

**CS FOR SENATE BILL NO. 176(L&C)**  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Offered: 4/25/01**

**Referred: Judiciary, Finance**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to distributorships."**

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

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

4 **Article 9A. Distributorships.**

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

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

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

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

13 (3) the expenditure of money.

14 **Sec. 45.45.710. Disposition of merchandise remaining upon contract**  
15 **termination.** (a) If a dealer maintains a stock of merchandise supplied for the

1 dealer's resale under a distributorship agreement and if the distributor or the dealer  
 2 terminates the distributorship agreement, the distributor shall, unless the dealer  
 3 chooses to keep the merchandise, pay the dealer for the merchandise that was  
 4 purchased from the distributor and that is held by the dealer on the date of the  
 5 termination an amount equal to

6 (1) 100 percent of the net cost of the merchandise that is current and  
 7 unused and for which the retailer has paid the distributor, plus 100 percent of the  
 8 transportation charges paid by the dealer to return the merchandise to the distributor;

9 (2) 85 percent of the current net price, as listed in the current price list  
 10 or catalog of the distributor, for repair parts, including superseded parts; and

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

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

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

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

25 **Sec. 45.45.730. Death of distributor.** Unless the distributorship agreement is  
 26 continued by the personal representative, heirs, or devisees of the individual, upon the  
 27 death of an individual who is a dealer or holds a majority interest in a dealer, a  
 28 distributor who supplied merchandise to the dealer shall repurchase from the personal  
 29 representative, heirs, or devisees the merchandise that was purchased from the  
 30 distributor and that remains when the distributorship agreement is terminated under  
 31 this section. To repurchase under this section, the distributor shall pay an amount

1 equal to the amount identified under AS 45.45.710(a) and (c), and the repurchase is  
 2 subject to AS 45.45.720. In this section, "devisee," "heir," and "personal  
 3 representative" have the meanings given in AS 13.06.050.

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

9 (1) purchase that portion of the dealer's business covered by the  
 10 distributorship agreement or affected by the change, including good will, assets, and  
 11 machinery, at commercially reasonable business valuations; and

12 (2) reimburse the dealer for the expenses that were incurred by the  
 13 dealer

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

16 (B) during the 18 months before the termination or change.

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

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

23 (1) a requirement that the distributor waive a trial by jury in court  
 24 cases involving the distributor;

25 (2) a requirement that disputes between the distributor and the dealer  
 26 be submitted to arbitration or to any other binding alternate dispute resolution  
 27 procedure, except authorization for the submission of a dispute to arbitration or to  
 28 binding alternative dispute resolution if the distributor and dealer voluntarily agree to  
 29 submit the dispute to arbitration or binding alternative dispute resolution when the  
 30 dispute arises;

31 (3) a requirement that the dealer pay the attorney fees of the

1 distributor; or

2 (4) a requirement that the agreement be subject to the laws of a state  
3 other than Alaska.

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

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

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

10 (1) damages suffered by the dealer as a result of the activity;

11 (2) an injunction enjoining the distributor from engaging in the  
12 activity;

13 (3) a requirement that the distributor make a payment or a purchase  
14 required by this chapter;

15 (4) any other relief determined by the court to be appropriate under the  
16 circumstances.

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

18 (1) coercion or attempted coercion under AS 45.45.700;

19 (2) terminating a distributorship agreement without paying the dealer  
20 as required by AS 45.45.710;

21 (3) failing to pay the dealer within the time established by  
22 AS 45.45.720;

23 (4) failing to provide the statement of account as required by  
24 AS 45.45.720;

25 (5) failing to make a repurchase payment required by AS 45.45.730;

26 (6) failing to repurchase merchandise as required by  
27 AS 45.45.740(a)(1);

28 (7) failing to make the reimbursement required by AS 45.45.740(a)(2);

29 or

30 (8) violating AS 45.45.750.

31 **Sec. 45.45.770. Exemption.** AS 45.45.700 - 45.45.790 do not apply to

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

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

4 (3) a distributorship agreement for the sale, repair, or servicing of  
5 motor vehicles that are required to be registered under AS 28.10.

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

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

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

13 (A) a wholesaler;

14 (B) a manufacturer;

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

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

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

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

23 (i) sell or lease merchandise or services at retail or  
24 wholesale; or

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

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

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

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

1     \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:  
3           **APPLICABILITY.** This Act applies to a distributorship agreement that is entered into  
4 on or after the effective date of this Act.