

CS FOR HOUSE BILL NO. 303(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/20/08

Referred: Rules

Sponsor(s): REPRESENTATIVES NEUMAN, Harris, Thomas, Edgmon, Olson

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 is amended by adding a new section to read:

5 **Sec. 45.25.920. Conflicting provisions.** If a provision of this chapter conflicts
6 with a provision in AS 45.27, the provision in AS 45.27 governs.

7 *** Sec. 2.** AS 45 is amended by adding a new chapter to read:

8 **Chapter 27. Marine Products and Motorized Recreational Products.**

9 **Article 1. Agreement Practices of Product Manufacturers and Distributors.**

10 **Sec. 45.27.010. Cancellation or nonrenewal of agreement.** A manufacturer
11 or distributor may not, without 90 days' advance written notice, cancel or refuse to
12 renew an agreement with an authorized dealer.

13 **Sec. 45.27.020. Consent to transfer of agreement.** A manufacturer or
14 distributor may not unreasonably withhold consent to the sale or other transfer of an

1 agreement by an authorized dealer to a transferee if the transferee

2 (1) meets the criteria generally applied by the manufacturer or
3 distributor when approving new authorized dealers; and

4 (2) agrees to be bound by all the terms and conditions of the standard
5 form of the agreement.

6 **Sec. 45.27.030. Change in existing agreement.** Except as provided by
7 AS 45.25.110, a manufacturer or distributor may not change an agreement with an
8 authorized dealer unless the manufacturer or distributor gives notice by mail to the
9 authorized dealer at least 90 days before the change.

10 **Article 2. Area of Responsibility.**

11 **Sec. 45.27.100. Determination of area of responsibility.** Unless the
12 authorized dealer's agreement establishes a smaller area of responsibility, an
13 authorized dealer's area of responsibility may be a geographical area designated by zip
14 code, municipality, or mileage radius in the authorized dealer's agreement with a
15 manufacturer or distributor.

16 **Sec. 45.27.110. Changing area of responsibility.** Before changing an area of
17 responsibility, the manufacturer or distributor shall give the authorized dealer at least
18 90 days' written notice by mail before the change. This section does not apply to an
19 authorized dealer who relocates or opens additional facilities within two miles of the
20 authorized dealer's existing facilities unless the relocation would infringe on another
21 authorized dealer's area of responsibility.

22 **Sec. 45.27.120. Adding authorized dealer to area of responsibility.** (a) A
23 manufacturer or distributor may not enter into an agreement that would add an
24 authorized dealer within the existing authorized dealer's area of responsibility without
25 giving at least 90 days' written notice by mail to all potentially affected authorized
26 dealers in the area of responsibility.

27 (b) The notice under (a) of this section must include

28 (1) a determination that the community or territory can support an
29 additional authorized dealer; and

30 (2) a determination of whether the existing authorized dealers of the
31 same line of product makes, models, or classifications in the authorized dealer's area

1 of responsibility are providing adequate representation, competition, and convenient
 2 consumer care for the same line of product makes, models, and classifications located
 3 in that area of responsibility.

4 (c) The potentially affected authorized dealers shall have at least 60 days to
 5 provide additional information and comments to the manufacturer or distributor before
 6 the manufacturer or distributor makes a final decision.

7 **Article 3. General Product Provisions.**

8 **Sec. 45.27.200. Sale or shipment before agreement.** A manufacturer or
 9 distributor may not sell or ship a product to an authorized dealer before the authorized
 10 dealer signs an agreement that complies with this chapter.

11 **Sec. 45.27.210. Involuntary order or delivery.** A manufacturer or distributor
 12 may not coerce or attempt to coerce an authorized dealer to order or accept delivery of
 13 a

14 (1) product or another item that the authorized dealer has not
 15 voluntarily ordered; or

16 (2) product with a special feature, appliance, accessory, or equipment
 17 that is not included in the manufacturer's or distributor's advertised list for the product.

18 **Sec. 45.27.220. Refusal to deliver or ship.** A manufacturer or distributor may
 19 not, without just cause, refuse to deliver or ship, within 60 days after the authorized
 20 dealer's order has been received, to an authorized dealer a product that the
 21 manufacturer or distributor has publicly advertised is available for immediate delivery.

