

HB

209

<TARGET><BILL>HB 209</BILL><SUBJECT>HB
209</SUBJECT><COMM>HL&C30</COMM></TARGET>



Representative Sam Kito

Alaska State Legislature

House District 33

Downtown Juneau
Douglas
Haines
Klukwan
Skagway
Gustavus
Excursion Inlet

Chair
House Labor & Commerce

Chair
Legislative Council

Member
House Health &
Social Services

Member
House Rules

Contact

Rep. Sam Kito
Alaska State Capitol 403
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Juneau, AK 99801

907-465-4766

Rep.Sam.Kito@akleg.gov

Sponsor Statement

House Bill 209

Product Warranties & Required Updates

House Bill 209 proposes fair treatment to Alaskan consumers and businesses. Heavy equipment is expensive and complicated. Most resource companies, contractors, and many other consumers are dependent on the availability of equipment to keep Alaskans employed and businesses running.

Our state's remote locations and transportation challenges, coupled with high shipping costs, often can result in high costs to local dealers and distributors when delivering warranty and update services for a manufacturer's defective or deficient products. Many of these services are not reimbursed by the manufacturers who require this high cost work. This results in our local businesses, or their customers, absorbing expenses for shipping, transportation, and labor that should be paid by the company that manufactures the defective or deficient products, provides the warranty, and requires the updates.

HB 209 protects buyers of heavy equipment. If, during the term of a warranty or, if earlier, within one year after the date equipment is delivered to a buyer, the manufacturer or dealer is unable to repair equipment after a reasonable number of attempts, the bill requires a refund or replacement of the equipment.

HB 209 also would ensure that local dealers and distributors of heavy equipment, machinery, and tools used for construction, maintenance, resources development and similar activities are adequately compensated when providing required warranty service and manufacturer's required updates on the products they sell.

HB 209 builds on existing state law pertaining to boats, and all-terrain vehicles (ATVs). The legislation provides clarity, and certainty, for the consumers that use and the manufacturers and dealers that provide the equipment that keeps Alaska's heavy equipment industries running. HB 209 would not apply to vehicles licensed for use on roads, boats, and ATVs; those items are covered under a separate and current statute.

HB 209 protects consumers and balances the interests of local dealers to be adequately made whole for meeting their obligations to customers, while setting clear guidelines for manufacturers of heavy equipment products. I respectfully ask your support for this bill.



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Sectional Analysis

House Bill 209

Product Warranties & Required Updates

Section 1: Enacts 45.45.772 – 45.45.788, which outline the obligations and duties of manufacturers, contractors, dealers, and distributors when providing “required services” which include warranty work, corrective work on defective products, and updates required by manufacturers. For simplification of this sectional, the word “dealer” is used instead of “dealer or distributor,” the phrase that appears in the bill.

Sec. 45.45.772 Requires a dealer to provide any manufacturer’s warranty in effect at the time of sale to the purchaser. Outlines the obligations of each party when a contractor provides warranty service on behalf of the manufacturer.

Sec. 45.45.773 Requires a dealer to explain the warranty coverage, including disclaimers, and limitations; prohibits a dealer from making a representation about a warranty that is not made in the warranty; and requires the dealer to provide manuals to the purchaser.

Sec. 45.45.774 Requires the dealer to provide warranty service and to make all claims for warranty reimbursement in the manner established by the manufacturer.

Sec. 45.45.775 Prohibits a manufacturer from restricting the nature or extent of labor or parts that are needed to perform the work in accordance with generally accepted standards.

Sec. 45.45.776 Requires the manufacturer to follow the process outlined in this bill and standard industry claim procedures when paying a dealer for required services.

Sec. 45.45.777 Establishes the minimum compensation for work performed by a dealer on behalf of a manufacturer. Specifies the minimum rate and time for labor costs. Also requires the manufacturer to pay for transportation and lodging costs if the dealer has to send an employee to the field to perform the work.

Sec. 45.45.778 Requires a manufacturer to reimburse a dealer for parts used at the manufacturer’s full suggested retail price.

Sec. 45.45.779 If a part needed that is not in the dealer’s inventory, requires the manufacturer to pay the cost to send the item, as soon as possible, to the

purchaser's choice of either the dealer that sold the product or the dealer closest to the purchaser.

Sec. 45.45.780 Requires the manufacturer to pay or disapprove a claim within 30 days or it is considered approved and accrues a penalty of 1.5% per month.

Sec. 45.45.781 Requires a manufacturer's claim disapproval to be in writing and issued within 30 days of receipt of the claim.

Sec. 45.45.782 Requires the manufacturer or dealer to repair a product defect that is covered under warranty when reported by the purchaser.

