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Bannister
3/6/15

CS FOR HOUSE BILL NO. 67()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE HAWKER

A BILL

FOR AN ACT ENTITLED

"An Act relating to product warranties and services for certain products; and relating to certain dealers, distributors, and manufacturers."

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

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

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

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

(1) the manufacturer remains subject to the obligations imposed on the manufacturer under AS 45.45.772 - 45.45.788;

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

(A) the contractor shall comply with the manufacturer's obligations under AS 45.45.772 - 45.45.788 that apply to the warranty services; and

(B) the manufacturer is responsible for the contractor's compliance with the manufacturer's obligations under AS 45.45.772 - 45.45.788 that apply to the warranty services; and

(3) the acts of the contractor that apply to the manufacturer's warranty obligations under AS 45.45.772 - 45.45.788 are treated as the acts of the manufacturer.

Sec. 45.45.773. Dealer or distributor warranty representations; manuals.

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

Sec. 45.45.774. Warranty service and claims. A dealer or distributor shall provide warranty service in accordance with the applicable warranty on all of the manufacturer's products sold by the dealer or distributor and shall make all claims for warranty reimbursement in the manner established by the manufacturer.

Sec. 45.45.775. Restrictions not allowed. A manufacturer may not, by distributorship agreement, by restrictions on reimbursement, or by another method, restrict the nature or extent of covered products provided or labor performed by a dealer or distributor if the restriction impairs the dealer's or distributor's ability to satisfy a required service in accordance with generally accepted standards.

Sec. 45.45.776. Payment for required services. A manufacturer of a covered product shall pay a dealer or distributor to complete a required service under AS 45.45.772 - 45.45.788 using the standard claim procedures and methods of the applicable industry.

Sec. 45.45.777. Required service reimbursement. (a) A manufacturer shall use the criteria established in this section to reimburse a dealer or distributor for performing a required service.

(b) If the technicians performing a required service meet the certification

standards in the distributorship agreement, the manufacturer shall pay the dealer or distributor providing the required service at a rate that is not less than the highest of the following for the labor of the technicians:

(1) the rate the dealer or distributor customarily charges a customer for work that is not a required service;

(2) the manufacturer's printed flat rate; or

(3) the rate established by a flat rate manual for dealers or distributors, if the manual is produced for dealers or distributors by a nationally recognized industry consultant.

(c) The payment under (b) of this section must include payment for clean-up, preparation, diagnosis, disassembly, repair, assembly, testing, and final cleaning as needed to provide a quality result and customer satisfaction.

(d) In addition to the payment under (b) of this section, the manufacturer shall pay a dealer or distributor a minimum of one hour at the dealer's or distributor's standard labor rate for the administration of each required service claim.

(e) The manufacturer shall reimburse the dealer or distributor for the transportation and lodging costs of the employees of the dealer or distributor when it is necessary for the employees to travel to the location of a product to perform a required service.

Sec. 45.45.778. Reimbursement for products used. A manufacturer shall reimburse a dealer or distributor at the current manufacturer's full suggested retail price for covered products in the dealer's or distributor's inventory that the dealer or distributor uses for a required service.

Sec. 45.45.779. Transportation of needed covered products. (a) If the inventory of a dealer or distributor does not contain a new or replacement covered product that is needed to complete a required service, the manufacturer shall pay the cost for transporting the new or replacement covered product to the dealer or distributor who sold the covered product or who is located nearest to the ultimate purchaser, whichever the ultimate purchaser chooses. The manufacturer is not required to pay the cost of transportation from the dealer or distributor to the ultimate purchaser or from the ultimate purchaser to the dealer or distributor.

(b) When transporting a covered product under (a) of this section, the manufacturer shall use a method of transportation that will deliver the covered product as soon as possible considering the time constraints of the situation.

Sec. 45.45.780. Timely reimbursement for claims. A manufacturer shall pay a properly submitted required service claim of a dealer or distributor within 30 days after receiving the claim from a dealer or distributor. Unless a manufacturer issues a written notice of disapproval under AS 45.45.781 within the 30 days, if a manufacturer fails to pay a claim within 30 days after receipt, the failure is considered an acceptance of the claim as submitted, and the manufacturer shall pay the dealer or distributor interest at the rate of 1.5 percent a month on the claim.

