

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10329 HOUSE LABOR & COMMERCE

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1 vehicle or perform any repairs or reconditioning on a trade-in vehicle before the
2 completion of the sales transaction for which the vehicle is a trade-in.

3 **Sec. 45.25.520. Disclosure of damages.** (a) Before entering into a new
4 motor vehicle sales contract, a new motor vehicle dealer shall disclose in writing to a
5 buyer of the new motor vehicle any known damage and repair to the new motor
6 vehicle if the damage exceeds five percent of the manufacturer's suggested retail price
7 as calculated at the dealer's authorized warranty rate for labor and parts. A new motor
8 vehicle dealer is not required to disclose to a buyer that glass, tires, bumpers, or
9 cosmetic parts of a new motor vehicle were damaged at any time if the damaged item
10 has been replaced with original or comparable equipment. A replaced part is not part
11 of the cumulative damage required to be disclosed under this subsection.

12 (b) If disclosure is not required under this section, a buyer may not revoke or
13 rescind a sales contract due to the fact that the new motor vehicle was damaged and
14 repaired before completion of the sale.

15 (c) In this section,

16 (1) "cosmetic parts" means parts that are attached by and can be
17 replaced in total through the use of screws, bolts, or other fasteners without the use of
18 welding or thermal cutting and includes windshields, bumpers, hoods, or trim panels;

19 (2) "manufacturer's suggested retail price" means the retail price of the
20 new motor vehicle suggested by the manufacturer and includes the retail delivered
21 price suggested by the manufacturer for each accessory or item of optional equipment
22 physically attached to the new motor vehicle at the time of delivery to the new motor
23 vehicle dealer that is not included within the retail price suggested by the manufacturer
24 for the new motor vehicle.

25 **Sec. 45.25.530. Form of disclosures.** Except as provided by
26 AS 45.25.460(a)(8)(A), if a disclosure is required by this chapter with respect to a
27 motor vehicle advertisement, the disclosure must be made in at least 12 point bold
28 type and in the same font style as the advertisement generally.

29 **Sec. 45.25.590. Definitions.** In AS 45.25.400 - 45.25.590,

30 (1) "advertise," "advertised," "advertising," and "advertisement"
31 include representations, whether made on or off store premises, made to persons in the

1 print media, in the broadcast media, on the computer, in a brochure, in a flyer, by
2 direct mail, by sign, or on a tag;

3 (2) "monrone sticker" means the window sticker required by 15
4 U.S.C. 1231 - 1233 (Automobile Information Disclosure Act);

5 (3) "motor vehicle," notwithstanding the definition of "motor vehicle"
6 in AS 45.25.990, means a vehicle, including a trailer, that is required to be registered
7 under AS 28.10, but does not include a motorcycle;

8 (4) "new motor vehicle," notwithstanding the definition of "new motor
9 vehicle" in AS 45.25.990, means a motor vehicle that has not been titled to anyone and
10 still retains the original manufacturer's certificate of origin.

11 Article 5. Sales and Service Contracts.

12 Sec. 45.25.600. Title transfer. A dealer may not transfer the title for a new or
13 used vehicle to a buyer before financing is final and complete.

14 Sec. 45.25.610. Sales contracts. (a) A motor vehicle sales contract must be
15 in writing, signed by both the seller and buyer, and completed as to all essential
16 provisions before the signing of the contract by the buyer and before delivery of the
17 vehicle to the buyer.

18 (b) A dealer may not obtain a signed motor vehicle sales contract from the
19 buyer until any financing terms reflected on the motor vehicle installment contract are
20 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 sales 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 sales contract, and any and all other conditions of the purchase will be
5 void if any of the terms contained in the separate agreement are changed by either the
6 dealer or the financing institution as a condition of sale or final financing approval.

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

13 (e) In this section, "sales contract" includes an installment sales contract, a
14 short-term sales contract, and a single-payment contract.

15 **Sec. 45.25.620. Service contracts.** (a) A motor vehicle service contract must
16 be in writing and contain all essential provisions regarding the administration of the
17 contract. If a dealer presents a service contract to the customer as an "application" for
18 a contract, it must be clearly and conspicuously marked as an application and must
19 disclose the applicable rules for obtaining a final service contract.

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

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

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

26 (3) describes the relationship between the maker and the seller of the
27 service contract;

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

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

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

7 (d) In this section, "maker" means the person that makes, frames, and executes
8 a service contract and assumes any obligation due to the buyer, but does not include a
9 dealer if the dealer merely sells the service contract as the agent of a service contract
10 company doing business in this state.

11 Article 6. General Provisions.

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

14 Sec. 45.25.990. Definitions. In this chapter,

15 (1) "brokers" means arranges or offers to arrange, for a fee,
16 commission, or other valuable consideration, a transaction involving the sale,
17 purchase, or lease of a new motor vehicle by a new motor vehicle dealer or by a motor
18 vehicle salesperson acting at the direction of a new motor vehicle dealer;

19 (2) "dealer" means a new motor vehicle dealer or used motor vehicle
20 dealer;

21 (3) "dealership" means the business entity that is operated by a motor
22 vehicle dealer;

23 (4) "distributor" means a person or entity who sells or distributes new
24 or used motor vehicles to motor vehicle dealers or who maintains or sends distributor
25 representatives within or to this state to sell or distribute new or used motor vehicles to
26 motor vehicle dealers in this state; in this paragraph, "distributor representative"
27 means a representative employed by a distributor branch, distributor, or wholesaler
28 who sells or distributes new or used motor vehicles to franchised motor vehicle dealers
29 in this state;

30 (5) "distributor branch" means a branch office maintained by a
31 distributor or wholesaler who sells or distributes new or used motor vehicles to

1 franchised motor vehicle dealers in this state;

2 (6) "family member" means a spouse, child, stepchild, grandchild,
3 stepgrandchild, parent, stepparent, brother, stepbrother, sister, or stepsister;

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

10 (8) "franchised" means having a franchise;

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

13 (10) "good faith" means honesty in fact and the observation of
14 reasonable commercial standards of fair dealing in the trade;

15 (11) "lease," except in AS 42.25.150, means a contract by which a
16 person owning a motor vehicle grants to another person the right to possess, use, and
17 enjoy the motor vehicle for a specified period of time in exchange for periodic
18 payment of a stipulated price, and in which the use of the vehicle is granted for a
19 period of 12 or more months;

20 (12) "manufacturer" means a person or the person's subsidiary who
21 manufactures, imports, distributes, or assembles new motor vehicles and includes an
22 administrator, a distributor, a distributor branch, and a factory branch, in this
23 paragraph,

24 (A) "administrator" means a person who administers any part
25 of the warranty coverage for a new or used vehicle or the service contract for a
26 new or used vehicle on behalf of a manufacturer or audits or examines a
27 dealer's performance or administration of a service contract, of a warranty, or
28 of maintenance or repairs performed on covered vehicles in this state;

29 (B) "factory branch" means a branch office maintained by a
30 manufacturer for directing and supervising the representatives of the
31 manufacturer;

1 (13) "manufacturer representative" means any employee or agent of a
2 manufacturer who engages in the business of contacting a manufacturer's respective
3 franchised dealers for the purpose of making or promoting the sale of the
4 manufacturer's vehicles, parts, accessories, or services;

5 (14) "motor vehicle" means a motor vehicle that is required to be
6 registered under AS 28.10, but does not include a motor home, a recreational vehicle,
7 or a motorcycle;

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

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

15 (B) a person disposing of a motor vehicle acquired and actually
16 used for the person's own use or for the use of a family member of the person
17 if the vehicle is acquired and used in good faith and not for the purpose of
18 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 (F) a person acquiring an interest in a motor vehicle for a
28 family member of the person;

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

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

4 (18) "new motor vehicle dealer" means a motor vehicle dealer for new
5 motor vehicles or for new and used motor vehicles;

6 (19) "sale" means the issuance, transfer, agreement for transfer,
7 exchange, gift, pledge, hypothecation, or mortgage in any form, whether by transfer in
8 trust or otherwise, of a motor vehicle, an interest in a motor vehicle, or a related
9 franchise;

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

13 (21) "terminate" includes nonrenewal or cancellation;

14 (22) "used motor vehicle" means a motor vehicle that has been
15 previously sold to and registered to a person other than a distributor, wholesaler, or
16 motor vehicle dealer;

17 (23) "used motor vehicle dealer" means a motor vehicle dealer for used
18 motor vehicles.

19 * Sec. 10. AS 45.50.471(b)(33) is amended to read:

20 (33) violating AS 08.66 [AS 08.66.010 - 08.66.090] (motor vehicle
21 dealers);

22 * Sec. 11. AS 45.50.471(b) is amended by adding a new paragraph to read:

23 (43) violating AS 45.25 (motor vehicle transactions).

24 * Sec. 12. AS 45.50.572 is amended by adding a new subsection to read:

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

28 * Sec. 13. AS 08.66.015, 08.66.200, 08.66.210, 08.66.220, 08.66.230, 08.66.240,
29 08.66.250, 08.66.260, 08.66.270, 08.66.280, 08.66.290, 08.66.300, 08.66.310, 08.66.320,
30 08.66.330, 08.66.350; and AS 45.50.471(b)(34) are repealed.

31 * Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. Sections 9, 11, and 12 of this Act apply to a franchise, as that term
3 is defined in AS 45.25.990, that is entered into on or after the effective date of this Act.

4 * Sec. 15. This Act takes effect July 1, 2002.

LEGAL SERVICES

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MEMORANDUM

April 9, 2002

SUBJECT: CSHB 182(), relating to vehicles
(Work Order No. 22-LS0239\R)

TO: Representative Lisa Murkowski
At.n: Amy

FROM: *TLB*
Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Unnecessary language. The requested language in sec. 45.25.470(a)(1) and in proposed new (a)(3) requiring certain disclosures was not included, because (b) of that section already requires the disclosures.
2. Conforming change. In sec. 45.25.400(b)(1), "by the manufacturer" has been added before "on the monrone sticker" to conform the language to the change made in sec. 45.25.450(b)(2).

If I may be of further assistance, please advise.

TLB:mcd
02-361.med

Enclosure

22-LS0239AR
Bannister
4/9/02

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, Hayes

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to certain vehicles, including motorcycles and trailers; relating to the
2 registration, bonding, and other regulation of motor vehicle dealers; relating to the
3 registration and other regulation of certain motor vehicle buyers' agents; relating to acts
4 and 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; amending Rule 3, Alaska Rules of Civil Procedure; and providing for an
7 effective date."

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

9 * Section 1. AS 08.66.010 is amended to read:

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

1 * **Sec. 2.** AS 08.66.030 is amended to read:

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

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

6 (2) the location of the business;

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

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

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

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

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

19 (8) other information the department [DEPARTMENT OF
20 ADMINISTRATION] requires to administer this chapter [AS 08.66.010 -
21 08.66.090].

22 * **Sec. 3.** AS 08.66.040 is amended to read:

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

31 * **Sec. 4.** AS 08.66.050 is amended to read:

1 **Sec. 08.66.050. Renewal of registration.** A dealer shall renew the
2 registration required by this chapter [AS 08.66.010 - 08.66.090] before January 1
3 every two years.

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

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

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

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

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

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

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

26 * **Sec. 6.** AS 08.66.070 is amended to read:

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

1 the amount of the bond.

