

HOUSE CS FOR CS FOR SENATE BILL NO. 176(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered: 4/19/02

Referred: Today's Calendar

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting certain coercive activity by distributors; relating to certain**
2 **required distributor payments and purchases; prohibiting distributors from requiring**
3 **certain contract terms as a condition for certain acts related to distributorship and**
4 **ancillary agreements; allowing dealers to bring certain court actions against distributors**
5 **for certain relief; and making exemptions that relate to the federal Petroleum**
6 **Marketing Practices Act, situations regulated by the Alaska Gasoline Products Leasing**
7 **Act, distributorship agreements relating to motor vehicles required to be registered**
8 **under AS 28.10, activities and agreements by persons licensed under AS 04, contracts**
9 **between persons licensed under AS 04 and out-of-state persons in the alcoholic beverage**
10 **industry, distributorship agreements involving cigarettes, food, drink, or components of**
11 **food or drink, manufacturers with 50 or fewer employees, suppliers, manufacturers,**
12 **importers, and wholesalers of alcoholic beverages."**

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

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

Article 9A. Distributorships.

Sec. 45.45.700. Coercion of dealer. (a) A distributor may not coerce or attempt to coerce a dealer to perform certain acts by using duress or by threatening to terminate the distributorship agreement or another agreement between the distributor and the dealer.

(b) In this section, "certain acts" means

(1) the purchase or acceptance of delivery of merchandise that has not been ordered by the dealer;

(2) the assignment, sale, or disposal of a contract or property; or

(3) making an expenditure that the dealer has not contracted to make.

Sec. 45.45.710. Disposition of merchandise remaining upon contract termination. (a) If a dealer maintains a stock of merchandise supplied for the dealer's resale under a distributorship agreement and if the distributor or the dealer terminates the distributorship agreement, the distributor shall, unless the dealer chooses to keep the merchandise, pay the dealer for the merchandise that was purchased from the distributor and that is held by the dealer on the date of the termination an amount equal to

(1) the fair market value for merchandise that is unused and for which the retailer has paid the distributor, plus 100 percent of the transportation charges paid by the dealer to return the merchandise to the distributor; in this paragraph,

(A) "fair market value" means the amount the distributor would realize from the sale of the merchandise to another retailer using reasonable good faith efforts;

(B) "unused" means unopened merchandise that is still in the original factory packaging or container;

(2) 85 percent of the current net price, as listed in the current price list or catalog of the distributor, for repair parts, including superseded parts; and

(3) five percent of the current net price of repair parts to cover the handling, packing, and transportation of the repair parts back to the distributor.

(b) Upon payment of the amounts required by (a) of this section, the title to the merchandise passes to the distributor making the payment, and the distributor is entitled to the possession of the merchandise for which the payment was made.

(c) In (a) of this section, if a repair part is not listed in a current price list or catalog of the distributor, the current net price is the higher of the fair market value or the latest price published by the distributor for the repair part if a dealer has actual proof of the purchase of the repair part from the distributor and if the repair part was purchased within 10 years before the termination.

Sec. 45.45.720. Time for payment. A distributor shall make the payments to the dealer under AS 45.45.710 not later than three months after the date the agreement is terminated. When the payment is made, the distributor shall provide the dealer with a final detailed statement of account for the merchandise.

Sec. 45.45.730. Death or disability of dealer or holder of majority interest in dealer. Unless the distributorship agreement is continued by the personal representative, an heir, a devisee, or another successor in interest of the individual, upon the death or disability of an individual who is a dealer or holds a majority interest in a dealer, a distributor who supplied merchandise to the dealer shall repurchase from the personal representative, heir, devisee, or other successor in interest the merchandise that was purchased from the distributor and that remains when the distributorship agreement is terminated under this section. To repurchase under this section, the distributor shall pay an amount equal to the amount identified under AS 45.45.710(a) and (c), and the repurchase is subject to AS 45.45.720. In this section, "devisee," "heir," and "personal representative" have the meanings given in AS 13.06.050.

Sec. 45.45.740. Required purchase, reimbursement, and supplies. (a) In addition to any purchase of merchandise required by AS 45.45.710, if a distributor terminates a distributorship agreement or makes substantial changes in the competitive situation of the distributor's dealer with regard to distribution of the merchandise or services that are the subject of the distribution agreement, the distributor shall

(1) purchase that portion of the dealer's business directly affected by the distributorship agreement or the change, including assets and machinery, at

1 commercially reasonable business valuations; and

2 (2) reimburse the dealer for the expenses that were necessarily incurred
3 by the dealer

4 (A) for that portion of the dealer's business covered by the
5 distributorship agreement; and

6 (B) during the 12 months before the termination or change.

7 (b) In this section, "change" does not include making a price change that
8 affects similarly situated dealers equally.

