

SB

176

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 176
 (S) Publish Date: 4/25/01

Revision Date/Time (Note if correction): 04/16/2001 2:35p.m. Dept. Affected: DCED
 Title: An act relating to Distributorships BRU: Banking, Securities & Corporations
 Sponsor: Senate Labor & Commerce By Request Component: Corporations
 Requester: Senate Labor and Commerce Component Number: 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL						

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This Legislation has no fiscal impact on this Department.

Prepared by: Franklin Terry Elder, Director Phone 907-465-2521
 Division: Banking, Securities & Corporations Date/Time 04/16/2001 2:35p.m.
 Approved by: Commissioner Deborah B. Sedwick Date 4/16/2001
 Agency: Department of Community & Economic Development

For distribution information, call the Governor's Legislative Office

22-LS0818\B
Bannister
4/17/02

Koff

**HOUSE CS FOR CS FOR SENATE BILL NO. 176(RLS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION**

BY THE HOUSE RULES COMMITTEE

**Offered:
Referred:**

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 making exemptions that relate to the federal Petroleum
6 Marketing Practices Act, situations regulated by the Alaska Gasoline Products Leasing
7 Act, distributorship agreements relating to motor vehicles required to be registered
8 under AS 28.10, activities and agreements by persons licensed under AS 04, contracts
9 between persons licensed under AS 04 and out-of-state persons in the alcoholic beverage
10 industry, distributorship agreements involving cigarettes, food, drink, or components of
11 food or drink, manufacturers with 50 or fewer employees, suppliers, manufacturers,
12 importers, and wholesalers of alcoholic beverages."

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

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

3 **Article 9A. Distributorships.**

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

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

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

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

12 (3) making an expenditure that the dealer has not contracted to make.

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

20 (1) the fair market value for merchandise that is unused and for which
21 the retailer has paid the distributor, plus 100 percent of the transportation charges paid
22 by the dealer to return the merchandise to the distributor; in this paragraph,

23 (A) "fair market value" means the amount the distributor would
24 realize from the sale of the merchandise to another retailer using reasonable
25 good faith efforts;

26 (B) "unused" means unopened merchandise that is still in the
27 original factory packaging or container;

28 (2) 85 percent of the current net price, as listed in the current price list
29 or catalog of the distributor, for repair parts, including superseded parts; and

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

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

4 (c) In (a) of this section, if a repair part is not listed in a current price list or
5 catalog of the distributor, the current net price is the higher of the fair market value or
6 the latest price published by the distributor for the repair part if a dealer has actual
7 proof of the purchase of the repair part from the distributor and if the repair part was
8 purchased within 10 years before the termination.

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

13 **Sec. 45.45.730. Death of dealer or holder of majority interest in dealer.**
14 Unless the distributorship agreement is continued by the personal representative, an
15 heir, or a devisee of the individual, upon the death of an individual who is a dealer or
16 holds a majority interest in a dealer, a distributor who supplied merchandise to the
17 dealer shall repurchase from the personal representative, heir, or devisee the
18 merchandise that was purchased from the distributor and that remains when the
19 distributorship agreement is terminated under this section. To repurchase under this
20 section, the distributor shall pay an amount equal to the amount identified under
21 AS 45.45.710(a) and (c), and the repurchase is subject to AS 45.45.720. In this
22 section, "devisee," "heir," and "personal representative" have the meanings given in
23 AS 13.06.050.

24 **Sec. 45.45.740. Required purchase, reimbursement, and supplies.** (a) In
25 addition to any purchase of merchandise required by AS 45.45.710, if a distributor
26 terminates a distributorship agreement or makes substantial changes in the competitive
27 situation of the distributor's dealer with regard to distribution of the merchandise or
28 services that are the subject of the distribution agreement, the distributor shall

29 (1) purchase that portion of the dealer's business directly affected by
30 the distributorship agreement or the change, including assets and machinery, at
31 commercially reasonable business valuations; and

1 (2) reimburse the dealer for the expenses that were necessarily incurred
2 by the dealer

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

5 (B) during the 12 months before the termination or change.

