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Referred: Labor & Commerce,  
Judiciary and Finance

1 IN THE HOUSE

BY PIGNALBERI

2

HOUSE BILL NO. 620

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act regulating certain dealerships; and amending  
7 Rule 65(c) of the Alaska Rules of Civil Procedure."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. FINDINGS AND PURPOSE. (a) It is in the best interest of  
10 the public for a manufacturer, distributor, or importer, and a dealer of  
11 the manufacturer, distributor, or importer to conduct business with each  
12 other in a fair, efficient, and competitive manner.

13 (b) The interest of the public is best served by a dealer being as-  
14 sured of the ability to manage a business enterprise under a contractual  
15 obligation with a manufacturer, distributor, or importer where the dealer  
16 does not experience unreasonable interference by the manufacturer, distrib-  
17 utor, or importer, receives adequate allocations of merchandise in a timely  
18 manner at competitive prices, and can transfer ownership of the dealership  
19 without undue constraints.

20 (c) The purpose of this Act is to impose a regulatory scheme on the  
21 relationship between manufacturers, distributors, or importers and their  
22 dealers to the extent necessary to balance fairness and efficiency.

23 (d) This Act will assure the public that a dealer will devote the  
24 best competitive efforts and resources of the dealer to the handling of the  
25 product that the dealer has been granted the right to sell.

26 \* Sec. 2. AS 45.50 is amended by adding new sections to read:

27 ARTICLE 7. REGULATION OF DEALERSHIPS.

28 Sec. 45.50.650. ESTABLISHMENT AND RELOCATION OF A DEALERSHIP.

29 (a) A person desiring to establish or relocate a dealership shall

1 notify in writing each existing dealership of the same franchisor in  
2 the relevant market area of the intention to establish or relocate a  
3 dealership.

4 (b) Within 120 days after receiving a notice under (a) of this  
5 section, or within 120 days after the end of an appeal period provided  
6 by the person, whichever is later, an existing dealer to whom the  
7 person is required to give notice under this section may file an  
8 action in the superior court of the judicial district where the exist-  
9 ing dealership is located, challenging the proposed establishment or  
10 relocation of the dealership within the relevant market area.

11 (c) If an existing dealer challenges the establishment or relo-  
12 cation of a dealership, the court may allow the establishment or  
13 relocation only if the franchisor proves just cause for the establish-  
14 ment or relocation.

15 (d) In this section

16 (1) "just cause" may be based on

17 (A) the amount of business transacted by an existing  
18 dealer when compared with the amount of business available to the  
19 existing dealer;

20 (B) the degree of an existing dealer's investment in  
21 the dealership, including the dealer's purchase or lease of real  
22 property for the dealership, the training given to the dealer's  
23 employees, and the amount of equipment purchased for the dealer-  
24 ship;

25 (C) the effect of the proposed dealership on retail  
26 business in the relevant market area;

27 (D) the effect of the proposed dealership on consumers  
28 in the relevant market area;

29 (E) the customer care being provided by an existing

1 dealer for the products sold, including the adequacy of product  
2 service facilities;

3 (2) the "establishment or relocation" of a dealership does  
4 not include the reopening of a dealership at the original location  
5 after a closure of less than six months.

6 Sec. 45.50.655. CONDITIONING RENEWAL OR EXTENSION. A franchisor  
7 may condition renewal or extension of a dealership on substantial  
8 renovation of the existing place of business or on the construction,  
9 purchase, acquisition, or lease of a new place of business if the  
10 franchisor

11 (1) gives 180 days' written notice to the dealer before the  
12 date of renewal or extension;

13 (2) demonstrates the reasonableness of the condition; and

14 (3) agrees to supply the dealer with an adequate quantity  
15 of the product and the parts and accessories for the product to meet  
16 the sales level necessary to support the overhead resulting from the  
17 satisfaction of the condition.