9 **Sec. 45.45.750. Prohibited terms.** (a) A distributor may not require a dealer
10 to agree to any of the following terms in a distributorship agreement, or in another
11 agreement that is ancillary to a distributorship agreement, as a condition of an offer,
12 grant, or renewal of a distributorship agreement or ancillary agreement:

13 (1) a requirement that the dealer waive a trial by jury in court cases
14 involving the distributor;

15 (2) a requirement that disputes between the distributor and the dealer
16 be submitted to arbitration or to any other binding alternate dispute resolution
17 procedure, except authorization for the submission of a dispute to arbitration or to
18 binding alternative dispute resolution if the distributor and dealer voluntarily agree to
19 submit the dispute to arbitration or binding alternative dispute resolution when the
20 dispute arises;

21 (3) a requirement that the dealer pay the attorney fees of the
22 distributor;

23 (4) a requirement that prohibits a firearms dealer from selling firearms
24 or related accessories, the sale of which is otherwise legal, but which the firearms
25 distributor does not manufacture or distribute; or

26 (5) a requirement that the agreement be subject to the laws of a state
27 other than Alaska.

28 (b) The provisions of (a) of this section do not apply to an agreement where a
29 lease or sale of real property is the main purpose of the agreement.

30 **Sec. 45.45.760. Civil action.** (a) A dealer may bring an action in court
31 against a distributor if the distributor engages in activity prohibited under this chapter.

1 (b) In an action brought under (a) of this section, the dealer may obtain one or
 2 more of the following types of relief that apply to the specific action of the dealer:

- 3 (1) damages suffered by the dealer as a result of the activity;
 4 (2) an injunction enjoining the distributor from engaging in the
 5 activity;
 6 (3) a requirement that the distributor make a payment or a purchase
 7 required by this chapter;
 8 (4) any other relief determined by the court to be appropriate under the
 9 circumstances.

10 (c) In this section, "activity prohibited under this chapter" means

- 11 (1) coercion or attempted coercion under AS 45.45.700;
 12 (2) terminating a distributorship agreement without paying the dealer
 13 as required by AS 45.45.710;
 14 (3) failing to pay the dealer within the time established by
 15 AS 45.45.720;
 16 (4) failing to provide the statement of account as required by
 17 AS 45.45.720;
 18 (5) failing to make a repurchase payment required by AS 45.45.730;
 19 (6) failing to make a purchase as required by AS 45.45.740(a)(1);
 20 (7) failing to make the reimbursement required by AS 45.45.740(a)(2);

21 or

- 22 (8) violating AS 45.45.750.

23 **Sec. 45.45.770. Exemptions.** (a) AS 45.45.700 - 45.45.790 do not apply to

- 24 (1) a distributorship agreement that would be considered a franchise
 25 regulated by 15 U.S.C. 2801 - 2841 (Petroleum Marketing Practices Act);
 26 (2) a situation regulated by AS 45.50.800 - 45.50.850;
 27 (3) a distributorship agreement, including a franchise agreement, for
 28 the sale, repair, or servicing of motor vehicles that are required to be registered under
 29 AS 28.10;
 30 (4) an activity or agreement by a person licensed under AS 04 if the
 31 activity or agreement is within the scope of the license or is incidental to the activity

1 or agreement that is within the scope of the license;

2 (5) a distributorship agreement or another contract between a person
3 licensed under AS 04 and a distributor, manufacturer, importer, supplier, or wholesaler
4 of alcoholic beverages who is not located in this state if the subject of the agreement
5 or contract is the distribution of alcoholic beverages to the licensed person by the
6 distributor, manufacturer, importer, supplier, or wholesaler;

7 (6) a distributor, manufacturer, importer, supplier, or wholesaler of
8 alcoholic beverages;

9 (7) a distributorship agreement for the sale or distribution of, or other
10 transaction involving, cigarettes, food, drink, or a component of food or drink; in this
11 paragraph, "cigarette" has the meaning given in AS 43.50.170; or

12 (8) a manufacturer with 50 or fewer employees.

13 (b) In (a) of this section, "alcoholic beverage" has the meaning given in
14 AS 04.21.080.

15 **Sec. 45.45.790. Definitions.** In AS 45.45.700 - 45.45.790,

16 (1) "dealer" means a person who enters into a distributorship
17 agreement and who, under the agreement, receives merchandise or services from a
18 distributor;

19 (2) "distributor" means a person who enters into a distributorship
20 agreement and who, under the agreement, provides merchandise or services to a
21 dealer; the term includes

22 (A) a wholesaler;

23 (B) a manufacturer;

24 (C) a person that is a parent corporation or an affiliated
25 corporation of a person identified in (A) or (B) of this paragraph; and

26 (D) a field representative, an officer, an agent, or another direct
27 or indirect representative of a person identified in (A), (B), or (C) of this
28 paragraph;

29 (3) "distributorship agreement" means an agreement, whether express,
30 implied, oral, or written, between two or more persons

31 (A) by which a person receives the right to

1 (i) sell or lease merchandise or services at retail or
2 wholesale; or

3 (ii) use a trade name, trademark, service mark,
4 logotype, advertising, or other commercial symbol; and

5 (B) in which the parties to the agreement have a joint interest,
6 whether equal or unequal, in the offering, selling, or leasing of the merchandise
7 or services;

8 (4) "merchandise" includes parts and accessories;

9 (5) "terminate" includes failing to renew.

10 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **APPLICABILITY.** This Act applies to a distributorship agreement that is entered into
13 on or after the effective date of this Act.