2 * Sec. 7. AS 08.66.080 is amended to read:

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

7 * Sec. 8. AS 08.66.350 is repealed and reenacted to read:

8 Sec. 08.66.350. Definitions. In this chapter,

9 (1) "buyer's agent" means a person who does business in the state by
10 negotiating on behalf of a buyer the purchase of a motor vehicle from a motor vehicle
11 dealer;

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

13 (3) "motor vehicle" means a motor vehicle that is required to be
14 registered under AS 28.10;

15 (4) "motor vehicle dealer" or "dealer"

16 (A) means

17 (i) a buyer's agent; or

18 (ii) a person, other than a manufacturer, who sells,
19 leases, solicits, or arranges for the sale or lease of five or more new or
20 used motor vehicles in any 12 consecutive months, regardless of who
21 owns the vehicles;

22 (B) does not include

23 (i) a receiver, a trustee, an administrator, an executor, a
24 guardian, or another person appointed by a court or a person
25 performing duties as a public officer;

26 (ii) a person disposing of a motor vehicle acquired and
27 actually used for the person's own use or for the use of a family
28 member of the person, or acquiring a motor vehicle for the person's
29 own use or for the use of a family member of the person if the vehicle
30 is acquired and used in good faith and not for the purpose of avoiding
31 the provisions of this chapter;

1 (iii) a person who sells motor vehicles as an incident of
2 the person's principal business but who is not engaged primarily in the
3 selling of motor vehicles;

4 (iv) an employee of an organization arranging for the
5 purchase or lease by the organization of a vehicle for use in the
6 organization's business;

7 (v) a publication, broadcast, or other communications
8 media when engaged in the business of advertising, but not otherwise
9 arranging for the sale of a motor vehicle owned by another person.

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

11 **Chapter 25. Motor Vehicle Transactions.**

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

13 **Sec. 45.25.010. Applicability.** AS 45.25.020 - 45.25.320 apply to franchise
14 contracts between a manufacturer and its new motor vehicle dealers in this state.

15 **Sec. 45.25.020. Jurisdiction; choice of law.** (a) The courts of this state have
16 jurisdiction over a legal dispute between a manufacturer located in or outside this state
17 and a new motor vehicle dealer located in this state, and the dispute is governed by
18 and interpreted and adjudicated under the law of this state.

19 (b) Venue for a dispute under (a) of this section is in the judicial district of this
20 state where the new motor vehicle dealer's principal place of business is located.

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

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

27 **Article 2. Franchise Agreements.**

28 **Sec. 45.25.100. Consistency with state law.** The terms and conditions in an
29 agreement between a manufacturer and a new motor vehicle dealer in this state,
30 including a motor vehicle franchise agreement, that are inconsistent with the law of
31 this state do not have any force or effect in this state.

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

3 (1) the manufacturer has

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

5 (B) shown that there is good cause for the termination of the
6 franchise, and, if the reasons underlying the good cause can be corrected by the
7 new motor vehicle dealer, the new motor vehicle dealer has failed for 60 days
8 after delivery of the notice required by AS 45.25.120 to make the corrections;
9 the circumstances identified under AS 45.25.120(a)(2) for which a 15-day
10 notice of termination is required do not qualify as reasons for which correction
11 is allowed under this paragraph; or

12 (2) the new motor vehicle dealer has systematically engaged in fraud
13 against consumers or the manufacturer or in the operation of the new motor vehicle
14 dealership.

15 (b) Notwithstanding (a)(1) of this section, a manufacturer may not terminate a
16 franchise agreement with a new motor vehicle dealer because of the death or
17 incapacity of an owner if the owner is not listed in the franchise as one on whose
18 expertise and abilities the manufacturer relied in the granting of the franchise.

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

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

29 (1) 90 days before the effective date of a termination, except as
30 required under (2) or (3) of this subsection;

31 (2) 15 days before the effective date of a termination when the new

1 motor vehicle dealer

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

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

8 (C) is convicted of a felony involving moral turpitude or fraud
9 under the law of this state, another state, the federal government, a territory of
10 the United States, or the District of Columbia;

11 (3) 180 days before the effective date of the termination if the
12 manufacturer or distributor is discontinuing the sale of the product line.

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

16 (1) a statement of intention to terminate the franchise;

17 (2) a statement of the reasons for the termination; and

18 (3) the date on which the termination takes effect.

19 **Sec. 45.25.130. Threat of termination.** (a) A manufacturer or manufacturer
20 representative may not coerce or attempt to coerce a new motor vehicle dealer to enter
21 into an agreement with the manufacturer or a subsidiary of the manufacturer, or to do
22 any other act unfair to the new motor vehicle dealer, by threatening to terminate a
23 franchise agreement between the manufacturer or subsidiary of the manufacturer and
24 the new motor vehicle dealer.

25 (b) This section does not prohibit a voluntary agreement between a
26 manufacturer and a new motor vehicle dealer or between a distributor and a new
27 motor vehicle dealer to settle legitimate disputes.

28 **Sec. 45.25.140. Repurchase obligations on termination.** (a) Upon the
29 termination of a new motor vehicle dealer's franchise agreement by the manufacturer
30 or distributor, the manufacturer or distributor shall repurchase from the new motor
31 vehicle dealer at

1 (1) the new motor vehicle dealer's net acquisition cost, if the motor
2 vehicles have not been materially altered or damaged, all inventory consisting of
3 unsold new motor vehicles that are current models and models that have been acquired
4 from the manufacturer within the past two model years before receipt of the notice of
5 termination;

6 (2) the new motor vehicle dealer price listed in the current parts
7 catalog, less applicable allowances, new unused undamaged parts in their original,
8 unbroken packaging, listed in the current price catalog and acquired from the
9 manufacturer or distributor;

10 (3) fair market value, signs, equipment, and furnishings that bear a
11 trademark or trade name, that have not been altered or damaged, and that were
12 required by the manufacturer or distributor within five years preceding the notice of
13 termination; and

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

17 (b) Within 90 days after the effective date of the termination, the new motor
18 vehicle dealer shall return the property required by (a) of this section to be
19 repurchased to the manufacturer or distributor at the manufacturer's or distributor's
20 expense. The manufacturer or distributor shall pay the compensation for the property
21 within 60 days after the tender of inventory and other items if the new motor vehicle
22 dealer has clear title to the property and is in a position to convey that title to the
23 manufacturer or distributor. If the property is subject to a security interest, the
24 manufacturer or distributor may make payment jointly to the new motor vehicle dealer
25 and the holder of the security interest, and the manufacturer or distributor may offset
26 these payments.

27 **Sec. 45.25.150. Required compensation for new motor vehicle dealer**
28 **facilities.** (a) Upon termination by the manufacturer or distributor, the manufacturer
29 or distributor shall compensate the new motor vehicle dealer for new motor vehicle
30 dealer facilities a sum equivalent to the

31 (1) rent for the unexpired term of the lease or 18 months, whichever

1 period is shorter, if the new motor vehicle dealer is leasing the new motor vehicle
2 dealership facilities from a lessor other than the manufacturer or distributor; or

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

8 (b) This section does not relieve a new motor vehicle dealer of the obligation
9 to mitigate damages under a lease, prevent a manufacturer from occupying and using
10 the new motor vehicle dealer's facilities while paying rent, or preclude a manufacturer
11 from negotiating a lease termination, sublease, or new lease.

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

13 (1) insolvency of the new motor vehicle dealer or the filing of any
14 petition by or against the new motor vehicle dealer under a bankruptcy or receivership
15 law;

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

19 (3) conviction of the new motor vehicle dealer or its principal owners
20 of a felony or a misdemeanor regardless of the punishment if the crime involves theft,
21 dishonesty, or false statement;

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

24 (5) a fraudulent misrepresentation by the new motor vehicle dealer to
25 the manufacturer or distributor that is material to the new motor vehicle dealer's
26 agreement.

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

30 (e) If payment under (a) of this section is made, the manufacturer or
31 distributor is entitled to possession and use of the new motor vehicle dealership

1 facilities for the period for which the payment is paid.

2 **Sec. 45.25.160. Prevention or refusal to honor transfer of new motor**
3 **vehicle dealership ownership.** A manufacturer may not unreasonably prevent or
4 refuse to honor a transfer of ownership of a new motor vehicle dealership.

5 **Sec. 45.25.170. Succession.** (a) A manufacturer or distributor may not
6 prevent or refuse to honor the succession to a new motor vehicle franchise of an heir
7 or devisee under a will of a franchisee, under a written instrument filed with the
8 manufacturer or distributor designating any person as the successor franchisee, or
9 under AS 13.06 - AS 13.36 (Uniform Probate Code), except that

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

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

18 (3) the manufacturer or distributor may not unreasonably withhold
19 approval of the succession; if the manufacturer or distributor refuses to honor the
20 succession, the manufacturer or distributor shall send written notice to the proposed
21 successor within 60 days after receiving the information requested in (2) of this
22 subsection or within 60 days after receiving the notice of the proposed successor's
23 intent to succeed, whichever is later.

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

29 (c) This section does not preclude the owner of a new motor vehicle
30 dealership from filing with the manufacturer or distributor a written instrument
31 designating any person as a successor. If there are competing successors, the written

1 instrument governs who may submit a proposal as a successor.

2 **Sec. 45.25.180. New dealerships.** (a) Before a manufacturer or distributor
3 enters into a franchise establishing or relocating a new motor vehicle dealer within a
4 relevant market area where the same line make is represented, the manufacturer or
5 distributor shall give 90 days' written notice to each new motor vehicle dealer of the
6 same line make in the relevant market area of the intention to establish an additional
7 new motor vehicle dealer or to relocate an existing new motor vehicle dealer within
8 that relevant market: a.

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

16 (c) This section does not prohibit

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

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

23 (3) the entering into of a renewal of, replacement of, or succeeding
24 franchise agreement with an existing new motor vehicle dealer whose operations will
25 continue at the existing new motor vehicle dealer's current location.

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

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

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

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

9 (4) the permanency of the investment of the protesting new motor
10 vehicle dealer; and

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

14 (e) In this section,

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

16 (A) within a radius of 14 miles around an existing new motor
17 vehicle dealer; or

18 (B) of responsibility defined in a governing franchise
19 agreement;

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

23 **Sec. 45.25.190. Arbitration.** In a controversy between a manufacturer and a
24 new motor vehicle dealer under AS 45.25.010 - 45.25.320, neither the manufacturer
25 nor the new motor vehicle dealer is required to submit the controversy to arbitration.
26 If both the manufacturer and the new motor vehicle dealer agree to submit a
27 controversy under AS 45.25.010 - 45.25.320 to arbitration, the arbitration shall be
28 conducted under AS 09.43.020 - 09.43.180 (Uniform Arbitration Act), the
29 manufacturer and the new motor vehicle dealer shall each select one arbitrator, and
30 both the manufacturer and the new motor vehicle dealer shall select the third
31 arbitrator.

1 **Article 3. Manufacturer and Distributor Practices.**

2 **Sec. 45.25.300. New motor vehicle dealership location and facilities.** A
3 manufacturer may not require, coerce, or attempt to coerce a new motor vehicle dealer
4 to change the location of the new motor vehicle dealership, or to make any substantial
5 alterations to the new motor vehicle dealership premises or facilities if the change or
6 alteration would be unreasonable or if there is not a sufficient supply of new motor
7 vehicles to justify the expansion in light of the current market and economic
8 conditions.

9 **Sec. 45.25.310. Discrimination.** A manufacturer may not unfairly
10 discriminate among new motor vehicle dealers with respect to warranty
11 reimbursements or authority granted new motor vehicle dealers to make warranty
12 adjustments with retail customers.

13 **Sec. 45.25.320. Claim audits and charge backs.** (a) A manufacturer or
14 distributor may not audit a claim, deny a claim, reduce the amount of a claim to be
15 reimbursed to a new motor vehicle dealer, or charge back a portion of the claim to a
16 new motor vehicle dealer if 18 or more months have passed since the new motor
17 vehicle dealer submitted the claim, or, if 18 or more months have passed from the end
18 of a manufacturer sponsored incentive program related to the claim, whichever 18-
19 month period ends later.

20 (b) The time restriction in (a) of this section does not apply if the manufacturer
21 reasonably suspects that fraud is involved in the claim.

22 (c) In this section, "claim" means a claim made by a new motor vehicle dealer
23 for compensation by the manufacturer or distributor for sales incentives, warranty
24 repairs, and service incentives.