Sec. 45.45.781. Claim disapproval. If a manufacturer does not approve a claim submitted under AS 45.45.780, the manufacturer shall issue a written notice of disapproval to the dealer or distributor within 30 days after the manufacturer receives the claim. The notice must contain the specific reasons for the disapproval.

Sec. 45.45.782. Repairs required. If a covered product does not conform to a warranty that is applicable to it and the ultimate purchaser of the covered product reports the defect to the manufacturer of the covered product or to the manufacturer's dealer or distributor during the term of the warranty, the manufacturer, dealer, or distributor shall make the necessary repairs to conform the covered product to the warranty.

Sec. 45.45.783. Replacement or refund. (a) If, during the term of a warranty or within one year after the date of the delivery of the covered product to the ultimate purchaser, whichever period ends first, the manufacturer, dealer, or distributor is unable to conform a covered product to an applicable warranty after a reasonable number of attempts, the manufacturer shall accept the return of the covered product, and, at the ultimate purchaser's option, shall replace the covered product with a new comparable covered product or refund the full purchase price to the owner after deducting a reasonable amount of money for the ultimate purchaser's use of the covered product from the date the covered product was delivered to the ultimate purchaser.

(b) The reasonable amount of money deducted under (a) of this section may

not exceed an amount that is equal to the sum of

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

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

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

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

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

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

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

(d) In this section,

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

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

Sec. 45.45.784. Notice by ultimate purchaser. (a) To claim a refund or replacement under AS 45.45.783, an ultimate purchaser shall give written notice by certified mail to the manufacturer and its dealer or distributor before 60 days have elapsed after the termination of whichever of the following periods ends first:

(1) the term of the warranty; or

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

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

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

(2) provide a reasonable description of the defect;

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

(4) state that the ultimate purchaser demands that a refund or a replacement of the covered 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 covered product before the manufacturer is required to make a refund or replacement under AS 45.45.783.

Sec. 45.45.785. Exceptions. An ultimate purchaser may not receive a refund for or replacement of a covered product under AS 45.45.772 - 45.45.788 claimed to have a defect 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 defect; or

(2) is a defect that resulted from

(A) alteration of the covered product by the ultimate purchaser, or by a person who is not the dealer or distributor or 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 dealer or distributor.

Sec. 45.45.786. Presumption. A rebuttable presumption that a reasonable number of attempts have been made to conform a covered product to an applicable warranty is established if

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

(2) the covered product is out of service for repair for a total of 30 or more days on which the dealer or distributor is open for business during the term of the warranty or during the one-year period after the date of delivery of the covered product to the ultimate purchaser, whichever period ends first; a period during which repairs are not performed for reasons that are beyond the control of the manufacturer,

dealer, or distributor is not included in satisfying the 30-day period.

Sec. 45.45.787. Products covered. AS 45.45.772 - 45.45.788 apply to products that are

(1) equipment, tools, or motor vehicles if the equipment, tools, or motor vehicles are designed to be used primarily for construction, road building, snow removal, mining, oil projects, gas projects, forestry, resource development, or a similar type of project; in this paragraph, "motor vehicle" means a motor vehicle that is not subject to registration under AS 28.10.011; or

(2) parts or accessories for the items identified in (1) of this section.

Sec. 45.45.788. Coverage of warranty service. To qualify as warranty service, the service must be covered by the manufacturer's warranty during the original period of the warranty.

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

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

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

(6) "covered product" has the meaning given in AS 45.45.787;

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

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

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

(8) "manufacturer" means

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

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

(C) a distribution entity that is

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

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

(9) "required service" means a service performed by a dealer or distributor on behalf of a manufacturer to complete

(A) warranty service as described under AS 45.45.788; or

(B) a modification or safety update required by the manufacturer;

(10) "required update" means an update that a manufacturer requires a dealer or distributor to perform for a covered product transferred to a dealer or distributor under a distributorship agreement;

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

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

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

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