use a false or misleading advertisement in the conduct  
30 of its business as a manufacturer in this state;

31 (23) knowingly make, either directly or through any agent or

1 employee, a material statement that is false or misleading and that induces a new  
2 motor vehicle dealer to enter into an agreement or franchise or to take action that is  
3 materially prejudicial to the new motor vehicle dealer;

4 (24) require, coerce, or attempt to coerce a new motor vehicle dealer to  
5 purchase or order a new motor vehicle as a precondition of purchasing, ordering, or  
6 receiving other new motor vehicles; this paragraph does not prevent a manufacturer  
7 from requiring that a new motor vehicle dealer fairly represent and inventory the full  
8 line of new motor vehicles that are covered by the franchise agreement;

9 (25) require, coerce, or attempt to coerce a new motor vehicle dealer to  
10 sell, transfer, or otherwise issue stock or other ownership interest in the dealership  
11 corporation to a general manager or other person involved in the management of the  
12 dealership other than the dealer principal or dealer operator named in the franchise,  
13 unless the dealer principal or dealer operator is an absentee owner who is not involved  
14 in the operation or management of the dealership on a regular basis;

15 (26) vary the price charged to a franchised new motor vehicle dealer  
16 located in this state for new motor vehicles or the reimbursement paid to a franchised  
17 new motor vehicle dealer for parts and labor reimbursement for warranty, policy, or  
18 service contract repairs based on the dealer's (A) purchase of new facilities, supplies,  
19 tools, equipment, or other merchandise from the manufacturer; (B) relocation,  
20 remodeling, repair, or renovation of an existing dealership or construction of a new  
21 facility; or (C) participation in training programs sponsored, endorsed, recommended,  
22 or required by the manufacturer; for purposes of this paragraph, the price of a vehicle  
23 includes the manufacturer's use of rebates, credits, or other consideration that has the  
24 effect of causing a variance in the price of a new motor vehicle offered to a franchised  
25 dealer located in the state; this paragraph does not preclude a manufacturer from  
26 establishing sales contests or promotions that are of limited duration and that provide  
27 or award dealers or consumers a rebate or incentive, or prohibit a manufacturer from  
28 providing assistance or encouragement to a franchised dealer to remodel renovate,  
29 recondition, or relocate the dealer's existing facilities, if the assistance,  
30 encouragement, or reward is not determined on a per vehicle basis;

31 (27) require that, in a civil or administrative proceeding in which a

1 new motor vehicle dealer asserts a claim, right, or defense arising under this chapter or  
2 under the franchise, the dealer or a nonprevailing party compensate the manufacturer  
3 or prevailing party for court costs, attorney fees, or other expenses incurred in  
4 litigation;

5 (28) require that a franchised new motor vehicle dealer located in this  
6 state pay an extra fee, purchase unreasonable or unnecessary quantities of advertising  
7 displays or other materials, or remodel, renovate, or recondition the dealer's existing  
8 facilities in order to receive a particular model or series of vehicles manufactured or  
9 distributed by the manufacturer for which the dealer has a valid franchise; this  
10 paragraph does not prohibit or prevent a manufacturer from requiring that a franchised  
11 dealer located in this state purchase special tools or equipment, stock reasonable  
12 quantities of certain parts, or participate in training programs that are reasonably  
13 necessary for the dealer to sell or service a model or series of motor vehicles;

14 (29) require a separate dealer agreement with a new motor vehicle  
15 dealer already a party to a dealer agreement with the manufacturer for the retail sale or  
16 leasing of a particular new motor vehicle model made or distributed by the  
17 manufacturer or restrict the right of a dealer to sell all products marketed under the  
18 trademark for which the dealer has a valid franchise;

19 (30) offer a service contract for its own line or make of vehicle or a  
20 competitive make of vehicle through a new motor vehicle dealer in this state that is a  
21 dealer-obligor service contract or that could be construed in any way as a contract  
22 between the dealer and the purchaser or that the dealer is a maker of the service  
23 contract; or

24 (31) offer a service contract for sale to a resident of this state except  
25 through a dealer licensed in this state.

26 **Sec. 45.25.410. Warranty and service contract obligations.** (a) A motor  
27 vehicle manufacturer or manufacturer's subsidiary shall provide for timely warranty  
28 repair of its vehicles through its franchised dealers that are licensed in this state under  
29 the provisions of this chapter.

30 (b) A motor vehicle manufacturer or manufacturer's subsidiary shall specify in  
31 writing to each of its motor vehicle dealers licensed in this state the dealer's

1 obligations for preparation, delivery, warranty, and service contract service on its  
2 products or the products it covers, the schedule of compensation to be paid to a dealer  
3 for parts, work, and service in connection with warranty service, recall service, and  
4 service contract service or maintenance that is the responsibility of the manufacturers,  
5 and the time allowances for the performance of warranty work and service.

6 (c) A schedule of warranty or service contract compensation must include  
7 reasonable compensation for diagnostic work, whether or not a problem is found when  
8 it has been reported by the owner, and, in addition to repair service and labor, for the  
9 labor required to complete and transmit warranty and service contract claims and to  
10 transmit any substantiating documentation.

11 (d) When warranty work or service contract work is performed, service time  
12 allowances must be reasonable and adequate for the work to be performed and must be  
13 equal to the allowances published in the manufacturer's labor time standard manual or  
14 another industry-wide recognized labor time guide manual for repairs performed by  
15 experienced automotive technicians using hand tools, whichever is greater. When  
16 reasonable compensation is determined under this subsection, the factors to be given  
17 consideration shall include the compensation paid by other manufacturers to their  
18 dealers, the retail price dealers charge their retail customers for parts used to perform  
19 similar work and paid to dealers for parts, and the prevailing wage rates, including  
20 employment benefits, being paid by dealers and the prevailing retail labor rate posted  
21 by dealers in the community in which the dealer is doing business if the prevailing  
22 rates and prices are not unreasonable.

23 (e) If a motor vehicle that is covered by a manufacturer's warranty or service  
24 contract is brought to a dealer and the owner describes a concern that, if verified,  
25 could reasonably lead to a covered warranty or service contract repair, the dealer shall  
26 make a diligent and reasonable attempt to verify the owner's complaint, and the  
27 manufacturer or administrator shall reimburse the dealer for the actual diagnosis time  
28 spent at the dealer's current warranty labor rate, whether or not a covered defect or  
29 failure is diagnosed. If, after a reasonable effort, the dealer is unable to verify the  
30 owner's complaint, the dealer shall notify the owner in writing of the diagnostic steps  
31 performed and the diagnostic results.

1 (f) When a motor vehicle that is covered by a manufacturer's warranty or  
2 service contract is brought to a licensed dealer that has a franchise to sell a line-make  
3 of motor vehicles in this state, if the dealer determines a motor vehicle covered by the  
4 franchise has a nonconformity covered by the manufacturer's warranty or a necessary  
5 repair covered by the manufacturer's service contract, and if the dealer subsequently  
6 fixes the nonconformity or performs the covered repair, the manufacturer shall pay the  
7 dealer for the labor associated with fixing the nonconformity or performing the  
8 covered repair.

9 (g) If a manufacturer or administrator requires

10 (1) a franchised dealer to perform a diagnostic task that leads to, could  
11 reasonably lead to, or confirms completion of a repair covered by a warranty or  
12 service contract, the manufacturer or administrator shall reimburse the franchised  
13 dealer for the actual diagnosis time at the dealer's current warranty labor rate, and the  
14 labor shall be considered labor over and above the labor that is included in an  
15 applicable published labor time standard or that was performed by the repairing  
16 technician;

17 (2) a dealer or dealership employee to obtain prior approval before  
18 performing a repair covered by a warranty or service contract, the manufacturer or  
19 administrator shall reimburse the dealer at the dealer's normal warranty labor rate for  
20 the actual time spent by a dealership employee to obtain the prior approval;

21 (3) a dealer or dealership employee to contact factory personnel in  
22 order to obtain unpublished diagnostic processes or repair procedures or to clarify  
23 diagnostic processes or repair procedures, the manufacturer or administrator shall  
24 reimburse the dealer at the dealer's normal warranty labor rate for the actual time spent  
25 by a dealership employee to obtain the information;

26 (4) a dealer to transmit digital images, video images, photographs,  
27 documents, or other material to the manufacturer for prior approval of warranty or  
28 service contract repairs, the manufacturer shall reimburse the dealer for the actual cost  
29 of transmitting the material.

30 (h) A motor vehicle manufacturer or manufacturer's subsidiary may not fail to

31 (1) timely perform or, through a policy or procedure, may not cause a

1 dealer to be unable to timely perform a manufacturer's warranty obligations with  
2 respect to a motor vehicle that the dealer has a franchise to sell;

3 (2) timely compensate its motor vehicle dealers licensed in this state  
4 for warranty parts at the prevailing retail rate according to the requirements or other  
5 factors set out in this section, or under the schedule of compensation provided the  
6 dealer described in this chapter; or

7 (3) indemnify and hold harmless its franchised dealers licensed in this  
8 state against a judgment for damages or a settlement agreed to by the manufacturer,  
9 including court costs and reasonable attorney fees of the motor vehicle dealer, arising  
10 out of a complaint, claim, or lawsuit relating to the alleged defective negligent  
11 manufacture, assembly, or design of a new motor vehicle, part, or accessory, or to  
12 other functions by the manufacturer, factory branch, distributor or distributor branch,  
13 beyond the control of the dealer.