25 **Article 4. Dealer Practices.**

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

30 (b) A motor vehicle dealer may use the term "manufacturer's suggested retail
31 price," "MSRP," or "list price" in an advertisement for the sale of a motor vehicle,

1 subject to the restriction on price comparisons in AS 45.25.450 and the following:

2 (1) the advertised price must reference the final price listed by the
3 manufacturer on the monroney sticker, including accessories and options physically
4 attached to the vehicle at the time of delivery to the dealer, plus any transportation
5 charges, and minus all manufacturer discounts and savings;

6 (2) the manufacturer's suggested retail price or the list price does not
7 include charges added by the dealer or options added to the vehicle by the dealer; and

8 (3) whenever using the term "manufacturer's suggested retail price,"
9 "MSRP," or "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.

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

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

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

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

29 **Sec. 45.25.440. Advertised price.** (a) When selling a motor vehicle, a motor
30 vehicle dealer may not charge dealer fees or costs, except for fees actually paid to a
31 state agency for licensing, registration, or title transfers, unless the fees or costs are

1 included in the advertised price.

2 (b) In this section, "dealer fees or costs" includes dealer preparation fees,
3 document preparation fees, surcharges, and other dealer imposed fees and costs.

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

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

8 (b) A motor vehicle dealer may advertise a price comparison for a new motor
9 vehicle with the manufacturer's suggested retail price only if

10 (1) the dealer only uses the term "manufacturer's suggested retail
11 price," "MSRP," or "list price";

12 (2) the advertised price references the final price listed by the
13 manufacturer on the monroney sticker;

14 (3) the manufacturer's suggested retail price, MSRP, or list price does
15 not include charges added by the dealer or options added to the vehicle by the dealer;

16 (4) the dealer clearly discloses that the manufacturer's suggested retail
17 price, MSRP, or list price may not reflect the actual selling price for the vehicle in the
18 dealer's trade area; and

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

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

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

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

29 (3) the dealer includes in the advertised price all charges that the
30 competitor includes in the competitor's price.

31 (d) A motor vehicle dealer shall be in possession of documents and all other

1 information necessary to substantiate all reference price claims when the claims are
2 made and shall maintain this information in a readily accessible place for two years
3 after the time the reference price claims are made.

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

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

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

13 (3) advertise a specific motor vehicle for sale without identifying the
14 vehicle by either its vehicle identification number, vehicle stocking number, or license
15 number;

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

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

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

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

30 (8) affix to a new motor vehicle a supplemental price sticker
31 containing a price that represents the dealer's asking price, if the supplemental price

1 sticker exceeds the manufacturer's suggested retail price, unless the supplemental
2 sticker

3 (A) clearly and conspicuously, in the largest print appearing on
4 the sticker other than the print size used for the dealer's name, discloses that
5 the supplemental sticker price is the dealer's asking price, or words of similar
6 meaning, and is not the manufacturer's suggested retail price;

7 (B) clearly and conspicuously discloses the manufacturer's
8 suggested retail price; and

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

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

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

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

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

28 (13) represent and sell as a new motor vehicle a demonstrator vehicle
29 or a motor vehicle that is a used motor vehicle; in this paragraph, "demonstrator
30 vehicle"

31 (A) means a motor vehicle

1 (i) that has been assigned by a dealer for use by the
2 dealership as an executive vehicle for promotional purposes, including
3 being driven in the community;

4 (ii) that has not been licensed by a retail buyer; and

5 (iii) the title of which has not been transferred to a retail
6 buyer;

7 (B) does not include a motor vehicle that has only been driven
8 to demonstrate the motor vehicle to a prospective buyer;

9 (14) advertise that the dealer finances any person, or does not reject
10 any person's credit, or make similar claims;

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

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

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

18 (1) when obtaining a used motor vehicle that the dealer intends to
19 resell, make a reasonable inquiry of the seller into the condition of the vehicle,
20 including the vehicle's accident and repair history;

21 (2) if the dealer has information that reasonably should lead the dealer
22 to know of the potential for a material defect in a used motor vehicle, conduct an
23 inspection of the vehicle, including, at a minimum, placing the vehicle on a rack and
24 inspecting under the hood.

25 (b) A motor vehicle dealer shall make available to all sales staff and provide in
26 writing to a prospective buyer of the vehicle before sale all information obtained by a
27 motor vehicle dealer under this section, along with all information relating to repairs
28 made to the vehicle by the dealer.

29 (c) In (a) of this section, "material defect" means a condition that impairs the
30 safe operation of a motor vehicle by a reasonable person.

31 **Sec. 45.25.480. Sales of vehicles manufactured for sale in a foreign**

1 country. Before sale, a motor vehicle dealer shall disclose in writing whether a motor
2 vehicle was originally manufactured for sale in Canada or another foreign country.

3 **Sec. 45.25.490. Identification number plates.** A motor vehicle dealer may
4 not knowingly purchase or sell a vehicle that has an altered or removed vehicle
5 identification number plate, or alter or remove a vehicle identification number plate.

6 **Sec. 45.25.500. Required documentation.** A motor vehicle dealer may not
7 sell or offer to sell a motor vehicle unless the motor vehicle dealer holds a
8 manufacturer's statement of origin, a title, or another properly executed document
9 reasonably necessary to obtain the statement of origin or title for transfer of the
10 vehicle to the buyer.

11 **Sec. 45.25.510. Trade-ins.** A motor vehicle dealer may not transfer title to a
12 trade-in vehicle or perform any repairs or reconditioning on a trade-in vehicle before
13 the completion of the sales transaction for which the vehicle is a trade-in.

14 **Sec. 45.25.520. Disclosure of damages.** (a) Before entering into a new
15 motor vehicle sales contract, a new motor vehicle dealer shall disclose in writing to a
16 buyer of the new motor vehicle any known damage and repair to the new motor
17 vehicle if the damage exceeds five percent of the manufacturer's suggested retail price
18 as calculated at the dealer's authorized warranty rate for labor and parts. A new motor
19 vehicle dealer is not required to disclose to a buyer that glass, tires, bumpers, or
20 cosmetic parts of a new motor vehicle were damaged at any time if the damaged item
21 has been replaced with original or comparable equipment. A replaced part is not part
22 of the cumulative damage required to be disclosed under this subsection.

23 (b) If disclosure is not required under this section, a buyer may not revoke or
24 rescind a sales contract due to the fact that the new motor vehicle was damaged and
25 repaired before completion of the sale.

26 (c) In this section,

27 (1) "cosmetic parts" means parts that are attached by and can be
28 replaced in total through the use of screws, bolts, or other fasteners without the use of
29 welding or thermal cutting and includes windshields, bumpers, hoods, or trim panels;

30 (2) "manufacturer's suggested retail price" means the retail price of the
31 new motor vehicle suggested by the manufacturer and includes the retail delivered

1 price suggested by the manufacturer for each accessory or item of optional equipment
2 physically attached to the new motor vehicle at the time of delivery to the new motor
3 vehicle dealer that is not included within the retail price suggested by the manufacturer
4 for the new motor vehicle.

5 **Sec. 45.25.530. Form of disclosures.** Except as provided in
6 AS 45.25.460(a)(8)(A), if a disclosure is required by this chapter with respect to a
7 motor vehicle advertisement, the disclosure must be made in a clear and conspicuous
8 manner.

9 **Sec. 45.25.590. Definitions.** In AS 45.25.400 - 45.25.590,

10 (1) "advertise," "advertised," "advertising," and "advertisement"
11 include representations, whether made on or off store premises, made to persons in the
12 print media, in the broadcast media, on the computer, in a brochure, in a flyer, by
13 direct mail, by sign, or on a tag;

14 (2) "monrone sticker" means the window sticker required by 15
15 U.S.C. 1231 - 1233 (Automobile Information Disclosure Act);

16 (3) "motor vehicle," notwithstanding the definition of "motor vehicle"
17 in AS 45.25.990, means a vehicle, including a trailer, that is required to be registered
18 under AS 28.10, but does not include a motorcycle;

19 (4) "new motor vehicle," notwithstanding the definition of "new motor
20 vehicle" in AS 45.25.990, means a motor vehicle that has not been titled to anyone and
21 still retains the original manufacturer's certificate of origin.

22 **Article 5. Sales and Service Contracts.**

23 **Sec. 45.25.600. Title transfer.** A motor vehicle dealer may not transfer the
24 title for a motor vehicle to a buyer before all of the sale documents, including any
25 finance contract arranged by the seller, are complete and executed in final form by all
26 parties to the sale.

27 **Sec. 45.25.610. Sales contracts.** (a) A motor vehicle sales contract must be
28 in writing, signed by both the seller and buyer, and completed as to all essential
29 provisions before the signing of the contract by the buyer and before delivery of the
30 vehicle to the buyer.

31 (b) A motor vehicle dealer may not obtain a signed motor vehicle sales

1 contract from the buyer until any financing terms reflected on the motor vehicle
2 installment contract are final and complete.

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

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

12 (2) the separate agreement clearly and conspicuously informs the
13 buyer that accepting delivery of the vehicle before final financing approval obligates
14 the buyer to terms of the motor vehicle sales contract if the terms on the separate
15 agreement are identical to the terms finally approved by the financing entity; and

16 (3) the separate agreement provides that the separate agreement, the
17 motor vehicle sales contract, and any and all other conditions of the purchase will be
18 void if any of the terms contained in the separate agreement are changed by either the
19 motor vehicle dealer or the financing institution as a condition of sale or final
20 financing approval.

21 (d) If a buyer's final financing is not approved within seven business days
22 from the date of the separate agreement and, as a result, the transaction is not
23 completed, the motor vehicle dealer shall return the buyer's entire down payment, and
24 the buyer's trade-in, if any, shall be returned to the buyer in the same condition and
25 with not more than 10 miles accumulated on the odometer from when the motor
26 vehicle was delivered to the motor vehicle dealer.

27 (e) In this section, "sales contract" includes an installment sales contract, a
28 short-term sales contract, and a single-payment contract.

29 **Sec. 45.25.620. Service contracts.** (a) A motor vehicle service contract must
30 be in writing and contain all essential provisions regarding the administration of the
31 contract. If a motor vehicle dealer presents a service contract to the customer as an

1 "application" for a contract, it must be clearly and conspicuously marked as an
2 application and must disclose the applicable rules for obtaining a final service
3 contract.

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

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

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

10 (3) describes the relationship between the maker and the seller of the
11 service contract;

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

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

16 (c) A motor vehicle dealer may not disclaim or limit implied warranties for a
17 motor vehicle for which the motor vehicle dealer is a maker of a service contract sold
18 for that motor vehicle. However, a motor vehicle dealer may disclaim or limit implied
19 warranties as otherwise allowed by law, regardless of the make or model of the motor
20 vehicle if the motor vehicle dealer is merely the seller, not the maker, of the service
21 contract and does not otherwise extend any written warranties on the motor vehicle
22 that is purchased.

23 (d) In this section, "maker" means the person that makes, frames, and executes
24 a service contract and assumes any obligation due to the buyer, but does not include a
25 motor vehicle dealer who merely sells the service contract as the agent of a service
26 contract company doing business in this state.

27 **Article 6. General Provisions.**

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

30 **Sec. 45.25.910. Remedial purpose.** The provisions of this chapter are
31 remedial.