18 Sec. 45.50.660. TERMINATION OR FAILURE TO RENEW DEALERSHIP. (a)  
19 A franchisor may terminate, refuse to renew, or fail to renew a deal-  
20 ership only for good cause.

21 (b) A franchisor shall notify the dealer in writing of the  
22 proposed termination or nonrenewal not less than 90 days before the  
23 proposed termination or nonrenewal and state the reasons for the  
24 proposed termination or nonrenewal. If the franchisor is basing the  
25 termination or nonrenewal on termination or discontinuance of the  
26 product line, the franchisor shall notify the dealer not less than 180  
27 days before the proposed termination or nonrenewal.

28 (c) In this section, "good cause" includes the

29 (1) amount of business transacted by the dealer when

- 1 compared to the amount of business available to the dealer;
- 2 (2) investment necessarily made and obligations necessarily  
3 incurred by the dealer in the performance of the dealership;
- 4 (3) degree of the dealer's investment, including the deal-  
5 er's purchase or lease of real property for the dealership, the train-  
6 ing given to the dealer's employees, and the amount of equipment  
7 purchased for the dealership;
- 8 (4) adequacy of the dealer's sales and service facilities,  
9 equipment, and parts;
- 10 (5) qualifications and performance of the management,  
11 sales, and service personnel to provide the consumer with reasonably  
12 good service and care of new products;
- 13 (6) failure of the dealer to comply substantially in good  
14 faith with the reasonable requirements of the dealership;
- 15 (7) adequacy of the franchisor's actual delivered quanti-  
16 ties of products, parts, and accessories compared to the quantities  
17 promised by the franchisor;
- 18 (8) effect on the retail business for the product and  
19 consumers in the dealer's market area;
- 20 (9) business judgment of the dealer.
- 21 Sec. 45.50.665. TERMINATION OF DISTRIBUTOR. If the franchisor  
22 terminates an existing distributor, all existing dealerships shall  
23 continue operation under a newly appointed distributor, unless the  
24 new distributor and an affected dealer file a mutual agreement of  
25 termination.
- 26 Sec. 45.50.670. COMPENSATION AT TERMINATION OR NONRENEWAL. (a)  
27 Upon the termination or nonrenewal of a dealership, a franchisor shall  
28 pay the dealer fair and reasonable compensation for  
29 (1) all new inventory, including new products not of the

1 current model year, that was purchased from the franchisor and that  
2 has not been materially altered, damaged, or driven more than 50  
3 miles;

4 (2) all new, rebuilt, or used parts and accessories re-  
5 ceived from the franchisor;

6 (3) equipment, furnishings, and signs purchased from the  
7 franchisor; and

8 (4) special tools purchased from the franchisor.

9 (b) The compensation paid under (a) of this section may not be  
10 less than the current prices charged by the franchisor for the new,  
11 rebuilt, or used items specified in (a)(1) and (2) of this section or  
12 the fair market value for items specified in (a)(3) and (4) of this  
13 section.

14 (c) If the franchisor terminates or does not renew the dealer-  
15 ship without good cause, the franchisor shall pay the dealer, at the  
16 dealer's election, fair and reasonable compensation for the value of  
17 the dealership within six months of the effective date of the termina-  
18 tion or nonrenewal. Compensation under this subsection must include  
19 payment for all items listed in (a) of this section, real and personal  
20 property associated with the place of business, and the good will of  
21 the business. The dealer shall take reasonable steps to mitigate  
22 damages.

23 (d) Subsections (a) and (c) of this section do not apply if the  
24 dealer has acted illegally or fraudulently in the procurement or  
25 operation of the dealership.

26 Sec. 45.50.675. SUCCESSION TO DEALERSHIP BY DESIGNATED FAMILY  
27 MEMBER. (a) Except as otherwise provided in AS 45.50.650 - 45.50.-  
28 760, a franchisor may not prevent, attempt to prevent, refuse to give  
29 effect to, attempt to refuse to give effect to, or otherwise hinder

1 the succession to the ownership, management, control, or continuance  
2 of a dealership by a designated family member on the death or incapacity  
3 of the dealer.