14 (i) A dealer or repair facility may not repair or replace an air emission related  
15 component on a motor vehicle that requires emission certification without performing,  
16 once the repair is complete, an emission test to verify that the repair is effective. A  
17 manufacturer or administrator may not refuse to fully reimburse a dealer at the dealer's  
18 current hourly warranty rate for performance of an emission test required under this  
19 subsection for a repair or replacement that is covered by an emission defect warranty,  
20 other warranty, or service contract.

21 (j) The power train components of a motor vehicle operated in this state must  
22 operate within the manufacturer's specifications. A dealer or repair facility may not  
23 repair or replace a power train component on a motor vehicle that is operated in this  
24 state without performing, once the repair is complete, the necessary test to confirm  
25 that the repaired or replaced component is operating within the manufacturer's  
26 specifications. A manufacturer or administrator may not refuse to reimburse a dealer  
27 at the dealer's current hourly warranty rate for performance of the test required under  
28 this subsection to confirm that a repaired or replaced power train component covered  
29 by a warranty or service contract is operating within the manufacturer's specifications.

30 (k) A new vehicle manufacturer or manufacturer's subsidiary shall commence  
31 and complete repairs or maintenance covered by a new vehicle warranty or service

1 plan as quickly as possible and without unreasonable delay. A motor vehicle  
2 manufacturer or administrator shall provide, at the manufacturer's expense, reasonable  
3 alternate transportation for an owner whose vehicle is covered by an express warranty  
4 or an authorized service plan if (1) the vehicle is unsafe or inoperable and has been  
5 brought to a franchised dealer or to a subcontracting repair facility working in  
6 cooperation with the franchised dealer; (2) covered repairs cannot begin the same  
7 working day because of the decision of the manufacturer or administrator to require  
8 prior approval before the dealer may commence the covered repairs; and (3) for any  
9 reason beyond the control of the dealer, oral prior approval may not be obtained that  
10 same day or repair parts for the vehicle required by the manufacturer are not available  
11 at the dealership and the manufacturer or its authorized suppliers cannot provide the  
12 repair parts within two working days. A manufacturer is in compliance with the  
13 provisions of this subsection if the manufacturer authorizes the repairing dealer to  
14 provide reasonable alternate transportation for the owner at the manufacturer's  
15 expense. When a dealer is authorized to provide transportation, the dealer shall  
16 attempt to provide a rental vehicle that is a similar model, or has similar characteristics  
17 to the owner's vehicle, through its own rental fleet or from the fleet of another licensed  
18 rental company. A manufacturer or administrator shall reimburse the owner or the  
19 dealer for the cost of the rental in the same manner and time frame the manufacturer or  
20 administrator uses to reimburse the dealer for warranty repairs, and the manufacturer  
21 or administrator may not include the rental car expense in the expenses that are used to  
22 compare the dealer to other dealers for audit purposes or for the purposes of prior  
23 warranty approval.

24 (1) A manufacturer shall pay a claim made by the manufacturer's franchised  
25 dealer for compensation for sales incentives, delivery, preparation, warranty repairs,  
26 transportation claims, recall work, and service contract repairs, including labor, parts,  
27 rental vehicle reimbursement, and other covered expenses, within 30 days after receipt  
28 of a claim from the dealer. If a claim is disapproved, the dealer shall be notified in  
29 writing of the grounds for disapproval. A claim not specifically disapproved in  
30 writing within 30 days after receipt is considered approved and payment is due  
31 immediately. A dealer's failure to comply with the specific requirements of the

1 manufacturer for processing the claim does not constitute grounds for denial of the  
2 claim or reduction of the amount of compensation to the dealer as long as reasonable  
3 documentation or other evidence has been presented to substantiate the claim. A  
4 claim that has been approved and paid may not be charged back to the dealer unless it  
5 can be shown that the claim was false or fraudulent, that the repairs were not properly  
6 made according to industry standards or were unnecessary to correct the defective  
7 condition, or that the dealer failed to reasonably substantiate the repairs. A  
8 manufacturer or distributor may not deny a claim, reduce the amount to be reimbursed  
9 to the dealer, or charge back a portion of the claim if 12 or more months have passed  
10 since the claim was submitted, or if the dealer has provided reasonably sufficient  
11 documentation that the dealer made a good faith attempt to perform the work in  
12 compliance with the written policies and procedures of the manufacturer and actually  
13 performed the work.

14 (m) A dealer may not be charged back or otherwise held liable for sales  
15 incentives or charges related to motor vehicles sold by the dealer and subsequently  
16 exported if the dealer can demonstrate that the dealer exercised due diligence and that  
17 the sale was made in good faith and without knowledge of the purchaser's intention to  
18 export the motor vehicle.

19 (n) If there is a dispute between the manufacturer and the dealer regarding a  
20 matter described in this section, either party may petition the commissioner in writing,  
21 within 30 days after either party has given written notice of the dispute to the other, for  
22 a hearing on the dispute. This subsection does not give the commissioner authority  
23 regarding the content of a manufacturer's or distributor's warranty. If a petition is filed  
24 with the commissioner under this subsection, a chargeback to or payment required of a  
25 dealer by a manufacturer relating to warranty parts or service compensation, or sales  
26 incentives, service incentives, rebates, or other forms of incentive compensation shall  
27 be stayed during the pendency of the determination by the commissioner and during  
28 the pendency of any internal appeal provided by the manufacturer. Notification of  
29 intent to use a manufacturer's internal appeal procedure shall be provided within 14  
30 days after notification of the chargeback is received by the dealer, and the appeal shall  
31 be completed and submitted by the dealer within 60 days from receipt by the dealer of

1 the manufacturer's list of specific claims scheduled for chargeback, including a  
2 detailed claim-by-claim explanation of the policies the manufacturer alleges the dealer  
3 has violated.

4 (o) A manufacturer may not process a chargeback against a dealer without  
5 first providing the dealer with a detailed list of specific policies the dealer has violated  
6 and a detailed explanation of the policy or procedure the dealer should have followed  
7 to avoid the chargeback.

8 (p) A manufacturer or administrator may not contract with a person to audit a  
9 dealer in this state for compliance with any of the manufacturer's policies or  
10 procedures if the auditor's compensation is in any way based on the amount charged  
11 back to the dealer or recovered from the dealer.

12 (q) A manufacturer or administrator may not require or cause, for any reason,  
13 a motor vehicle owner to take a vehicle covered by a warranty for warranty repair to a  
14 dealership in this state other than the manufacturer's franchised dealership closest to  
15 the motor vehicle owner's residence or to the location where the motor vehicle's  
16 nonconformity became apparent to the motor vehicle owner, whichever is closer. In  
17 any case involving warranty repairs or service contract repairs, the motor vehicle  
18 owners shall have the option, for any covered repair, to have the vehicle towed to and  
19 repaired at the manufacturer's expense by the dealership that sold the motor vehicle to  
20 the motor vehicle owner if the dealership is within 35 miles of the location where the  
21 vehicle became inoperable due to the nonconformity.

22 (r) When a warranty or service contract repair results in the removal of  
23 hazardous or potentially hazardous material from a motor vehicle, the manufacturer or  
24 administrator shall reimburse the repairing dealership for the reasonable cost the  
25 dealership incurs that results from or is associated with the disposal of the material.

26 (s) A licensed manufacturer doing business in this state shall notify its  
27 franchised dealers of any hazardous or potentially hazardous material, including  
28 asbestos in brake linings, contained in the motor vehicles and replacement parts it  
29 manufacturers or distributes. As part of the required notification, the manufacturer  
30 shall provide recommended procedures for the handling and disposal of the hazardous  
31 or potentially hazardous material and shall assume any liability the dealer may later

1 incur for the handling or disposal of the hazardous or potentially hazardous material if  
2 the dealer follows the manufacturer's recommended handling and disposal procedures.

3 **Sec. 45.25.420. Transportation damages.** (a) A manufacturer is liable for  
4 all damages to a new motor vehicle manufactured by the manufacturer before delivery  
5 to a carrier or transporter. If a new motor vehicle dealer determines the method of  
6 transportation, the risk of loss passes to the dealer upon delivery of the new motor  
7 vehicle to the carrier. Except as provided in this subsection, the risk of loss from  
8 delivery of a new motor vehicle remains with the manufacturer until the new motor  
9 vehicle dealer or the new motor vehicle dealer's designee accepts the new motor  
10 vehicle from the carrier.

11 (b) If a new motor vehicle is damaged while in transit when the manufacturer  
12 designates the carrier or the means of transportation, or if a new motor vehicle is  
13 otherwise damaged before delivery to the dealer, the dealer shall notify the  
14 manufacturer of the damage within three working days or within additional time as  
15 authorized by the franchise agreement of the occurrence of the delivery of the new  
16 motor vehicle and request authorization from the manufacturer to repair the damages  
17 or replace the parts or accessories damaged. If the manufacturer refuses or fails to  
18 authorize repair or replacement of the damage within three working days after the  
19 manufacturer receives notification of damage from the dealer, ownership of the new  
20 motor vehicle reverts to the manufacturer, and the dealer does not have an obligation,  
21 financial or otherwise, for the damage to the new motor vehicle. A manufacturer may  
22 not fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a  
23 new motor vehicle, the nature and extent of damage or post-manufacturing repairs  
24 made to a new motor vehicle while in the possession or under the control of the  
25 manufacturer if the cost of the post-manufacturing repairs exceeds three percent of the  
26 manufacturer's suggested retail price or an amount stated in the manufacturer's policy  
27 regarding disclosure of damage, whichever is lower. A manufacturer is not required to  
28 disclose to a new motor vehicle dealer that the glass, tires, or bumper of a new motor  
29 vehicle was damaged if the damaged item has been replaced with original or  
30 comparable equipment. Nothing in this subsection relieves the dealer of the obligation  
31 to cooperate with the manufacturer as necessary in filing a transportation damage

1 claim with the carrier.

