

ALASKA STATE HOUSE OF REPRESENTATIVES

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Session

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Room 204

REPRESENTATIVE JOHN COGHILL

Marine Products and Motorized Recreational Products Act

HB 177 Sponsor Statement

House Bill 177 implements consumer protection for ATV's, snowmobiles, boat motors, and other recreational vehicles vital for transportation and economics in Alaska.

House Bill 177 requires a manufacturer to replace a defective product or refund the price of the product if it is out of service for a 30-day time period in the first year of the purchase because of a defect in the product or if the defect has been unsuccessfully repaired three times.

The bill has eliminated provisions that are contractual issues and has implemented statutes to deal with cancellation, nonrenewal, and transfer of dealership agreements and the repurchase of products should the manufacturer cancel or choose not to renew a dealership contract. It also provides that authorized dealers with factory-trained technicians will be paid for warranty work by the manufacturer at a reasonable rate.

House Bill 177 also requires posting of warranty policies, mechanics paid on commission, and any indirect repair charges such as diagnostics and storage for consumers.

Alaska has extensive statutory requirements for motor vehicle transactions but no protection for consumers purchasing defective snowmobiles, four-wheelers, and boat motors that are just as essential in Alaska as motor vehicles.

26-LS0477\W
Bannister
4/14/09

SENATE CS FOR CS FOR HOUSE BILL NO. 177()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Herron, Neuman, Austerman, Muñoz, Harris, Thomas, Buch, Tuck, Millett, Kelly, Ramras

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to marine products and motorized recreational products; amending
2 Rule 3, Alaska Rules of Civil Procedure; and providing for an effective date."

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

4 * **Section 1.** AS 45.25.990(12) is amended to read:

5 (12) "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; in this paragraph,

8 (A) "all-terrain vehicle" has the meaning given in
9 AS 45.27.390;

10 (B) "recreational vehicle" includes an all-terrain vehicle
11 and a snow machine;

12 (C) "snow machine" has the meaning given in
13 AS 45.27.390;

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

Chapter 27. Marine Products and Motorized Recreational Products

Article 1. Agreement Practices of Product Manufacturers.

Sec. 45.27.010. Consent to transfer of agreement. A manufacturer may not unreasonably withhold consent to the sale or other transfer of a dealership agreement by an authorized dealer to a transferee if the transferee

(1) meets the criteria generally applied by the manufacturer when approving new authorized dealers; and

(2) agrees to be bound by all the terms and conditions of the standard form of the dealership agreement.

Sec. 45.27.020. Cancellation or nonrenewal of agreement. (a) A manufacturer may not cancel or decline to renew a dealership agreement with an authorized dealer unless

(1) the manufacturer has

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

(B) shown that there is good cause for the cancellation or nonrenewal of the dealership agreement, and, if the reasons underlying the good cause can be corrected by the authorized dealer, the authorized dealer has failed for 60 days after delivery of the notice required by AS 45.27.030 to make the corrections; the circumstances identified under AS 45.27.030(a)(2), for which a 15-day notice of cancellation or nonrenewal is required, do not qualify as reasons for which correction is allowed under this paragraph; or

(2) the authorized dealer has engaged in fraud

(A) against consumers or the manufacturer; or

(B) in the operation of the authorized dealer's dealership

(b) Under (a)(1)(B) of this section, an authorized dealer may not prevent a cancellation or nonrenewal of a dealership agreement more than two times by making corrections.

(c) Notwithstanding (a)(1) of this section, a manufacturer may not cancel or decline to renew a dealership agreement with an authorized dealer because of the death or incapacity of an owner if the owner is not listed in the agreement as one on whose expertise and abilities the manufacturer relied in the granting of the agreement.

(d) In this section, "good cause" includes circumstances in which the authorized dealer fails to comply with or observe a material provision of the dealership agreement with the authorized dealer. For the purpose 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 authorized dealer within a reasonable period of not less than six months before the effective date of the cancellation or nonrenewal, to afford the authorized dealer a reasonable opportunity to comply with the criteria or requirements.

Sec. 45.27.030. Notice of cancellation or nonrenewal. (a) A manufacturer shall furnish a notice of cancellation or nonrenewal of a dealership agreement with an authorized dealer to an authorized dealer at least

(1) 90 days before the effective date of a cancellation or nonrenewal, except as provided under (2) of this subsection:

(2) 15 days before the effective date of a cancellation or nonrenewal when the authorized dealer

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

(B) 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:

(C) has violated a term of the dealership agreement with the manufacturer, the violation of which the manufacturer and the authorized dealer have agreed in the dealership agreement constitutes a basis for cancellation or nonrenewal

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

(1) a statement of intention to cancel or not renew the dealership agreement;

- (2) a statement of the reasons for the cancellation or nonrenewal; and
- (3) the date on which the cancellation or nonrenewal takes effect.

(c) In this section, "mail" means registered or certified mail, return receipt requested.

Sec. 45.27.040. Threat of cancellation or nonrenewal. (a) A manufacturer or manufacturer's representative may not coerce or attempt to coerce an authorized dealer to enter into a dealership agreement with the manufacturer or a subsidiary of the manufacturer, or to perform any other act unfair to the authorized dealer, by threatening to terminate a dealership agreement between the manufacturer or subsidiary of the manufacturer and the authorized dealer.

(b) This section does not prohibit a voluntary agreement between a manufacturer and an authorized dealer to settle legitimate disputes.

(c) In this section, "manufacturer's representative" means an employee or agent of a manufacturer who engages in the business of contacting a manufacturer's authorized dealer for the purpose of making or promoting the sale of the manufacturer's products or product parts.

Sec. 45.27.050. Repurchase obligations on cancellation or nonrenewal. (a) On the cancellation or nonrenewal of a dealership agreement by a manufacturer without satisfying the requirements under AS 45.27.020, the manufacturer shall repurchase from the authorized dealer's inventory

(1) each new and unused product of the manufacturer that is a current product model, or the product model from the previous year; and

(2) each product part that

(A) was purchased from the manufacturer by the authorized dealer;

(B) is listed in the manufacturer's parts price books in the previous two years; and

(C) has not been damaged or substantially altered to the prejudice of the manufacturer while in the possession of the authorized dealer.

(b) Within 90 days after the effective date of the cancellation or nonrenewal, the authorized dealer shall return the property required by (a) of this section to be repurchased to the manufacturer at the manufacturer's expense. The manufacturer shall pay the compensation for the property within 60 days after the tender of inventory and

1 other items if the authorized dealer has clear title to the property and is in a position to
2 convey that title to the manufacturer. If the property is subject to a security interest,
3 the manufacturer may make the payments jointly to the authorized dealer and the
4 holder of the security interest, and the manufacturer may offset the payment.