1 **Sec. 45.25.990. Definitions.** In this chapter,

2 (1) "dealer" means a new motor vehicle dealer or used motor vehicle
3 dealer;

4 (2) "dealership" means the business entity that is operated by a motor
5 vehicle dealer;

6 (3) "distributor" means a person or entity who sells or distributes new
7 or used motor vehicles to motor vehicle dealers or who maintains or sends distributor
8 representatives within or to this state to sell or distribute new or used motor vehicles to
9 motor vehicle dealers in this state; in this paragraph, "distributor representative"
10 means a representative employed by a distributor branch, distributor, or wholesaler
11 who sells or distributes new or used motor vehicles to franchised motor vehicle dealers
12 in this state;

13 (4) "distributor branch" means a branch office maintained by a
14 distributor or wholesaler who sells or distributes new or used motor vehicles to
15 franchised motor vehicle dealers in this state;

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

22 (6) "franchised" means having a franchise;

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

25 (8) "good faith" means honesty in fact and the observation of
26 reasonable commercial standards of fair dealing in the trade;

27 (9) "lease," except in AS 45.25.150, means a contract by which a
28 person owning a motor vehicle grants to another person the right to possess, use, and
29 enjoy the motor vehicle for a specified period of time in exchange for periodic
30 payment of a stipulated price, and in which the use of the vehicle is granted for a
31 period of 12 or more months;

1 (10) "manufacturer" means a person or the person's subsidiary who
2 manufacturers, imports, distributes, or assembles new motor vehicles and includes an
3 administrator, a distributor, a distributor branch, and a factory branch; in this
4 paragraph, "factory branch" means a branch office maintained by a manufacturer for
5 directing and supervising the representatives of the manufacturer;

6 (11) "manufacturer representative" means any employee or agent of a
7 manufacturer who engages in the business of contacting a manufacturer's respective
8 franchised dealers for the purpose of making or promoting the sale of the
9 manufacturer's vehicles, parts, accessories, or services;

10 (12) "motor vehicle" means a motor vehicle that is required to be
11 registered under AS 28.10, but does not include a motor home, a recreational vehicle,
12 or a motorcycle;

13 (13) "motor vehicle dealer" has the meaning given in AS 08.66.350,
14 except that, in this paragraph, notwithstanding the definition of "motor vehicle" given
15 in AS 08.66.350, "motor vehicle" has the meaning given in this section;

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

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

22 (16) "new motor vehicle dealer" means a motor vehicle dealer for new
23 motor vehicles or for new and used motor vehicles;

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

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

31 (19) "terminate" includes nonrenewal or cancellation;

1 (20) "used motor vehicle" means a motor vehicle that has been
2 previously sold to and registered to a person other than a distributor, wholesaler, or
3 motor vehicle dealer;

4 (21) "used motor vehicle dealer" means a motor vehicle dealer for used
5 motor vehicles.

6 * **Sec. 10.** AS 45.50.471(b)(33) is amended to read:

7 (33) violating AS 08.66 [AS 08.66.010 - 08.66.090] (motor vehicle
8 dealers);

9 * **Sec. 11.** AS 45.50.471(b) is amended by adding a new paragraph to read:

10 (43) violating AS 45.25.400 - 45.25.590 (motor vehicle dealer
11 practices).

12 * **Sec. 12.** AS 45.50.572 is amended by adding a new subsection to read:

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

16 * **Sec. 13.** AS 08.66.090, 08.66.200, 08.66.210, 08.66.220, 08.66.230, 08.66.240,
17 08.66.250, and 08.66.330 are repealed.

18 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **INDIRECT COURT RULE AMENDMENT.** AS 45.25.020(b), enacted by sec. 9 of
21 this Act, amends Rule 3, Alaska Rules of Civil Procedure, by establishing a different rule for
22 determining where a legal dispute described in AS 45.25.020(a), enacted by sec. 9 of this Act,
23 may be brought.

24 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **APPLICABILITY.** Sections 9, 11, and 12 of this Act apply to a franchise, as that term
27 is defined in AS 45.25.990, added by sec. 9 of this Act that is entered into on or after the
28 effective date of this Act.

29 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **CONDITIONAL EFFECT.** AS 45.25.020(b), enacted by sec. 9 of this Act, takes

1 effect only if sec. 14 of this Act receives the two-thirds majority vote of each house required
2 by art. IV, sec. 15, Constitution of the State of Alaska.

3 * Sec. 17. This Act takes effect July 1, 2002.

22-LS0239\S
Bannister
3/15/02

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. ~~0~~

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.

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

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

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

Sec. 08.66.090. Definitions. In this chapter,

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

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

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

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

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

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

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

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

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

Chapter 25. Motor Vehicle Transactions.

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

2 **Sec. 45.25.010. Applicability.** AS 45.25.020 - 45.25.310 apply to franchise
3 contracts between a manufacturer and its new motor vehicle dealers in this state.

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

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

11 **Article 2. Franchise Agreements.**

12 **Sec. 45.25.100. Consistency with state law.** The terms and conditions in an
13 agreement between a manufacturer and a new motor vehicle dealer in this state,
14 including a motor vehicle franchise agreement, that are inconsistent with the law of
15 this state do not have any force or effect in this state.

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

18 (1) the manufacturer has

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

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

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

30 (b) Notwithstanding (a)(1) of this section, a manufacturer may not terminate a
31 franchise agreement with a new motor vehicle dealer because of the death or

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incapacity of an owner if the owner is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

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

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

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

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

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

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

(C) is convicted of a felony involving moral turpitude or fraud under the law of this state, another state, the federal government, a territory of the United States, or the District of Columbia;

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

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

(1) a statement of intention to terminate the franchise;

1 (2) a statement of the reasons for the termination; and

2 (3) the date on which the termination takes effect.

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

9 (b) This section does not prohibit a voluntary agreement between a
10 manufacturer and a new motor vehicle dealer or between a distributor and a new
11 motor vehicle dealer to settle legitimate disputes.

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

16 (1) the new motor vehicle dealer's net acquisition cost, if the motor
17 vehicles have not been altered or damaged, of inventory consisting of unsold new
18 motor vehicles that are current models and that have been acquired from the
19 manufacturer within the past two model years before receipt of the notice of
20 termination;

21 (2) the new motor vehicle dealer price listed in the current parts
22 catalog, less applicable allowances, new unused undamaged parts in their original,
23 unbroken packaging, listed in the current price catalog and acquired from the
24 manufacturer or distributor;

25 (3) fair market value, signs, equipment, and furnishings that bear a
26 trademark or trade name, that have not been altered or damaged, and that were
27 required by the manufacturer or distributor within five years preceding the notice of
28 termination; and

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

1 (b) Within 90 days after the effective date of the termination, the new motor
2 vehicle dealer shall return the property required by (a) of this section to be
3 repurchased to the manufacturer or distributor at the manufacturer's or distributor's
4 expense. The manufacturer or distributor shall pay the compensation for the property
5 within 60 days after the tender of inventory and other items if the new motor vehicle
6 dealer has clear title to the property and is in a position to convey that title to the
7 manufacturer or distributor. If the property is subject to a security interest, the
8 manufacturer or distributor may make payment jointly to the new motor vehicle dealer
9 and the holder of the security interest, and the manufacturer or distributor may offset
10 these payments.

11 **Sec. 45.25.150. Required compensation for new motor vehicle dealer**
12 **facilities.** (a) Upon termination by the manufacturer or distributor, the manufacturer
13 or distributor shall compensate the new motor vehicle dealer for new motor vehicle
14 dealer facilities a sum equivalent to the

15 (1) rent for the unexpired term of the lease or 18 months, whichever
16 period is shorter, if the new motor vehicle dealer is leasing the new motor vehicle
17 dealership facilities from a lessor other than the manufacturer or distributor; or

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

23 (b) This section does not relieve a new motor vehicle dealer of the obligation
24 to mitigate damages under a lease, prevent a manufacturer from occupying and using
25 the new motor vehicle dealer's facilities while paying rent, or preclude a manufacturer
26 from negotiating a lease termination, sublease, or new lease.

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

28 (1) insolvency of the new motor vehicle dealer or the filing of any
29 petition by or against the new motor vehicle dealer under a bankruptcy or receivership
30 law;

31 (2) failure of the new motor vehicle dealer to conduct its customary

1 sales and service operations during its customary business hours for seven consecutive
2 business days;

3 (3) conviction of the new motor vehicle dealer or its principal owners
4 of a felony or a misdemeanor regardless of the punishment if the crime involves theft,
5 dishonesty, or false statement;

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

8 (5) a fraudulent misrepresentation by the new motor vehicle dealer to
9 the manufacturer or distributor that is material to the new motor vehicle dealer's
10 agreement.

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

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

17 **Sec. 45.25.160. Prevention or refusal to honor transfer of new motor**
18 **vehiclc dealership ownership.** A manufacturer may not unreasonably prevent or
19 refuse to honor a transfer of ownership of a new motor vehicle dealership.

20 **Sec. 45.25.170. Succession.** (a) A manufacturer or distributor may not
21 prevent or refuse to honor the succession to a new motor vehicle franchise of an heir
22 or devisee under a will of a franchisee, under a written instrument filed with the
23 manufacturer or distributor designating any person as the successor franchisee, or
24 under AS 13.06 - AS 13.36 (Uniform Probate Code), except that

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

29 (2) the manufacturer or distributor may request from the designated
30 successor personal and financial data that are reasonably necessary to determine the
31 qualifications of the designated successor; the designated successor shall provide the

1 information within 60 days after receiving the request;

2 (3) the manufacturer or distributor may not unreasonably withhold
3 approval of the succession; if the manufacturer or distributor refuses to honor the
4 succession, the manufacturer or distributor shall send written notice to the proposed
5 successor within 60 days after receiving the information requested in (2) of this
6 subsection or within 60 days after receiving the notice of the proposed successor's
7 intent to succeed, whichever is later.

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

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

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

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

31 (c) This section does not prohibit

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

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

7 (3) the entering into of a renewal of, replacement of, or succeeding
8 franchise agreement with an existing new motor vehicle dealer whose operations will
9 continue at the existing new motor vehicle dealer's current location.

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 new motor vehicle
23 dealer's obligations under existing franchise agreements;

24 (4) the permanency of the investment of the protesting new motor
25 vehicle dealer; and

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

29 (e) In this section,

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

31 (A) within a radius of 14 miles around an existing new motor

1 vehicle dealer; or

2 (B) of responsibility defined in a governing franchise
3 agreement;

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

7 **Sec. 45.25.190. Arbitration.** In a controversy between a manufacturer and a
8 new motor vehicle dealer under AS 45.25.010 - 45.25.320, neither the manufacturer
9 nor the new motor vehicle dealer is required to submit the controversy to arbitration.
10 If both the manufacturer and the new motor vehicle dealer agree to submit a
11 controversy under AS 45.25.010 - 45.25.320 to arbitration, the arbitration shall be
12 conducted under AS 09.43.020 - 09.43.180 (Uniform Arbitration Act), the
13 manufacturer and the new motor vehicle dealer shall each select one arbitrator, and
14 both the manufacturer and the new motor vehicle dealer shall select the third
15 arbitrator.

16 **Article 3. Manufacturer and Distributor Practices.**

17 **Sec. 45.25.300. New motor vehicle dealership location and facilities.** A
18 manufacturer may not require, coerce, or attempt to coerce a new motor vehicle dealer
19 to change the location of the new motor vehicle dealership, or to make any substantial
20 alterations to the new motor vehicle dealership premises or facilities if the change or
21 alteration would be unreasonable or if there is not a sufficient supply of new motor
22 vehicles to justify the expansion in light of the current market and economic
23 conditions.

24 **Sec. 45.25.310. Discrimination.** A manufacturer may not unfairly
25 discriminate among new motor vehicle dealers with respect to warranty
26 reimbursements or authority granted new motor vehicle dealers to make warranty
27 adjustments with retail customers.

28 **Sec. 45.25.320. Claim audits and charge backs.** A manufacturer or
29 distributor may not audit a claim, deny a claim, reduce the amount of a claim to be
30 reimbursed to a new motor vehicle dealer, or charge back a portion of the claim to a
31 new motor vehicle dealer if 18 or more months have passed since the new motor

1 vehicle dealer submitted the claim. In this section, "claim" means a claim made by a
2 new motor vehicle dealer for compensation by the manufacturer or distributor for sales
3 incentives, warranty repairs, service incentives, and related expenses.

4 Article 4. Dealer Practices.

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

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

12 (1) the advertised price must reference the final price listed on the
13 monroneu sticker, including accessories and options physically attached to the vehicle
14 at the time of delivery to the dealer, plus any transportation charges, and minus all
15 manufacturer discounts and savings;

16 (2) the manufacturer's suggested retail price or the list price does not
17 include charges added by the dealer or options added to the vehicle by the dealer; and

18 (3) whenever using the term "manufacturer's suggested retail price,"
19 "MSRP," or "list price," the dealer shall provide in the advertisement a clear and
20 conspicuous disclosure that states that a sale may not have occurred at that price.