2 (c) Before entering into a new motor vehicle sales contract, a new motor  
3 vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle any  
4 known damage and repair to the new motor vehicle if the damage exceeds five percent  
5 of the manufacturer's suggested retail price as calculated at the dealer's authorized  
6 warranty rate for labor and parts. A new motor vehicle dealer is not required to  
7 disclose to a purchaser that glass, tires, bumpers, or cosmetic parts of a new motor  
8 vehicle were damaged at any time if the damaged item has been replaced with original  
9 or comparable equipment. A replaced part is not part of the cumulative damage  
10 required to be disclosed under this subsection. If disclosure is not required under this  
11 subsection, a purchaser may not revoke or rescind a sales contract due to the fact that  
12 the new motor vehicle was damaged and repaired before completion of the sale. For  
13 purposes of this subsection, "manufacturer's suggested retail price" means the retail  
14 price of the new motor vehicle suggested by the manufacturer and includes the retail  
15 delivered price suggested by the manufacturer for each accessory or item of optional  
16 equipment physically attached to the new motor vehicle at the time of delivery to the  
17 new motor vehicle dealer that is not included within the retail price suggested by the  
18 manufacturer for the new motor vehicle. In this subsection, "cosmetic parts" means  
19 parts that are attached by and can be replaced in total through the use of screws, bolts,  
20 or other fasteners without the use of welding or thermal cutting and includes  
21 windshields, bumpers, hoods, or trim panels.

22 **Sec. 45.25.430. Other unfair methods of competition.** A motor vehicle  
23 manufacturer may not

24 (1) own, operate, or control a motor vehicle dealership in this state;  
25 however, this paragraph does not prohibit the ownership or operation of a new motor  
26 vehicle dealership by a manufacturer for a period, not to exceed one year, during the  
27 transition from one owner or operator to another, or during a period when a dealership  
28 is being sold or its shares are being purchased under a bona fide contract or purchase  
29 option;

30 (2) own, operate, or control a facility for the repair or maintenance of  
31 motor vehicles except a facility that is used to

1 (A) repair or maintain vehicles owned or operated by the  
2 manufacturer: or

3 (B) perform motor vehicle service required by law that cannot  
4 be performed by the manufacturer's franchised dealers;

5 (3) contract with or approve a person or entity other than a duly  
6 franchised dealer to perform warranty repairs or service contract repairs for the  
7 manufacturer unless that person or entity is a subcontractor for that manufacturer's  
8 licensed dealer franchised for that geographic market area;

9 (4) ship new or used motor vehicles or new or used parts or accessories  
10 to a location other than the location of its franchised dealer for the geographic area or  
11 the dealer's subsidiary location or subcontractor location in that geographic area or to a  
12 wholesale distributor appointed by the manufacturer for that geographic area.

13 **Article 5. Installment Sales; Service Contracts.**

14 **Sec. 45.25.500. Installment sales; statement to be delivered to buyer;**  
15 **obligations to buyer.** (a) A motor vehicle installment contract must be in writing,  
16 signed by both the seller and buyer, and completed as to all essential provisions before  
17 the signing of the contract by the buyer and before delivery of the vehicle to the buyer.

18 (b) A dealer may not obtain a signed motor vehicle installment contract from  
19 the buyer until the financing terms reflected on the motor vehicle installment contract  
20 are final and complete.

21 (c) Notwithstanding the requirements of this section, if a dealer arranges  
22 financing for a buyer, the dealer may deliver the motor vehicle to the buyer before  
23 final approval by the financing entity if

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

30 (2) the separate agreement clearly and conspicuously informs the  
31 buyer that accepting delivery of the vehicle before final financing approval obligates

1 the buyer to terms of the motor vehicle installment contract if the terms on the separate  
2 agreement are identical to the terms finally approved by the financing entity; and

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

8 (d) A licensee may not enter into a short-term or single-payment contract  
9 unless the terms and conditions described in this section are fully complied with  
10 before delivery of the vehicle to the buyer.

11 (e) If a buyer's final financing is not approved within seven business days  
12 from the date of the separate agreement and, as a result, the transaction is not  
13 completed, the licensee shall return the buyer's entire down payment, and the buyer's  
14 trade-in, if any, shall be returned to the buyer in the same condition and with not more  
15 than 10 miles accumulated on the odometer from when the motor vehicle was  
16 delivered to the dealer.

17 **Sec. 45.25.510. Installment sales coercion prohibited.** (a) A manufacturer  
18 or an officer, agent, or representative of a manufacturer, may not coerce or attempt to  
19 coerce a motor vehicle dealer in this state to sell, assign, or transfer a motor vehicle  
20 installment contract to a specified finance company, to a class of finance companies,  
21 or to another specified person.

22 (b) A manufacturer, an officer, an agent, or a representative of a manufacturer,  
23 or a person affiliated with the manufacturer may not

24 (1) offer to provide information to a dealer concerning a prospective  
25 customer who contacts the manufacturer or a person affiliated with the manufacturer  
26 about the manufacturer's or distributor's products; and

27 (2) condition the provision of the information referred to in (1) of this  
28 subsection to a dealer on the agreement of the dealer to sell or lease a motor vehicle to  
29 the prospective customer only if the financing or leasing for the transaction is done by  
30 a finance company or lease company that has a relationship or is affiliated with the  
31 manufacturer.

1 (c) The provisions of (b) of this section do not prohibit a finance company or  
2 lease company that is affiliated with a manufacturer from

3 (1) servicing existing loans or leases, including arranging financing or  
4 a lease upon the maturity of an existing loan or lease;

5 (2) negotiating with an existing debtor or lessee who is in default under  
6 the terms of a loan or lease, including working with a dealer to retake or dispose of a  
7 motor vehicle retaken from the existing debtor or lessee; or

8 (3) providing information concerning a customer who qualifies to  
9 purchase a new motor vehicle under a motor vehicle purchase program sponsored by a  
10 manufacturer for factory employees, manufacturer retirees, or factory vendors or  
11 under another reasonably similar new vehicle purchase program offered by a  
12 manufacturer or distributor.

13 **Sec. 45.25.520. Service contracts.** (a) A motor vehicle service contract must  
14 be in writing and contain all essential provisions regarding the administration of the  
15 contract. If a dealer presents a service contract to the customer as an "application" for  
16 a contract, it must be clearly and conspicuously marked as an application and must  
17 disclose the applicable rules for obtaining a final service contract.

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

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

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

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

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

29 (5) includes all other disclosures required by law.

30 (c) A dealer may not disclaim or limit implied warranties for a motor vehicle  
31 for which the dealer is a maker of a service contract sold for that motor vehicle.

1           However, a dealer may disclaim or limit implied warranties as otherwise allowed by  
2           law, regardless of the make or model of the motor vehicle if the dealer is merely the  
3           seller, not the maker, of the service contract and does not otherwise extend any written  
4           warranties on the motor vehicle that is purchased.

5                           **Article 6. Prohibited Trade Practices.**

6                   **Sec. 45.25.600. Prohibited trade practices.** A manufacturer or manufacturer  
7           representative may not

8                           (1) coerce or attempt to coerce a dealer to accept delivery of a motor  
9           vehicle, motor vehicle parts or accessories, or another commodity, that has not been  
10          ordered by the dealer;

11                          (2) coerce or attempt to coerce a dealer to enter into an agreement with  
12          the manufacturer or a subsidiary of the manufacturer, or do any other act unfair to the  
13          dealer, by threatening to cancel a franchise existing between the manufacturer or  
14          subsidiary of the manufacturer and the dealer;

15                          (3) directly or indirectly impose unreasonable restrictions on a dealer  
16          relating to the transfer or sale of the business, by stock transfer or otherwise, or to the  
17          transfer, sale, or assignment of a dealer franchise; in this paragraph, "unreasonable  
18          restrictions" includes restricting a dealer's right to renew a franchise, unreasonable  
19          termination of a franchise, unreasonable discipline of a dealer, noncompetition  
20          covenants, site-control agreements, the right of first refusal to purchase agreements,  
21          option to purchase agreements, and unreasonable requirements to comply with  
22          subjective manufacturer standards;

23                          (4) prevent or refuse a change in the executive management or  
24          principal operator of a franchise or prevent or refuse relocation of the franchise to  
25          another site or additional sales or service facilities within the franchise's relevant  
26          market area if the commissioner has determined, upon request in writing by the dealer  
27          within 30 days after receipt of an objection to a proposed change or relocation and  
28          after a hearing on the matter, that the manufacturer's failure to permit the change or  
29          relocation is unreasonable under the circumstances; the executive management or  
30          principal operators may not be changed, or a franchise relocated, unless the franchisor  
31          has been given at least 30 days' prior written notice of the identity and qualifications

1 of the persons proposed to be involved in executive management or as principal  
2 operators, or of the location and site plan of any proposed relocation; a franchisor  
3 may, by registered or certified mail, return receipt requested, send the dealer a notice  
4 of objection to the proposed change or relocation; notice of objection must be sent  
5 within 30 days after receipt of notice from the dealer, as provided in this paragraph;  
6 failure by the franchisor to send notice of objection within 30 days after receipt of  
7 notice from the dealer constitutes waiver by the franchisor of the right to object to the  
8 proposed change or relocation; a manufacturer or manufacturer representative has the  
9 burden of proving that the proposed change or relocation is unreasonable under the  
10 circumstances. In this paragraph, "franchisor" means a manufacturer, distributor, or  
11 wholesaler who grants a franchise to a dealer.