5 (c) The amount of a repurchase required by (a) of this section must be based
6 on the authorized dealer's landed cost, subject to adjustments to landed costs for
7 quarterly or annual purchase rebates and credits given to the authorized dealer on the
8 products or product parts.

9 Article 2. Product Warranties.

10 **Sec. 45.27.100. Warranty provided.** A manufacturer shall provide, through
11 the authorized dealer, to the product's ultimate purchaser from an authorized dealer the
12 manufacturer's standard warranty, if any, that is in effect at the time of delivery of the
13 product to the authorized dealer.

14 **Sec. 45.27.110. Nonconforming products.** (a) A manufacturer of a
15 nonconforming product shall, during the original warranty period, pay an authorized
16 dealer to complete factory-recommended warranty repairs, solutions, and procedures
17 to cure factory warranty problems with a nonconforming product. The manufacturer
18 shall make the payment in accordance with the standard warranty service claim
19 procedures and methods of the industry and with AS 45.27.100 - 45.27.220.

20 (b) If a part that is necessary to repair a nonconforming product of a
21 nonconformity that is covered under a manufacturer's warranty is not in an authorized
22 dealer's inventory when the nonconforming product is brought to the authorized dealer
23 for repair, the manufacturer of the product shall provide the authorized dealer with the
24 part. The manufacturer shall provide the part as soon as possible and may not charge
25 for freight or handling. This subsection applies to a manufacturer whose products are
26 sold in the state through an authorized dealer.

27 (c) The manufacturer of a nonconforming product shall pay the cost for
28 transporting a replacement for the nonconforming product from the manufacturer to
29 the authorized dealer who sold the nonconforming product to the ultimate purchaser or
30 the authorized dealer who is located nearest to the ultimate purchaser, whichever of
31 the two authorized dealers the ultimate consumer chooses. The manufacturer is not

1 required to pay the transportation cost from the authorized dealer to the ultimate
2 purchaser or from the ultimate purchaser to the authorized dealer.

3 (d) In this section, "nonconforming product" means a product that has a
4 nonconformity.

5 **Sec. 45.27.120. Authorized dealer warranty representations.** An authorized
6 dealer may not make a representation about the warranty that is not made by the
7 manufacturer in the warranty. An authorized dealer shall deliver the manuals on the
8 operation and maintenance of a product to an ultimate purchaser and make the
9 manufacturer's warranty known to the ultimate purchaser, including all disclaimers
10 and limitations.

11 **Sec. 45.27.130. Warranty service and claims.** (a) An authorized dealer shall
12 provide warranty service in accordance with the manufacturer's applicable warranty on
13 all of the manufacturer's products sold by the authorized dealer.

14 (b) An authorized dealer shall make all claims for warranty reimbursement in
15 the manner established by the manufacturer.

16 **Sec. 45.27.140. Warranty restrictions.** A manufacturer may not, by
17 dealership agreement, by restrictions on reimbursement, or by another method, restrict
18 the nature or extent of product parts provided or labor performed by an authorized
19 dealer if the restriction impairs the authorized dealer's ability to satisfy a warranty
20 created by the manufacturer in accordance with generally accepted standards.

21 **Sec. 45.27.150. Basis for reimbursements.** (a) A manufacturer shall use the
22 criteria established in this section to reimburse an authorized dealer for all approved
23 warranty service work performed by the authorized dealer.

24 (b) A manufacturer shall pay to a servicing authorized dealer warranty work
25 labor rates that

26 (1) are not less than the highest of the following:

27 (A) the rate the authorized dealer customarily charges to a
28 customer for nonwarranty service work;

29 (B) the manufacturer's printed flat rate; or

30 (C) the rate established by a flat rate manual for dealers, if the
31 manual is produced for dealers by a nationally respected industry consultant;

1 and

2 (2) include time for clean-up, preparation, diagnosis, disassembly,
3 repair, assembly, testing, and final cleaning as needed to provide a quality result and
4 customer satisfaction.

5 (c) In addition to the payment under (b) of this section, the manufacturer shall
6 reimburse an authorized dealer a minimum of one hour at the authorized dealer's shop
7 standard labor rate for the administration of each warranty claim.

8 (d) A manufacturer shall reimburse the authorized dealer for product parts at
9 the current manufacturer's full suggested retail price and shall ship each part to the
10 authorized dealer without cost for freight or handling.

11 **Sec. 45.27.160. Timely reimbursement for claims.** A manufacturer shall pay
12 a properly submitted warranty claim of an authorized dealer within 30 days after
13 receiving the claim from an authorized dealer. Unless a manufacturer issues a written
14 notice of disapproval under AS 45.27.170 within the 30 days, if a manufacturer fails to
15 pay a claim within 30 days after receipt, the failure is considered an acceptance of the
16 claim as submitted, and the manufacturer shall pay the authorized dealer interest at the
17 rate of 1.5 percent a month on the claim.

18 **Sec. 45.27.170. Warranty claim disapproval.** If a manufacturer does not
19 approve a claim submitted under AS 45.27.160, the manufacturer shall issue a written
20 notice of disapproval to the authorized dealer within 30 days after the manufacturer
21 receives the claim. The notice must contain the specific reasons for the disapproval.

22 **Sec. 45.27.180. Repairs required.** If a product does not conform to a warranty
23 that is applicable to it and the ultimate purchaser of the product reports the
24 nonconformity to the manufacturer of the product or to the manufacturer's authorized
25 dealer during the term of the warranty, the manufacturer or authorized dealer shall
26 make the necessary repairs to conform the product to the warranty.

27 **Sec. 45.27.190. Replacement or refund.** (a) If, during the term of a warranty
28 or within one year after the date of the delivery of the product to the ultimate
29 purchaser, whichever period of time terminates first, the manufacturer or authorized
30 dealer is unable to conform a product to an applicable warranty after a reasonable
31 number of attempts, the manufacturer shall accept the return of the nonconforming

1 product, and, at the ultimate purchaser's option, shall replace the nonconforming
2 product with a new comparable product or refund the full purchase price to the owner
3 after deducting a reasonable amount of money for the ultimate purchaser's use of the
4 product from the date the product was delivered to the ultimate purchaser.

5 (b) The reasonable amount of money deducted under (a) of this section may
6 not exceed an amount that is equal to the sum of

7 (1) the amount of money that reflects the depreciation in value of the
8 product for the period during which the product was available for use by the ultimate
9 purchaser, as calculated by a straight line depreciation method over seven years; and

10 (2) an amount of money that is equal to the depreciation in value of the
11 product that was caused by

12 (A) neglect or abuse by the ultimate purchaser; or

13 (B) body damage that was not caused by the nonconformity.

14 (c) The manufacturer shall make the refund required by this section

15 (1) to the lienholder of record for the product, if any, to the extent of
16 the lienholder's interest, and, if there is a balance after satisfying the lienholder's
17 interest, to the ultimate purchaser; or

18 (2) entirely to the ultimate purchaser, if there is no lienholder of record
19 for the product.

