

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

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Amended: 5/1/01

Offered: 4/25/01

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 exempting from the provisions of the Act franchises regulated by**
6 **the federal Petroleum Marketing Practices Act, situations regulated by the Alaska**
7 **gasoline products leasing act, and distributorship agreements relating to motor vehicles**
8 **required to be registered under AS 28.10."**

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

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

11 **Article 9A. Distributorships.**

12 **Sec. 45.45.700. Coercion of dealer.** (a) A distributor may not coerce or

1 attempt to coerce a dealer to perform certain acts by using duress or by threatening to
 2 terminate the distributorship agreement or another agreement between the distributor
 3 and the dealer.

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

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

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

8 (3) the expenditure of money.

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

16 (1) 100 percent of the net cost of the merchandise that is current and
 17 unused and for which the retailer has paid the distributor, plus 100 percent of the
 18 transportation charges paid by the dealer to return the merchandise to the distributor;

19 (2) 85 percent of the current net price, as listed in the current price list
 20 or catalog of the distributor, for repair parts, including superseded parts; and

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

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

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

31 **Sec. 45.45.720. Time for payment.** A distributor shall make the payments to

1 the dealer under AS 45.45.710 not later than three months after the date the agreement
 2 is terminated. When the payment is made, the distributor shall provide the dealer with
 3 a final detailed statement of account for the merchandise.

4 **Sec. 45.45.730. Death of distributor.** Unless the distributorship agreement is
 5 continued by the personal representative, heirs, or devisees of the individual, upon the
 6 death of an individual who is a dealer or holds a majority interest in a dealer, a
 7 distributor who supplied merchandise to the dealer shall repurchase from the personal
 8 representative, heirs, or devisees the merchandise that was purchased from the
 9 distributor and that remains when the distributorship agreement is terminated under
 10 this section. To repurchase under this section, the distributor shall pay an amount
 11 equal to the amount identified under AS 45.45.710(a) and (c), and the repurchase is
 12 subject to AS 45.45.720. In this section, "devisee," "heir," and "personal
 13 representative" have the meanings given in AS 13.06.050.

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

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

22 (2) reimburse the dealer for the expenses that were incurred by the
 23 dealer

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

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

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

29 **Sec. 45.45.750. Prohibited terms.** (a) A distributor may not require a dealer
 30 to agree to any of the following terms in a distributorship agreement, or in another
 31 agreement that is ancillary to a distributorship agreement, as a condition of an offer,

1 grant, or renewal of a distributorship agreement or ancillary agreement:

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

4 (2) a requirement that disputes between the distributor and the dealer
5 be submitted to arbitration or to any other binding alternate dispute resolution
6 procedure, except authorization for the submission of a dispute to arbitration or to
7 binding alternative dispute resolution if the distributor and dealer voluntarily agree to
8 submit the dispute to arbitration or binding alternative dispute resolution when the
9 dispute arises;

10 (3) a requirement that the dealer pay the attorney fees of the
11 distributor;

12 (4) a requirement that prohibits a firearms dealer from selling firearms
13 or related accessories whose sale is otherwise legal, but which the firearms distributor
14 does not manufacture or distribute; or

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

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

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

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

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

24 (2) an injunction enjoining the distributor from engaging in the
25 activity;

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

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

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

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

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

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

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

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

8 (6) failing to repurchase merchandise as required by
9 AS 45.45.740(a)(1);

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

11 or

12 (8) violating AS 45.45.750.

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

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

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

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

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

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

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

26 (A) a wholesaler;

27 (B) a manufacturer;

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

30 (D) a field representative, an officer, an agent, or another direct
31 or indirect representative of a person identified in (A), (B), or (C) of this

1 paragraph;

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

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

5 (i) sell or lease merchandise or services at retail or
6 wholesale; or

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

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

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

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

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

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