12 **Sec. 45.25.610. Unlawful acts by licensee.** It is unlawful for a licensed motor  
13 vehicle dealer to

14 (1) intentionally publish or circulate an advertisement that is  
15 misleading or inaccurate in a material manner or that misrepresents a product sold or  
16 furnished by a licensed motor vehicle dealer;

17 (2) use the word "invoice" in an advertisement for the sale of a motor  
18 vehicle, unless

19 (A) the advertisement contains the following statement: "A  
20 factory invoice may not reflect factory holdbacks or rebates paid to the dealer";  
21 and

22 (B) the word "invoice," as used by the licensed motor vehicle  
23 dealer, means the itemized statement that a manufacturer sends to the dealer  
24 that clearly defines the make, model, model year, and vehicle identification  
25 number of the vehicle shipped to the dealer, that identifies all factory installed  
26 accessories, and that states the amount originally charged to the dealer by the  
27 manufacturer for the vehicle delivered to the dealer's principal place of  
28 business;

29 (3) refuse to sell a motor vehicle under the terms or conditions that the  
30 dealer has advertised; this paragraph does not apply if

31 (A) the dealer can document that the advertised term was the

1 result of an error on the part of the advertising medium or an outside  
2 advertising agent; or

3 (B) the error was made in good faith by the dealer and was  
4 clearly and conspicuously a mistake, and the dealer corrected the error as soon  
5 as the dealer knew or reasonably should have known of the error;

6 (4) use misleading statements about dealer size, sales volume, or  
7 inventory to represent or imply that the dealer sells motor vehicles at a lower price as a  
8 result of the dealer's size, volume, or inventory;

9 (5) advertise a selling price for a motor vehicle that does not include  
10 all internal dealer fees in the advertised selling price;

11 (6) use the term "factory outlet," "factory authorized sale," or a similar  
12 term to imply that the dealer has a special connection or relationship with the  
13 manufacturer that is greater or more direct than that of other dealers when in fact there  
14 is not a special connection or relationship or when any special connection or  
15 relationship does not have a discernible effect on vehicle prices;

16 (7) use the term "liquidation sale," "public notice," "public sale," or a  
17 similar term in an advertisement when the sale is not required by court order, by  
18 operation of law, or by impending cessation of the dealer's business;

19 (8) use the word "free" or a similar term in connection with the  
20 purchase of a vehicle whose price is arrived at through bargaining or when the offer is  
21 contingent on purchasing something whose price is marked up to recover all or part of  
22 the cost of the "free" merchandise;

23 (9) advertise a minimum trade-in or use the term "guaranteed" or a  
24 similar term in connection with a trade-in if the selling price of the advertised vehicle  
25 is or may be higher than it would have been but for the minimum trade-in;

26 (10) advertise that a specific price will be paid for a trade-in vehicle,  
27 unless

28 (A) the advertised price will be paid for all trade-in vehicles; or

29 (B) the advertisement discloses any conditions that the vehicle  
30 must meet before the price is paid;

31 (11) advertise a range of prices that will be paid for trade-in vehicles,

1 unless the advertisement discloses the factors that will be used to determine the  
2 amount to be paid for a particular trade-in vehicle;

3 (12) advertise a comparison with a manufacturer's suggested retail  
4 price, unless the

5 (A) advertised price is in fact the manufacturer's suggested  
6 retail price listed on the monroney sticker, including accessories and options  
7 physically attached to the motor vehicle at the time of delivery to the dealer  
8 and any charge to the dealer for transportation to the dealer, after all  
9 manufacturer discounts and manufacturer savings listed on the monroney  
10 sticker have been deducted;

11 (B) advertised manufacturer's suggested retail price does not  
12 include any charges added by the dealer;

13 (C) advertised manufacturer's suggested retail price is referred  
14 to as the "manufacturer's suggested retail price" or "MSRP";

15 (D) advertisement clearly and conspicuously discloses that the  
16 manufacturer's suggested retail price is a price set by the manufacturer and  
17 does not necessarily reflect the price actually paid by consumers in the trade  
18 area; and

19 (E) advertisement does not otherwise conflict with or detract  
20 from a requirement or disclosure under (A) - (D) of this paragraph;

21 (13) advertise a discount offered by the manufacturer, including a  
22 manufacturer rebate or other reduction in price offered by the manufacturer, without  
23 disclosing that the manufacturer is the source of the discount;

24 (14) violate a provision of this chapter or regulation adopted under this  
25 chapter;

26 (15) knowingly purchase, sell, or otherwise acquire or dispose of a  
27 stolen vehicle;

28 (16) violate a provision of law relating to purchase or sale of a motor  
29 vehicle;

30 (17) engage as a dealer in the business for which the dealer is licensed  
31 without at all times maintaining a principal place of business in the state;

1 (18) knowingly purchase or sell a vehicle that has an altered or  
2 removed vehicle identification number plate, or alter or remove a vehicle  
3 identification number plate;

4 (19) display for sale or exchange or sell a vehicle for which the dealer  
5 does not hold a manufacturer's statement of origin, a title, or a properly executed  
6 consignment agreement;

7 (20) violate a provision of federal law relating to motor vehicle safety  
8 standards or to odometer laws;

9 (21) transfer the title for a new or used vehicle to a buyer before  
10 financing is final and complete;

11 (22) transfer title to a trade-in vehicle or perform any repairs or  
12 reconditioning to a trade-in vehicle before the completion of the sales transaction for  
13 which the vehicle is a trade-in;

14 (23) knowingly represent a vehicle as qualified to be covered by a  
15 service contract when the vehicle is not, in fact, qualified;

16 (24) represent and sell as new or unused a motor vehicle that has been  
17 used and operated for demonstration purposes or that is otherwise a used motor  
18 vehicle.

19 **Sec. 45.25.620. Restrictions on vehicle sale or lease.** Unless otherwise  
20 provided for in this chapter, it is unlawful for a person other than a licensed dealer to

21 (1) display a vehicle for sale or lease unless the title is in the name of  
22 the displayer; or

23 (2) solicit the sale or lease of a vehicle unless the title is in the name of  
24 the seller; this paragraph does not apply to a vehicle that is subject to a trust or  
25 financing agreement between a dealer and a financing institution or entity where title  
26 to the vehicle is obtained by paying off the trust or financing obligation.

27 **Article 7. Miscellaneous Provisions.**

28 **Sec. 45.25.700. Acts of officers, directors, partners, salespersons, and**  
29 **other representatives.** (a) If a licensee is not an individual, a license may be denied,  
30 suspended, or revoked if an officer, director, partner, member, or manager of the  
31 licensee commits an act or omits a duty that is cause for refusing, suspending, or

1           revoking a license to an individual.

2           (b) A dealer or manufacturer is responsible for the acts of a representative or  
3           salesperson while the representative or salesperson is acting as the dealer's or  
4           manufacturer's agent.

5           (c) A manufacturer is responsible for the acts of its employees, agents, or  
6           representatives while the employees, agents, or representatives are acting in the  
7           conduct of the manufacturer's business, whether or not the manufacturer approved,  
8           authorized, or had prior knowledge of the acts.

9           **Sec. 45.25.710. Powers of the commissioner.** Whenever the commissioner is  
10          provided with information by the Motor Vehicle Dealers Advisory Board or another  
11          person and the information supports commissioner action under this section, the  
12          commissioner may

13                 (1) prevent or investigate allegations of unfair methods of competition,  
14                 unfair deceptive acts or practices, and other violations of this chapter;

15                 (2) conduct hearings, including conducting discovery, determining the  
16                 date, time, and place where hearings are to be held, subpoenaing witnesses, deposing  
17                 witnesses, and administering oaths;

18                 (3) recommend that the attorney general bring an action in the name of  
19                 the state against a person for a violation of this chapter or seek to enjoin a person from  
20                 violating this chapter.

21          **Sec. 45.25.720. Required hearing notice; appeal.** (a) The commissioner  
22          shall give reasonable notice of a hearing to all interested parties.

23                 (b) In a dispute that is the subject of a hearing by the commissioner, the  
24                 commissioner's decision may be appealed to the superior court. The commissioner's  
25                 decision is binding on the parties unless the decision is appealed. The commissioner  
26                 may require the parties to a hearing to pay the costs of the hearing.

27          **Sec. 45.25.730. Motor Vehicle Dealers Advisory Board.** (a) The Motor  
28          Vehicle Dealers Advisory Board is established in the department. The board consists  
29          of six voting members appointed by the commissioner and the nonvoting member  
30          under (g) of this section.