20 (d) In this section,

21 (1) "costs" include original registration fees, transportation fees,
22 authorized dealer's preparation fees, and the cost of options installed by the authorized
23 dealer;

24 (2) "full purchase price" means the total price paid for a product by the
25 ultimate purchaser, including any costs added to the retail price.

26 **Sec. 45.27.200. Notice by ultimate purchaser.** (a) To claim a refund or
27 replacement under AS 45.27.190, an ultimate purchaser shall give written notice by
28 certified mail to the manufacturer and its authorized dealer before 60 days have
29 elapsed after the termination of whichever of the following periods of time terminates
30 first:

31 (1) the term of the warranty; or

(2) one year after the date of delivery of the product to the ultimate purchaser.

(b) The notice required by (a) of this section must

(1) state that the product has a nonconformity:

(2) provide a reasonable description of the nonconformity;

(3) state that the manufacturer or authorized dealer has made a number of attempts to conform the product to the warranty; and

(4) state that the owner demands that a refund or a replacement of the product be delivered on or before the 60th day after the mailing date of the written notice.

(c) Within 30 days after receiving the notice required by this section, the manufacturer may make a final attempt to conform the product before the manufacturer is required to make a refund or replacement under AS 45.27.190.

Sec. 45.27.210. Exceptions. (a) An ultimate purchaser may not receive a refund for or replacement of a product under AS 45.27.190 - 45.27.220 if the manufacturer shows that the problem or condition because of which the ultimate purchaser is claiming a refund or a replacement

(1) is not a nonconformity; or

(2) is a nonconformity that resulted from

(A) alteration of the product by the ultimate purchaser, or by a person who is not the authorized dealer or otherwise authorized by the manufacturer or distributor to make the alteration; or

(B) abuse or neglect by the ultimate purchaser or another person other than the authorized dealer.

Sec. 45.27.220. Presumption. A rebuttable presumption that a reasonable number of attempts have been made to conform a product to an applicable warranty is established if

(1) the nonconformity continues to exist even though the same nonconformity has been subject to repair three or more times by the manufacturer or authorized dealer during the term of the warranty or the one-year period after the date of delivery of the product to the ultimate purchaser, whichever period of time

1 terminates first; or

2 (2) the product is out of service for repair for a total of 30 or more days
3 on which the authorized dealer is open for business during the term of the warranty or
4 during the one-year period after the date of delivery of the product to the ultimate
5 purchaser, whichever period of time terminates first; a period of time during which
6 repairs are not performed for reasons that are beyond the control of the manufacturer
7 or authorized dealer is not included in satisfying the 30-day time period.

8 Article 3. Miscellaneous Business Practices.

9 **Sec. 45.27.250. Required posting.** (a) An authorized dealer shall post a notice
10 of the authorized dealer's retail labor rate in a place conspicuous to service customers.
11 If the authorized dealer uses a factory-certified or factory-trained technician to
12 perform warranty service work, the notice must also contain a statement that warranty
13 service work completed by the authorized dealer is performed by a factory-certified or
14 factory-trained technician.

15 (b) If an authorized dealer's service operations employees receive a
16 commission for the amount of work they perform, the authorized dealer shall post a
17 conspicuous sign that is visible to service customers that the authorized dealer's
18 service operations employees work on commission.

19 **Sec. 45.27.260. Written estimates for repairs not covered by warranty.** (a)
20 Before beginning repair work on a product for a customer, an authorized dealer shall
21 provide to the customer a written estimate listing the specific parts, labor, and cost of
22 the repairs.

23 (b) If additional repairs are determined to be necessary after the service
24 employees begin repairing the product, the authorized dealer shall contact the
25 customer and receive permission to do additional repairs not covered in the written
26 estimate.

27 (c) An authorized dealer shall post in a conspicuous place for service
28 customers to view all charges for diagnostics, storage, and other incidentals not
29 associated with the actual repair of a product.

30 **Sec. 45.27.270. Content of factory recall notices.** A manufacturer shall
31 include in a written factory recall notice to ultimate purchasers and authorized dealers

1 the date by which the manufacturer expects that necessary parts and equipment will be
2 available to the authorized dealer for the correction of the defect that is the subject of
3 the recall.

4 **Sec. 45.27.280. Resale without disclosure prohibited.** A manufacturer may
5 not resell in the state a product returned under AS 45.27.190 unless the manufacturer
6 fully discloses to the prospective buyer before the resale is concluded the reason why
7 the product was returned.

8 **Article 4. Miscellaneous Provisions.**

9 **Sec. 45.27.300. Other rights and remedies.** The provisions of this chapter do
10 not limit other rights and remedies that may be available to the owner of a product
11 under other provisions of law. This section does not create a new cause of action
12 against an authorized dealer who sells or attempts to repair a product found to be
13 nonconforming.

14 **Sec. 45.27.310. Applicability.** The provisions of this chapter apply to a
15 dealership agreement if the dealership agreement is between a manufacturer and an
16 authorized dealer in this state.

17 **Sec. 45.27.320. Jurisdiction; venue.** (a) This state has jurisdiction over a legal
18 dispute between a manufacturer located in or outside this state and an authorized
19 dealer located in this state, and the dispute is governed by, interpreted, and adjudicated
20 under the law of this state.

21 (b) Venue for court action involving a dispute under (a) of this section is in the
22 judicial district of this state in which the authorized dealer's principal place of business
23 is located.

24 **Sec. 45.27.330. Corporate affiliates.** (a) A manufacturer may not use a
25 subsidiary corporation, affiliated corporation, partnership, association, or other person
26 to do what the manufacturer is prohibited from doing under this chapter.

27 (b) The provisions of (a) of this section do not limit the right of a person to
28 engage in reasonable and appropriate business practices consistent with an existing
29 trade practice that is not prohibited by this chapter.

30 **Sec. 45.27.340. Unenforceable provisions.** If a provision in a dealership
31 agreement violates this chapter, the provision is not enforceable.

Article 5. General Provisions.

Sec. 45.27.390. Definitions. In this chapter, unless the context indicates otherwise,

(1) "authorized dealer" means a person who has entered into a dealership agreement with a manufacturer.

(2) "boat" means a marine product that is not equipped with a motor;

(3) "dealership agreement" means an agreement between a person and a manufacturer of products for the person to engage in the retail sale and warranty repair of the manufacturer's products in the state:

(4) "distributor" means a person who is authorized by a manufacturer to engage in the wholesale distribution of the manufacturer's products in the state.

(5) "landed cost" means the sum of the price of the product and the transportation cost to the authorized dealer's facility.