4 (b) Unless rejected under (c) of this section, a designated  
5 family member may succeed the dealer in ownership or management control  
6 under the existing dealership of the dealer if the designated  
7 family member

8 (1) gives written notice to the franchisor within 120 days  
9 after the dealer's death or incapacity of the intention to succeed to  
10 the dealership;

11 (2) agrees to be bound by the terms of the original dealership; and  
12

13 (3) meets the reasonable, written, and uniformly applied  
14 conditions of the franchisor under the existing dealership.

15 (c) A franchisor may reject a designated family member for  
16 succession to the dealership only on reasonable grounds and if the  
17 franchisor provides written notice of the rejection to the designated  
18 family member within 60 days after receiving the notice of the intention  
19 to succeed. The notice of rejection must state the specific  
20 grounds for the rejection. The rejection may not take effect less  
21 than 90 days after the designated family member receives the notice of  
22 rejection. If the franchisor does not serve the notice of rejection  
23 on the dealer within the time period specified in this subsection, the  
24 dealership continues in effect with the designated family member.

25 (d) The designated family member may contest a notice of rejection  
26 given under (c) of this section by filing an action in the superior  
27 court within 90 days after receiving the notice. The franchisor  
28 has the burden of proving reasonable grounds for the notice.

29 (e) A dealer may designate a family member to continue the

1 dealership by making a notarized statement of the designation. The  
2 statement is effective as a provision for transfer at death under  
3 AS 13.31.070.

4 Sec. 45.50.680. PROHIBITED TRADE PRACTICES. A franchisor, or  
5 its manufacturers, distributors, subsidiaries, or agents, may not

6 (1) require, coerce, or attempt to require, or coerce,  
7 either directly or indirectly, a dealer to

8 (A) accept, buy, or order a product, part, or acces-  
9 sory, or another commodity or service that the dealer did not  
10 voluntarily order or request, or to buy, order, or pay value for  
11 an item in order to obtain a part, accessory, or other commodity  
12 that the dealer has voluntarily ordered or requested;

13 (B) order or accept delivery of a product with special  
14 features, accessories, or equipment not included in the list  
15 price of the product as advertised by the franchisor, except  
16 items that the dealer voluntarily requested or ordered and items  
17 required by law;

18 (C) enter into an agreement or understanding that  
19 reduces the dealer's allocation of the product for reasons other  
20 than reduced production levels causing uniformly and proportion-  
21 ally applied reductions to all dealers;

22 (D) enter into an agreement or sales promotion program  
23 by threatening to terminate the dealership of the dealer;

24 (E) refrain from participation in the management,  
25 investment, acquisition, or sale of another related product or  
26 product line of parts or accessories;

27 (F) enter into an agreement that violates AS 45.50.-  
28 650 - 45.50.760; or

29 (G) enter into an agreement by which the franchisor,

1 manufacturer, factory branch, factory representative, distribu-  
2 tor, distributor branch, or distributor representative can di-  
3 rectly solicit the dealer's customers;

4 (2) change the capital structure or financing of the deal-  
5 ership, if the dealer at all times meets the reasonable, written, and  
6 uniformly applied standards for the capital structure of a dealer  
7 established by the franchisor;

8 (3) prevent or attempt to prevent a dealer from making  
9 reasonable changes in the capital structure or financing of a dealer-  
10 ship if the dealer meets the reasonable, written, and uniformly ap-  
11 plied capital requirements of the franchisor;

12 (4) unreasonably require the dealer to change location of  
13 the dealership or to substantially alter the place of business of the  
14 dealership;

15 (5) adopt, establish, or implement a plan or system, or  
16 modify an existing plan or system, for product distribution or allo-  
17 cation that is arbitrary, in bad faith, or unconscionable and that  
18 damages the dealer or the dealer's customers;

19 (6) except for test marketing, fail to offer a new product  
20 model, line, or product for resale to all dealers of the franchisor or  
21 fail to require that all similarly situated dealers meet the same  
22 conditions for marketing the new model, line, or product;

