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Bannister

4/2/09

CS FOR HOUSE BILL NO. 177()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Herron, Neuman, Austerman, Muñoz, Harris, Thomas

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 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.

1 (c) In this section, "mail" means registered or certified mail, return receipt
2 requested.

3 **Sec. 45.27.040. Threat of cancellation or nonrenewal.** (a) A manufacturer or
4 manufacturer's representative may not coerce or attempt to coerce an authorized dealer
5 to enter into a dealership agreement with the manufacturer or a subsidiary of the
6 manufacturer, or to perform any other act unfair to the authorized dealer, by
7 threatening to terminate a dealership agreement between the manufacturer or
8 subsidiary of the manufacturer and the authorized dealer.

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

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

15 **Sec. 45.27.050. Repurchase obligations on cancellation or nonrenewal.** (a)
16 On the cancellation or nonrenewal of a dealership agreement by a manufacturer
17 without satisfying the requirements under AS 45.27.020, the manufacturer shall
18 repurchase from the authorized dealer's inventory

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

21 (2) each product part that

22 (A) was purchased from the manufacturer by the authorized
23 dealer;

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

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

28 (b) Within 90 days after the effective date of the cancellation or nonrenewal,
29 the authorized dealer shall return the property required by (a) of this section to be
30 repurchased to the manufacturer at the manufacturer's expense. The manufacturer shall
31 pay the compensation for the property within 60 days after the tender of inventory and

1 other items if the authorized dealer has clear title to the property and is in a position to
2 convey that title to the manufacturer. If the property is subject to a security interest,
3 the manufacturer may make the payments jointly to the authorized dealer and the
4 holder of the security interest, and the manufacturer may offset the payment.

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

9 **Article 2. Product Warranties.**

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

14 **Sec. 45.27.110. Defective products.** (a) A manufacturer of a defective product
15 shall, during the original warranty period, pay an authorized dealer to complete
16 factory-recommended warranty repairs, solutions, and procedures to cure factory
17 warranty problems with a defective product. The manufacturer shall make the
18 payment in accordance with the standard warranty service claim procedures and
19 methods of the industry and with AS 45.27.100 - 45.27.170.

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

27 (c) The manufacturer of a defective product shall pay the cost for transporting
28 a replacement for the defective product from the manufacturer to the authorized dealer
29 who sold the defective product to the ultimate purchaser or the authorized dealer who
30 is located nearest to the ultimate purchaser, whichever of the two authorized dealers
31 the ultimate consumer chooses. The manufacturer is not required to pay the

1 transportation cost from the authorized dealer to the ultimate purchaser or from the
2 ultimate purchaser to the authorized dealer.

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

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 written warranty. An authorized dealer shall deliver the manuals
8 on the 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) A manufacturer shall pay to a servicing authorized dealer warranty work
25 labor rates that

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

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

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

30 (C) the rate established by a flat rate manual for dealers, if the
31 manual is produced for dealers by a nationally respected industry consultant;

1 and

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

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

8 (d) A manufacturer shall reimburse the authorized dealer for product parts at
9 the current manufacturer's full suggested retail price and shall ship each part to the
10 authorized dealer without cost for freight or handling.

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

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

22 **Article 3. Miscellaneous Business Practices.**

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

29 (b) If an authorized dealer's service operations employees receive a
30 commission for the amount of work they perform, the authorized dealer shall post a
31 conspicuous sign that is visible to service customers that the authorized dealer's

1 service operations employees work on commission.

2 **Sec. 45.27.210. Written estimates for repairs not covered by warranty.** (a)

3 Before beginning repair work on a product for a customer, an authorized dealer shall
4 provide to the customer a written estimate listing the specific parts, labor, and cost of
5 the repairs.

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

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

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

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

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

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

26 **Article 4. Miscellaneous Provisions.**

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

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

Article 6. General Provisions.

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

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

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

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

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

(5) "manufacturer" means a person who

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

(B) is a distribution entity that is

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

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

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

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

(A) "all-terrain vehicle" means a vehicle with three or more low-pressure, flotation-type tires, as designed by the manufacturer or altered,

1 to be used as an off-road recreational vehicle;

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

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

7 (8) "part" includes an accessory;

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

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

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

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

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

17 (1) a distributorship agreement that would be considered a franchise
18 regulated by 15 U.S.C. 2801 - 2841 (Petroleum Marketing Practices Act);

19 (2) a situation regulated by AS 45.50.800 - 45.50.850;

20 (3) a distributorship agreement, including a franchise agreement, for
21 the sale, repair, or servicing of motor vehicles that are required to be registered under
22 AS 28.10;

23 (4) an activity or agreement by a person licensed under AS 04 if the
24 activity or agreement is within the scope of the license or is incidental to the activity
25 or agreement that is within the scope of the license;

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

31 (6) a distributor, manufacturer, importer, supplier, or wholesaler of

1 alcoholic beverages;

2 (7) a distributorship agreement for the sale or distribution of, or other
3 transaction involving, cigarettes, food, drink, or a component of food or drink; in this
4 paragraph, "cigarette" has the meaning given in AS 43.50.170; [OR]

5 (8) a manufacturer with 50 or fewer employees; or

6 (9) a marine product or motorized recreational product agreement
7 under AS 45.27.

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

9 (56) violating AS 45.27 (marine products and motorized recreational
10 products).

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

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

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