Sec. 45.45.783 If a product cannot be repaired after a "reasonable number" of attempts during the term of the warranty or one year after purchase, whichever comes first, requires the manufacturer to either replace the product with a new comparable product or refund an amount equal to the full purchase price minus a "reasonable amount" for the period that the purchaser was able to use the product. The purchaser can choose whether to get a new product or refund. Outlines how to calculate the "reasonable amount" for a refund.

Sec. 45.45.784 Establishes a process for the purchaser to make a claim under 45.45.783. The purchaser must make a written claim by certified mail to the manufacturer within 60 days of the end of the term of the warranty or one year after the purchase date, whichever comes first. Outlines what must be in that written claim. Allows the manufacturer to make a final attempt to fix the item within 30 days.

Sec. 45.45.785 States that the manufacturer does not have to replace/refund if the claimed product defect is either not a defect or resulted from alteration, abuse or neglect by a person who is not an authorized dealer.

Sec. 45.45.786 Creates a rebuttable presumption that if the product has been in the shop for repairs three separate times or for 30 days during the warranty period or first year of ownership, whichever is shorter, a "reasonable number of attempts" to fix the product has been made.

Sec. 45.45.787 Defines what products are covered by this legislation.

Sec. 45.45.788 Establishes what qualifies as a "warranty service."

Section 2: Amends the definition of "merchandise" in AS 45.45.790 to include "covered products" – a term used in this bill.

Section 3: Adds definitions to AS 45.45.790 for terms used in this legislation.

Section 4: Adds violations to the provisions in Section. 1 to the list of unfair methods of competition and unfair or deceptive acts or practices found in AS 45.50.471

Section 5: Applicability – specifies that this bill applies to agreements entered into on and after the effective date of this act.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 209
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB209-LAW-CIV-04-07-17
Title: PRODUCT WARRANTIES & REQUIRED
UPDATES
Sponsor: KITO
Requester: House Labor & Commerce

Department: Department of Law
Appropriation: Civil Division
Allocation: Commercial and Fair Business
OMB Component Number: 2717

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Valerie Rose, Budget Analyst</u>	Phone: <u>(907)465-3674</u>
Division: <u>Administrative Services Division</u>	Date: <u>04/06/2017 08:37 AM</u>
Approved By: <u>Jahna Lindemuth, Attorney General</u>	Date: <u>04/07/17</u>
Agency: <u>Department of Law</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 209

Analysis

HB 209 would amend AS 45.45 to add warranty provisions for tools and commercial motor vehicles designed to be used primarily for construction, road building, mining, oil and gas projects and other uses, but not including motor vehicles subject to registration in Title 28, which primarily covers vehicles driven on the roads.

The bill will require a manufacturer (through its distributor or dealer) to provide the purchaser a copy of any warranty in effect at the time of delivery of the product. If a manufacturer contracts with a third party for warranty service, the manufacturer is still responsible for warranty obligations.

If a product is defective and is covered by a warranty, the manufacturer must pay the dealer or distributor to make repairs, and must get repair parts to the dealer without charge for freight or handling. If a product cannot be repaired, the manufacturer must provide a refund (minus an amount for reasonable use) or replacement. Amounts deducted for "reasonable use" are limited to depreciation (based on a straight-line seven year schedule), neglect or abuse, and "body damage."

The bill requires three unsuccessful repair attempts before a claim for a refund or replacement can be made.

The bill includes a provision that requires a manufacturer to pay a dealer or distributor to perform required updates or repairs, and pay all costs associated with the update, including transportation and lodging for personnel required to perform the update.

Labor rates charged for warranty repairs and updates are also restricted to not more than the highest of (1) non-warranty rates, or (2) manufacturer's printed flat rates, or (3) rate established by a flat rate manual.

Warranty claims made by a dealer must be paid in 30 days unless the manufacturer issues a written notice of disapproval. The bill provides that if a manufacturer does not provide such notice or make repairs in 30 days, the failure is considered an acceptance of the claim as submitted, and the claim begins accruing interest of 1.5 percent per month.

The bill adds the new sections of Title 45 (AS 45.45.772-45.45.778) to AS 45.50.471, making a violation of any provision of the bill a violation of AS 45.50.471 (unlawful acts and practices).

The Department of Law expects no fiscal impact on the department if this bill should become law.



April 3, 2017

Representative Sam Kito
House Labor & Commerce Committee Chair
Alaska State House of Representatives
Alaska State Capitol, Rm 409
Juneau, AK 99801

Re: Support of HB 209 – Product Warranties & Required Updates

Dear Representative Kito:

The Alaska State Chamber of Commerce (Alaska Chamber) supports the current version of House Bill 209, an act relating to product warranties and services for certain products; relating to certain dealers, distributors, and manufacturers; and establishing an unfair trade practice under the Alaska Unfair Trade Practices and Consumer Protection Act.