22 **Sec. 45.27.230. Delivery of products in reasonable quantities.** A
 23 manufacturer or distributor may not delay, refuse, or fail to deliver products in
 24 reasonable quantities to an authorized dealer unless the delay, refusal, or failure is
 25 caused by an act beyond the control of the manufacturer, the distributor, or a person
 26 related to the manufacturer or distributor.

27 **Sec. 45.27.240. Selection of delivery method.** Unless otherwise provided by
 28 the agreement, a manufacturer or distributor may not refuse to allow an authorized
 29 dealer to select the method and carrier for the delivery of products to the authorized
 30 dealer by the manufacturer or distributor.

31 **Sec. 45.27.250. Product damage responsibility.** (a) A manufacturer or

1 distributor is solely responsible for damage to a product that occurs before the
2 manufacturer or distributor delivers the product to a carrier.

3 (b) An authorized dealer is not responsible for damage to a new product that
4 occurs while the product is in the possession of the carrier unless the authorized dealer
5 selects the method of transportation and the carrier.

6 (c) An authorized dealer is solely responsible for damage to a new product
7 that occurs after the authorized dealer accepts the product from the carrier and before
8 delivery to the ultimate purchaser unless the damage results from a latent or hidden
9 defect or is not reasonably observable at the time the authorized dealer accepts the
10 product. An authorized dealer accepts a product when the authorized dealer signs a
11 delivery receipt for the product.

12 (d) An authorized dealer may refuse to accept a damaged product from a
13 manufacturer or distributor by giving written notice to the manufacturer or distributor
14 within 10 business days after the product is delivered to the authorized dealer. If an
15 authorized dealer refuses to accept the damaged product, the manufacturer or
16 distributor shall, within 10 days after receiving the notice from the authorized dealer,
17 credit the authorized dealer's account for the product cost that the manufacturer or
18 distributor charged to the authorized dealer and any freight and interest charged to the
19 authorized dealer for the product.

20 **Article 4. Product Repurchase Requirements.**

21 **Sec. 45.27.300. Manufacturer or distributor mandatory repurchase.** If an
22 authorized dealer discontinues selling a particular product and gives 60 days' advance
23 written notice of the discontinuance to the manufacturer or distributor by mail, the
24 manufacturer or distributor shall repurchase from the authorized dealer's inventory

25 (1) each new and unused discontinued product of the manufacturer that
26 is

27 (A) the current model of the discontinued product; or

28 (B) a model of the discontinued product from the previous two

29 years; and

30 (2) each discontinued product part that

31 (A) was purchased from the manufacturer or distributor;

1 (B) is listed in the manufacturers' parts price books in the past
2 two years; and

3 (C) has not been damaged or substantially altered to the
4 prejudice of the manufacturer or distributor while in the possession of the
5 authorized dealer.

6 **Sec. 45.27.310. Timing of repurchase.** A manufacturer or distributor shall
7 make the repurchase required by AS 45.27.300 within 60 days after the authorized
8 dealer submits to the manufacturer or distributor by mail the authorized dealer's final
9 inventory of all the products and product parts identified under AS 45.27.300 that
10 apply to the authorized dealer's discontinuance of the manufacturer's products.

11 **Sec. 45.27.320. Optional retention.** If an authorized dealer discontinues
12 engaging in the business of being an authorized dealer or discontinues selling a
13 particular make of product, the authorized dealer may, at the sole option of the
14 authorized dealer, retain some of the discontinued products and product parts to allow
15 for customer service, special orders, presold products, or another valid situation, as
16 determined in the sole discretion of the authorized dealer.

17 **Sec. 45.27.330. Failure to repurchase.** If a manufacturer or distributor fails,
18 without just cause, to make the repurchase required by AS 45.27.300, the
19 manufacturer or distributor shall pay the authorized dealer interest at the allowed rate
20 on the inventory value of the products and product parts that the manufacturer or
21 distributor fails to repurchase. The interest begins on the 31st day after the
22 manufacturer or distributor receives the final inventory under AS 45.27.310 and
23 continues until the manufacturer or distributor completes the required repurchase. In
24 this section, "allowed rate" means the interest rate set out in AS 45.45.010(a),
25 excluding the exception for AS 45.45.010(b).

26 **Sec. 45.27.340. Landed cost.** (a) The amount of a repurchase required by
27 AS 45.27.300 shall be based on the authorized dealer's landed cost at the authorized
28 dealer's facility.