23 (7) fail or refuse to disclose to the dealer, after written  
24 request, the basis for present or future allocation or distribution of  
25 the product to dealers;

26 (8) fail or refuse to disclose to a dealer, after written  
27 request, the total number of new products of a given model that the  
28 franchisor, or the manufacturer or distributor of the franchisor, has  
29 sold during the current model year within the dealer's marketing

1 (16) release confidential information provided by the dealer  
2 to the franchisor, or to the manufacturer, distributor, subsidiary or  
3 agent of the franchisor, without the prior written consent of the  
4 dealer;

5 (17) deny a dealer the right to associate with another  
6 dealer for a lawful purpose;

7 (18) artificially and intentionally create a shortage of a  
8 make, model, or series of a product that results in the inequitable  
9 distribution of the make, model, or series to dealers;

10 (19) charge an increased price without having given written  
11 notice to the dealer at least 15 days before the effective date of the  
12 price increase;

13 (20) permit factory authorized warranty service to be per-  
14 formed on a product or an accessory by a person other than the dealer-  
15 ships;

16 (21) unreasonably interfere with a dealer's performance  
17 under a sale quota of the dealership agreement by withholding suffi-  
18 cient deliveries of a product;

19 (22) own, operate, or control a dealer or place of business  
20 selling at retail in the state.

21 Sec. 45.50.685. AGENCY RESTRICTION. A franchisor may not re-  
22 quire the dealer to act as an agent for the franchisor, or the man-  
23 ufacturer or distributor of the franchisor, in the securing of a  
24 promissory note, a security agreement given in connection with the  
25 sale of a product, or the securing of a policy of insurance for a  
26 product.

27 Sec. 45.50.690. RESTRICTIONS ON HANDLING OF SALES DOCUMENTS. A  
28 franchisor, or the manufacturer or distributor of the franchisor, may  
29 not require or coerce a dealer to sell, assign, or transfer a retail

1 sales installment contract or condition delivery of products, parts,  
2 or accessories on the dealer's assignment, sale, or other transfer of  
3 sales installment contracts to specific finance companies.

4 Sec. 45.50.695. COMPENSATION FOR DEALERSHIP EXPENSES. (a) The  
5 franchisor shall compensate the dealer for labor, parts, and other  
6 expenses incurred by the dealer to comply with the warranty agreements  
7 of the franchisor, or the manufacturer or distributor of the fran-  
8 chisor, and for work and services performed in connection with the  
9 delivery and preparation of products received from the franchisor or  
10 from the manufacturer or distributor of the franchisor. The compen-  
11 sation may not be less than the rates reasonably charged by the dealer  
12 for like services and parts to retail customers.

13 (b) The franchisor, or the manufacturer or distributor of the  
14 franchisor, shall approve or disapprove all claims for compensation  
15 made by the dealer within 30 days of receipt and shall pay approved  
16 claims within 30 days from receipt. A denial of a claim must be in  
17 writing and state the specific grounds for the denial.

18 (c) A franchisor, or the manufacturer or distributor of the  
19 franchisor may not charge back to the dealer a claim that has been  
20 approved and paid, unless the claim was false or fraudulent, the  
21 repairs were not properly made or were unnecessary to correct the  
22 defective condition, or the dealer failed to provide reasonable sub-  
23 stantiation for the claim.

24 Sec. 45.50.700. REMEDY FOR VIOLATION OF CHAPTER. Except as  
25 otherwise provided under AS 45.50.650 - 45.50.760, a person who is  
26 injured by a violation of AS 45.50.650 - 45.50.760 may bring a civil  
27 action in a court of competent jurisdiction to enjoin further vio-  
28 lations or to recover damages. The court may grant injunctive relief  
29 in an action brought under this section without the dealer being

1 required to post a bond if, in the opinion of the court, there exists  
2 a likelihood that the dealer may prevail on the merits.