21 Sec. 45.25.410. Availability of advertised items. A motor vehicle dealer
22 may not advertise vehicles and related goods or services at a specified dealer price
23 with the intent not to supply reasonably expected demand, unless the advertisement
24 discloses the number of vehicles in stock at the advertised price.

25 Sec. 45.25.420. Display of motor vehicles. A motor vehicle dealer shall
26 display all vehicles advertised for sale for the duration of the sale period in a
27 conspicuous and clearly visible location on the dealer's premises. The advertised sale
28 price for each vehicle must be clearly marked on the vehicle so the consumer can
29 readily identify the advertised price for the vehicle.

30 Sec. 45.25.430. Refusal to sell on advertised terms and conditions. A
31 motor vehicle dealer may not refuse to sell a motor vehicle on the terms and

1 conditions that the dealer has advertised. This section does not apply if

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

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

8 **Sec. 45.25.440. Advertised price.** (a) When selling a motor vehicle, a motor
9 vehicle dealer may not charge dealer fees or costs, except for fees actually paid to a
10 state agency for licensing, registration, or title transfers, unless the fees or costs are
11 included in the advertised price.

12 (b) In this section, "dealer fees or costs" includes dealer preparation fees,
13 document preparation fees, surcharges, and other dealer imposed fees and costs.

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

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

18 (b) A motor vehicle dealer may advertise a price comparison for a new motor
19 vehicle with the manufacturer's suggested retail price only if

20 (1) the dealer only uses the term "manufacturer's suggested retail
21 price," "MSRP," or "list price";

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

26 (3) the manufacturer's suggested retail price, MSRP, or list price does
27 not include charges added by the dealer or options added to the vehicle by the dealer;

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

31 (5) the dealer does not make a representation in the advertisement,

1 including a reference to a "sale," "reduction," or "discount," that the comparison
2 represents a saving to the consumer.

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

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

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

10 (3) the dealer includes in the advertised price all charges that the
11 competitor includes in the competitor's price.

12 (d) A motor vehicle dealer shall be in possession of documents and all other
13 information necessary to substantiate all reference price claims when the claims are
14 made and shall maintain this information in a readily accessible place for two years
15 after the time the reference price claims are made.

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

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

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

25 (3) advertise a specific motor vehicle for sale without identifying the
26 vehicle by either its vehicle identification number, vehicle stocking number, or license
27 number;

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

1 (5) use the term "rebate," "cash back," or a similar term in advertising
2 the sale of a motor vehicle unless the rebate is expressed in a specific dollar amount
3 and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the
4 retail buyer of the vehicle;

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

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

11 (8) affix to a new motor vehicle a supplemental price sticker
12 containing a price that represents the dealer's asking price, if the supplemental price
13 sticker exceeds the manufacturer's suggested retail price, unless the supplemental
14 sticker

15 (A) clearly and conspicuously, in the largest print appearing on
16 the sticker other than the print size used for the dealer's name, discloses that
17 the supplemental sticker price is the dealer's asking price, or words of similar
18 meaning, and is not the manufacturer's suggested retail price;

19 (B) clearly and conspicuously discloses the manufacturer's
20 suggested retail price; and

21 (C) states, if the supplemental sticker price is greater than the
22 sum of the manufacturer's suggested retail price and the price of the items
23 added by the dealer, the difference and describes it as additional dealer mark-
24 up;

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

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

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

5 (12) require a buyer of a new motor vehicle, as a condition of sale and
6 delivery, to also purchase special features, appliances, accessories, or equipment not
7 desired or requested by the buyer unless the special features, appliances, equipment, or
8 accessories are already installed on the vehicle when received by the dealer;

9 (13) represent and sell as a new motor vehicle a demonstrator vehicle
10 or a motor vehicle that is a used motor vehicle; in this paragraph: "demonstrator
11 vehicle"

12 (A) means a motor vehicle

13 (i) that has been assigned by a dealer for use by the
14 dealership as an executive vehicle for promotional purposes, including
15 being driven in the community;

16 (ii) that has not been licensed by a retail buyer; and

17 (iii) the title of which has not been transferred to a retail
18 buyer;

19 (B) does not include a motor vehicle that has only been driven
20 to demonstrate the motor vehicle to a prospective buyer;

21 (14) advertise that the dealer finances any person, or does not reject
22 any person's credit, or make similar claims;

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

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

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

30 (1) when obtaining a used motor vehicle, by purchase or otherwise,
31 that the dealer intends to resell, make a reasonable inquiry of the seller about the

1 condition of the vehicle, including the vehicle's accident and repair history, to
2 determine if the vehicle has any known material defects;

3 (2) conduct a reasonable inspection of the vehicle, including a test
4 drive and visual inspection, for material defects;

5 (3) if the dealer has information that reasonably should lead the dealer
6 to know of the potential for a material defect in a used motor vehicle, conduct a further
7 inspection of the vehicle, including, at a minimum, placing the vehicle on a rack and
8 inspecting under the hood.

9 (b) A motor vehicle dealer shall make available to all sales staff and provide in
10 writing to a prospective buyer of the vehicle before sale the information obtained by a
11 motor vehicle dealer under this section, along with all information relating to repairs
12 made to the vehicle by the dealer.

13 (c) In (a) of this section, "material defect" means a condition that

14 (1) cannot be discovered by a reasonable inspection by an ordinary
15 consumer; or

16 (2) impairs the safe operation of a motor vehicle by a reasonable
17 person.

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

21 **Sec. 45.25.490. Identification number plates.** A motor vehicle dealer may
22 not knowingly purchase or sell a vehicle that has an altered or removed vehicle
23 identification number plate, or alter or remove a vehicle identification number plate.

24 **Sec. 45.25.500. Required documentation.** A motor vehicle dealer may not
25 sell or offer to sell a motor vehicle unless the motor vehicle dealer holds a
26 manufacturer's statement of origin, a title, or another properly executed document
27 reasonably necessary to obtain the statement of origin or title for transfer of the
28 vehicle to the buyer.

29 **Sec. 45.25.510. Trade-ins.** A motor vehicle dealer may not transfer title to a
30 trade-in vehicle or perform any repairs or reconditioning on a trade-in vehicle before
31 the completion of the sales transaction for which the vehicle is a trade-in.

1 **Sec. 45.25.520. Disclosure of damages.** (a) Before entering into a new
2 motor vehicle sales contract, a new motor vehicle dealer shall disclose in writing to a
3 buyer of the new motor vehicle any known damage and repair to the new motor
4 vehicle if the damage exceeds five percent of the manufacturer's suggested retail price
5 as calculated at the dealer's authorized warranty rate for labor and parts. A new motor
6 vehicle dealer is not required to disclose to a buyer that glass, tires, bumpers, or
7 cosmetic parts of a new motor vehicle were damaged at any time if the damaged item
8 has been replaced with original or comparable equipment. A replaced part is not part
9 of the cumulative damage required to be disclosed under this subsection.

10 (b) If disclosure is not required under this section, a buyer may not revoke or
11 rescind a sales contract due to the fact that the new motor vehicle was damaged and
12 repaired before completion of the sale.

13 (c) In this section,

14 (1) "cosmetic parts" means parts that are attached by and can be
15 replaced in total through the use of screws, bolts, or other fasteners without the use of
16 welding or thermal cutting and includes windshields, bumpers, hoods, or trim panels;

17 (2) "manufacturer's suggested retail price" means the retail price of the
18 new motor vehicle suggested by the manufacturer and includes the retail delivered
19 price suggested by the manufacturer for each accessory or item of optional equipment
20 physically attached to the new motor vehicle at the time of delivery to the new motor
21 vehicle dealer that is not included within the retail price suggested by the manufacturer
22 for the new motor vehicle.

23 **Sec. 45.25.530. Form of disclosures.** Except as provided by
24 AS 45.25.460(a)(8)(A), if a disclosure is required by this chapter with respect to a
25 motor vehicle advertisement, the disclosure must be made in at least 12 point bold
26 type and in the same font style as the advertisement generally.

27 **Sec. 45.25.590. Definitions.** In AS 45.25.400 - 45.25.590,

28 (1) "advertise," "advertised," "advertising," and "advertisement"
29 include representations, whether made on or off store premises, made to persons in the
30 print media, in the broadcast media, on the computer, in a brochure, in a flyer, by
31 direct mail, by sign, or on a tag;

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

3 (3) "motor vehicle," notwithstanding the definition of "motor vehicle"
4 in AS 45.25.990, means a vehicle, including a trailer, that is required to be registered
5 under AS 28.10, but does not include a motorcycle;

6 (4) "new motor vehicle," notwithstanding the definition of "new motor
7 vehicle" in AS 45.25.990, means a motor vehicle that has not been titled to anyone and
8 still retains the original manufacturer's certificate of origin.

9 **Article 5. Sales and Service Contracts.**

10 **Sec. 45.25.600. Title transfer.** A motor vehicle dealer may not transfer the
11 title for a motor vehicle to a buyer before all of the sale documents, including any
12 finance contract arranged by the seller, are complete and executed in final form by all
13 parties to the sale.

14 **Sec. 45.25.610. Sales contracts.** (a) A motor vehicle sales contract must be
15 in writing, signed by both the seller and buyer, and completed as to all essential
16 provisions before the signing of the contract by the buyer and before delivery of the
17 vehicle to the buyer.

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

21 (c) Notwithstanding the requirements of this section, if a motor vehicle dealer
22 arranges financing for a buyer, the motor vehicle dealer may deliver the motor vehicle
23 to the buyer before 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 sales 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 sales contract, and any and all other conditions of the purchase will be
5 void if any of the terms contained in the separate agreement are changed by either the
6 motor vehicle dealer or the financing institution as a condition of sale or final
7 financing approval.

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

14 (e) In this section, "sales contract" includes an installment sales contract, a
15 short-term sales contract, and a single-payment contract.

16 **Sec. 45.25.620. Service contracts.** (a) A motor vehicle service contract must
17 be in writing and contain all essential provisions regarding the administration of the
18 contract. If a motor vehicle dealer presents a service contract to the customer as an
19 "application" for a contract, it must be clearly and conspicuously marked as an
20 application and must disclose the applicable rules for obtaining a final service
21 contract.

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

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

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

28 (3) describes the relationship between the maker and the seller of the
29 service contract;

30 (4) for a vehicle that is a used vehicle, notifies the buyer that the seller
31 may not disclaim implied warranties if the seller is the maker or obligor of the service

1 contract; and

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

3 (c) A motor vehicle dealer may not disclaim or limit implied warranties for a
4 motor vehicle for which the motor vehicle dealer is a maker of a service contract sold
5 for that motor vehicle. However, a motor vehicle dealer may disclaim or limit implied
6 warranties as otherwise allowed by law, regardless of the make or model of the motor
7 vehicle if the motor vehicle dealer is merely the seller, not the maker, of the service
8 contract and does not otherwise extend any written warranties on the motor vehicle
9 that is purchased.

10 (d) In this section, "maker" means the person that makes, frames, and executes
11 a service contract and assumes any obligation due to the buyer, but does not include a
12 motor vehicle dealer who merely sells the service contract as the agent of a service
13 contract company doing business in this state.

14 **Article 6. General Provisions.**

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

17 **Sec. 45.25.910. Remedial purpose.** The provisions of this chapter are
18 remedial.