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

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

12 (1) a requirement that the dealer waive a trial by jury in court cases
13 involving the distributor;

14 (2) a requirement that disputes between the distributor and the dealer
15 be submitted to arbitration or to any other binding alternate dispute resolution
16 procedure, except authorization for the submission of a dispute to arbitration or to
17 binding alternative dispute resolution if the distributor and dealer voluntarily agree to
18 submit the dispute to arbitration or binding alternative dispute resolution when the
19 dispute arises;

20 (3) a requirement that the dealer pay the attorney fees of the
21 distributor;

22 (4) a requirement that prohibits a firearms dealer from selling firearms
23 or related accessories, the sale of which is otherwise legal, but which the firearms
24 distributor does not manufacture or distribute; or

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

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

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

31 (b) In an action brought under (a) of this section, the dealer may obtain one or

1 more of the following types of relief that apply to the specific action of the dealer:

- 2 (1) damages suffered by the dealer as a result of the activity;
- 3 (2) an injunction enjoining the distributor from engaging in the
- 4 activity;
- 5 (3) a requirement that the distributor make a payment or a purchase
- 6 required by this chapter;
- 7 (4) any other relief determined by the court to be appropriate under the
- 8 circumstances.

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

- 10 (1) coercion or attempted coercion under AS 45.45.700;
- 11 (2) terminating a distributorship agreement without paying the dealer
- 12 as required by AS 45.45.710;
- 13 (3) failing to pay the dealer within the time established by
- 14 AS 45.45.720;
- 15 (4) failing to provide the statement of account as required by
- 16 AS 45.45.720;
- 17 (5) failing to make a repurchase payment required by AS 45.45.730;
- 18 (6) failing to make a purchase as required by AS 45.45.740(a)(1);
- 19 (7) failing to make the reimbursement required by AS 45.45.740(a)(2);
- 20 or
- 21 (8) violating AS 45.45.750.

22 **Sec. 45.45.770. Exemptions.** (a) AS 45.45.700 - 45.45.790 do not apply to

- 23 (1) a distributorship agreement that would be considered a franchise
- 24 regulated by 15 U.S.C. 2801 - 2841 (Petroleum Marketing Practices Act);
- 25 (2) a situation regulated by AS 45.50.800 - 45.50.850;
- 26 (3) a distributorship agreement, including a franchise agreement, for
- 27 the sale, repair, or servicing of motor vehicles that are required to be registered under
- 28 AS 28.10;
- 29 (4) an activity or agreement by a person licensed under AS 04 if the
- 30 activity or agreement is within the scope of the license or is incidental to the activity
- 31 or agreement that is within the scope of the license;

1 (5) a distributorship agreement or another contract between a person
2 licensed under AS 04 and a distributor, manufacturer, importer, supplier, or wholesaler
3 of alcoholic beverages who is not located in this state if the subject of the agreement
4 or contract is the distribution of alcoholic beverages to the licensed person by the
5 distributor, manufacturer, importer, supplier, or wholesaler;

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

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

11 (8) a manufacturer with 50 or fewer employees.

12 (b) In (a) of this section, "alcoholic beverage" has the meaning given in
13 AS 04.21.080.

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

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

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

21 (A) a wholesaler;

22 (B) a manufacturer;

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

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

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

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

31 (i) sell or lease merchandise or services at retail or

1 wholesale; or

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

4 (B) in which the parties to the agreement have a joint interest,
5 whether equal or unequal, in the offering, ~~selling~~, or leasing of the merchandise
6 or services;

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

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

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

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

22-LS0818\S
Bannister
4/12/02

HOUSE CS FOR CS FOR SENATE BILL NO. 176(RLS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered:
Referred:

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, distributorship agreements relating to motor vehicles
8 required to be registered under AS 28.10, ~~certain~~ activities and agreements by persons
9 licensed under AS 04, ~~certain~~ contracts between persons licensed under AS 04 and out-
10 of-state alcoholic beverage distributors, including manufacturers, ~~and certain~~
11 ~~manufacturers.~~ and suppliers, ~~importers,~~

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

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

2 **Article 9A. Distributorships.**

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

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

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

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

11 (3) making an expenditure that the dealer has not contracted to make.

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

19 (1) the fair market value for merchandise that is unused and for which
20 the retailer has paid the distributor, plus 100 percent of the transportation charges paid
21 by the dealer to return the merchandise to the distributor; in this paragraph,

22 (A) "fair market value" means the amount the distributor would
23 realize from the sale of the merchandise to another retailer using reasonable
24 good faith efforts;

25 (B) "unused" means unopened merchandise that is still in the
26 original factory packaging or container;

27 (2) 85 percent of the current net price, as listed in the current price list
28 or catalog of the distributor, for repair parts, including superseded parts; and

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

31 (b) Upon payment of the amounts required by (a) of this section, the title to

1 the merchandise passes to the distributor making the payment, and the distributor is
2 entitled to the possession of the merchandise for which the payment was made.