29 (b) An authorized dealer's landed cost shall be adjusted for any quarterly or
30 annual purchase rebates and credits given to the authorized dealer on the products and
31 product parts being repurchased.

1 **Sec. 45.27.350. Carrier selection and costs.** A manufacturer or distributor of
2 a product may select the method and carrier to transport a product repurchased under
3 AS 45.27.300 - 45.27.340, but is responsible for any transportation or storage costs for
4 the repurchased product.

5 **Article 5. Product Warranties.**

6 **Sec. 45.27.400. Warranty provided.** A manufacturer shall provide, through
7 the authorized dealer, to the product's ultimate purchaser from an authorized dealer the
8 manufacturer's standard written warranty, if any, that is in effect at the time of delivery
9 of the product to the authorized dealer.

10 **Sec. 45.27.410. Defective products.** (a) A manufacturer or distributor of a
11 defective product shall, during the original warranty period, pay, in accordance with
12 the standard warranty service claim procedures and methods of the industry and with
13 AS 45.27.400 - 45.27.500, an authorized dealer to complete factory-recommended
14 warranty repairs, solutions, and procedures to cure factory warranty problems with a
15 defective product.

16 (b) A manufacturer or distributor shall, within 30 days after an authorized
17 dealer's request, provide the authorized dealer with original factory parts required to
18 perform warranty service on a defective product. If a manufacturer or distributor is
19 unable to supply original factory parts needed to complete the warranty repairs for a
20 defective product within 30 days, the authorized dealer may return the defective
21 product and receive full credit for the authorized dealer's landed cost of the product,
22 plus 100 percent of the freight charges to return the product.

23 (c) In this section, "defective product" means a product that is defective in
24 design, assembly, engineering, or manufacturing.

25 **Sec. 45.27.420. Authorized dealer warranty representations.** An authorized
26 dealer may not make a representation about the warranty that is not made by the
27 manufacturer in the written warranty. An authorized dealer shall deliver the manuals
28 on the operation and maintenance of a product to an ultimate purchaser and make the
29 manufacturer's warranty known to the ultimate purchaser, including all disclaimers
30 and limitations.

31 **Sec. 45.27.430. Timely warranty service and claims.** (a) An authorized

1 dealer shall provide timely warranty service in accordance with the manufacturer's
 2 applicable warranty on all of the manufacturer's and distributor's products sold by the
 3 authorized dealer.

4 (b) An authorized dealer shall make all claims for warranty reimbursement in
 5 the manner established by the manufacturer.

6 **Sec. 45.27.440. Basis for reimbursements.** (a) A manufacturer or distributor
 7 shall use the bases established in this section to reimburse an authorized dealer for all
 8 approved warranty service work performed by the authorized dealer.

9 (b) A manufacturer or distributor shall pay to a servicing authorized dealer
 10 warranty work labor rates that

11 (1) are at least the same as the authorized dealer customarily charges to
 12 a customer for nonwarranty service work; and

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

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

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

23 **Sec. 45.27.450. Requests to return items.** A request by the manufacturer, the
 24 distributor, or another person involved in a product's warranty service to an authorized
 25 dealer to return a product or a product part for analysis, testing, or inspection must be
 26 in writing and shall be made within 30 days after the filing date of the warranty claim
 27 submitted by the authorized dealer.

28 **Sec. 45.27.460. Timely reimbursement for claims.** A manufacturer or
 29 distributor shall pay a properly submitted warranty claim within 30 days after
 30 receiving the claim from an authorized dealer. If a manufacturer or distributor fails to
 31 pay a claim within 30 days after receipt, the failure is considered an acceptance of the

1 claim as submitted, and the manufacturer or distributor shall pay the authorized dealer
2 interest at the rate of 1.5 percent a month on the claim.

3 **Sec. 45.27.470. Boat package warranties and branding.** (a) A manufacturer
4 or distributor of a marine product may enter into a warranty service agreement with a
5 marine authorized dealer of a boat package without violating the area of responsibility
6 of another authorized dealer who has an agreement to sell the brand of marine motor
7 that is part of the boat package. However, the warranty service agreement may not be
8 construed to permit the marine authorized dealer to sell the marine motor separately
9 from the boat package, and the marine authorized dealer may not hold itself out to be
10 an authorized dealer in the full line of marine engines.