31                 (b) A voting member of the board shall be a resident of the state for a

1 minimum of five consecutive years preceding appointment. Four voting members of  
2 the board shall be licensed franchised dealers in new motor vehicles who have been  
3 actually engaged in the sale, lease, and repair of motor vehicles in the state for at least  
4 three consecutive years. One voting member shall be a licensed dealer in used  
5 vehicles who has been actually engaged in the sale, lease, and repair of motor vehicles  
6 in the state for at least three consecutive years. One voting member shall be a member  
7 of the general public and may not be a dealer in either new or used vehicles.

8 (c) Members of the board shall meet at the call of the commissioner.  
9 Members do not receive compensation for services, but shall receive per diem and  
10 travel expenses allowed for boards under AS 39.20.180.

11 (d) The purpose of the board is to advise the commissioner regarding

- 12 (1) appeals or other disputes between manufacturers and dealers;
- 13 (2) a manufacturer's proposed changes to its new vehicle franchises;
- 14 (3) proposed regulations; and
- 15 (4) violations of the provisions of this chapter by a licensee.

16 (e) The commissioner shall refer an appeal made to the commissioner under  
17 this chapter to the board for consideration before the commissioner acts on the appeal.

18 (f) The commissioner shall appoint a qualified person to serve as executive  
19 director of the board. The executive director is a member of the exempt service under  
20 AS 39.25.110.

21 (g) The attorney general or a person appointed by the attorney general to  
22 represent the attorney general is a nonvoting member of the board, shall attend board  
23 meetings, and shall seek the advice of and consult with the board before issuing a  
24 business directive affecting the sale, leasing, or repair of motor vehicles in this state.

25 (h) A member of the board is not civilly liable for an act or omission that  
26 occurs while performing duties as a member of the board.

27 **Sec. 45.25.740. Civil penalty.** If, after complying with the administrative  
28 provisions of AS 44.62.330 - 44.62.630, the commissioner determines that a  
29 manufacturer or dealer is violating a provision of this chapter or a regulation or order  
30 of the commissioner issued under this chapter, the commissioner may levy a civil  
31 penalty of not less than \$1,000 nor more than \$10,000 for each violation. If the

1 violation involves multiple transactions within a 30-day period, the multiple  
2 transactions constitute a single violation. In determining the amount of the civil  
3 penalty levied under this section, the commissioner shall consider

4 (1) the seriousness of the violation, including the nature,  
5 circumstances, extent, and gravity of the prohibited act and the harm or potential harm  
6 caused to the safety of the public;

7 (2) the economic damage to the public caused by the violation;

8 (3) any previous violations;

9 (4) the amount necessary to deter future violations;

10 (5) efforts made to correct the violation; and

11 (6) other matters that justice may require.

12 **Sec. 45.25.750. Requirement of principal place of business.** (a) When a  
13 dealer is required by this chapter to have and maintain a principal place of business,  
14 the principal place of business must include a permanent building that contains, at a  
15 minimum, an established office and an established salesroom.

16 (b) To qualify as an established office under (a) of this section, the office must

17 (1) contain at least 400 square feet of floor space in a permanent and  
18 enclosed building; and

19 (2) be a place where books, records, and files required by the  
20 department are kept.

21 (c) To qualify as an established salesroom under (a) of this section, the  
22 salesroom must

23 (1) contain at least 400 square feet of floor space in a permanent and  
24 enclosed building;

25 (2) display, or be located immediately adjacent to, a sign having block  
26 letters not less than six inches in height on a contrasting background, clearly and  
27 distinctly designating the trade name of the business, unless prohibited by law;

28 (3) be a place at which the business of bartering, trading, and selling  
29 motor vehicles is carried on in good faith on an ongoing basis and where the dealer  
30 can be contacted by the public at reasonable times; and

31 (4) be a place where books, records, and files required by the

1 department are kept.

2 (d) An established salesroom includes the area contiguous to the premises on  
3 which the salesroom is located, but does not include a tent, a temporary stand, or other  
4 temporary quarters.

5 **Sec. 45.25.760. Regulations.** (a) The commissioner may adopt regulations,  
6 as provided under AS 44.62 (Administrative Procedure Act), necessary or proper for  
7 the effective administration and enforcement of this chapter.

8 (b) The commissioner shall mail a copy of proposed regulations to each  
9 licensed motor vehicle dealer before the effective date of the regulations.

#### 10 **Article 8. General Provisions.**

11 **Sec. 45.25.900. Applicability.** If a provision of this chapter conflicts with  
12 another provision of this title, this chapter controls.

13 **Sec. 45.25.950. Definitions.** In this chapter,

14 (1) "administrator" means a person who administers any part of the  
15 warranty coverage for a new or used vehicle or the service contract for a new or used  
16 vehicle on behalf of a manufacturer or audits or examines a dealer's performance or  
17 administration of a service contract, of a warranty, or of maintenance or repairs  
18 performed on covered vehicles in this state;

19 (2) "broker" means arrange or offer to arrange, for a fee, commission,  
20 or other valuable consideration, a transaction involving the sale, purchase, or lease of a  
21 new motor vehicle by a new motor vehicle dealer or by a motor vehicle salesperson  
22 acting at the direction of a new motor vehicle dealer;

23 (3) "commissioner" means the commissioner of administration;

24 (4) "dealer" means a new motor vehicle dealer or used motor vehicle  
25 dealer;

26 (5) "dealer facilities" means the real estate, buildings, fixtures and  
27 improvements devoted to the conduct of business under a new vehicle franchise or in  
28 the conduct of a used vehicle business;

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

31 (7) "department" means the Department of Administration;

1 (8) "distributor" means a person or entity who sells or distributes new  
2 or used motor vehicles to motor vehicle dealers or who maintains or sends distributor  
3 representatives within or to this state to sell or distribute new or used motor vehicles to  
4 motor vehicle dealers in this state;

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

8 (10) "distributor representative" means a representative employed by a  
9 distributor branch, distributor, or wholesaler who sells or distributes new or used  
10 motor vehicles to franchised motor vehicle dealers in this state;

11 (11) "factory branch" means a branch office maintained by a  
12 manufacturer for directing and supervising the representatives of the manufacturer;

13 (12) "factory representative" means a representative employed by a  
14 manufacturer or factory branch for the purpose of making or promoting the sale of  
15 motor vehicles or supervising, servicing, instructing, or contracting with franchised  
16 motor vehicle dealers or prospective franchised motor vehicle dealers;

17 (13) "family member" means a spouse, child, stepchild, grandchild,  
18 stepgrandchild, parent, stepparent, brother, stepbrother, sister, or stepsister;

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

25 (15) "franchised" means having a franchise;

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

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

30 (18) "lease" means a contract by which a person owning a motor  
31 vehicle grants to another person the right to possess, use, and enjoy the motor vehicle

1 for a specified period of time in exchange for periodic payment of a stipulated price,  
2 and in which the use of the vehicle is granted for a period of 12 or more months;

3 (19) "licensed dealer" means a dealer licensed under AS 45.25.140;

4 (20) "licensed manufacturer" means a manufacturer licensed under  
5 AS 45.25.120;

6 (21) "line-make" means a new motor vehicle that is offered for sale,  
7 lease, or distribution under a common name, common trademark, or common service  
8 mark;

9 (22) "maker" means the person that makes, frames, and executes a  
10 service contract and assumes any obligation due to the purchaser, but does not include  
11 a dealer if the dealer merely sells the service contract as the agent of a service contract  
12 company licensed to do business in this state;

13 (23) "manufacturer" means a person or the person's subsidiary who  
14 manufactures, imports, distributes, or assembles new motor vehicles and includes an  
15 administrator, a distributor, a distributor branch, and a factory branch;

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

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

22 (26) "motor vehicle" means a motor vehicle that is required to be  
23 registered under AS 28.10;

24 (27) "motor vehicle dealer" means a person, other than a manufacturer,  
25 who sells, leases, solicits, brokers, or arranges for sale or lease, of three or more new  
26 or used motor vehicles in any 12 consecutive months, regardless of who owns the  
27 vehicles; "motor vehicle dealer" does not include

28 (A) a receiver, trustee, administrator, executor, guardian, or  
29 other person appointed by a court or a person performing duties as a public  
30 officer;

31 (B) a person disposing of a motor vehicle acquired and actually

1 used for the person's own use or for the use of a family member of the person  
2 if the vehicle is acquired and used in good faith and not for the purpose of  
3 avoiding the provisions of this chapter;

4 (C) a person who sells motor vehicles as an incident of their  
5 principal business but who is not engaged primarily in the selling of motor  
6 vehicles;

7 (D) an employee of an organization arranging for the purchase  
8 or lease by the organization of a vehicle for use in the organization's business;

9 (E) a publication, broadcast, or other communications media  
10 when engaged in the business of advertising, but not otherwise arranging for  
11 the sale of a motor vehicle owned by another person;

12 (F) a person acquiring an interest in a motor vehicle for a  
13 family member of the person;

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

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

20 (30) "new motor vehicle dealer" means a motor vehicle dealer for new  
21 motor vehicles or for new and used motor vehicles;

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

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

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

1 (34) "used motor vehicle dealer" means a motor vehicle dealer for used  
2 motor vehicles.

3 \* Sec. 3. AS 39.25.110 is amended by adding a new paragraph to read:

4 (34) the executive director of the Motor Vehicle Dealers Advisory  
5 Board.

6 \* Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

7 (60) the Department of Community and Economic Development as to  
8 the licensing and regulation of a person involved in the selling, leasing, brokering, or  
9 exchanging of a motor vehicle under AS 45.25.