3 Sec. 45.50.705. LIMITATION OF ACTIONS. Except as otherwise  
4 provided in AS 45.50.650 - 45.50.760, a person shall bring a civil  
5 action under AS 45.50.650 - 45.50.760 within four years after the  
6 person discovers the facts that constitute a violation of AS 45.50.-  
7 650 - 45.50.760.

8 Sec. 45.50.730. WAIVER. Waiver of the provisions of AS 45.50.-  
9 650 - 45.50.760 is prohibited.

10 Sec. 45.50.740. EXEMPTION. AS 45.50.650 - 45.50.760 do not  
11 apply to a lease covered by AS 45.50.800 - 45.50.850.

12 Sec. 45.50.750. DEFINITIONS. In AS 45.50.650 - 45.50.760

13 (1) "dealer" means the person who receives the rights  
14 listed under (2) of this section;

15 (2) "dealership" means a business arrangement based on an  
16 oral or written agreement, express or implied, under which a person  
17 receives from the other party to the agreement the right to

18 (A) purchase and resell a product that is manufactur-  
19 ed, distributed, or imported by the other party;

20 (B) use the trademark, trade name, or commercial  
21 symbol of the other party in the sale and resale of the products  
22 of the other party; and

23 (C) rely on the other party for a continued supply of  
24 the products of the other party;

25 (3) "designated family member" means

26 (A) an heir if the dealer dies intestate and has not  
27 designated a person under (c) of this paragraph;

28 (B) a legatee or devisee if the deceased dealer leaves  
29 a will and has not designated a person under (c) of this

1 paragraph; or

2 (C) the spouse, child, parent, brother, sister or  
3 other relative of a dealer named by the dealer in a notarized  
4 statement to receive an interest in the dealership if the dealer  
5 dies or becomes incapacitated;

6 (4) "distributor" means a person, other than a manufacturer,  
7 er, who sells, leases, or distributes a product to a dealer of the  
8 product or controls another person, other than a manufacturer, who  
9 sells, leases, or distributes a product to a dealer of the product;

10 (5) "distributor branch" means a branch office maintained  
11 by the distributor;

12 (6) "distributor representative" means a representative  
13 employed by a distributor for the purpose of selling or promoting the  
14 sale or lease of the distributor's product to dealers, or for the  
15 purpose of supervising or contacting dealers;

16 (7) "factory branch" means a branch office maintained by a  
17 manufacturer in order to direct and supervise the representatives of  
18 the manufacturer;

19 (8) "factory representative" means a person employed by a  
20 manufacturer for the purpose of making or promoting the sale or lease  
21 of the manufacturer's product to dealers, distributors, or prospective  
22 dealers;

23 (9) "franchisor" means the person who grants the rights  
24 listed in (2) of this section;

25 (10) "manufacturer" means a person that manufactures or  
26 provides assemblies for a product;

27 (11) "new product" means a product that has been sold or  
28 transferred to a dealer, has not been used for other than demonstra-  
29 tion purposes, and, whose certificate of title, if titling of the

1 product is required by law, has not been delivered to a purchaser of  
2 the product; "new product" includes products in the dealer's inventory  
3 that are not of the current model year;

4 (12) "product" does not include real property or an interest  
5 in real property;

6 (13) "relevant market area" means a 10-mile radius around a  
7 proposed place of business.

8 Sec. 45.50.760. SHORT TITLE. AS 45.50.650 - 45.50.760 may be  
9 cited as the Dealership Protection Act.

10 \* Sec. 3. This Act applies to a dealership, as defined in AS 45.50.750  
11 enacted by sec. 2 of this Act, entered into or renewed after the effective  
12 date of this Act.

13 \* Sec. 4. AS 45.50.700, enacted by sec. 2 of this Act, amends Alaska  
14 Rule of Civil Procedure 65(c) by allowing a court to issue an injunction  
15 without the posting of a bond by a dealer if the court determines that the  
16 dealer may prevail on the merits.