11 (b) The boat package brand shall be determined by the brand of the boat.

12 **Sec. 45.27.480. Performance of warranty service work.** An authorized
13 dealer shall use a factory-certified or factory-trained technician to perform warranty
14 service work if factory certification or training is readily available.

15 **Sec. 45.27.490. Warranty restrictions.** A manufacturer may not, by
16 agreement, by restrictions on reimbursement, or by another method, restrict the nature
17 or extent of product parts provided or labor performed by an authorized dealer if the
18 restriction impairs the authorized dealer's ability to satisfy a warranty created by the
19 manufacturer in accordance with generally accepted standards.

20 **Sec. 45.27.500. Warranty claim disapproval.** If a manufacturer or distributor
21 disapproves a claim, the manufacturer or distributor shall issue a written notice of
22 disapproval to the authorized dealer within 30 days after the manufacturer or
23 distributor receives the claim. The notice must contain the specific reasons for the
24 disapproval.

25 **Article 6. Miscellaneous Business Practices.**

26 **Sec. 45.27.600. Liability resulting from audit.** (a) An authorized dealer is not
27 liable to a manufacturer or distributor for money that an audit of the authorized
28 dealer's financial records determines to be owed to the manufacturer or distributor, or
29 to a wholesaler, distributor branch, or factory branch, if the money is a result of
30 transactions that occurred more than two years before the beginning of the audit,
31 unless the money is owed as a result of a fraudulent practice of the authorized dealer.

1 (b) If an authorized dealer retains a product part for at least 30 days after the
2 warranty claim is filed, the authorized dealer is not liable to a manufacturer or
3 distributor for failing to retain the product part for a longer time.

4 **Sec. 45.27.610. Competition with authorized dealer.** A manufacturer or
5 distributor may not compete with an authorized dealer who is operating under an
6 agreement with a manufacturer or distributor in the same line, brand, model, or make
7 of product.

8 **Sec. 45.27.620. Content of factory recall notices.** A manufacturer or
9 distributor shall include in a written factory recall notice to ultimate purchasers and
10 authorized dealers the date by which the manufacturer or distributor expects that
11 necessary parts and equipment will be available to the authorized dealer for the
12 correction of the defect that is the subject of the recall.

13 **Sec. 45.27.630. Advertising.** A manufacturer or distributor may not use false
14 or misleading advertising in connection with an agreement with an authorized dealer
15 or in the operation of the manufacturer's or distributor's sale of products.

16 **Sec. 45.27.640. Required posting.** (a) An authorized dealer shall post a notice
17 of the authorized dealer's retail labor rate in a place conspicuous to service customers.
18 If the authorized dealer uses a factory-certified or factory-trained technician to
19 perform warranty service work, the notice must also contain a statement that warranty
20 service work completed by the authorized dealer is performed by a factory-certified or
21 factory-trained technician.

22 (b) If an authorized dealer's service operations employees receive a
23 commission for the amount of work they perform, the authorized dealer shall post a
24 conspicuous sign that is visible to service customers that the authorized dealer's
25 service operations employees work on commission.

26 **Article 7. Miscellaneous Provisions.**

27 **Sec. 45.27.800. Unenforceable provisions.** If a provision in an agreement
28 violates this chapter, the provision is not enforceable.

29 **Sec. 45.27.810. Manufacturer and distributor liability.** (a) A manufacturer
30 and a distributor shall indemnify and hold harmless an authorized dealer for damages,
31 including fines, suffered by the authorized dealer as a result of the manufacturer's or

1 distributor's violation of this chapter.

2 (b) Notwithstanding the terms of an agreement with an authorized dealer, a
3 manufacturer and a distributor shall indemnify and hold harmless an authorized dealer
4 for damages arising out of complaints, claims, or lawsuits, to the extent that the
5 damages arise out of alleged acts of the manufacturer and distributor, that

6 (1) relate to the authorized dealer's sale or other handling of the
7 manufacturer's or distributor's product;

8 (2) are beyond the control of the authorized dealer; and

9 (3) are based on strict liability, negligence, misrepresentation, express
10 warranty, implied warranty, or rescission.

11 (c) In this section, "damages" includes court costs and reasonable attorney fees
12 of the authorized dealer.

