

SENATE BILL NO. 176

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 4/5/01

Referred: Labor and Commerce, Judiciary, Finance

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, except repair parts,
 7 that is current and unused and for which the retailer has paid the distributor, plus 100
 8 percent of the transportation charges paid by the dealer to return the merchandise to
 9 the distributor;

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 11 or catalog of the distributor, for repair parts, including superseded parts; and

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

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

17 (c) In (a)(2) or (3) of this section, if a repair part is not listed in a current price
 18 list or catalog of the distributor, the current net price is the higher of the original
 19 purchase price or the latest price published by the distributor for the repair part if a
 20 dealer has actual proof of the purchase of the repair part from the distributor and if the
 21 repair part was purchased within 10 years before the termination.

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) a requirement that the dealer pay the attorney fees of the
2 distributor; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 or

31 (8) violating AS 45.45.750.

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

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

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

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

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

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

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

14 (A) a wholesaler;

15 (B) a manufacturer;

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

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

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

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

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

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

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

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

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

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

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