(6) "manufacturer" means a person who

(A) fabricates, manufactures, or assembles products; "manufacturer" includes a manufacturer branch and a manufacturer sales representative, but does not include a person who converts, modifies, or otherwise alters a product fabricated, manufactured, or assembled by another person; or

(B) is a distribution entity that is

(i) owned or controlled by a person described under (A) of this paragraph; and

(ii) separate from a person described under (A) of this paragraph;

(7) "marine product" means a new watercraft, boat, or a gasoline motor designed for recreational or commercial use on water; "marine product" includes an outboard gasoline motor or boat with an attached gasoline motor, but does not include a watercraft designed or adapted to be powered only by an occupant's energy;

(8) "motorized recreational product" means an all-terrain vehicle, a marine gasoline motor, a boat, a boat package, a marine product, and a snow machine; in this paragraph,

(A) "all-terrain vehicle" means a vehicle with three or more low-pressure, flotation-type tires, as designed by the manufacturer or altered, to be used as an off-road recreational vehicle;

(B) "boat package" means a boat that is equipped and sold with a gasoline motor or another form of gasoline motorized propulsion;

(C) "snow machine" means a motorized vehicle with a gross vehicle weight under 1,300 pounds propelled by a track system designed to move a person over snow or ice, and includes a snowmobile:

(9) "nonconformity" means a defect or condition in a product that is caused by a manufacturer, distributor, or authorized dealer and that

(A) substantially decreases the dollar value of a product to the owner when compared to the dollar value of a similar product that does not have the defect or condition; or

(B) prevents a product from being operated or used or makes the product unsafe;

(10) "part" includes an accessory;

(11) "product" means a marine product or a motorized recreational product;

(12) "ultimate purchaser" means

(A) a purchaser, other than for resale, of a new product, if the new product is not subject to AS 28.10 or AS 28.39; or

(B) a person to whom ownership of a new product is transferred under AS 28.10 or AS 28.39;

(13) "warranty" means a written warranty provided by the manufacturer of a product.

Sec. 45.27.395. Short title. This chapter may be cited as the Alaska Marine
Sport and Motorized Recreational Product Act.

* Sec. 3. AS 45.45.770(a) is amended to read:

(a) AS 45.45.700 - 45.45.790 do not apply to

(1) a distributorship agreement that would be considered a franchise regulated by 15 U.S.C. 2801 - 2841 (Petroleum Marketing Practices Act);

- (2) a situation regulated by AS 45.50.800 - 45.50.850;
 - (3) a distributorship agreement, including a franchise agreement, for the sale, repair, or servicing of motor vehicles that are required to be registered under AS 28.10;
 - (4) an activity or agreement by a person licensed under AS 04 if the activity or agreement is within the scope of the license or is incidental to the activity or agreement that is within the scope of the license;
 - (5) a distributorship agreement or another contract between a person licensed under AS 04 and a distributor, manufacturer, importer, supplier, or wholesaler of alcoholic beverages who is not located in this state if the subject of the agreement or contract is the distribution of alcoholic beverages to the licensed person by the distributor, manufacturer, importer, supplier, or wholesaler;
 - (6) a distributor, manufacturer, importer, supplier, or wholesaler of alcoholic beverages;
 - (7) a distributorship agreement for the sale or distribution of, or other transaction involving, cigarettes, food, drink, or a component of food or drink; in this paragraph, "cigarette" has the meaning given in AS 43.50.170; [OR]
 - (8) a manufacturer with 50 or fewer employees; or
 - (9) a marine product or motorized recreational product agreement**

* Sec. 4. AS 45.50.471(b) is amended by adding a new paragraph to read:

(56) violating AS 45.27 (marine products and motorized recreational s).

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

INDIRECT COURT RULE AMENDMENT. The provisions of AS 45.27.320, enacted by sec. 2 of this Act, have the effect of amending Rule 3, Alaska Rules of Civil Procedure, by establishing a specific venue rule that is different from the venue rules in Rule 3 for a dispute between a manufacturer and an authorized dealer.

* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to read:

1 APPLICABILITY. This Act does not apply to a dealership agreement that is entered
2 into before the effective date of this Act. In this section, "dealership agreement" has the
3 meaning given in AS 45.27.390, enacted by sec. 2 of this Act.

4 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

Rynnieve Moss

From: Sniffen, Clyde E (LAW) [ed.sniffen@alaska.gov]
Sent: Tuesday, April 14, 2009 10:26 AM
To: Rynnieve Moss
Subject: RE: by back

I read Sec. 45.27.050 to mean that a manufacturer must buy back all current model new products, AND all new products that are less than two years old. So, if a dealer was terminated today, the manufacturer must buy back: (1) the dealer's current 2009 inventory, and (2) the dealer's 2008 and some 2007 new product (going back two years).

But if the dealer has some 2006 inventory, even if it's new – he's stuck with it.

In the auto world, this buy-back is limited to current model vehicles and new vehicles from the previous model year.

Ed

From: Rynnieve Moss [mailto:Rynnieve_Moss@legis.state.ak.us]
Sent: Monday, April 13, 2009 4:58 PM
To: Sniffen, Clyde E (LAW)
Subject: by back

THyes Shaub has asked on a couple of occasions if the by back on cancellation is three years or two. The way it is written it is confusing. Can you tell me what you interpretation is?



Andrew E. Graves
President
US Marine and Outboard Boat Group

April 9, 2009

The Honorable John Coghill
Alaska House of Representatives
Juneau, AK

Dear Representative Coghill:

I am writing today to express our significant concerns with HB 177, as well as to respond to questions you posed today to David Dickerson of the National Marine Manufacturers Association.

I will respond first to the questions you have regarding the certification of marine repair technicians and the contract language detailing how a dealer can earn 100 percent of his retail rate for warranty repairs.

Dealers who carry the Lund and Lowe brand, which are very popular in Alaska, are by definition “authorized dealers,” and their technicians are authorized to provide warranty repairs. Without these immediate designations, the consumer would be unsure if the dealer could provide repairs without voiding his warranty. Nevertheless, there is much additional training needed to meet the long-term goals we have for well-trained technicians performing repairs, whether under warranty or not.

The Brunswick Corporation owns the Lund and Lowe brands, which are two of 17 brands it manufactures. Brunswick uses a standard contract for dealers representing all of its boat brands. However, the contract refers to the dealer manual associated with each brand for specific program requirements. One of those programs is how a dealership can qualify to receive his posted labor repair rate. In the case of Lund and Lowe, dealers have an opportunity to receive their posted labor rate upon meeting requirements for certification as a dealer. A copy of the Lund Dealer Certification Program is attached as an example.

Requiring us to pay 100 percent of a dealerships posted labor rate removes a key component to provide incentives for dealerships to attend further training.