10 \* Sec. 5. AS 45.50.572 is amended by adding a new subsection to read:

11 (k) AS 45.50.562 - 45.50.596 do not apply to action taken by a person to  
12 comply with AS 45.25 or to action refrained from by a person in order to comply with  
13 AS 45.25 (motor vehicle transactions).

14 \* Sec. 6. AS 08.66.010, 08.66.015, 08.66.020, 08.66.030, 08.66.040, 08.66.050, 08.66.060,  
15 08.66.070, 08.66.080, 08.66.090, 08.66.200, 08.66.210, 08.66.220, 08.66.230, 08.66.240,  
16 08.66.250, 08.66.260, 08.66.270, 08.66.280, 08.66.290, 08.66.300, 08.66.310, 08.66.320,  
17 08.66.330, 08.66.350; AS 45.50.471(b)(33), and 45.50.471(b)(34) are repealed.

18 \* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
19 read:

20 TRANSITION. The minimum floor space requirements for an established salesroom  
21 imposed under AS 45.25.750(c), enacted by sec. 2 of this Act, do not apply to a motor vehicle  
22 salesroom that was in existence on or before the effective date of this Act.

23 \* Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to  
24 read:

25 APPLICABILITY. This Act applies to a franchise, as that term is defined in  
26 AS 45.25.950, that is entered into or renewed before, on, or after the effective date of this Act.

27 \* Sec. 9. This Act takes effect July 1, 2001.

22-LS0239P  
Bannister  
12/28/01

CS FOR HOUSE BILL NO. 182( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES MURKOWSKI, Halcro

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain vehicles, including motorcycles and trailers; relating to the  
2 registration and bonding of motor vehicle dealers; eliminating certain registration and  
3 other requirements for certain motor vehicle buyers' agents; relating to acts and  
4 transactions involving vehicles, including trailers, and to the acts and practices of  
5 certain persons and entities involved in vehicle transactions, including trailer  
6 transactions; and providing for an effective date."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 08.66.010 is amended to read:

9           Sec. 08.66.010. Dealers to register. A dealer in motor vehicles [,  
10 TRAILERS, OR SEMI-TRAILERS] shall, as a condition to engaging in business in  
11 the state, register biennially with the department [DEPARTMENT OF  
12 ADMINISTRATION].

13 \* Sec. 2. AS 08.66.030 is amended to read:

1           Sec. 08.66.030. Form of application. The department [DEPARTMENT OF  
2           ADMINISTRATION] shall prescribe and furnish the form of application for dealer  
3           registration under AS 08.66.010. The application must contain

4                     (1) the name under which the business is conducted;

5                     (2) the location of the business;

6                     (3) the name and address of all persons having an interest in the  
7           business and, in the case of a corporation, the application shall contain the name and  
8           address of the two principal officers;

9                     (4) the name and make of all vehicles handled;

10                    (5) a statement of whether or not used vehicles are handled;

11                    (6) a statement that the applicant is a bona fide dealer in motor  
12           vehicles [, TRAILERS, OR SEMI-TRAILERS] with an established business at the  
13           location given;

14                    (7) if the applicant sells a motor vehicle as a new or current model  
15           motor vehicle having a manufacturer's warranty, the name of the manufacturer of the  
16           motor vehicle and the date and duration of the applicant's sales and service agreement  
17           with the manufacturer; and

18                    (8) other information the department [DEPARTMENT OF  
19           ADMINISTRATION] requires to administer this chapter [AS 08.66.010 -  
20           08.66.090].

21   \* Sec. 3. AS 08.66.040 is amended to read:

22           Sec. 08.66.040. Filing application for registration. The application shall be  
23           filed with the department [DEPARTMENT OF ADMINISTRATION]. Upon receipt  
24           of the application, the department shall examine it and may make an investigation of  
25           the information in it. If the department is satisfied that the dealer is entitled to  
26           registration, and the fees have been paid and a bond filed, the department shall assign  
27           a distinctive registration number to the dealer and file the dealer's application and  
28           index it alphabetically and numerically. A dealer is registered when the department  
29           assigns a registration number.

30   \* Sec. 4. AS 08.66.050 is amended to read:

31           Sec. 08.66.050. Renewal of registration. A dealer shall renew the

1 registration required by this chapter [AS 08.66.010 - 08.66.090] before January 1  
2 every two years.

3 \* Sec. 5. AS 08.66.060 is repealed and reenacted to read:

4 Sec. 08.66.060. Bond. (a) An applicant for a dealer registration under  
5 AS 08.66.010 shall file with the application and shall maintain in force while  
6 registered a bond in favor of the state that is executed by a surety approved by the  
7 commissioner. The amount of the bond shall be \$50,000, except that the amount of a  
8 bond for a dealer who sells only motorcycles shall be \$25,000. The bond must be  
9 conditioned on the dealer's

10 (1) doing business in compliance with this chapter and the other laws  
11 of this state; and

12 (2) not committing fraud or making fraudulent representations in the  
13 course of doing business as a dealer.

14 (b) A surety may cancel the bond required by (a) of this section by giving  
15 notice in writing to the commissioner or the commissioner's designee. However,  
16 cancellation does not relieve a surety of liability arising before cancellation or a  
17 liability that has accrued on the bond before cancellation. The commissioner or the  
18 commissioner's designee shall retain the canceled bond on file and may not relieve a  
19 surety of a liability arising before cancellation or accruing on the bond before  
20 cancellation.

21 (c) A bond filed under (a) of this section is valid for renewal of a dealer  
22 registration unless the surety has provided a written notice of cancellation to the  
23 commissioner.

24 (d) In this section, "commissioner" means the commissioner of administration.

25 \* Sec. 6. AS 08.66.070 is amended to read:

26 Sec. 08.66.070. Action on bond. If a person suffers loss or damage by reason  
27 of fraud, fraudulent representations, or a violation of a [ANY] provision of this  
28 chapter or another law of this state [AS 08.66.010 - 08.66.090] by a dealer, the  
29 person has a right of action against the dealer and a personal right of action against the  
30 surety upon the bond. The aggregate liability of the surety may [DOES] not exceed  
31 the amount of the bond.

1 \* Sec. 7. AS 08.66.080 is amended to read:

2 Sec. 08.66.080. Penalties. A dealer who fails to register and file a bond as  
3 required by this chapter [AS 08.66.010 - 08.66.090] is guilty of a violation. A dealer  
4 who knowingly violates a provision of this chapter [AS 08.66.010 - 08.66.090] is  
5 guilty of a class A misdemeanor.

6 \* Sec. 8. AS 08.66.090 is repealed and reenacted to read:

7 Sec. 08.66.090. Definitions. In this chapter,

8 (1) "dealer" means a person who sells, leases, solicits, brokers, or  
9 arranges for sale or lease of five or more new or used motor vehicles in any 12  
10 consecutive months, regardless of who owns the vehicles; "dealer" does not include

11 (A) a receiver, a trustee, an administrator, an executor, a  
12 guardian, or another person appointed by a court or a person performing duties  
13 as a public officer;

14 (B) a person disposing of a motor vehicle acquired and actually  
15 used for the person's own use or for the use of a family member of the person,  
16 or acquiring a motor vehicle for the person's own use or for the use of a family  
17 member of the person if the vehicle is acquired and used in good faith and not  
18 for the purpose of avoiding the provisions of this chapter;

19 (C) a person who sells motor vehicles as an incident of the  
20 person's principal business but who is not engaged primarily in the selling of  
21 motor vehicles;

22 (D) an employee of an organization arranging for the purchase  
23 or lease by the organization of a vehicle for use in the organization's business;

24 (E) a publication, broadcast, or other communications media  
25 when engaged in the business of advertising, but not otherwise arranging for  
26 the sale of a motor vehicle owned by another person;

27 (2) "department" means the Department of Administration;

28 (3) "motor vehicle" means a motor vehicle that is required to be  
29 registered under AS 28.10.

30 \* Sec. 9. AS 45 is amended by adding a new chapter to read:

31 Chapter 25. Motor Vehicle Transactions.

1                   **Article 1. Applicability; Venue; Corporate Affiliates.**

2                   **Sec. 45.25.010. Applicability.** The provisions of this chapter are remedial  
3 and apply to a contract, including a franchise, between a manufacturer and its dealers  
4 in this state.

5                   **Sec. 45.25.020. Jurisdiction; choice of law.** The courts of this state have  
6 jurisdiction over a legal dispute between a manufacturer located in or outside this state  
7 and a dealer located in this state, and the dispute is governed by and interpreted and  
8 adjudicated under the law of this state.

9                   **Sec. 45.25.030. Corporate affiliates.** (a) A manufacturer may not use a  
10 subsidiary corporation, affiliated corporation, partnership, association, or other person  
11 to accomplish what would otherwise be prohibited for the manufacturer under this  
12 chapter.

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

16                   **Article 2. Franchise Agreements.**

17                   **Sec. 45.25.100. Consistency with state law.** The terms and conditions in a  
18 motor vehicle franchise agreement that are inconsistent with the law of this state do  
19 not have any force or effect.

