

HOUSE BILL NO. 177

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES COGHILL, Herron, Neuman, Austerman, Muñoz, Harris

Introduced: 3/12/09

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to marine products and motorized recreational products; and**
2 **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;

(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 systematically engaged in fraud

(A) against consumers or the manufacturer; or

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

(b) 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.

(c) 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

1 manufacturer's representative may not coerce or attempt to coerce an authorized dealer
 2 to enter into a dealership agreement with the manufacturer or a subsidiary of the
 3 manufacturer, or to perform any other act unfair to the authorized dealer, by
 4 threatening to terminate a dealership agreement between the manufacturer or
 5 subsidiary of the manufacturer and the authorized dealer.

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

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

12 **Sec. 45.27.050. Repurchase obligations on cancellation or nonrenewal.** (a)

13 On the cancellation or nonrenewal of a dealership agreement by a manufacturer, the
 14 manufacturer shall repurchase from the authorized dealer's inventory

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

17 (2) each product part that

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

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

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

24 (b) Within 90 days after the effective date of the cancellation or nonrenewal,
 25 the authorized dealer shall return the property required by (a) of this section to be
 26 repurchased to the manufacturer at the manufacturer's expense. The manufacturer shall
 27 pay the compensation for the property within 60 days after the tender of inventory and
 28 other items if the authorized dealer has clear title to the property and is in a position to
 29 convey that title to the manufacturer. If the property is subject to a security interest,
 30 the manufacturer may make the payments jointly to the authorized dealer and the
 31 holder of the security interest, and the manufacturer may offset the payment.

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

Article 2. Product Warranties.

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

Sec. 45.27.110. Defective products. (a) A manufacturer of a defective product shall, during the original warranty period, pay an authorized dealer to complete factory-recommended warranty repairs, solutions, and procedures to cure factory warranty problems with a defective product. The manufacturer shall make the payment in accordance with the standard warranty service claim procedures and methods of the industry and with AS 45.27.100 - 45.27.150.

(b) A manufacturer shall, within 60 days after an authorized dealer's request, provide the authorized dealer with the original factory parts required to perform warranty service on a defective product. If a manufacturer is unable to supply original factory parts needed to complete the warranty repairs for a defective product within 60 days, the authorized dealer may return the defective product and receive full credit for the authorized dealer's landed cost of the product, plus 100 percent of the freight charges to return the product.

(c) In this section, "defective product" means a product that is defective in manufacture, including design, assembly, engineering, or manufacturing.

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

Sec. 45.27.130. Warranty service and claims. (a) An authorized dealer shall

1 provide warranty service in accordance with the manufacturer's applicable warranty on
2 all of the manufacturer's products sold by the authorized dealer.

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

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

10 **Sec. 45.27.150. Warranty claim disapproval.** If a manufacturer does not
11 approve a claim, the manufacturer shall issue a written notice of disapproval to the
12 authorized dealer within 30 days after the manufacturer receives the claim. The notice
13 must contain the specific reasons for the disapproval.

14 **Article 3. Miscellaneous Business Practices.**

15 **Sec. 45.27.200. Required posting.** (a) An authorized dealer shall post a notice
16 of the authorized dealer's retail labor rate in a place conspicuous to service customers.
17 If the authorized dealer uses a factory-certified or factory-trained technician to
18 perform warranty service work, the notice must also contain a statement that warranty
19 service work completed by the authorized dealer is performed by a factory-certified or
20 factory-trained technician.

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

25 **Sec. 45.27.210. Written estimates for repairs not covered by warranty.** (a)
26 Before beginning repair work on a product for a customer, an authorized dealer shall
27 provide to the customer a written estimate listing the specific parts, labor, and cost of
28 the repairs.

29 (b) If additional repairs are determined to be necessary after the service
30 employees begin repairing the product, the authorized dealer shall contact the
31 customer and receive permission to do additional repairs not covered in the written

1 estimate.

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

5 **Sec. 45.27.220. Content of factory recall notices.** A manufacturer shall
6 include in a written factory recall notice to ultimate purchasers and authorized dealers
7 the date by which the manufacturer expects that necessary parts and equipment will be
8 available to the authorized dealer for the correction of the defect that is the subject of
9 the recall.

10 **Sec. 45.27.230. Replacement of product.** The manufacturer of a product that
11 is sold to an ultimate purchaser in the state, that is not more than a year old, and that is
12 still under warranty shall replace the product without charge or refund the full
13 purchase price, minus a reasonable amount for mileage, if

14 (1) the authorized dealer is unable to fix a serious defect after
15 attempting to fix the defect four times; or

16 (2) the product has a defect that prevents the ultimate purchaser from
17 using the product for 30 or more consecutive or inconsecutive days.

18 **Article 4. Miscellaneous Provisions.**

19 **Sec. 45.27.250. Unenforceable provisions.** If a provision in a dealership
20 agreement violates this chapter, the provision is not enforceable.

21 **Sec. 45.27.260. Cumulative provisions.** The remedies under this chapter are
22 in addition to any other legal or equitable remedy available under law or under a
23 dealership agreement between an authorized dealer and a manufacturer.

24 **Article 6. General Provisions.**

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

27 (1) "authorized dealer" means a person who has entered into a
28 dealership agreement with a manufacturer of products;

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

30 (3) "dealership agreement" means an agreement between a person and
31 a manufacturer of products for the person to sell or service the manufacturer's

1 products;

2 (4) "landed cost" means the total cost of a product delivered at a given
3 location, including the initial authorized dealer invoice price and any freight,
4 transportation, flooring expense, interest expense, authorized dealer preparation cost,
5 assembly cost, and reasonable handling cost;

6 (5) "manufacturer" means a person who

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

12 (B) is a distribution entity that is

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

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

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

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

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

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

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

(8) "part" includes an accessory;

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

(10) "ultimate purchaser" means the first person, other than an authorized dealer purchasing in the authorized dealer's capacity as an authorized dealer, who, in good faith, purchases a new product for a purpose other than resale.

Sec. 45.27.395. Short title. This chapter may be cited as the Alaska Marine Product 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

1 under AS 45.27.

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

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

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

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

10 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).