

HOUSE BILL NO. 67

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE HAWKER

Introduced: 1/21/15

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to product warranties and required updates to products; and relating**
2 **to dealers, distributors, and manufacturers."**

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

4 *** Section 1.** AS 45.45 is amended by adding new sections to read:

5 **Sec. 45.45.772. Warranty provided.** (a) A manufacturer shall provide,
6 through the dealer or distributor, to the product's ultimate purchaser, if the ultimate
7 purchaser has obtained the product from a dealer or distributor, the manufacturer's
8 standard written warranty, if any, that is in effect at the time of delivery of the product
9 to the dealer or distributor.

10 (b) If a manufacturer contracts with a person to provide the manufacturer's
11 warranty required by (a) of this section on behalf of the manufacturer,

12 (1) the manufacturer remains subject to the obligations imposed on the
13 manufacturer under AS 45.45.772 - 45.45.785;

14 (2) when the contractor provides warranty services under the contract,

1 (A) the contractor shall comply with the manufacturer's
2 obligations under AS 45.45.772 - 45.45.785 that apply to the warranty
3 services; and

4 (B) the manufacturer is responsible for the contractor's
5 compliance with the manufacturer's obligations under AS 45.45.772 -
6 45.45.785 that apply to the warranty services; and

7 (3) the acts of the contractor that apply to the manufacturer's warranty
8 obligations under AS 45.45.772 - 45.45.785 are treated as the acts of the manufacturer.

9 **Sec. 45.45.773. Defective products.** (a) A manufacturer of a defective product
10 covered under a warranty shall, during the original warranty period, pay a dealer or
11 distributor to complete factory-recommended warranty repairs, solutions, and
12 procedures to cure factory warranty problems with a defective product. The
13 manufacturer shall make the payment in accordance with the standard warranty
14 service claim procedures and methods of the industry and with AS 45.45.772 -
15 45.45.785.

16 (b) If a part that is necessary to repair a defective product of a defect that is
17 covered under a warranty is not in a dealer's or distributor's inventory when the
18 defective product is brought to the dealer or distributor for repair, the manufacturer of
19 the product shall provide the dealer or distributor with the part. The manufacturer shall
20 provide the part as soon as possible and may not charge for freight or handling. This
21 subsection applies to a manufacturer whose products are sold in the state through a
22 dealer or distributor.

23 (c) The manufacturer of a defective product shall pay the cost for transporting
24 a replacement for the defective product from the manufacturer to the dealer or
25 distributor who sold the defective product to the ultimate purchaser or the dealer or
26 distributor who is located nearest to the ultimate purchaser, whichever of the dealers
27 or distributors the ultimate purchaser chooses. The manufacturer is not required to pay
28 the transportation cost from the dealer or distributor to the ultimate purchaser or from
29 the ultimate purchaser to the dealer or distributor.

30 (d) In this section, "defective product" means a product that has a defect.

31 **Sec. 45.45.774. Required update.** (a) A manufacturer who orders a required

1 update for a product transferred to a dealer or distributor under a distributorship
 2 agreement shall pay the dealer or distributor to perform the required update. The
 3 manufacturer shall make the payment under AS 45.45.772 - 45.45.785 using the
 4 standard claim procedures and methods of the applicable industry.

5 (b) If a new or replacement part that is necessary for a required update is not
 6 in a dealer's or distributor's inventory when the manufacturer orders the required
 7 update, the manufacturer shall provide the dealer or distributor with the part. The
 8 manufacturer shall provide the part as soon as possible. This subsection applies to a
 9 manufacturer whose products are sold in the state through a dealer or distributor.