13 **Sec. 45.27.820. Cumulative provisions.** The provisions of this chapter are in
14 addition to any other legal or equitable remedy available under law or under an
15 agreement between an authorized dealer and a manufacturer or distributor.

16 **Article 8. General Provisions.**

17 **Sec. 45.27.900. Exemptions.** The following persons are exempt from this
18 chapter:

19 (1) a receiver, a trustee, an administrator, an executor, a guardian, and
20 other persons appointed by or acting under a court order;

21 (2) a public officer in the course of performing the public officer's
22 duties;

23 (3) a person who holds a security interest in a motor vehicle as part of
24 the sale of the motor vehicle to another person;

25 (4) an insurance company;

26 (5) an auctioneer and an auction house handling an estate auction, a
27 bankruptcy auction, a farm equipment auction, or a government auction, if the
28 auctioneer and auction house are not engaged in the auction of used products as the
29 principal part of their business.

30 **Sec. 45.27.990. Definitions.** In this chapter, unless the context indicates
31 otherwise,

1 (1) "agreement" means a franchise, sales, or other product agreement
2 with a manufacturer or distributor;

3 (2) "all-terrain vehicle" means a vehicle with three or more low-
4 pressure, flotation-type tires, as designed by the manufacturer or altered, to be used as
5 an off-road recreational vehicle;

6 (3) "area of responsibility" means the area of an authorized dealer's
7 principal product sales and service responsibility;

8 (4) "authorized dealer" means a dealer who has entered into an
9 agreement with a manufacturer or distributor of products to sell or service the
10 manufacturer's or distributor's products;

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

12 (6) "boat package" means a boat that is equipped and sold with a motor
13 or another form of motorized propulsion;

14 (7) "distributor" means a person who

15 (A) sells or distributes products to authorized dealers; or

16 (B) maintains distributor representatives, including
17 wholesalers, distributor branches, and distributor sales representatives;

18 (8) "distributor sales representative" means an officer, agent, or
19 employee hired by a distributor to promote the sale of products or to supervise or
20 contact authorized dealers or prospective authorized dealers;

21 (9) "landed cost" means the total cost of a product delivered at a given
22 location, including the initial authorized dealer invoice price and any freight,
23 transportation, flooring expense, interest expense, authorized dealer preparation cost,
24 assembly cost, and reasonable handling cost;

25 (10) "mail" means registered or certified mail, return receipt requested;

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

31 (12) "marine authorized dealer" means an authorized dealer of marine

1 products;

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

6 (14) "motorized recreational product" means an all-terrain vehicle, a
7 marine motor, a boat, a boat package, a marine product, and a snow machine; in this
8 paragraph, "snow machine" means a motorized vehicle with a gross vehicle weight
9 under 1,300 pounds propelled by a track system designed to move a person over snow
10 or ice, and includes a snowmobile;

11 (15) "part" includes an accessory;

12 (16) "product" means a marine product or a motorized recreational
13 product;

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

17 **Sec. 45.27.995. Short title.** This chapter may be cited as the Alaska Marine
18 Product and Motorized Recreational Product Act.

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

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

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

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

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

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

30 (5) a distributorship agreement or another contract between a person
31 licensed under AS 04 and a distributor, manufacturer, importer, supplier, or wholesaler

1 of alcoholic beverages who is not located in this state if the subject of the agreement
 2 or contract is the distribution of alcoholic beverages to the licensed person by the
 3 distributor, manufacturer, importer, supplier, or wholesaler;

4 (6) a distributor, manufacturer, importer, supplier, or wholesaler of
 5 alcoholic beverages;

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

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

10 (9) a marine product or motorized recreational product
 11 agreement, as regulated under AS 45.27.

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

13 (53) violating AS 45.27 (marine products and motorized recreational
 14 products).

15 * **Sec. 5.** AS 45.50.572 is amended by adding a new subsection to read:

16 (m) AS 45.50.562 - 45.50.596 do not apply to action taken by a person to
 17 comply with AS 45.27 or to action refrained from by a person to comply with
 18 AS 45.27 (Alaska Marine Product and Motorized Recreational Product Act).

19 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 20 read:

21 **APPLICABILITY.** This Act does not apply to an agreement that is entered into before
 22 the effective date of this Act. In this section, "agreement" has the meaning given in
 23 AS 45.27.990, enacted by sec. 2 of this Act.

24 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).