3 (c) In (a) of this section, if a repair part is not listed in a current price list or
4 catalog of the distributor, the current net price is the higher of the fair market value or
5 the latest price published by the distributor for the repair part if a ^{dealer} [deleer] has actual
6 proof of the purchase of the repair part from the distributor and if the repair part was
7 purchased within 10 years before the termination.

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

12 **Sec. 45.45.730. Death of dealer or holder of majority interest in dealer.**
13 Unless the distributorship agreement is continued by the personal representative, an
14 heir, or a devisee of the individual, upon the death of an individual who is a dealer or
15 holds a majority interest in a dealer, a distributor who supplied merchandise to the
16 dealer shall repurchase from the personal representative, heir, or devisee the
17 merchandise that was purchased from the distributor and that remains when the
18 distributorship agreement is terminated under this section. To repurchase under this
19 section, the distributor shall pay an amount equal to the amount identified under
20 AS 45.45.710(a) and (c), and the repurchase is subject to AS 45.45.720. In this
21 section, "devisee," "heir," and "personal representative" have the meanings given in
22 AS 13.06.050.

23 **Sec. 45.45.740. Required purchase, reimbursement, and supplies.** (a) In
24 addition to any purchase of merchandise required by AS 45.45.710, if a distributor
25 terminates a distributorship agreement or makes substantial changes in the competitive
26 situation of the distributor's dealer with regard to distribution of the merchandise or
27 services that are the subject of the distribution agreement, the distributor shall

28 (1) purchase that portion of the dealer's business directly affected by
29 the distributorship agreement or the change, including assets and machinery, at
30 commercially reasonable business valuations; and

31 (2) reimburse the dealer for the expenses that were necessarily incurred

1 by the dealer

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

4 (B) during the 12 months before the termination or change.

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

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

11 (1) a requirement that the dealer waive a trial by jury in court cases
12 involving the distributor;

13 (2) a requirement that disputes between the distributor and the dealer
14 be submitted to arbitration or to any other binding alternate dispute resolution
15 procedure, except authorization for the submission of a dispute to arbitration or to
16 binding alternative dispute resolution if the distributor and dealer voluntarily agree to
17 submit the dispute to arbitration or binding alternative dispute resolution when the
18 dispute arises;

19 (3) a requirement that the dealer pay the attorney fees of the
20 distributor;

21 (4) a requirement that prohibits a firearms dealer from selling firearms
22 or related accessories, the sale of which is otherwise legal, but which the firearms
23 distributor does not manufacture or distribute; or

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

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

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

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

- 1 (1) damages suffered by the dealer as a result of the activity;
2 (2) an injunction enjoining the distributor from engaging in the
3 activity;
4 (3) a requirement that the distributor make a payment or a purchase
5 required by this chapter;
6 (4) any other relief determined by the court to be appropriate under the
7 circumstances.

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

- 9 (1) coercion or attempted coercion under AS 45.45.700;
10 (2) terminating a distributorship agreement without paying the dealer
11 as required by AS 45.45.710;
12 (3) failing to pay the dealer within the time established by
13 AS 45.45.720;
14 (4) failing to provide the statement of account as required by
15 AS 45.45.720;
16 (5) failing to make a repurchase payment required by AS 45.45.730;
17 (6) failing to make a purchase as required by AS 45.45.740(a)(1);
18 (7) failing to make the reimbursement required by AS 45.45.740(a)(2);

19 or

- 20 (8) violating AS 45.45.750.

21 **Sec. 45.45.770. Exemptions.** AS 45.45.700 - 45.45.790 do not apply to

- 22 (1) a distributorship agreement that would be considered a franchise
23 regulated by 15 U.S.C. 2801 - 2841 (Petroleum Marketing Practices Act);
24 (2) a situation regulated by AS 45.50.800 - 45.50.850;
25 (3) a distributorship agreement, including a franchise agreement, for
26 the sale, repair, or servicing of motor vehicles that are required to be registered under
27 AS 28.10;
28 (4) an activity or agreement by a person licensed under AS 04 if the
29 activity or agreement is within the scope of the license or is incidental to the activity
30 or agreement that is within the scope of the license;
31 (5) a distributorship agreement or another contract between a person

Manufacturer, importer, wholesaler, and supplier

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licensed under AS 04 and ^{or} a distributor, of alcoholic beverages who is not located in this state if the subject of the agreement or contract is the distributor's distribution of alcoholic beverages to the licensed person; in this paragraph, "alcoholic beverage" has the meaning given in AS 04.21.080; or ^{(b) supplier, importers, manufacturers, distributor}

^{7 (A)} a manufacturer with 50 or fewer employees. ^{or wholesalers of alcoholic beverages}