The Alaska Chamber is a non-profit founded in 1952 working to promote a positive business environment in Alaska. The Chamber is the voice of small and large business representing hundreds of employers and local chambers across Alaska. Our member companies employ over 100,000 hard-working Alaskans. The Alaska Chamber believes HB 209 will provide increased consumer protection for owners of heavy equipment when manufacturers require updates and/or warranty work is needed.

As you know Alaska is unique in its vast geographical size as well as the remoteness of where many businesses operate their heavy equipment. This size and remoteness leads to higher costs and challenges when getting goods and services out to these locations. The manufacturers do not reimburse for the higher costs of the updates and warranty work, and so Alaska businesses are forced to absorb these costs.

The Alaska Chamber thanks you for sponsoring HB 209 and your support for Alaska's business community.

Sincerely,

A handwritten signature in cursive script that reads 'Curtis W. Thayer'.

Curtis W. Thayer
President & CEO



ASSOCIATED GENERAL CONTRACTORS of ALASKA

8005 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518
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April 12, 2017

Representative Sam Kito, Chair
House Labor and Commerce Committee
State Capitol, Room 403
Juneau AK, 99801

Re: House Bill 209

Dear Representative Kito, *Sam*

The Associated General Contractors of Alaska is a trade association representing over 640 Alaskan businesses in the construction industry. Within our membership is a majority of Alaska's construction industry. On behalf of the AGC and those businesses, I offer the following support for House Bill 209.

No too many years ago, some suppliers in the lower 48 were known to send their rejects to Alaska, knowing that the cost of return freight meant the purchaser was going to be stuck with it. It's not like that anymore, but there are still a few issues where Alaska's remoteness imposes a burden on our businesses. Our remote locations, high shipping costs and transportation challenges result in high costs for warranty and update services for a manufacturer's defective products. Many of these services are discounted or not reimbursed at all by the manufacturers who require them. Alaska businesses have to absorb expenses for shipping, transportation, and labor that should be paid by the companies that manufacture defective products, provide warranties and require equipment updates.

House Bill 209 is modeled after laws in many other states for warranties covering boats and ATVs. This bill extends that same protection to the heavy equipment that keeps Alaska's construction and resource extraction businesses running. Fixing this problem is another consumer protection and business friendly action the legislature can take to help our resource and construction businesses and the companies that supply and serve them as they try to support the economy of Alaska.

Thank you for sponsoring this bill which will help ensure that Alaskans buying, selling or owning heavy equipment are adequately protected by manufacturers' required "updates" and warranties.

Sincerely,

John MacKinnon, Executive Director
Associated General Contractors of Alaska



ASSOCIATION OF
EQUIPMENT MANUFACTURERS

AGRICULTURE
CONSTRUCTION
FORESTRY
MINING
UTILITY

Chairman Sam Kito
House Labor and Commerce Committee
State Capitol, Room 504
Juneau, AK 99801

April 11, 2017

Dear Chairman Kito:

I write you on behalf of the Association of Equipment Manufacturers (AEM), the North American-based international trade association representing over 950 companies in the off-highway machinery market. AEM members contribute \$18 million to the state economy in Alaska.

AEM is opposed to HB 209, which would alter treatment of heavy equipment warranties. It is an unnecessary intrusion into the business relationship between an equipment manufacturer and the retail dealer. This is bad public policy that offers no benefits to consumers in Alaska.

Almost all equipment manufacturers distribute their products through independent dealers located throughout the world. Over the decades, these manufacturers and their dealers have developed close business relationships that have stood the test of time and the marketplace. The contracts that have evolved are a function of the type of products, the nature of their markets, and their combined experience.

These mutually agreed upon contracts are balanced to share the duties and responsibilities in such a way that both parties can make their best contributions toward a long-term relationship to work out isolated disagreements and conflicts that may arise and not seek wide sweeping legislative solutions.

One of the cornerstones of equipment warranty reimbursement and administration programs is incentivizing dealers to make vital, customer-driven product support investments.

Advancing this legislation sets a precedent for creating special protections for all products covered by manufacturer warranties. If the legislature approves special legislation to assist car dealers or heavy equipment dealers, how can it turn away lawn mower dealers, snow blower

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ASSOCIATION OF
EQUIPMENT MANUFACTURERS

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businesses, washing machines, computers, vacuum cleaners, etc.? Each of these is sold under similar warranties under similar dealer franchise laws. It will become a substantial problem for the legislature if the committee allows this legislation to advance.

These types of bills are not about consumer protection. Quite the opposite--they are about increasing the advantage that one side of a private business has over another. In fact, if passed, this bill will likely harm the consumer in a misguided effort to enrich a few determined equipment dealers seeking special treatment under the law.

We respectfully ask you to oppose HB 209 and allow the private parties to work out their private business issues.