As for the other content associated with HB 177, we find the language regarding “for cause” non-renewal to be an effort to protect poorly performing dealers by establishing a high economic

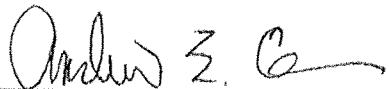
barrier to changes. The bill would essentially remove any expiration date for our contracts, instead making them a never-ending relationship unless we are willing to repurchase at full wholesale price boats that are up to three model years old.

Likewise, the "lemon law" language, even as it may be amended, puts the manufacturer at the mercy of a dealer's backlog. A delay in assessing the problem, delays in ordering parts, delays in repairing the boat and/or engine are beyond our control. Lowe and Lund have Consumer Satisfaction scores from consumers that are very good. These scores only come from providing good customer service and establishing a well-trained network of dealerships. A failure to meet a customer's expectations can happen, but it is too rare to warrant government mandates and intrusion.

We have other objections to the bill that we will provide as soon as possible, but we wanted to get you this information in the interest of time.

I hope you consider the programs we already have in place to improve the customer experience and allow good dealers to succeed.

Sincerely,



Andrew E. Graves
President, US Marine and Outboard Boats

BACKCREEK MARINE



To: The Honorable Senator Albert Kookesh,
Re: Dealer and Alaskan Consumer Warranty Fairness Legislation

I would like to take this opportunity to bring to your attention the unfair business practices that are being inflicted by large Manufacturing companies on the dealership owners throughout the state of Alaska. While some manufacturers attempt to provide a good product, many do not and follow a practice termed "Dumping" which results in inferior and defective merchandise being intentionally passed or "dumped" onto licensed franchises throughout Alaska, with the resulting costs and liabilities ultimately being born by the dealership owners and consumers, all of whom are your constituents. These unfair practices include the following:

- Requiring dealerships to **pay all the freight costs** on any warranty parts that the manufacturers mandate must be returned before a warranty will be paid.
- **Failing to rectify known design problems** at the factory level even when notified in writing by dealerships and continuing to ship these defective products knowingly.
- **Under-reimbursing dealerships for warranties by a fabricated manufacturer's "repair flat rate"** rather than the actual dealer repair time or the Spader or another industry standard "Flat Rate" repair time. In many instances this results in woefully inadequate compensation for repair work and repair times that do not accurately represent reality.
- **Non reimbursement for the huge burden of time required for the administration and handling time** required for the approval process, to file and track completed warranty paperwork, store defective parts or return them as requested. Many situations require multiple warranty coverage requests and submission because of the very difficult, paperwork and processing hurdles that many manufacturers require before a warranty will be reimbursed. These extra costs and burdens are created by and have benefit only for the manufacturer for a problem that they have created and are responsible for. The end result is that doing warranty repairs for a manufacturer is a money losing situation.

This has presented an additional hardship for the customer base which I attempt to serve. While snowmobiles and watercraft are often an avenue for recreation for a large part of the population in the state, for the Bethel area and the surrounding villages that make up my service area these vehicles are a way of life. The Yukon Kuskokwim Delta region, while being very rich in Native culture, is also one of the most economically challenged regions in the state; subsistence hunting and fishing not only allows the Native residents to continue to honor a lifestyle that is part of their heritage but more often than not

is a means of survival. This is how many individuals on limited incomes secure food to feed their families and wood to heat their homes. Defective and inferior products and machinery can become a matter of life or death for these same individuals when these machines fail to perform when they are miles away from home.

Each day I encounter machines that need servicing and require repair time that far exceeds what the manufacturer reimburses for under current warranty systems. For example, most snowmobiles require two to three hours of shop time to adequately defrost and dry out the engine before any service work can be performed. This time is not billable or included by any manufacturers under their warranty service contracts and I have chosen not to pass that cost onto my customers so that shop time becomes a loss; those types of losses multiplied daily quickly take a financial toll on any business. As a 15+ year resident of this community and a business owner for nine years I now consider Bethel "home"; these "individuals" who are my customers have now become my family as we live and work closely together. I know first hand the importance of having equipment and vehicles that are reliable and function consistently and have striven to provide an excellent product for my customers because of this knowledge. Providing this customer service has become increasingly difficult because the above mentioned unfair trade practices have put me in the position where I have been forced to operate my business at a loss. I can no longer adequately provide for my family and must consider closing my business to avoid filing bankruptcy. Successful passage of the Dealer and Consumer Warranty Fairness Legislation would allow my employees and my business to be more fairly paid for the extra costs and times needed for warranty repairs and help prevent the manufacturers from shifting their costly mistakes onto me and my customers. With fair treatment by the manufacturers I should be able to continue to stay in business and to serve my community honorably.

I would greatly appreciate your help and support in co-sponsoring the proposed Consumer Dealer Fairness Legislation. If you have any questions or if I can be of any further service please do not hesitate to contact me.

Sincerely,



David McCormick
Back Creek Marine
PO Box 166
Bethel, AK 99559
(907) 543 5880



Alaska Outdoor Council

PO Box 73902
Fairbanks, AK 99707-3902
(907) 455-4AOC (4262)

aoc@alaska.net

www.alaskaoutdoorcouncil.org

February 6th, 2008

Representative Jay Ramras, Chairman
House Judiciary Committee
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99801

Representative Ramras,

Alaskans from Ketchikan to Kaktovic depend on motorized vehicles for access to the far reaches of our land and water. Many of these people belong to the Alaska Outdoor Council, a group of 3,000 individuals and 47 member clubs.

AOC supports HB 303 because we believe it will lead to more affordable and reliable outboard motors, ORV's, and snowmachines.

We are reassured by fact that the network of dealers and suppliers who sell and repair the products that enable us to live our Alaskan lifestyle also support this legislation. If enacted into law, we believe that information about the performance of motorized outdoor equipment can be better utilized by consumers, dealers and manufacturers, and that it will ultimately result in better and safer equipment.

Thank you for your consideration,

Rod Arno, Executive Director Alaska Outdoor Council
(907) 376-2913

• • ○

Homer Saw & Cycle



1532 Ocean Dr
Homer, Alaska 99603
Phone: 907-235-8406
Fax: 907-235-8950

To: Alaska Marine Dealers Association
Re: Pending Legislation

I support the pending legislation as I believe it will benefit the customer base in my area. We have been fighting unfair practices by our supplier for years and hope that this will be a positive direction for the industry. Please help us get this passed.

