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Chapter No.

AN ACT

Relating to marine products and motorized recreational products; amending Rule 3, Alaska Rules of Civil Procedure; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

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

3

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

(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

other items if the authorized dealer has clear title to the property and is in a position to convey that title to the manufacturer. If the property is subject to a security interest, the manufacturer may make the payments jointly to the authorized dealer and the 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, 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 warranty, if any, that is in effect at the time of delivery of the product to the authorized dealer.

Sec. 45.27.110. Nonconforming products. (a) A manufacturer of a nonconforming 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 nonconforming 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 - 45.27.220.

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

(c) The manufacturer of a nonconforming product shall pay the cost for transporting a replacement for the nonconforming product from the manufacturer to the authorized dealer who sold the nonconforming product to the ultimate purchaser or the authorized dealer who is located nearest to the ultimate purchaser, whichever of the two authorized dealers the ultimate purchaser 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) If the technician performing the warranty service work meets the
25 certification standards in the dealership agreement, a manufacturer shall pay to a
26 servicing authorized dealer warranty work labor rates that

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

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

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

31 (C) the rate established by a flat rate manual for dealers, if the

1 manual is produced for dealers by a nationally respected industry consultant;
2 and

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

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

9 (d) A manufacturer shall reimburse the authorized dealer for product parts in
10 the authorized dealer's inventory at the current manufacturer's full suggested retail
11 price.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (d) In this section,

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

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

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

- (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 reasonable number of attempts to conform the product to the warranty; and
- (4) state that the ultimate purchaser 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. 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

1 of delivery of the product to the ultimate purchaser, whichever period of time
2 terminates first; or

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

9 **Article 3. Miscellaneous Business Practices.**

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

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

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

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

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

31 **Sec. 45.27.270. Content of factory recall notices.** A manufacturer shall

1 include in a written factory recall notice to ultimate purchasers and authorized dealers
2 the date by which the manufacturer expects that necessary parts and equipment will be
3 available to the authorized dealer for the correction of the defect that is the subject of
4 the recall.

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

9 **Article 4. Miscellaneous Provisions.**

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

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

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

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

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

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

31 **Sec. 45.27.340. Unenforceable provisions.** If a provision in a dealership

1 agreement violates this chapter, the provision is not enforceable.

2 **Article 5. General Provisions.**

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

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

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

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

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

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

15 (6) "manufacturer" means a person who

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

21 (B) is a distribution entity that is

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

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

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

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

1 in this paragraph,

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

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

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

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

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

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

17 (10) "part" includes an accessory;

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

20 (12) "ultimate purchaser" means

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

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

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

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

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

30 (a) AS 45.45.700 - 45.45.790 do not apply to

31 (1) a distributorship agreement that would be considered a franchise

1 regulated by 15 U.S.C. 2801 - 2841 (Petroleum Marketing Practices Act);
2 (2) a situation regulated by AS 45.50.800 - 45.50.850;
3 (3) a distributorship agreement, including a franchise agreement, for
4 the sale, repair, or servicing of motor vehicles that are required to be registered under
5 AS 28.10;
6 (4) an activity or agreement by a person licensed under AS 04 if the
7 activity or agreement is within the scope of the license or is incidental to the activity
8 or agreement that is within the scope of the license;
9 (5) a distributorship agreement or another contract between a person
10 licensed under AS 04 and a distributor, manufacturer, importer, supplier, or wholesaler
11 of alcoholic beverages who is not located in this state if the subject of the agreement
12 or contract is the distribution of alcoholic beverages to the licensed person by the
13 distributor, manufacturer, importer, supplier, or wholesaler;
14 (6) a distributor, manufacturer, importer, supplier, or wholesaler of
15 alcoholic beverages;
16 (7) a distributorship agreement for the sale or distribution of, or other
17 transaction involving, cigarettes, food, drink, or a component of food or drink; in this
18 paragraph, "cigarette" has the meaning given in AS 43.50.170; [OR]
19 (8) a manufacturer with 50 or fewer employees; **or**
20 **(9) a marine product or motorized recreational product agreement**
21 **under AS 45.27.**

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

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

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

27 INDIRECT COURT RULE AMENDMENT. The provisions of AS 45.27.320,
28 enacted by sec. 2 of this Act, have the effect of amending Rule 3, Alaska Rules of Civil
29 Procedure, by establishing a specific venue rule that is different from the venue rules in Rule
30 3 for a dispute between a manufacturer and an authorized dealer.

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

1 read:

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

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