Respectfully submitted,

Nick Yaksich
Senior Vice President, Government and Industry Affairs

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SENT VIA EMAIL: representative.sam.kito.akleg.gov

Chairman Sam Kito
House Labor and Commerce Committee
State Capitol Room 504
Juneau AK, 99801

April 13, 2017

Re: HB 209 - "An act relating to product warranties and services for certain products; relating to certain dealers, distributors and manufacturers; and establishing an unfair trade practice under the Alaska Unfair Trade Practices and Consumer Protection Act."

Subject: Opposition Testimony

Dear Chairman Kito:

On behalf of CNH Industrial America LLC (CNHI), I respectfully submit testimony in **opposition to HB 209** - "An Act relating to product warranties and required updates to products; and relating to dealers, distributors and manufacturers."

CNHI is the global manufacturer of Case IH and New Holland brands of agricultural equipment and Case and New Holland brands of construction equipment. Our brands are sold and serviced by dealers in all 50 states and over 160 countries around the globe.

We very strongly believe in the private right of parties to contract and the power of our industry, and the free market, to correctly solve private business issues without legislative intervention.

The specific areas of the bill that I wish to testify about are as follows:

Paragraph 45.45.775: Restrictions Not Allowed -

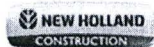
- This paragraph is especially ambiguous and will lead to costly and unnecessary conflict if a dispute should arise;
- Potential "restrictions" are unlimited;

Paragraph 45.45.776: Required Service Reimbursement -

- Industry standards do not exist;
- Likewise, this language can lead to unnecessary conflict in the case of a dispute;

Paragraph 45.45.777: Required Service Reimbursement -

- Language in this paragraph is misleading and/or not appropriate to the industry;
- Manufacturers printed flat rate;
 - "reasonable and customary" is the typical standard;





- “The rate established by a flat rate manual for dealers or distributors if the manual is produced for dealers or distributors by a nationally recognized industry consultant”, does not exist in the construction equipment marketplace;

Paragraph 45.45.777 (c) – Included payments (clean-up, preparation, etc. etc.) -

- “Clean-up, preparation, testing and final cleaning” are completely unaccountable and un-auditable;
- Develop a standard that is identifiable and presents low administration cost;

Paragraph 45.45.777 (d) – dealer administrative time –

- This cost, like other departmental operating cost should be included in the sales shop rate the dealer charges for work performed just as the dealer does for customer labor, parts sales and machinery sales;
- This provision will unnecessarily drive-up product cost for Alaska consumers;

Paragraph 45.45.777 (e) – reimbursement for transportation and lodging –

- This provision must be verifiable and auditable;
- Alaska would be the only state to mandate employee lodging and travel expenses;
- Dealers and customers in large geographic states tend to work-out the warranty provision on their own;
- Note: CNHI voluntarily pays travel time on safety modifications (up to 2 hours);

Paragraph 45.45.778: reimbursement for products used –

- Reimbursement should be based on current cost multiplied by a factor to avoid variances and potential manipulation;
- A factor of cost is the standard;
- “in the dealer’s or distributor’s inventory” is vague and impractical as dealers will not have every part for all warranty work and will cause needless interpretation that will directly lead back to the “restrictions” language in paragraph 45.45.775;

Paragraph 45.45.778: transportation of needed covered products –

- This will drive the manufacturers to require dealers to certain stocking levels of parts based on machines under warranty;
- Method of transportation should be the dealer’s option but reimbursement coverage should be not to exceed “best-way” terms and cost;



Paragraph 45.45.783: replacement or refund –

- The manufacturer should hold the explicit option of simply refunding and not replacing. A courteous way of saying “these are not the conditions that our machine was designed to work in, and the customer would be better off with a different machine or different brand of machine”;
- This provision will drive great onus on the dealer and the customer to provide, and be accountable for, precise information from which a judgment will be made as to warranty coverage from the manufacturer;
- (b) (1) the seven-year depreciation schedule is not appropriate for construction equipment and tools;

Paragraph 45.45.788: Products covered - Equipment, tools or motor vehicles if used primarily for construction, road building, snow removal, mining, oil projects, forestry, resource development or similar -

- Tools? Hand tools, chain saws, utility vehicles, ATVs and on?
- This would appear to separate the same vehicle into two classes A farm tractor in the Mat-Su Valley is used for farming That same tractor, with a backhoe mounted on it is used for light construction in Anchorage. Will the dealer and manufacturer have to behave differently based on the application or intent of the product design?

We very strongly believe in the private right of parties to contract and the power our industry, and the free market, to correctly solve private business issues.

Please feel free to call upon us if we may provide additional input.

George Whitaker
State Government Affairs
CNH Industrial America LLC

Copy:

Representative Wool
Representative Josephson
Representative Stutes
Representative Birch
Representative Edgmon

Representative Knopp
Representative Knopp
Representative Sullivan-Loenard
Representative Chenalult