Thank you, Claire Waxman
Owner -Homer Saw & Cycle



January 29, 2008

Mark Neuman
State Capitol Room 432
Juneau, AK 99801

Dear Representative Neuman,

As a partner and co-owner of Marita Sea & Ski and Alaska Power Sports, businesses located in Anchorage involved in the retail sale of boats, outboard motors, snowmachines, all terrain vehicles and motorcycles, I am writing this letter of support for House Bill # 303. As presented to the legislature this bill is a very important piece of legislation that protects and supports the consumers of Alaska when they purchase the type of equipment that we sell. It will allow the end user (the consumer) to be able to receive full support and all entitlements as outlined in any of the manufacturer's warranties. This bill also protects the rights of small business in Alaska and levels the playing field, keeping the large manufacturers from "bullying" the small businesses that attempt to take care of the consumer. Once again, we want to reiterate our support of House Bill # 303. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Wade A. Huls".

Wade A. Huls
Vice President/General Manager
Marita Sea & Ski
Alaska Power Sports



A-1 Enterprises, Inc.
MARINE PRODUCTS - POLARIS

229 WILSON ST., SODOTNA, AK 99668 PHONE (907) 262-8888 FAX (907) 262-8811

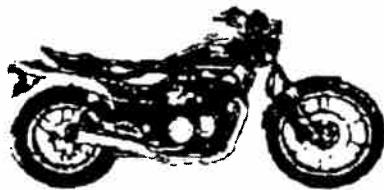
29 January 2008

Marine Dealers Association;

I, Brian Alexander of A-1 Enterprises, Inc., show full support for House Bill 303.

Thank You,

Brian Alexander
A-1 Enterprises, Inc.
Owner / President



HARTLEY MOTORS, INC.

Palmer, Alaska 99645
MI, 36½ Parks Hwy.

(907) 745-4868

HONDA



from

Hartley Motors
PO Box 800
Palmer, AK 99645

1-29-08

TO: Representative Newman
and Alaska Marine Dealers Assoc.

To whom it may concern:

We are in full support of house
bill 303.

We have had many issues with
warranty and product issues that have
so hurt our ability to serve the
customers and keep our business operating
fairly and honestly, most of all profitably.

Manufacturers

Polaris
Honda
Kubota

Thank you
Alice McAllister
General manager
Hartley Motors Inc

Rex Shattuck

From: Dudley Benesch [dudley@akmining.com]
Sent: Monday, January 28, 2008 12:02 PM
To: Rex Shattuck
Subject: HB303.doc

The Alaska State Snowmobile Association



To Whom It May Concern:

I would like to take a moment and reiterate the Alaska State Snowmobile Association's support for HB 303. This legislation is designed to address the current gap in published manufacturer's warranty assurances to the end consumers who purchase a product and the manufacturer's support of these warranty items to the local dealer. While there are several levels of consumer protection for vehicles that are DMV titled, the non-DMV titled vehicles have lagged considerably behind in the consumer protection process.

While the legal stipulations of this legislation are complex and beyond the ASSA realm of review, the impetus for compensating authorized dealers fairly for warranty work is without question worthy of support. As an organization participating in both statewide and national forums, we have seen this issue addressed throughout the ORV spectrum. Each one of us has either a personal anecdote or a close associate who has struggled with this issue. In almost every case, the local dealer is attempting to take care of a personal customer and struggling to do it within sometime arbitrary limitations set by manufacturers. Mandating that the manufacturers fulfill their commitments to both their local representatives and to the end user is overdue and will be a welcome item for consumers.

In conclusion, the Alaska State Snowmobile Association supports this legislation and offers our appreciation to Representative Neuman for sponsoring it.

Kevin Hite
President
Alaska State Snowmobile Association
www.aksnow.org
907-522-6373 Home
907-529-0106 Mobile

2-21-08

Senator Albert Kookesh

(907-465-3466

Dear Representative Kookesh-

Hi Al, As a lifelong Alaskan resident and a one time Marine and power sports dealer, I would like strongly support HB303. The dealers in Alaska face a huge hurdle when it comes to providing warranty coverage for the consumers, as these jobs are often performed at a loss. When it is not economically feasible to perform warranty work, the dealer has only a three choices. (1) Absorb the cost to satisfy the customer, (2) pass along the cost to the customer that ultimately should be the responsibility of the manufacturer, or (3) close shop. I chose #3.

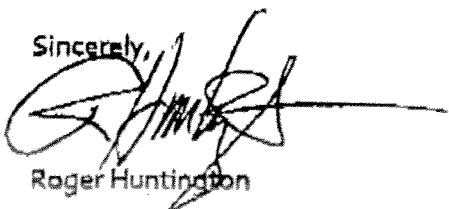
Here in the Interior there have been several dealers like my dad Sidney, Dan Patrick and Norm Burgett; all who have a fair attempt to provide dependable service to village people but we all have had great difficulty with makers of the machines we sold; and all have had to discontinue our businesses rather than to put up with them any more.

HB303 would level the playing field, and provide better service and coverage for Alaskans that own boats, motors, ATVs and snow machines.

I strongly urge passage of HB303 for the benefit of Alaskans everywhere.

Thank you for your help here.

Sincerely,



Roger Huntington

Galena

P.S. Mom & Dad R. Huntington

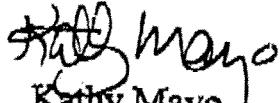
Senator Albert Kookesh
State of Alaska Senate
District C

Via Fax: (907) 465-3466
Page 1 of 1

Dear Albert,

I know you are busy trying to finish the State's business in 90 days this year but I hope you can take a minute to consider our strong support for HB 303 which is moving into the Senate after passing the House. Clyde and I know first hand what the importance of outboard motors, snowmachines and four-wheelers are to the residents of rural Alaska. HB 303 offers us consumer protection in the form of fair practices for warranty availability and fair cost to end users. HB 303 also offers protection to bush dealers from predatory practices of unscrupulous manufacturers. I strongly urge you to support HB 303 for all Alaskans, it is the right thing to do.

Sincerely,


Kathy Mayo



POLAR WIRE PRODUCTS, INC.

7941 Brayton Drive • Anchorage, Alaska 99507

Phone (907) 561-5955 • Fax (907) 561-4233 • WWW.POLARWIRE.COM

February 26, 2008

Alaska Mining and Diving Supply, Inc.
3222 Commercial Drive
Anchorage, Alaska 99501
Attn: Dudley Benesch

Dear Dudley,

I would like to offer my testimonial and services to you in support of House Bill 303. As a business owner myself, I have experienced the difficulties and efforts required, at times, to get factory support and reimbursement for warranties handled at the local level. This bill would have greatly facilitated and ultimately resolved my personal experience dealing with a boat manufacturer's unwillingness to warrant a known defect that almost cost me and my family's lives!

I purchased an aluminum boat in early 2006, motivated, in part, by the manufacturers offering of a lifetime hull warranty. During the prime fishing month of July of 2006, I was fishing in Seward from this newly acquired boat with my wife and 4 year old son. Shortly after dropping anchor near Fox Island, I noticed water gushing into the anchor locker hold at an alarming rate! Further investigation revealed an 18", or so, hull opening into the sea of the port bulkhead weld. I quickly pulled anchor and managed to get the boat on accelerated step trying to keep the water pressure on the opening at a minimum. A near by boat was dispatched to follow me back to port.