10 (c) The manufacturer that orders a required update shall pay

11 (1) the cost of transporting by air freight a new or replacement product
 12 needed for the required update from the manufacturer to the dealer or distributor that
 13 has been ordered to perform the required update, or to a dealer or distributor that is
 14 located nearest to the ultimate purchaser of the product, at the ultimate purchaser's
 15 option, if the dealer or distributor has sold the product to an ultimate purchaser; and

16 (2) all other costs necessary to perform a required update, including

17 (A) transportation and lodging costs for personnel needed to
 18 perform the update;

19 (B) labor rates as described in AS 45.45.778(b) for personnel
 20 while performing the required update and while in transit;

21 (C) a minimum of one hour at the dealer's or distributor's shop
 22 standard labor rate for the administration of each required update; and

23 (D) product parts from the dealer's or distributor's inventory at
 24 the current manufacturer's full suggested retail price.

25 **Sec. 45.45.775. Dealer or distributor warranty representations; manuals.**

26 A dealer or distributor may not make a representation about a warranty that is not
 27 made in the warranty. A dealer or distributor shall deliver the manuals on the
 28 operation and maintenance of a product to the ultimate purchaser and make the
 29 warranty known to the ultimate purchaser, including all disclaimers and limitations.

30 **Sec. 45.45.776. Warranty service and claims.** (a) A dealer or distributor shall
 31 provide warranty service in accordance with the applicable warranty on all of the

1 manufacturer's products sold by the dealer or distributor.

2 (b) A dealer or distributor shall make all claims for warranty reimbursement in
3 the manner established by the manufacturer.

4 **Sec. 45.45.777. Warranty restrictions.** A manufacturer may not, by
5 distributorship agreement, by restrictions on reimbursement, or by another method,
6 restrict the nature or extent of product parts provided or labor performed by a dealer or
7 distributor if the restriction impairs the dealer's or distributor's ability to satisfy a
8 warranty or required update in accordance with generally accepted standards.

9 **Sec. 45.45.778. Basis for reimbursements.** (a) A manufacturer shall use the
10 criteria established in this section to reimburse a dealer or distributor for all approved
11 warranty service work performed by the dealer or distributor.

12 (b) If the technician performing the warranty service work meets the
13 certification standards in the distributorship agreement, a manufacturer shall pay to a
14 servicing dealer or distributor warranty work labor rates that

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

16 (A) the rate the dealer or distributor customarily charges a
17 customer for nonwarranty service work;

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

19 (C) the rate established by a flat rate manual for dealers or
20 distributors, if the manual is produced for dealers or distributors by a nationally
21 respected industry consultant; and

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

25 (c) In addition to the payment under (b) of this section, the manufacturer shall
26 reimburse a dealer or distributor a minimum of one hour at the dealer's or distributor's
27 shop standard labor rate for the administration of each warranty claim.

28 (d) A manufacturer shall reimburse the dealer or distributor for product parts
29 in the dealer's or distributor's inventory at the current manufacturer's full suggested
30 retail price.

31 **Sec. 45.45.779. Timely reimbursement for claims.** A manufacturer shall pay

1 a properly submitted warranty or required update claim of a dealer or distributor
2 within 30 days after receiving the claim from a dealer or distributor. Unless a
3 manufacturer issues a written notice of disapproval under AS 45.45.780 within the 30
4 days, if a manufacturer fails to pay a claim within 30 days after receipt, the failure is
5 considered an acceptance of the claim as submitted, and the manufacturer shall pay the
6 dealer or distributor interest at the rate of 1.5 percent a month on the claim.

7 **Sec. 45.45.780. Claim disapproval.** If a manufacturer does not approve a
8 claim submitted under AS 45.45.779, the manufacturer shall issue a written notice of
9 disapproval to the dealer or distributor within 30 days after the manufacturer receives
10 the claim. The notice must contain the specific reasons for the disapproval.

11 **Sec. 45.45.781. Repairs required.** If a product does not conform to a warranty
12 that is applicable to it and the ultimate purchaser of the product reports the defect to
13 the manufacturer of the product or to the manufacturer's dealer or distributor during
14 the term of the warranty, the manufacturer, dealer, or distributor shall make the
15 necessary repairs to conform the product to the warranty.