19 **Sec. 45.25.990. Definitions.** In this chapter,

20 (1) "dealer" means a new motor vehicle dealer or used motor vehicle
21 dealer;

22 (2) "dealership" means the business entity that is operated by a motor
23 vehicle dealer;

24 (3) "distributor" means a person or entity who sells or distributes new
25 or used motor vehicles to motor vehicle dealers or who maintains or sends distributor
26 representatives within or to this state to sell or distribute new or used motor vehicles to
27 motor vehicle dealers in this state; in this paragraph, "distributor representative"
28 means a representative employed by a distributor branch, distributor, or wholesaler
29 who sells or distributes new or used motor vehicles to franchised motor vehicle dealers
30 in this state;

31 (4) "distributor branch" means a branch office maintained by a

1 distributor or wholesaler who sells or distributes new or used motor vehicles to
2 franchised motor vehicle dealers in this state;

3 (5) "family member" means a spouse, child, stepchild, grandchild,
4 stepgrandchild, parent, stepparent, brother, stepbrother, sister, or stepsister;

5 (6) "franchise" means a written arrangement for a definite or indefinite
6 period in which a manufacturer, distributor, or motor vehicle wholesaler grants to a
7 motor vehicle dealer a license, sales and service agreement, or contract of any kind to
8 use a trade name, service mark, or related characteristic, and in which there is a
9 community of interest in the wholesale or retail marketing of related motor vehicles or
10 services;

11 (7) "franchised" means having a franchise;

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

14 (9) "good faith" means honesty in fact and the observation of
15 reasonable commercial standards of fair dealing in the trade;

16 (10) "lease," except in AS 45.25.150, means a contract by which a
17 person owning a motor vehicle grants to another person the right to possess, use, and
18 enjoy the motor vehicle for a specified period of time in exchange for periodic
19 payment of a stipulated price, and in which the use of the vehicle is granted for a
20 period of 12 or more months;

21 (11) "manufacturer" means a person or the person's subsidiary who
22 manufactures, imports, distributes, or assembles new motor vehicles and includes an
23 administrator, a distributor, a distributor branch, and a factory branch; in this
24 paragraph,

25 (A) "administrator" means a person who administers any part
26 of the warranty coverage for a new or used vehicle or the service contract for a
27 new or used vehicle on behalf of a manufacturer or audits or examines a
28 dealer's performance or administration of a service contract, of a warranty, or
29 of maintenance or repairs performed on covered vehicles in this state;

30 (B) "factory branch" means a branch office maintained by a
31 manufacturer for directing and supervising the representatives of the

1 manufacturer;

2 (12) "manufacturer representative" means any employee or agent of a
3 manufacturer who engages in the business of contacting a manufacturer's respective
4 franchised dealers for the purpose of making or promoting the sale of the
5 manufacturer's vehicles, parts, accessories, or services;

6 (13) "motor vehicle" means a motor vehicle that is required to be
7 registered under AS 28.10, but does not include a motor home, a recreational vehicle,
8 or a motorcycle;

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

13 (A) a receiver, trustee, administrator, executor, guardian, or
14 other person appointed by a court or a person performing duties as a public
15 officer;

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

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

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

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

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

30 (15) "motor vehicle salesperson" means a person who is employed by
31 a motor vehicle dealer as a salesperson or sales representative to solicit, sell, lease, or

1 exchange motor vehicles under the direction of a motor vehicle dealer;

2 (16) "new motor vehicle" means a motor vehicle that has not been
3 previously sold to and registered to a person except a distributor, wholesaler, or motor
4 vehicle dealer for resale;

5 (17) "new motor vehicle dealer" means a motor vehicle dealer for new
6 motor vehicles or for new and used motor vehicles;

7 (18) "sale" means the issuance, transfer, agreement for transfer,
8 exchange, gift, pledge, hypothecation, or mortgage in any form, whether by transfer in
9 trust or otherwise, of a motor vehicle, an interest in a motor vehicle, or a related
10 franchise;

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

14 (20) "terminate" includes nonrenewal or cancellation;

15 (21) "used motor vehicle" means a motor vehicle that has been
16 previously sold to and registered to a person other than a distributor, wholesaler, or
17 motor vehicle dealer;

18 (22) "used motor vehicle dealer" means a motor vehicle dealer for used
19 motor vehicles.

20 * Sec. 10. AS 45.50.471(b)(33) is amended to read:

21 (33) violating AS 08.66 [AS 08.66.010 - 08.66.090] (motor vehicle
22 dealers);

23 * Sec. 11. AS 45.50.471(b) is amended by adding a new paragraph to read:

24 (43) violating AS 45.25.400 - 45.25.590 (motor vehicle dealer
25 practices).

26 * Sec. 12. AS 45.50.572 is amended by adding a new subsection to read:

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

30 * Sec. 13. AS 08.66.015, 08.66.200, 08.66.210, 08.66.220, 08.66.230, 08.66.240,
31 08.66.250, 08.66.260, 08.66.270, 08.66.280, 08.56.290, 08.66.300, 08.66.310, 08.66.320,

1 08.66.330, 08.66.350; and AS 45.50.471(b)(34) are repealed.

2 * Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. Sections 9, 11, and 12 of this Act apply to a franchise, as that term
5 is defined in AS 45.25.990, that is entered into on or after the effective date of this Act.

6 * Sec. 15. This Act takes effect July 1, 2002.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 182
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An act relating to motor vehicles; and providing BRU: Motor Vehicles
for an effective date. Component: _____
 Sponsor: Representative Murkowski
 Requester: H (L&C) Component Number: 2348

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	384.7	384.7	384.7	384.7	384.7	384.7
Travel	25.0	25.0	25.0	25.0	25.0	25.0
Contractual	67.2	63.7	63.7	63.7	63.7	63.7
Supplies	16.5	7.5	7.5	7.5	7.5	7.5
Equipment	62.8	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	556.2	485.9	485.9	485.9	485.9	485.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1005)	326.5	266.5	266.5	266.5	266.5	266.5
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	556.2	485.9	485.9	485.9	485.9	485.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	556.2	485.9	485.9	485.9	485.9	485.9

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	7	7	7	7	7	7
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

In this bill the Department of Administration is tasked with licensing manufacturers, manufacturer's representatives, dealers, and sales persons; investigating and arbitrating disputes between dealers or between dealers and manufacturers; and creating a Dealer Advisory Board. For purposes of this fiscal note these duties will be housed in a single unit that initially will be in Division of Motor Vehicles; however it is recommended that these functions be placed in Division of Occupational Licensing with other professional licensing functions.

For purposes of this fiscal note the following numbers will be used:

- 30 Manufacturers
- 30 Manufacturers' Representatives
- 400 Motor Vehicle Dealers
- 2000 Salesperson (see page 2)

Prepared by: Charles R. Hosack Phone 269-5559
 Division: Motor Vehicles Date/Time 4/10/01
 Approved by: Jim Duncan, Commissioner Date 4/11/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

Fiscal Note HB 182 Continuation

The detail of the costs for the new Dealer Unit is as follows:

<u>ITEM</u>	<u>1ST YEAR</u>	<u>OTHER YEARS</u>
Personnel		
Executive Director (Rng 22)	\$ 77.8	\$ 77.8
Secretary (Rng 10)	\$ 39.5	\$ 39.5
Admin Asst (Rng 12)	\$ 43.6	\$ 43.6
Investigator III (Rng 18)	\$ 62.3	\$ 62.3
Investigator I (Rng 13)	\$ 46.0	\$ 46.0
Hearing Officer (Rng 21)	\$ 76.0	\$ 76.0
Admin Clerk III (Rng 10)	\$ 39.5	\$ 39.5
Total Personnel	\$384.7	\$384.7
Travel	\$ 25.0	\$ 25.0
Contractual		
Postage	\$ 5.0	\$ 5.0
Forms	\$ 2.0	\$ 2.0
Space Lease (1500 sq ft @ \$24/yr)	\$ 36.0	\$ 36.0
Phone & computer charges	\$ 11.2	\$ 7.7
Vehicle Lease	\$ 10.0	\$ 10.0
Photo Licenses (1500 @ \$2 ea)	\$ 3.0	\$ 3.0
Total Contractual	\$ 67.2	\$ 63.7
Commodities	\$ 16.5	\$ 7.5
Equipment	\$ 62.8	\$ 5.0
Total Cost	\$556.2	\$485.9

REVENUE

The revenue will be derived from the licensing fees as follows:

30 Manufacturers @ 1500	\$ 45.0
30 Manufacturers' Representative @ \$50	\$ 1.5
400 Dealers @ \$400	\$160.0
2000 Salespersons @ \$60 (First year only)	\$120.0
Total Revenue (first year)*	\$326.5

* The manufacturers, manufacturers' representative, and dealers license fees are paid annually and will continue each year. After the first year the number of saies persons will decrease to 1000 per year. There may be a spike in the third year as the first renewals come due however salespersons change dealers and employment frequently so it is not likely that many remain with the same dealer for more than three years.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 182
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to motor vehicles, and BRU Civil Division
providing for an effective date." Component Fair Business Practices
 Sponsor Rep. Murkowski
 Requester House Labor and Commerce Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	58.3	58.3	58.3	58.3	58.3	58.3
Travel	0.1	0.1	0.1	0.1	0.1	0.1
Contractual	11.1	11.1	11.1	11.1	11.1	11.1
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.5	6.5	6.5	6.5	6.5	6.5
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	77.0	77.0	77.0	77.0	77.0	77.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	77.0	77.0	77.0	77.0	77.0	77.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	77.0	77.0	77.0	77.0	77.0	77.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 182 provides for regulation of conduct between automobile dealers and manufacturers by the Department of Administration.

The fiscal impact on the Department of Law will arise primarily from participation on the Motor Vehicle Dealers Advisory Board, and assisting the commissioner of the Department of Administration with any actions that result from charges of unfair methods of competition, unfair and deceptive acts or practices, or other violations of the act. In addition, the department will advise the commissioner on any license disputes. We anticipate the services of one-half of a full-time equivalent attorney position will be needed to handle this new workload. The position will be located in the Fair Business Practices section of the Civil Division.

Cost estimates are based on the department's FY 2003 standard attorney schedule, which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Estimates also include an additional \$6,500 for one-time equipment purchases, costs that cannot be included in the rate as overhead.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 3/18/02 1:43 PM
 Approved by: Kathryn Daughettee for Bruce M. Botelho, Attorney General Date 3/18/2002
 Agency: Department of Law

HB

184

TONY KNOWLES
GOVERNOR

HB184

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 2001

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

I am transmitting this bill to implement needed financial service reforms in our insurance code in compliance with the federal Gramm-Leach-Bliley Act (GLBA). These changes will assist the State in maintaining its regulatory authority over the business of insurance in Alaska. The GLBA repealed depression-era restrictions on the insurance, banking, and securities industries and, more notably, removed some of the barriers that limited banks from engaging in the business of insurance.

Under the GLBA, specific standards are established with respect to consumer privacy, consumer protection, insurance producer licensing, and insurance sales. It requires states to streamline and coordinate their regulatory systems to make them faster, less burdensome, and more effective. This bill reforms our laws to conform to the GLBA and to continue the process of streamlining and coordinating insurance regulation.

Under the bill, the GLBA reforms would focus on three key areas:

- Establishing reciprocity for licensing nonresident insurance producers;
- Implementing the GLBA consumer privacy standards regarding sharing of personal information with affiliates and nonaffiliates; and
- Implementing GLBA consumer protection measures related to the sale of insurance by financial institutions.

These reforms are based on models adopted by the National Association of Insurance Commissioners (NAIC).

A significant portion of the bill would amend AS 21.27, the licensing chapter of the insurance code, to provide for reciprocity in the licensing of nonresident producers. In this context, reciprocity means that a nonresident producer would receive a license to transact insurance in this state to the same extent that the producer is licensed in the producer's home state, without

The Honorable Brian Porter
March 9, 2001
Page 2

having to satisfy any additional requirements. Licensing in this state would be accomplished by submitting an application, providing proof of licensing and good standing from the home state, and paying the license fees. Reciprocity also would allow resident producers to obtain licensing in other states without meeting state-specific requirements. All insurance producers, however, would still be subject to state-specific requirements related to unfair trade practices or consumer protection. The bill requires use of uniform applications in an electronic format to speed up insurance licensing.