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

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

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

- (A) a wholesaler;
- (B) a manufacturer;
- (C) a person that is a parent corporation or an affiliated corporation of a person identified in (A) or (B) of this paragraph; and
- (D) a field representative, an officer, an agent, or another direct or indirect representative of a person identified in (A), (B), or (C) of this paragraph;

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

- (A) by which a person receives the right to
 - (i) sell or lease merchandise or services at retail or wholesale; or
 - (ii) use a trade name, trademark, service mark, logotype, advertising, or other commercial symbol; and
- (B) in which the parties to the agreement have a joint interest, whether equal or unequal, in the offering, selling, or leasing of the merchandise or services;

(4) "merchandise" includes parts and accessories;

(5) "terminate" includes failing to renew.

L

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.

Terry Bannister
Also include
in (R/s) CS
for SB 176
4/16
THANKS,
Kris

offer the following two additional paragraphs to 45.45.770 (the "Exemptions"

- (6) a distributorship agreement for the sale or distribution of, or other transaction involving, cigarettes; in this paragraph, "cigarette" has the meaning given in AS 43.50.170(2);
- (7) a distributorship agreement for the sale or distribution of, or other transaction involving, any food product; in this paragraph, "food product" has the same meaning as in AS 17.

Alaska Senate Bill No. 176

1. Insert into Section 45.45.770 Exemptions. The following new Section (6) and renumber existing (6) to (7):

“(6) a distiller, brewer, vintner, supplier, manufacturer, importer, distributor, or wholesaler of alcoholic beverages; or”

April 8, 2002

Kris:

Here's the draft CS for SB 176.

Changes from HCS CSSB 176 (JUD)

Title: line 8: adds "persons licensed under AS 04, certain contracts between persons licensed under AS 04 and out-of-state alcoholic beverage manufactures,"

Deletes: "certain alcoholic beverage licensees"

So will need a title change resolution, which I don't have.

Page 3, line 13: deletes: heirs, or devisees

Inserts: an heir, or a devisee

Page 3, line 15: deletes: heirs, or devisees

Inserts: heir, or devisee

Page 5, lines 27-28: deletes: a person licensed as a brewery under AS 04.11.130, a brewpub under AS 04.11.135, or a winery under AS 04.11.140; or

Inserts: a person licensed under AS 04 and acting within the scope of the license;

Page 5, line 29 through page 6, line 2. Inserts new language in subsection (5)

Janet

WORK DRAFT

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WORK DRAFT

22-1508185
Reviser
4/12/02

HOUSE CS FOR CS FOR SENATE BILL NO. 176(RLS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Officed:
Referred:

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, distributorship agreements relating to motor vehicles
8 required to be registered under AS 28.10, ~~contracts~~ activities and agreements by persons
9 licensed under AS 04, ~~contracts~~ contracts between persons licensed under AS 04 and out-
10 of-state alcoholic beverage distributors, including manufacturers, and ~~wholesalers~~
11 manufacturers."

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

22-LS0818V.1
Bannister
4/17/02

AMENDMENT # 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: HCS CSSB 176(JUD)

1 Page 3, line 10, following "Death":

2 Insert "or disability"

3

4 Page 3, line 12:

5 Delete "or devisees"

6 Insert "devisees, or other successor in interest"

7 Following "death":

8 Insert "or disability"

9

10 Page 3, line 14:

11 Delete "or devisees"

12 Insert "devisees, or other successor in interest"

HC R.

Senate Bill 176

"An Act relating to distributorships."

Sponsor:

Senate Labor & Commerce Committee *by request*

SPONSOR STATEMENT

The proposed Alaska Small Business Protection Act bill is necessary to level the playing field between large, well-financed manufacturers and distributors, and small businesses in Alaska. Passage of this legislation will protect Alaska's small businesses from unreasonable manipulation by manufacturers and distributors, foster economic growth and development, and keep capital in Alaska.

Alaska is one of the few states without a law addressing distributorship agreements. This bill fixes gross inequities that occur as Alaskan businesses develop markets for products and services based upon specific product lines under distributorship agreements.

As small businesses invest capital and commit to growth and infrastructure based on distributorship agreements, they inherently become dependent upon those product lines. In many cases, this dependency allows manufacturers to unilaterally force changes in distribution contracts to the detriment of Alaskan businesses, and ultimately, the employees and other entities with whom they have committed in order to fulfill obligations under the original contract.