20                   **Sec. 45.25.110. Termination of franchise agreements.** (a) A manufacturer  
21 may not terminate a franchise with a new motor vehicle dealer unless

22                   (1) the manufacturer has

23                   (A) satisfied the notice requirements of this chapter;

24                   (B) shown that there is good cause for the termination of the  
25 franchise; and

26                   (C) acted in good faith and, if the reasons underlying the good  
27 cause can be corrected by the dealer, the dealer has failed for 60 days after  
28 delivery of the notice required by AS 45.25.120 to make the corrections; or

29                   (2) the dealer has engaged in fraud against consumers or the  
30 manufacturer or in the operation of the dealership.

31                   (b) Notwithstanding (a)(1) of this section, a manufacturer may not terminate a

1 franchise agreement because of the death or incapacity of an owner if the owner is not  
2 listed in the franchise as one on whose expertise and abilities the manufacturer relied  
3 in the granting of the franchise.

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

12 Sec. 45.25.120. Notice of termination. (a) A manufacturer shall furnish a  
13 notice of termination of a franchise agreement to a new motor vehicle dealer at least

14 (1) 90 days before the effective date of a termination, except as  
15 required under (2) or (3) of this subsection;

16 (2) 15 days before the effective date of a termination when the new  
17 motor vehicle dealer

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

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

24 (C) is convicted of a felony involving moral turpitude or fraud  
25 under the law of this state, another state, a territory, or the District of  
26 Columbia;

27 (3) 180 days before the effective date of the termination if the  
28 manufacturer or distributor is discontinuing the sale of the product line.

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

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

4 Sec. 45.25.130. Threat of termination. A manufacturer or manufacturer  
5 representative may not coerce or attempt to coerce a dealer to enter into an agreement  
6 with the manufacturer or a subsidiary of the manufacturer, or to do any other act unfair  
7 to the dealer, by threatening to terminate a franchise agreement between the  
8 manufacturer or subsidiary of the manufacturer and the dealer.

9 Sec. 45.25.140. Repurchase obligations on termination. (a) Upon the  
10 termination of a new motor vehicle dealer's franchise agreement by the manufacturer  
11 or distributor, the manufacturer or distributor shall repurchase from the new motor  
12 vehicle dealer at

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

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

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

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

28 (b) Within 90 days after the effective date of the termination, the new motor  
29 vehicle dealer shall return the property required by (a) of this section to be  
30 repurchased to the manufacturer or distributor. The manufacturer or distributor shall  
31 supply the new motor vehicle dealer with instructions on the method by which the new

1 motor vehicle dealer is to return the property to the manufacturer or distributor. The  
2 manufacturer or distributor shall pay the compensation for the property within 60 days  
3 after the tender of inventory and other items if the new motor vehicle dealer has clear  
4 title to the property and is in a position to convey that title to the manufacturer or  
5 distributor. If the property is subject to a security interest, the manufacturer or  
6 distributor may make payment jointly to the new motor vehicle dealer and the holder  
7 of the security interest, and the manufacturer or distributor may offset these payments.

8 Sec. 45.25.150. Required compensation for dealer facilities. (a) Upon  
9 termination by the manufacturer or distributor, the manufacturer or distributor shall  
10 compensate the new motor vehicle dealer for dealer facilities a sum equivalent to the

11 (1) rent for the unexpired term of the lease or 12 months, whichever  
12 period is shorter, if the new motor vehicle dealer is leasing the new motor vehicle  
13 dealership facilities from a lessor other than the manufacturer or distributor; or

14 (2) reasonable rental value of the new motor vehicle dealership  
15 facilities for 12 months or until the facilities are leased or sold, whichever period is  
16 shorter, if the new motor vehicle dealer owns the new motor vehicle dealership  
17 facilities; the sum may be paid in monthly installments at the election of the  
18 manufacturer or distributor.

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

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

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

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

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

1 dishonesty, or false statement;

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

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

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

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

12 **Sec. 45.25.160. Prevention or refusal to honor transfer of dealership**  
13 **ownership.** A manufacturer may not unreasonably prevent or refuse to honor a  
14 transfer of ownership of a dealership.

15 **Sec. 45.25.170. Succession.** (a) A manufacturer or distributor may not  
16 prevent or refuse to honor the succession to a franchise of an heir or devisee under a  
17 will of a franchisee, under a written instrument filed with the manufacturer or  
18 distributor designating any person as the successor franchisee, or under AS 13.06 -  
19 AS 13.36 (Uniform Probate Code), except that

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

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

28 (3) the manufacturer or distributor may not unreasonably withhold  
29 approval of the succession; if the manufacturer or distributor refuses to honor the  
30 succession, the manufacturer or distributor shall send written notice to the proposed  
31 successor within 60 days after receiving the information requested in (2) of this

1 subsection or within 60 days after receiving the notice of the proposed successor's  
2 intent to succeed, whichever is later.

3 (b) The notice required by (a)(3) of this section must state the specific grounds  
4 for not approving the proposed successor. Within 30 days after the proposed  
5 successor's receipt of the notice, the proposed successor may file a protest with the  
6 superior court to determine whether the manufacturer or distributor has unreasonably  
7 withheld approval.

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

12 **Sec. 45.25.180. New dealerships.** (a) Before a manufacturer or distributor  
13 enters into a franchise establishing or relocating a new motor vehicle dealer within a  
14 relevant market area where the same line make is represented, the manufacturer or  
15 distributor shall give 90 days' written notice to each new motor vehicle dealer of the  
16 same line make in the relevant market area of the intention to establish an additional  
17 dealer or to relocate an existing dealer within that relevant market area.

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

25 (c) This section does not prohibit

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

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

1 (3) the entering into of a renewal of, replacement of, or succeeding  
2 franchise agreement with an existing new motor vehicle dealer whose operations will  
3 continue at the existing dealer's current location; this paragraph does not relieve a  
4 manufacturer or distributor from complying with the provisions of this section if the  
5 renewal, replacement, or successor franchise agreement contains a term or condition  
6 that substantially adversely changes the sales and service obligations, capital  
7 requirements, or facilities requirements of the new motor vehicle dealer, or amends,  
8 adds, or deletes any other material term or condition stated in the new motor vehicle  
9 dealer's franchise agreement.

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

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

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

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

24 (4) the permanency of the investment of the protesting dealer; and

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

27 (e) In this section,

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

29 (A) within a radius of 14 miles around an existing dealer; or

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

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

3 **Sec. 45.25.190. Arbitration.** A franchise agreement, whether written or oral,  
4 between a motor vehicle dealer and a manufacturer shall be considered to contain an  
5 agreement to submit a dispute under this chapter to arbitration under AS 09.43.020 -  
6 09.43.180 (Uniform Arbitration Act) if either the motor vehicle dealer or the  
7 manufacturer elects to have the dispute determined by arbitration. For the arbitration,  
8 the motor vehicle dealer and the manufacturer shall each select one arbitrator, and  
9 both parties shall select the third arbitrator.

### 10 **Article 3. Manufacturer Practices.**

11 **Sec. 45.25.300. Dealership location and facilities.** A manufacturer may not  
12 require, coerce, or attempt to coerce a new motor vehicle dealer to change the location  
13 of the dealership, or to make any substantial alterations to the dealership premises or  
14 facilities if the change or alteration would be unreasonable or if there is not a sufficient  
15 supply of new motor vehicles to justify the expansion in light of the current market  
16 and economic conditions.

17 **Sec. 45.25.310. Discrimination.** A manufacturer may not unfairly  
18 discriminate among new motor vehicle dealers with respect to warranty  
19 reimbursements or authority granted new motor vehicle dealers to make warranty  
20 adjustments with retail customers.

### 21 **Article 4. Dealer Practices.**

22 **Sec. 45.25.400. Prohibited use of advertising terms.** (a) A motor vehicle  
23 dealer may not use the term "invoice," "factory invoice," "dealer invoice," "dealer  
24 cost," "wholesale price," or any other term of similar meaning in an advertisement for  
25 the sale of a motor vehicle.

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

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

1 manufacturer discounts and savings;

2 (2) the manufacturer's suggested retail price or the list price may not  
3 include charges added by the dealer or options added to the vehicle by the dealer,  
4 including block heaters;

5 (3) when advertising a manufacturer's suggested retail price, a motor  
6 vehicle dealer may use the term "list price" in place of the term "manufacturer's  
7 suggested retail price" but may not use the term "factory sticker"; and

8 (4) whenever using the term "manufacturer's suggested retail price" or  
9 the term "list price," the dealer shall provide in the advertisement a clear and  
10 conspicuous disclosure that states that a sale may not have occurred at that price.

11 **Sec. 45.25.410. Availability of advertised items.** A motor vehicle dealer  
12 may not advertise vehicles and related goods or services at a specified dealer price  
13 with the intent not to supply reasonably expected demand, unless the advertisement  
14 discloses the number of vehicles in stock at the advertised price. In addition, when  
15 "starting at," "from," "beginning as low as," or words of similar meaning are used in  
16 reference to an advertised price, the advertisement must disclose the number of  
17 vehicles available at the advertised price.

18 **Sec. 45.25.420. Display of motor vehicles.** A motor vehicle dealer shall  
19 display all vehicles advertised for sale for the duration of the sale period in a  
20 conspicuous and clearly visible location on the dealer's premises. The advertised sale  
21 price for each vehicle must be clearly marked on the vehicle so the consumer can  
22 readily identify the advertised price for the vehicle.