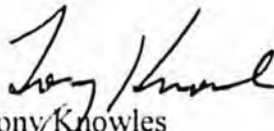
The GLBA requires that at least 29 states adopt either reciprocity or uniformity in insurance producer licensing by November 2002, in order to maintain the authority to license nonresident insurance producers. Otherwise, a national organization authorized under the GLBA would assume that role. Enacting this bill into law in Alaska would achieve reciprocity and thereby help ensure the state retains the authority to license nonresident producers.

Another time-sensitive issue under the GLBA relates to consumer privacy. The federal law sets a minimum privacy standard that states must adopt and enforce by July 1, 2001, or risk losing the authority to enforce state consumer protection standards with respect to financial institution insurance sales. This bill expressly requires those regulated under our insurance statutes to comply with the GLBA privacy standards and authorizes the state director of insurance to adopt corresponding regulations on consumer privacy.

In addition to the GLBA-related reforms, the bill addresses other important issues to facilitate state insurance regulation and to conform to federal law. This includes the ability to obtain national criminal history record checks for persons who want to engage in the business of insurance. It also requires a person with a felony conviction involving dishonesty or breach of trust to obtain the express written consent of the director of insurance before engaging in the business of insurance. Without this consent, federal law prohibits such persons from working in the business of insurance. The amendment under this bill would assist the director of insurance in ensuring that prohibited persons comply with the law.

I urge your prompt and favorable action on this measure.

Sincerely,


Tony Knowles
Governor

**Sectional Analysis
HB 184**

SB 138 addresses three major sections of GLBA relating to insurance; producer licensing, consumer privacy and consumer protections in bank sales of insurance.

1. Sections 2-43 contain the needed amendments to AS 21.27 in order to achieve reciprocity in producer licensing. Title III, Subsection 321 of GLBA provides for multi-state licensing reform and directs a majority of states (a minimum of 29 jurisdictions) to achieve either uniformity or reciprocity within three years from the date of enactment of GLBA. In October 2000, the National Association of Insurance Commissioners (NAIC) adopted the Producer License Model Act (PLMA) for states to use as a guideline for developing legislation to meet the required elements of GLBA in order to achieve reciprocity.
2. Section 44 contains the provision addressing consumer privacy. Title V of GLBA establishes minimum privacy protections for consumer personal information. In September 2000, the NAIC adopted the Privacy of Consumer Financial and Health Information Regulation for states to use as a guideline in establishing privacy protections for insurance consumers.
3. Sections 44-47 and 49-50 contain the provisions addressing consumer protections in bank sales of insurance. Two sections in GLBA address consumer protections in sales of insurance by banks. Section 104 contains 13 safe harbor provisions for regulating bank sales of insurance that a state may not go beyond without risking federal preemption. However, Section 305 establishes additional consumer protections that dovetail with the 13 safe harbor provisions.

Sec. 2.

AS 21.27.010(e). License required

Narrows the license exemption for company employees who respond to requests from existing policyholders on existing policies provided the person does not sell, solicit, or negotiate insurance and their compensation is not directly related to the volume of premiums that may result from those services.

Sec. 3.

AS 21.27.010(j). License required

Expands the functions and duties a person may perform without holding an insurance license consistent with NAIC Model Law. Inserted those provisions in Section 4 of PLMA to achieve GLBA reciprocity requirements and for consistency with other states.

Sec. 4.

Sec. 21.27.020(b). Qualifications for license

Changes the minimum age and education requirements consistent with nonresident requirements that prohibit a state from requiring any additional requirements that are not required in home state to achieve GLBA reciprocity. The minimum age would be 18 and no High School or GED Diploma Equivalency would be required.

Sec. 5.

Sec. 21.27.020(c). Qualifications for license

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA and removes the separate subsection (2) applicable only to firms that are corporations or partnerships, thereby making some requirements applicable to all firms.

Sec. 6.

Sec. 21.27.020(f). Qualifications for license

Removes the requirement for a nonresident to meet Alaska's continuing education requirement consistent with Section 321 (c)(2) of GLBA that prohibits a state from requiring any additional requirements that are not required in home state.

Sec. 7.

Sec. 21.27.025(a) Required notice by licensee

Clarifies what actions must be reported as well as information that must be filed within an established time period for reciprocity requirements. Inserted language from Section 17 of the PLMA.

Sec. 8.

Sec. 21.27.025(b) Required notice by licensee

Replaces principal or manager with compliance officer consistent with the information required on the NAIC's Uniform Business entity application and Section 6 (B)(2) in the PLMA for reciprocity requirements.

Sec. 9.

Sec. 21.21.27.040(a). Application for license

Removes the notary requirement for consistency with the NAIC Uniform Application that does not require a notarized signature consistent with Section 321 (c)(1) of GLBA that prohibits a state from requiring any additional requirements that are not required in home state. Retains the authority to suspend or revoke a license for misrepresentation in an application.

Sec. 10.

Sec. 21.21.27.040(e). Application for license

Added to require any applicant for licensure to submit a fingerprint card for a national criminal background history check.

Sec. 11.

Sec. 21.27.060(a). Examination of Applicants; exceptions

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA for reciprocity requirements.

Sec. 12.

Sec. 21.27.060(c). Examination of Applicants and licensees

Removes the pre-licensing and examination requirements to be consistent with Section 321, (c)(1) of GLBA. Also allows for automated confirmation of a nonresident's license status seeking licensure in this state.

Sec. 13.

Sec. 21.27.060(d). Examination of Applicants and licensees

Changes the examination exceptions in order to be consistent with AS 21.27.150 and changes the requirement to submit passing test results for an inactive license from two years to one, consistent with Section 7(C) of PLMA.

Sec. 14.

Sec. 21.27.100. Appointment of agents of general agents

Added to allow multiple insurers within the insurer's holding company system or group to file a single appointment request to reduce paper filings, consistent with Section 14 (B) of PLMA. Also clarifies that acts of the appointed agent are acts on behalf of the appointing insurer.

Sec. 15.

Sec. 21.27.110. Term of appointment

Changes the time period from 10 to 30 days for an insurer to notify the director of termination without cause of a company appointment and from 10 to 15 days if the termination is for cause. Retains the immunity and confidentiality provisions for information received for terminations for cause. Allows the terminated person to submit written comments about the termination that will become a part of the director's file. These changes are consistent with Section 15 in PLMA and essential for uniformity.

Sec. 16.

Sec. 21.27.115. Lines of Authority

Added the definitions for major lines of authority to achieve GLBA reciprocity. Incorporated Section 7 of PLMA.

Sec. 17.

Sec. 21.27.130. Form and content of licenses

Removes listing the name of the principal or compliance officer on the license, allowing for movement into an electronic environment and giving the licensee or a third party the ability to print a license. This change is consistent with the concept of Sections 6 (B)(2) and 7 (G) in PLMA.

Sec. 18.

Sec. 21.27.130. Form and content of licenses

Added to identify the license authority issued by the director, consistent with the definition of license in Section 2 (F) in PLMA

Sec. 19.

Sec. 21.27.140(b). License to firms and corporations

Replaces principal or manager with compliance officer for reciprocity and consistency with Section 6 (B)(2) in the PLMA.

Sec. 20.

Sec. 21.27.140(c). License to firms and corporations

Replaces principal or manager with compliance officer for reciprocity and consistency with Section 6 (B)(2) in the PLMA.

Sec. 21.

Sec. 21.27.150(a). Limited licenses

Removes the residency requirements that are inconsistent with GLBA, eliminates the limited lines retired and health licenses as well as the provision that permits the director to waive the bond requirement (since AS 21.27.530(5) is repealed). Added new limited license categories that allows the director to issue a limited lines producer license to a nonresident for the same authority issued in the home state. Added credit insurance and a miscellaneous licenses that restrict authority to less than the total authority for a defined line of authority. These changes are consistent with Section 321(c) of GLBA.

Sec. 22.

Sec. 21.27.270. Licensing of nonresidents

Incorporates the principal GLBA reciprocity requirements to allow for issuance of nonresident licenses as required under Section 321(c) in GLBA. Ongoing statutory requirements, such as fiduciary account requirements for nonresidents are retained.

Additionally, the retaliatory provisions are removed in order prohibit a state from requiring a nonresident to comply with additional requirements that are not required in home state in compliance with Section 321(c) of GLBA.

Sec. 23.

Sec. 21.27.275. Alien licenses

Added to allow Canadians and other foreign residents to obtain licensure in this state.

Sec. 24.

Sec. 21.27.330. Place of business

Removes the requirements for each branch location transacting business in this state to obtain separate licenses. Separate fees for each location of the same firm will still be required. These changes comply with Section 321(c) of GLBA that prohibits a state from requiring any additional requirements that are not required in home state.

Sec. 25.

Sec. 21.27.350(c). Maintenance of records; form and content

Replaces principal or manager with compliance officer to meet reciprocity and make consistent with Section 6 (B)(2) in the PLMA.

Sec. 26.

Sec. 21.27.370. Sharing Compensation

Allows an unlicensed person to receive renewal or deferred commissions if at the time of sale, solicitation or negotiation, the person was appropriately licensed. Changes made are consistent with consumer protection (13 safe harbor) requirements and consistent with Sections 13(C) and (D) of PLMA.

Sec. 27.

Sec. 21.27.390(a). Temporary license

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 28.

Sec. 21.27.410(b). Disqualifications for license

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 29.

Sec. 21.27.460(c). Surrender of license

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 30.

Sec. 21.27.540(g). Trainee Producers

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 31.

Sec. 21.27.560(a). Appointment of Brokers

Clarifies that the fee compensation a broker receives is from the client.

Sec. 32.

Sec. 21.27.600(g). Trainee managing general agents

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 33.

Sec. 21.27.620(l). Agency contracts

Added to clarify that the definition in 21.90.900 is applicable to insurers transacting business with a managing general agent in this state.

Sec. 34.

Sec. 21.27.640(b). Qualifications

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA and removes the separate subsection (4) applicable only to firms that are corporations or partnerships, making some requirements applicable to all firms.

Sec. 35.

Sec. 21.27.650(p). Requirements to transact business

Added to clarify that the definition in 21.90.900 is applicable to insurers transacting business with a third party administrator in this state.

Sec. 36.

Sec. 21.27.680(g). Trainee reinsurance brokers

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 37.

Sec. 21.27.690(g). Requirements to transact business

Added to clarify that the definition in 21.90.900 is applicable to insurers transacting business with a reinsurance intermediary broker in this state.

Sec. 38.

Sec. 21.27.760(l). Contracts with reinsurance managers

Added to clarify that the definition in 21.90.900 is applicable to insurers transacting business with a reinsurance intermediary manager in this state.

Sec. 39.

Sec. 21.27.800(g). Trainee surplus lines brokers

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 40.

Sec. 21.27.840(f). Trainee independent adjusters

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 41.

Sec. 21.27.840(i). Trainee independent adjusters

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 42.

Sec. 21.27.900. Definitions

Removes the requirement that an individual may not represent a firm or work in association with another licensee without having to obtain a firm license or individual working in a firm license. This is necessary to meet the reciprocity requirements in Section 321 (c) of GLBA.

Sec. 43.

Sec. 21.27.900. Definitions

Adds new definitions for compliance officer, home state, license, limited lines credit insurance, limited lines insurance, negotiate, sells, solicit, transact, Uniform application and Uniform Business Entity Application for GLBA reciprocity requirements under Section 321 of GLBA and consistent with Section 2 of PLMA.

Sec. 44.

Sec. 21.36.162. Nondisclosure of personal information

Adds new provisions to AS 21.36 to give the director authority to adopt regulations in Alaska consistent with but no less restrictive than the NAIC "Privacy of Consumer Financial and Health Insurance Regulation" which was adopted by the NAIC on September 26, 2000. This NAIC model establishes separate standards for financial information and health information as follows:

Financial information

Insurers and licensees are required to provide notices to consumers describing their financial information privacy policies and to provide consumers with an opportunity to prohibit the sharing of their personal financial information, which means that if a consumer does not affirmatively say they do not want the information disclosed, insurers and licensees may disclose the information (called an opt-out requirement). Information sharing among affiliates is not restricted.