Although quite capable of facilitating and affording a fix, a dialog was immediately opened with this boat manufacturer concerning the need to get this hull damage fixed. Rather than responding in a timely and proactive manner, it was inferred that I had abused the boat from overuse in rough chop! I quickly realized that this case was going to extend beyond the summer fishing opportunities thus requiring me to purchase another boat!

Although my file was communicated all along to the President of this boat manufacturer, it was local dealer intervention that facilitated a response and ownership of the problem. I had to threaten taking legal recourse and reporting this case to the Coast Guard before a resolution was offered! Documented by hull serial numbers, it was further revealed that my boat, (along with numerous others), were shipped from the factory missing bow support stringers. Without the support stringers the aluminum fatigued from an oil canning effect resulting in hull failure!

By the time the boat finally was repaired, under factory supervision and cost, it was late fall before I got the boat back. With full disclosure, I eventually sold the boat the following spring. If I can be of any further assistance, please do not hesitate to contact me.

Marvin Kuentzel, Jr. - President

HB303 is important for Alaskan consumers and dealers.

Here's a "real-world" Alaskan example of why.

Not long ago a very unfortunate situation occurred at our 63 yr old 4th generation family power sports business. It serves as a perfect example of why HB303 is necessary legislation, similar to what many other States have enacted for the protection of their citizens.

One of the major U.S. based outboard motor manufacturers had announced a "revolutionary" new outboard motor that was going to change recreational over-the-water travel. The technology promised up to 60% better fuel economy than conventional carbureted engines, dramatically lower emissions, much lower operating cost, "peace of mind" for the consumer, and finally superior performance and reliability.

Production ramped up quickly, and the sales force from this manufacturer scrambled to secure orders from dealers anxious for this improved technology.

In Alaska, the need for a safe, reliable, more fuel efficient outboard engine is even more of an attraction for the commercial fishermen and those that rely on these engines for more than just recreation.

This manufacturer insisted that customers would be lining up at our doors because of these outboards, and guaranteed us that all the necessary R&D testing had been completed to their satisfaction.

Ironically, it was not long before customers were lining up at our doors. Unfortunately, these were extremely frustrated customers whose \$9,000 to \$16,000 new outboards did not live up to the factory hype. Literally dozens of warranty bulletins and factory service tips were produced in an attempt to keep these motors in service and running without mechanical and performance issues. Unfortunately, any reliability improvement was very short lived, and after two seasons, the problems only seemed to get worse. In many cases, we were forced to buy these defective motors back from our disgruntled customers, even paying the

freight back from the bush. So unreliable were these motors, that we actually discouraged potential new customers away from this brand, and suggested a competitive model featuring older, proven technology.

All the while, this manufacturer continued to attempt to "band aid" the problem, with short term fixes, waiting for the warranty clock to expire. Personnel in their parts and service departments actually admitted to some of our staff that these engines should have never left their loading dock.

Then, when things seemed the bleakest at our dealerships, the situation went from bad to worse. We had pleaded with this manufacturer to at least let us return those new, still-in-the-box known, defective motors, that we had both safety and reliability concerns with, in what can be a fairly treacherous outdoor environment. They flatly refused. We had even suggested that they let us trade them back for an equivalent dollar amount of a simpler, proven sister brand that they sold. Again, they flatly refused. It was obvious that they did not want these motors back.

After literally dozens of communications and persistent requests for any level of support, a "compromise" was offered by this manufacturer. (Incidentally, it was an offer they asked us to keep private.)

We were instructed to open each of the new motor crates, and then remove two items- the riveted serial number tag, and the ECU (or brainbox) of the engine. We were then to send those two items back to the factory (prepaid), and on receipt of them, our dealership would receive a \$2,000 credit to our account per motor. In effect, what this manufacturer was doing was having the dealership perform the equivalent of a lobotomy on the engine, thus taking them off the market, mostly at the expense of the dealer. These are motors that not long before we had paid \$7,000 to \$13,000 for. And remember, they asked us to keep this action confidential.

As for those engines already out of the crates and in the field, nothing was offered. We explained that we felt these engines had substantial safety and liability issues, and again we were told nothing other than any remaining warranty coverage would be provided to these customers.

Unfortunately, we had little choice but to accept this predatory offer, and we did, in an attempt to A) recover a small percentage of our initial investment, and B) stop the bleeding and bad rap we were getting on these motors from a consumer standpoint. Our internal records show a loss on this poorly designed, under-tested and truly defective engine of almost \$100,000. In addition we lost the confidence of many of our long time customers. For many dealers in the bush and along small coastal communities, the impact was even more devastating. Several were unable to keep their doors opened and as a result are no longer in business. Ultimately, the consumers in these communities are the hardest hit, as suddenly they have absolutely no support for their motor when the dealers are gone.

In the end, a majority of these motors that we retailed were purchased back by our company, (reluctantly), or taken on trade with an apology and a handshake. We only expected the same courtesy and professionalism from the manufacturer that built and sold us the defective motors. (We had been a dealer for this same company since 1945.)

This situation is not an isolated one. Even today our dealership is saddled with both snowmobiles and ATVs that we have purchased back or traded in as a good will gesture in an effort to keep our customers. Again, these units have issues that are beyond the ability of our shop to make reliable, even with certified, factory trained technicians.

Our requests to either return these units or have the manufacturers fly up and make them work have been met by polite refusal.

HB303 would simply ensure that in those instances where truly defective, unreliable merchandise is produced, those responsible for its release to the general public through Alaska's dedicated dealer network would be held accountable for their mistakes, as is the case currently in several other states that have adopted this type of legislation.

Why should Alaskan consumers and their dealers expect anything less.

This unfortunate example of how predatory some of these manufacturers have become could be remedied by Article 3 of HB303.

What is important to realize is that other one-sided, heavy handed tactics are common by some, not all manufacturers in the powersports industry, and it hits Alaska the hardest. Ridiculously low reimbursement for warranty labor, which is often paid at about half of the dealers posted labor rates, little or no compensation for untold hours of administering all the costs associated with these warranty claims, and embarrassingly low warranty reimbursement time allowances that are a small fraction of the actual time it takes to perform the entire procedure.

One major ATV manufacturer just announced a warranty recall where the ATVs might catch fire, and it affects 95,000 units. A dealer in Alaska I spoke with is furious, as the actual time it takes to do the physical work and administer the entire repair is close to 2 hours. This manufacturer is paying just 15 minutes at an hourly rate far lower than what he has to charge to remain in business. He has over 300 of these units in the field to call back in and repair.

We have removed from the original version of HB303 almost 50% of it's content, including an entire Article, and 16 sections, in an attempt to streamline it and offer compromises to those who found issue with parts of it.