16 **Sec. 45.45.782. Replacement or refund.** (a) If, during the term of a warranty
17 or within one year after the date of the delivery of the product to the ultimate
18 purchaser, whichever period terminates first, the manufacturer, dealer, or distributor is
19 unable to conform a product to an applicable warranty after a reasonable number of
20 attempts, the manufacturer shall accept the return of the defective product, and, at the
21 ultimate purchaser's option, shall replace the defective product with a new comparable
22 product or refund the full purchase price to the owner after deducting a reasonable
23 amount of money for the ultimate purchaser's use of the product from the date the
24 product was delivered to the ultimate purchaser.

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

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

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

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

2 (B) body damage that was not caused by the defect.

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

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

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

9 (d) In this section,

10 (1) "costs" include original registration fees, transportation fees,
11 dealer's or distributor's preparation fees, and the cost of options installed by the dealer
12 or distributor;

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

15 **Sec. 45.45.783. Notice by ultimate purchaser.** (a) To claim a refund or
16 replacement under AS 45.45.782, an ultimate purchaser shall give written notice by
17 certified mail to the manufacturer and its dealer or distributor before 60 days have
18 elapsed after the termination of whichever of the following periods terminates first:

19 (1) the term of the warranty; or

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

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

23 (1) state that the product has a defect;

24 (2) provide a reasonable description of the defect;

25 (3) state that the manufacturer, dealer, or distributor has made a
26 reasonable number of attempts to conform the product to the warranty; and

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

30 (c) Within 30 days after receiving the notice required by this section, the
31 manufacturer may make a final attempt to conform the product before the

1 manufacturer is required to make a refund or replacement under AS 45.45.782.

2 **Sec. 45.45.784. Exceptions.** An ultimate purchaser may not receive a refund
3 for or replacement of a product under AS 45.45.772 - 45.45.785 claimed to have a
4 product defect if the manufacturer shows that the problem or condition because of
5 which the ultimate purchaser is claiming a refund or a replacement

6 (1) is not a defect; or

7 (2) is a defect that resulted from

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

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

13 **Sec. 45.45.785. Presumption.** A rebuttable presumption that a reasonable
14 number of attempts have been made to conform a product to an applicable warranty is
15 established if

16 (1) the defect continues to exist even though the same defect has been
17 subject to repair three or more times by the manufacturer, dealer, or distributor during
18 the term of the warranty or the one-year period after the date of delivery of the product
19 to the ultimate purchaser, whichever period terminates first; or

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

26 * **Sec. 2.** AS 45.45.790(4) is amended to read:

27 (4) "merchandise" includes products, parts, and accessories;

28 * **Sec. 3.** AS 45.45.790 is amended by adding new paragraphs to read:

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

31 (A) substantially decreases the dollar value of a product to the

1 owner when compared to the dollar value of a similar product that does not
2 have the condition; or

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

5 (7) "manufacturer" means

6 (A) a person who fabricates, manufactures, or assembles
7 products; "manufacturer" does not include a person who converts, modifies, or
8 otherwise alters a product fabricated, manufactured, or assembled by another
9 person;

10 (B) a manufacturer branch and a manufacturer sales
11 representative; or

12 (C) a distribution entity that is

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

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

17 (8) "product" includes parts and accessories but, in AS 45.45.772 -
18 45.45.785, does not include a marine product or a motorized recreational product as
19 those terms are defined in AS 45.27.390;

20 (9) "required update" means an update that a manufacturer requires a
21 dealer or distributor to perform for a product transferred to a dealer or distributor
22 under a distributorship agreement;

23 (10) "ultimate purchaser" means a purchaser, other than for resale, of a
24 new product; or a person to whom ownership of a new product is transferred;

25 (11) "update" means replacing a product, improving systems used in a
26 product, or servicing a product;

27 (12) "warranty" means a warranty provided by the manufacturer of a
28 product or by a person who contracts with the manufacturer to provide the warranty on
29 behalf of the manufacturer.

30 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. This Act applies to merchandise transferred under a distributorship
2 agreement entered into on and after the effective date of this Act. In this section,
3 "distributorship agreement" and "merchandise" have the meanings given in AS 45.45.790.