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**B U S I N E S S   A D V I S O R Y**

TO: Alaska Used Car Dealers

FROM: Fair Business Practices Section  
Alaska Attorney General's Office  
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An Anchorage Judge recently clarified several important rules that apply when an Alaska car dealer sells a used car to a retail customer. The Attorney General's Office wishes to work with the used car industry to maintain a good level of cooperation and understanding about the law that applies to used car sales. Our goal is to assist the industry and its customers by making sure the law is clearly stated; easily understood; and predictably enforced. This Business Advisory is issued in order make Alaska used car dealers aware of the rulings of the Superior Court Judge.

We have observed that there has been a substantial amount of misunderstanding with regard to the used car dealer's duty to inspect used vehicles before they are resold; the duty to disclose defects in used vehicles at the time of sale; and the duty to honor the customer's implied warranty rights, especially where the customer purchases a service contract at the time of sale.

The Rulings can be summarized as follows:

1. A used car dealer must make a reasonable inspection of each used car taken into inventory for purpose of resale to the public. If the initial inspection reveals that the car may have a defective or dangerous condition, or if the dealer has any other knowledge of the potential for a defective or dangerous condition, the dealer must conduct an in depth inspection of the car. This means that if the dealer has any information that the car was involved in a wreck (from any source), the dealer must investigate whether the damage was properly repaired, and whether there is residual damage to the car, including frame and suspension damage. If the initial inspection discloses evidence that the frame or suspension was affected by the previous wreck, the dealer must carefully inspect the frame, steering and suspension components. A four wheel alignment check should be made to rule out conditions that make the car handle improperly.
2. A used car dealer is required to give honest answers to a customer's questions about the used car's condition. In addition, a used car dealer is required to tell the customer about anything that makes the car dangerous, even if the customer does not ask. If the car has previously repaired frame damage, the dealer must tell the customer about it, because it is a material fact. Finally, if a dealer provides some information

about a car, the dealer is required to tell "the rest of the story" about any defects in the car if the information provided by the dealer would be misleading unless the defect were also disclosed.

3. Every used car sale by an Alaskan dealer is covered by the Uniform Commercial Code (UCC). The UCC provides that there is an implied warranty, by the dealer, that the car is free of serious defects at the time of sale. It is against the law for a dealer to sell the car "as is" if the customer purchases a service contract for the car. By selling a service contract, the dealer is providing the customer with the dealer's guarantee that the car is free serious defects or dangerous conditions at the time of sale, this warranty obligation runs for a period of 4 years from the date of sale.
4. A dealer breaks the law by asking the customer to sign an "as is" statement where the dealer sells the customer a service contract for the car. A dealer who sells a service contract should explain to the customer that the service contract means the dealer is guaranteeing that the car is free of serious defects at the time of sale. It is legal, however, for the dealer to sell the car "as is" if the customer does not buy a service contract.
5. A dealer must not disclaim or misrepresent the terms or conditions of a manufacturers warranty; an implied warranty; or a service contract. This means, for example, that a dealer must not tell a customer who purchased a service contract that the sale was "as is" if the customer comes back, after the sale, complaining that the car was defective at the time of sale.
6. Any representation in the "buyer's guide" (the window sticker required by the FTC) overrides any contrary provision in the contract documents. (Except that an "as is" statement in the window sticker does not apply if the customer buys a service contract.)
7. A used car dealer may not knowingly conceal, suppress or omit any material fact from a customer in connection with the sale of an automobile or services provided in connection with an automobile.
8. A dealer may not misrepresent the characteristics or condition of an automobile; and the dealer must not engage in any conduct that creates a likelihood of confusion or misunderstanding about either the condition of a vehicle or the terms of a sale of a vehicle.

The items in the paragraphs below are not directly from the judge's rulings. They are also provisions of Alaska's Consumer Protection law that have been in effect for many years, however, and should be remembered in any used car sale:

We do not believe that a dealer can effectively disclose defects in a car merely by saying that the car is "reconditioned"; "reconstructed"; or "salvage". The actual extent of any serious defect or dangerous condition must be specifically described to comply with the law.

Violation of the law by a dealer at the time of sale may give the customer the right to rescind the purchase of a vehicle and obtain reimbursement of the purchase price. In many circumstances, the dealer will be entitled to some offset in the refund for the customer's use of the vehicle, but only as much as the use of the vehicle was actually worth. For example, if the vehicle is unreliable and is frequently in the shop, the amount of money that could be offset for the customer's use of the vehicle would not be very much.

A dealer may offer to trade the defective car for another, but the customer is not required to accept the offer. The customer may have several different remedies available where a dealer sells the customer a defective car. We always encourage the dealer and the customer to work out a settlement between themselves. This saves everyone time and money.

Used car dealers should be aware that where they violate the law, the customer can sue under the Consumer Protection Act and obtain up to 3 times the amount their actual damages from the dealer as well as their attorney's fees. In appropriate cases, the State of Alaska may bring a consumer protection case to obtain compliance with the law.

The Attorney General's office is providing this information to used car dealers in an effort to avoid confusion as to what the law in Alaska requires in used car transactions. We have previously issued a Business Advisory regarding a used car seller's obligation in connection with emissions requirements, and that advisory remains in effect.

Representatives from the Attorney General's office remain available to meet with groups of used car industry representatives to discuss these matters. We hope that you find this business advisory helpful. Our objective is to promote a healthy used car industry in Alaska which gives the customer a fair deal, and which gives the used car dealer a successful business operation.