HB303 truly benefits Alaskan consumers who rely strongly on their local dealers for much needed technical service, warranty coverage, troubleshooting, and routine maintenance.

After all, it is the tens of thousands of boats, motors, ATVs and snowmobiles in this State that allow us Alaskans to navigate, recreate, commercial fish, hunt, explore, and sometimes just survive in this unique and beautiful playground we all call home.

Thank you for taking the time to read this. I hope it helps you understand the importance of HB303 for all Alaskans.

Craig Compeau



April 14, 2009

The Honorable Joe Paskvan
Chairman, Senate Labor and Commerce Committee
State Capitol
Juneau, AK 99801-1182

Dear Chairman Paskvan:

SVIA is a national trade association representing manufacturers and distributors of all-terrain vehicles. I am writing to express our concern with and opposition to several provisions of HB 177 that would regulate the motorized recreational product manufacturer and dealer relationship.

To avoid confusion and conflict, it is extremely important that the language in Section 1 of HB 177 be amended. Section 1 would define "recreational vehicle" to include "all-terrain vehicle" and "snow machine." This should be deleted because it will cause confusion with other definitions of "recreational vehicle" elsewhere in the Alaska Statutes. For example, in 43.52.099 subd. 3, a recreational vehicle is defined as a recreational dwelling vehicle ("recreational vehicle" means (A) a motor vehicle or trailer for recreational dwelling purposes; (B) a motor home or other vehicle with a motor home body style; (C) a one-piece camper vehicle; and (D) any other self-propelled vehicle with living quarters). Instead, we recommend that this section read as follows:

"(12) "motor vehicle" means a motor vehicle that is required to be registered under AS 28.10, but does not include a motor home, a recreational vehicle, a motorcycle, or an all-terrain vehicle or a snow machine as defined in AS 45.27.390."

HB 177 requires reimbursement for warranty service and parts at the dealer's retail rate. This provision forces the manufacturer to make additional payments to the dealer to pay the dealer's retail mark-up. This simply inflates the costs of warranty work, which will eventually be passed to the consumer, without supplying any benefit to the consumer. Some manufacturers have a tiered reimbursement system depending on the level of factory training a dealer has completed. If a basic level of training is completed, the dealer can receive retail labor rate for warranty work and can receive in excess of its retail rate if the dealer completes a higher level of training. This encourages dealers to employ highly qualified technicians, which significantly benefits consumers. Requiring the same reimbursement rate for all would only punish dealers who spend considerable effort, money and time to have and retain qualified technicians at their dealership. Again, it is the consumer, who relies on the dealers for quality service, who is hurt. Additionally, this bill requires reimbursement of yet an additional hour at the retail rate for administration of each claim. We are not aware of any other state that requires another hour of payment for labor for administrative work. It also requires that the manufacturer's labor rate paid to dealer include time for clean-up, preparation, diagnosis, disassembly, repair, assembly, testing, and final cleaning as needed to provide a quality result and customer satisfaction. This language is very problematic and the requirements are vague and totally subjective. Inclusion of this language in statute will only lead to disputes between parties.

Additionally, more dealers are moving to "on-time" parts inventory and order parts when they need them rather than stocking parts, which was the original purpose of many of these statutory provisions that allowed a dealer to obtain reimbursement at retail rates for parts used in warranty. We urge that the bill be amended to provide that a dealer shall be compensated, at retail rate, for parts used in warranty repair if the dealer maintains the manufacturer/distributor recommended inventory for stocking parts.

Sec. 45.27.230, which requires replacement of a product or full refund if a dealer is unable to fix a serious defect after 4 attempts or the product having been out of service for 30 or more days, is unreasonable. This

language is contained in state lemon laws, which almost exclusively apply to motor vehicles operated on highways. Lemon legislation was written to address concerns within the automobile industry. There are numerous factors unique to the ATV industry and inherent differences between ATVs and passenger cars which complicate and make inappropriate the inclusion of ATVs in this type of law. Off-highway recreational vehicles are not included in the National Conference of State Legislatures' Model Lemon Law.

ATV use patterns are very different from those of on-highway vehicles. ATVs are used for recreational and utilitarian purposes. They are many times subjected to modification and extreme use or even abuse. Many are used for competition purposes. It seems no more appropriate to cover these products under a lemon law designed for automobiles than it does to cover other products from entertainment devices to household appliances. These consumer purchases are adequately covered under the Uniform Commercial Code which offers protection to buyers of defective products.

ATV manufacturers view warranty repair policies as an investment in good customer relations and future repeat sales. ATVs are largely discretionary purchases and if a consumer is dissatisfied, he or she simply won't buy another ATV of that make or perhaps any make. A dissatisfied car buyer usually will not nor cannot abandon the automobile market. ATV manufacturers must be responsive to complaints if they want to retain their customer base. It is not uncommon for ATV manufacturers to authorize goodwill repairs, even though the repair is not required under warranty or the vehicle's warranty has expired. If this provision were to be enacted, these goodwill repairs would surely end since they would be included in the number of repairs allowed before repurchase or a refund is required. Our industry is somewhat unique in its generally close dealer-consumer relationship. Imposing a law that sets arbitrary limits and encourages lawsuits could only serve to weaken this bond and put an end to goodwill attempts to repair suspected problems in the absence of definite defects. In effect, this provision could prove to be detrimental, rather than beneficial, to consumers. Also, ATV use is very seasonal and customers may leave their ATVs for service at dealerships for extended periods of time. In this regard, a law requiring vehicle replacement/refund if it has been out of service for 30 days would be more of a consumer inconvenience than a benefit, for this practice will end. The manufacturer's risk exposure will overshadow the owner's convenience and the dealer's efficiency.

The majority of ATV dealerships are small businesses. It is a common misconception that lemon laws are only a manufacturer concern with regard to compliance. The dealer is and will continue to be the customer's focal point in all matters having to do with the purchase. The manufacturers' responsibilities and ability to comply are very much dependent upon the dealers' performance of their responsibilities with regard to service management and particularly the extensive record-keeping that will be required.

In view of the differences in use between cars and ATVs, the small incidence of problems in this area and the fact that ATV manufacturers are currently acting in a responsible and conscientious manner to achieve customer satisfaction, this provision is neither needed nor justified. Enacting this provision in the absence of any need is simply not good public policy.

These onerous and unreasonable provisions will only serve to increase operation costs for manufacturers and distributors, raising the cost of doing business and ultimately increasing the cost of recreational products to Alaskans. The government need not be in a position of regulating the relationship between two business partners.

Thank you for your consideration of these comments. We urge that the bill be amended to reflect these needed changes.

Respectfully submitted:



Kathy R. Van Kleeck
Sr. Vice President, Government Relations