23 **Sec. 45.25.430. Refusal to sell on advertised terms and conditions.** A  
24 dealer may not refuse to sell a motor vehicle on the terms and conditions that the  
25 dealer has advertised. This section does not apply if

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

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

1           Sec. 45.25.440. **Advertised price.** (a) In the advertised selling price of a  
2 motor vehicle, a motor vehicle dealer

3                   (1) shall include all expenses, commissions, overhead costs, supplies,  
4 internal dealer fees, and other charges and expenses incurred by the dealer that are  
5 associated with making the vehicle ready for sale or completing the sale;

6                   (2) may include the actual cost of title, registration, and licensing fees  
7 paid to a state agency.

8                   (b) In this section, "internal dealer fees" includes dealer preparation fees,  
9 document preparation fees, and other dealer imposed fees, costs, and surcharges.

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

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

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

16                           (1) the dealer only uses the terms "manufacturer's suggested retail  
17 price," "MSRP," or "list price," and other similar terms, including "factory sticker,"  
18 are not used;

19                           (2) the advertised price references the final price listed on the  
20 mononey sticker, including accessories and options physically attached to the vehicle  
21 at the time of delivery to the dealer, plus any transportation charges and minus all  
22 manufacturer discounts and savings;

23                           (3) the manufacturer's suggested retail price or the list price does not  
24 include charges added by the dealer or options added to the vehicle by the dealer,  
25 including block heaters;

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

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

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

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

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

8 (3) the motor vehicle dealer includes in the advertised price all charges  
9 that the competitor includes in the competitor's price if the comparison is to a  
10 competitor's price that includes charges to the consumer that the advertising dealer  
11 charges separately.

12 (d) A motor vehicle dealer may advertise other price comparisons only if the  
13 reference price is a bona fide price at which the dealer has actually made a significant  
14 number of sales within the recent regular course of the dealer's business of the same or  
15 substantially similar vehicles. In this subsection,

16 (1) "significant number of sales" means that the dealer has sold at least  
17 40 percent of the dealer's inventory of substantially similar vehicles at the reference  
18 price within the preceding six months;

19 (2) "substantially similar vehicles" means vehicles of the same make,  
20 model, year, and configuration.

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

25 (f) In this section,

26 (1) "bona fide price" means a genuine price at which a motor vehicle is  
27 offered for sale or sold in the regular course of business; "bona fide price" does not  
28 include a price used for the purpose of establishing an inflated higher price on which a  
29 deceptive price comparison may be made;

30 (2) "reference price" means a price that a motor vehicle dealer, directly  
31 or by implication, compares to the price at which the dealer is currently offering or

1 selling a vehicle.

2 Sec. 45.25.460. Advertising and selling practices generally. (a) In addition  
3 to the provisions of AS 45.50.471 and regulations adopted under AS 45.50.471, a  
4 motor vehicle dealer may not

5 (1) exclude from an advertisement of a motor vehicle for sale that  
6 taxes, if applicable, vehicle registration fees, finance charges, charges for the issuance  
7 of any certificate of compliance or noncompliance required by statute, or other fees or  
8 charges to be paid to a third party that are not otherwise included in the advertised  
9 price will be added to the advertised price at the time of the sale;

10 (2) represent the dealer document preparation fee as a government fee;

11 (3) advertise a specific motor vehicle for sale without identifying the  
12 vehicle by either its vehicle identification number or license number;

13 (4) advertise that free merchandise, gifts, or services will be provided  
14 by the dealer if a vehicle is purchased; in this paragraph, "free" includes merchandise  
15 or services offered for sale at a price less than the dealer's cost for the merchandise or  
16 services;

17 (5) use the term "rebate," "cash back," or a similar term in advertising  
18 the sale of a motor vehicle unless the rebate is expressed in a specific dollar amount  
19 and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the  
20 retail purchaser of the vehicle;

21 (6) require a person, in order to receive the advertised credit terms, to  
22 pay a higher price for a motor vehicle and any related goods or services than the cash  
23 price the same person would have to pay to purchase the same vehicle and related  
24 goods or services;

25 (7) advertise a guaranteed trade in allowance or range of allowances  
26 unless the guarantee is provided by the manufacturer or distributor;

27 (8) affix to a new motor vehicle a supplemental price sticker  
28 containing a price that represents the dealer's asking price, if the supplemental price  
29 sticker exceeds the manufacturer's suggested retail price, unless the supplemental  
30 sticker

31 (A) clearly and conspicuously, in the largest print appearing on

1 the sticker other than the print size used for the dealer's name, discloses that  
2 the supplemental sticker price is the dealer's asking price, or words of similar  
3 meaning, and is not the manufacturer's suggested retail price;

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

6 (C) lists each item that is not included in the manufacturer's  
7 suggested retail price and discloses the additional price of each item; and

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

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

16 (10) advertise an offer for the sale, lease, or purchase of a motor  
17 vehicle that creates the false impression that the vehicle is being offered by a private  
18 party or a motor vehicle agent or that does not contain the name of the dealer;

19 (11) use an advertisement for a motor vehicle that contains language  
20 that falsely, implicitly, or explicitly suggests that, to take advantage of an offer, a  
21 consumer must act within a certain period of time when, in fact, the vehicles will  
22 continue to be available at the advertised price beyond that time period;

23 (12) require a purchaser of a new motor vehicle, as a condition of sale  
24 and delivery, to also purchase special features, appliances, accessories, or equipment  
25 not desired or requested by the purchaser unless the special features, appliances,  
26 equipment, or accessories are already installed on the vehicle when received by the  
27 dealer;

28 (13) represent and sell as a new motor vehicle a motor vehicle that has  
29 been used and operated for demonstration purposes or that is otherwise a used motor  
30 vehicle;

31 (14) advertise that the dealer finances any person, or does not reject

1 any person's credit, or make similar claims;

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

5 (b) A motor vehicle dealer shall disclose a beginning and ending date in all  
6 motor vehicle sale advertisements.

7 **Sec. 45.25.470. Sales of used motor vehicles.** (a) Before the sale of a used  
8 motor vehicle, a motor vehicle dealer shall

9 (1) when obtaining a used motor vehicle, by purchase or otherwise,  
10 that the dealer intends to resell, make diligent inquiry of the seller into the condition of  
11 the vehicle, including the accident history, title history, repair and warranty history,  
12 known damage, known defects, information that could potentially affect the safety and  
13 performance of the vehicle, and any other relevant information; this information about  
14 the condition of the vehicle shall be recorded in writing, made available to all sales  
15 staff, and provided to a prospective buyer of the vehicle, along with all documents  
16 obtained from prior owners relating to repair of the vehicle;

17 (2) conduct a reasonable inspection of the vehicle, including a test  
18 drive and visual inspection, and record, in writing, all information regarding any  
19 material defects or dangerous conditions discovered during this inspection or learned  
20 from any other source; information from this inspection, along with any repair records,  
21 shall be made available to all sales staff and provided to prospective buyers of the  
22 vehicle;

23 (3) if the dealer has information that reasonably should lead the dealer  
24 to know of the potential for a material defect in a used motor vehicle, in addition to the  
25 other requirements of this subsection, conduct a further inspection of the vehicle for  
26 patent and latent defects, including, at a minimum, placing the vehicle on a rack and  
27 inspecting under the hood; information from this inspection, along with all  
28 information relating to repairs made to the vehicle by the dealer, shall be made  
29 available to all sales staff, and, upon request, provided to a prospective buyer of the  
30 vehicle before sale; in this paragraph,

31 (A) "latent defect" means a hidden or concealed defect that

1 could not be discovered by reasonable and customary inspection;

2 (B) "patent defect" means a defect apparent to a buyer on  
3 normal observation.

4 (b) A motor vehicle dealer may not make an affirmative representation about  
5 the condition of a used motor vehicle unless the dealer has complied with this section.

6 (c) In addition to the other requirements of this section, a motor vehicle dealer  
7 shall disclose to a prospective buyer the known accident history and any known  
8 defects of the motor vehicle.

9 (d) A motor vehicle dealer may not display or offer for sale a used motor  
10 vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's  
11 Guide required by 16 CFR 455.

12 (e) If a motor vehicle dealer fails to comply with the disclosure requirements  
13 of (d) of this section, the buyer may cancel the sale within 30 days. If the buyer  
14 cancels the sale, in addition to the provisions of AS 45.50.531 - 45.50.537, the buyer  
15 has the right to return the motor vehicle to the dealer and obtain a full refund of all  
16 payments made toward the purchase of the vehicle, less any damage to the vehicle  
17 incurred while ownership was vested in the buyer, and less a reasonable amount for  
18 the use of the vehicle, which may not exceed \$.30 a mile or \$25 a day, whichever is  
19 less. Notice of this subsection must be included in every disclosure required by this  
20 section.

21 **Sec. 45.25.480. Sales of vehicles manufactured for sale in a foreign**  
22 **country.** Before sale, a motor vehicle dealer shall disclose in writing whether a motor  
23 vehicle was originally manufactured for sale in Canada or another foreign country.

24 **Sec. 45.25.490. Identification number plates.** A dealer may not knowingly  
25 purchase or sell a vehicle that has an altered or removed vehicle identification number  
26 plate, or alter or remove a vehicle identification number plate.

27 **Sec. 45.25.500. Required documentation.** A dealer shall hold a  
28 manufacturer's statement of origin, a title, or a properly executed consignment  
29 agreement for a vehicle when the dealer displays the vehicle for sale or exchange or  
30 sells the vehicle.

31 **Sec. 45.25.510. Trade-ins.** A dealer may not transfer title to a trade-in