In many cases, if Alaska's businesses do not agree with new contract terms demanded by the manufacturer/distributor, they are terminated and left with inventory they are unable to sell and which typically, manufacturers/distributors refuse to buy back. This loss of capital ranges from \$500 to \$500,000 or more, depending upon the business and the amount of inventory required to fulfill the terms of the original agreement. Additionally, many of these contracts make it possible to unilaterally terminate the distributorship agreement if a small business owner wishes to sell his or her business, thereby eliminating much or all of the goodwill value established over years of service.

While businesses are free to sue to recover losses, making claims in civil court is extremely cost prohibitive, especially for a business that may have had its entire income stream cut off. In one prominent 1995 Anchorage case, the small business was selling approximately \$2.0 million per year in product. It had \$700,000 invested in inventory at the time of termination that the manufacturer/distributor refused to repurchase. However, after the Alaskan business successfully won its case in court, the manufacturer/distributor appealed the outcome. The case continues to date, with legal fees and court costs in excess of one million, and climbing. Many Alaskan small business distributors cannot afford the massive legal costs to pursue these claims through the courts, and still remain in business.

HOUSE CS FOR CS FOR SENATE BILL NO. 176(JUD) am H(efd add H)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 5/7/01

Offered: 5/7/01

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, distributorship agreements relating to motor vehicles
 8 required to be registered under AS 28.10, and certain manufacturers; and providing for
 9 an effective date."

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

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

12 Article 9A. Distributorships.

DRAFT

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

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

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

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

9 (3) making an expenditure that the dealer has not contracted to make.

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

17 (1) the fair market value for merchandise that is unused and for which
 18 the retailer has paid the distributor, plus 100 percent of the transportation charges paid
 19 by the dealer to return the merchandise to the distributor; in this paragraph,

20 (A) "fair market value" means the amount the distributor would
 21 realize from the sale of the merchandise to another retailer using reasonable
 22 good faith efforts;

23 (B) "unused" means unopened merchandise that is still in the
 24 original factory packaging or container;

25 (2) 85 percent of the current net price, as listed in the current price list
 26 or catalog of the distributor, for repair parts, including superseded parts; and

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

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

1 (c) In (a) of this section, if a repair part is not listed in a current price list or
 2 catalog of the distributor, the current net price is the higher of the fair market value or
 3 the latest price published by the distributor for the repair part if a dealer has actual
 4 proof of the purchase of the repair part from the distributor and if the repair part was
 5 purchased within 10 years before the termination.

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

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

20 **Sec. 45.45.740. Required purchase, reimbursement, and supplies.** (a) In
 21 addition to any purchase of merchandise required by AS 45.45.710, if a distributor
 22 terminates a distributorship agreement or makes substantial changes in the competitive
 23 situation of the distributor's dealer with regard to distribution of the merchandise or
 24 services that are the subject of the distribution agreement, the distributor shall

25 (1) purchase that portion of the dealer's business directly affected by
 26 the distributorship agreement or the change, including assets and machinery, at
 27 commercially reasonable business valuations; and

28 (2) reimburse the dealer for the expenses that were necessarily incurred
 29 by the dealer

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

1 (B) during the 12 months before the termination or change.

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

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

8 (1) a requirement that the dealer waive a trial by jury in court cases
9 involving the distributor;

10 (2) a requirement that disputes between the distributor and the dealer
11 be submitted to arbitration or to any other binding alternate dispute resolution
12 procedure, except authorization for the submission of a dispute to arbitration or to
13 binding alternative dispute resolution if the distributor and dealer voluntarily agree to
14 submit the dispute to arbitration or binding alternative dispute resolution when the
15 dispute arises;

16 (3) a requirement that the dealer pay the attorney fees of the
17 distributor;

18 (4) a requirement that prohibits a firearms dealer from selling firearms
19 or related accessories, the sale of which is otherwise legal, but which the firearms
20 distributor does not manufacture or distribute; or

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

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

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

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

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

30 (2) an injunction enjoining the distributor from engaging in the
31 activity;

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

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

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

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

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

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

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

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

14 (6) failing to make a purchase as required by AS 45.45.740(a)(1);

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

16 or

17 (8) violating AS 45.45.750.

18 **Sec. 45.45.770. Exemptions.** AS 45.45.700 - 45.45.790 do not apply to

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

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

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

25 (4) a manufacturer with 50 or fewer employees.

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

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

30 (2) "distributor" means a person who enters into a distributorship
31 agreement and who, under the agreement, provides merchandise or services to a

1 dealer; the term includes

2 (A) a wholesaler;

3 (B) a manufacturer;

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

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

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

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

12 (i) sell or lease merchandise or services at retail or
13 wholesale; or

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

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

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

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

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

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

25 * Sec. 3. This Act takes effect January 1, 2002.