Health information

Protected health information can not be disclosed without the prior consent of the consumer, which means an insurer or licensee must get explicit permission from the consumer before they can disclose the protected health information (called an opt-in requirement). However, several specific exceptions to this requirement are allowed in order for insurers to be able to perform their day to day operations. Unlike the financial information privacy requirements, insurers are not required to provide notices to consumers describing their health information privacy policies and the model provisions do not apply to insurers who are in compliance with the DHHS privacy regulations under HIPAA, which will become effective in late 2002. Sharing of health information among both affiliates and non-affiliates is restricted. Unlike for financial information, sharing among affiliates is restricted because of the expected sharing of information among banks, securities firms and insurers that are now allowed to affiliate with each other.

Enhanced protection of health information is essential due to the greater sensitivity of health information and the much larger volume of health information compared with financial information collected by insurers and licensees.

Sec. 21.36.164. Licensing of persons in a financial institution

Implements GLBA Section 305, Sec 47 (d)(2)(C), which prohibits a financial institution from allowing a person to sell or offer an insurance product in the office of the institution if the person is not properly licensed.

Sec. 45.

Sec. 21.36.165. Anticoercion and antitying.

Amended to be consistent with and incorporate additional provisions relating to GLBA Section 104 safe harbor provisions 1-2, 6-8, 11-13 as well as GLBA Section 305, Sec 47 (b) antitying and anticoercion provisions.

Modifies existing statutory provision regarding confidentiality of information to allow sharing of consumer information with an unaffiliated party only with consent of consumer and establishes certain specified exceptions to this rule.

Sec. 46.

Adds provisions to AS 21.36.165 to require that a person use separate documents for transacting insurance, to prohibit a person from including insurance premiums in the credit transaction without consent, and to require that separate records relating to insurance be maintained.

Sec. 47.

Sec. 21.36.167. Misrepresentation in financial institution sales

21.36.167(1), (3), (4) implement 14.30(b)(1)-(3) of the federal regulations implementing Section 305, Sec 47(a). These provisions prohibit a person from using an advertisement or engaging in any practice that would lead a customer to believe that

- (1) the insurance is backed by, or a return on the insurance is guaranteed by, the person responsible for the advertisement or practice, state or federal government, or the FDIC
 - (2) the insurance does not contain investment risk, that principal may not be lost, or value may not decline, if in fact the insurance does contain investment risk
 - (3) lending of money, extending credit or renewing a loan is conditioned on the customer purchasing insurance from the person or that insurance may not be purchased elsewhere
- 21.36.167(2) implements Section 104, safe harbor 3, which prohibits a person from using an advertisement or engaging in any practice that would lead a customer to believe that state or federal government will pay a claim under the insurance contract, is responsible for insurance sales activity of the person, or guarantees the credit of the person.

Sec. 21.36.168. Disclosures required in financial institution sales

Implements GLBA Section 305, Sec 47 (c) and Section 104 safe harbors 9 and 10, which require certain disclosures be provided in a meaningful form to consumers at or before the initial purchase of an insurance product. The disclosures must be provided both orally and in writing and may be provided electronically. A person transacting insurance must disclose to the consumer that:

- (1) the insurance is not a deposit or other obligation of the person
- (2) the insurance is not guaranteed by the person or the person soliciting the insurance
- (3) the insurance is not insured by the FDIC, another government agency, the financial institution or the person
- (4) the insurance contains investment risk and may lose value, if the insurance does contain investment risk
- (5) the consumer is not required to purchase insurance through a particular insurer as a condition to the extension of credit

Sec. 21.36.169. Definitions

"Consumer" is defined in the federal regulations 14.20(c)

"Financial institution" is defined to be consistent with the definition in IIAA model, which expands applicability of the consumer protections beyond depository institutions.

Sec. 48.

Sec. 21.36.355. Felony convictions involving dishonesty or breach of trust.

Adds a provision that a person with a felony conviction involving dishonesty or breach of trust may not transact insurance without receiving prior written consent by the director as is currently required under federal law.

Sec. 49. and 50.

Sec. 21.36.430. Insurance for domestic violence victims; records

Expands existing provision to be consistent with GLBA Section 305(e) including a definition of domestic violence.

Sec. 51.

Sec. 21.89.080. Electronic submissions.

Adds a provision to remove barriers to electronic submissions of information and electronic confirmation of submissions.

22-GH1025\F
Ford
4/19/01

CS FOR HOUSE BILL NO. 184(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to insurance; amending Rule 402, Alaska Rules of Evidence; and
2 providing for an effective date."

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

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

6 **PURPOSE.** The primary purpose of this Act is to implement insurance reforms in
7 AS 21 as required by P.L. 106-102 (Gramm-Leach-Bliley Act) to modernize financial
8 services related to the business of insurance and to further this state as an attractive place for
9 investment and other commerce involving the insurance industry.

10 * **Sec. 2.** AS 21.27.010(e) is repealed and reenacted to read:

11 (e) An employee of an insurer who responds to requests from existing
12 policyholders on existing policies is not required to be licensed under this section if
13 the employee

14 (1) is not directly compensated based on volume of premiums that may

1 result from those services; and

2 (2) does not transact insurance.

3 * Sec. 3. AS 21.27.010(j) is amended to read

4 (j) This section does not apply to a person who

5 (1) is employed on salary or hourly wage by a person licensed under
6 this section solely for the performance of accounting, clerical, stenographic, and
7 similar office duties;

8 (2) only secures and forwards information required for the purposes of,
9 and does not receive a commission for, any of the following services:

10 (A) performing administrative services related to

11 (i) group life insurance;

12 (ii) group property and casualty insurance;

13 (iii) group annuities;

14 (iv) group or blanket accident and health insurance;

15 (B) enrolling individuals under plans for the types of
16 insurance or annuities specified in (A) of this paragraph;

17 (C) issuing certificates under plans for the types of
18 insurance or annuities specified in (A) of this paragraph, or otherwise
19 assisting in administering those plans;

20 (D) performing administrative services related to mass-
21 marketed property and casualty insurance [COVERING THE UNPAID
22 BALANCE, OR REMAINING PAYMENTS PROPOSED TO BE MADE, IN
23 CONNECTION WITH THE PURCHASE OF MERCHANDISE OR
24 SERVICES, IF THE PERSON RECEIVES NO COMPENSATION,
25 DIRECTLY OR INDIRECTLY, ARISING OUT OF OR IN ANY WAY
26 RELATING TO THE INSURANCE TRANSACTIONS]; [OR]

27 (3) is employed on salary by a licensee at the licensee's place of
28 business, is supervised by and reports directly to a licensee in the firm, and who, after
29 explaining that the matter must be reviewed by a licensee, may

30 (A) furnish premium estimates from published or printed lists
31 of standard rates if the person does not advise, counsel, or suggest what

1 coverage may be needed, or otherwise solicit insurance coverage;

2 (B) arrange appointments for a licensee if the person does not
3 solicit insurance coverage;

4 (C) record information from an applicant or policyholder and
5 complete for the licensee's personal review and signature, a certificate of
6 insurance that is not a contract of insurance; the licensee's signature may be by
7 facsimile;

8 (D) inform a policyholder of the type of coverage shown in the
9 licensee's policy record if the person does not advise that an event or
10 hypothetical event is or is not covered; or

11 (E) in the physical presence of the licensee, record information
12 from an applicant or policyholder and complete for a licensee's personal
13 review and personal signature, applications, binders, endorsements, or
14 identification cards if the person discloses to the applicant or policyholder that
15 the applicant or policyholder may review the matter with a licensee;

16 (4) is an employee of an insurer or an organization employed by an
17 insurer and is engaged in the inspection, rating, or classification of risks, or in the
18 supervision of the training of insurance producers and is not individually
19 engaged in the sale, solicitation, or negotiation of insurance;

20 (5) advertises in this state through printed publications or
21 electronic mass media, the distribution of which is not limited to residents of this
22 state, if the person

23 (A) performs no other insurance-related activities in this
24 state;

25 (B) does not intend to solicit in this state; and

26 (C) does not sell, solicit, or negotiate insurance of risks
27 resident, located, or to be performed in this state;

28 (6) is not a resident of this state, but sells, solicits, or negotiates
29 commercial property and casualty insurance for an insured with risks located in
30 more than one state if the person is licensed as an insurance producer in the state
31 where the insured maintains its principal place of business and the contract of

1 insurance covers risks located in that state;

2 (7) is a salaried full-time employee who counsels or advises the
3 person's employer regarding the insurance interests of the employer or of the
4 subsidiaries or business affiliates of the employer, if the employee does not sell or
5 solicit insurance or receive a commission from the sale or solicitation of
6 insurance;

7 (8) is an employer or association or the employer's or association's
8 officer, director, employee, or the trustee of an employee trust plan, if the person
9 is not compensated, directly or indirectly, for transacting insurance and is
10 engaged in the administration or operation of a plan offering employee benefits
11 for the employer's or association's own employees, or the employees of its
12 subsidiaries or affiliates; to qualify under this paragraph, the plan must include
13 insurance for employees; or

14 (9) is an officer, director, or employee of an admitted insurer who
15 does not receive a commission on policies written or sold to risks resident,
16 located, or to be performed in this state if the officer's, director's, or employee's
17 functions are executive, administrative, managerial, clerical, or a combination of
18 these and are only indirectly related to the transaction of insurance; relates to
19 underwriting or loss control; or are in the capacity of an agency supervisor
20 where the activities are limited to providing technical assistance to insurance
21 producers and whose activities do not include transacting insurance.

22 * Sec. 4. AS 21.27.020(b) is amended to read:

23 (b) To qualify for issuance or renewal of an individual or individual in the
24 firm license, an applicant or licensee shall comply with this title and [,] regulations
25 adopted under AS 21.06.090 [,] and

26 (1) shall be 18 [19] years of age or older [WITH A HIGH SCHOOL
27 OR GENERAL EDUCATION DEVELOPMENT DIPLOMA OR EQUIVALENT];

28 (2) if for a resident license, shall be a bona fide resident before
29 issuance of the license and actually reside in the state;

30 (3) shall successfully pass an examination required under
31 AS 21.27.060;

- 1 (4) shall be a trustworthy person;
- 2 (5) may not use or intend to use the license for the purpose principally
- 3 of writing controlled business, as defined in AS 21.27.030;
- 4 (6) may not have committed an act that is a cause for denial,
- 5 nonrenewal, suspension, or revocation of a license in this state or another jurisdiction.

6 * Sec. 5. AS 21.27.020(c) is repealed and reenacted to read:

7 (c) To qualify for issuance or renewal of a license as a firm insurance

8 producer, a firm managing general agent, a firm reinsurance intermediary broker, a

9 firm reinsurance intermediary manager, a firm surplus lines broker, or a firm

10 independent adjuster, an applicant or licensee shall

- 11 (1) comply with (b)(4) and (5) of this section;
- 12 (2) maintain a lawfully established place of business in this state,
- 13 except when licensed as a nonresident under AS 21.27.270;
- 14 (3) disclose to the director all owners, officers, directors, or partners of
- 15 the firm;
- 16 (4) designate a compliance officer for the firm;
- 17 (5) provide to the director documents necessary to verify the
- 18 information contained in or made in connection with the application; and
- 19 (6) notify the director, in writing, within 30 days of a change in the
- 20 firm's compliance officer or of the termination of employment of an individual in the
- 21 firm licensee.

22 * Sec. 6. AS 21.27.020(f) is amended to read:

23 (f) The director may adopt regulations establishing additional education or

24 experience requirements for applicants or licensees under this chapter upon due

25 consideration of the availability and accessibility of education and training

26 opportunities in rural areas of the state. Regulations adopted under this subsection are

27 subject to the following provisions:

- 28 (1) additional educational or experience requirements may not apply to
- 29 a licensee who has been licensed by the division of insurance before January 1, 1980;
- 30 (2) a licensee shall complete at least 24 credit hours of approved
- 31 continuing education courses during each two-year license period;