

12184

HOUSE

JUDICIARY

fetus; and

'(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus; and

'(2) the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: Provided, however, That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

'(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

'(2) Such relief shall include--

'(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

'(B) statutory damages equal to three times the cost of the partial-birth abortion.

'(d)(1) A defendant accused of an offense under this section may seek a hearing before the State Medical Board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

'(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

'(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.'

(b) CLERICAL AMENDMENT- The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:
--1531'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

Gonzales v. Carhart, 550 U.S. ____ (2007).

Decision

Justice Anthony Kennedy wrote for the Court that the respondents had failed to show that Congress lacked power to ban this abortion procedure. Chief Justice John Roberts along with Justices Samuel Alito, Clarence Thomas, and Antonin Scalia agreed with the Court's judgment, and they also joined Kennedy's opinion.

The Court left the door open for as-applied challenges, citing its recent precedent in *Ayotte v. Planned Parenthood of New England*. According to *Washington Post* reporter Benjamin Wittes, "The Court majority, following the path it sketched out last year in the New Hampshire case, decided to let the law stand as a facial matter and let the parties fight later about what, if any, applications need to be blocked."^[15]

The Court decided to "assume ... for the purposes of this opinion" the principles of *Roe v. Wade* and *Planned Parenthood v. Casey*. The Court then proceeded to apply those "principles accepted as controlling here."

The Court said that the lower courts had repudiated a central premise of *Casey* — that the state has an interest in preserving fetal life — and the Court held that the ban was narrowly tailored to address this interest. Relying deferentially on Congress's findings that this intact dilation and extraction procedure is never needed to protect the health of a pregnant woman, Kennedy wrote that a health exception was therefore unnecessary. And, where medical testimony disputed Congress's findings, Congress is still entitled to regulate in an area where the medical community has not reached a "consensus."^[21]

The majority opinion held that "ethical and moral" considerations, including an interest in fetal life, represented "substantial" state interests which (assuming they do not impose an "undue" burden) could be a basis for legislation at all times during pregnancy, not just after viability. Thus, the Court believed that the pre-viability/post-viability distinction was not implicated in *Carhart*.^[21]

In addition, the Court distinguished the *Stenberg* case, which previously struck down Nebraska's partial-birth abortion law. The Court held that the state statute at issue in *Stenberg* was more ambiguous than the later federal statute at issue in *Carhart*.^[21]

The majority opinion in *Gonzales v. Carhart* did not discuss the constitutional rationale of the Court's prior abortion cases (i.e. "due process"). However, the majority opinion disagreed with the Eighth Circuit that the federal statute conflicted with "the Due Process Clause of the Fifth Amendment [which] is textually identical to the Due Process Clause of the Fourteenth Amendment."^[6]

[edit] Concurrence

Justice Thomas filed a concurring opinion, joined by Justice Scalia, saving for another day the issue of whether Congress had sufficient power under the Commerce Clause to enact this ban.^[2] The Commerce Clause was also mentioned in the opinion of the Court, and was the only clause of the Constitution mentioned explicitly by the opinions in this case.

The concurrence also stated that Justices Thomas and Scalia joined the Court's opinion "because it accurately applies current jurisprudence." And, the concurrence reiterated their view that that current abortion jurisprudence "has no basis in the Constitution." Nadine Strossen, President of the ACLU, pointed out that "no less an anti-abortion proponent than Justice Scalia joined by Justice Thomas, in his separate opinion, chided the majority for not coming out and explicitly saying that they had overturned not *Roe vs. Wade*, but the prior partial-birth abortion ban case."^[16]

[edit] Dissent

Justice Ruth Bader Ginsburg dissented, joined by justices David Souter, John Paul Stevens, and Stephen Breyer, contending that the ruling was an "alarming" one that ignored Supreme Court abortion precedent. Justice Ginsburg's dissent was the only opinion in this case that mentioned the word "privacy". Justice Ginsburg, referring in particular to *Planned Parenthood v. Casey*, sought to ground the Court's abortion jurisprudence based on concepts of personal autonomy and equal citizenship rather than the Court's previous privacy approach: "Thus, legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman's autonomy to determine her life's course, and thus to enjoy equal citizenship stature."^[2]

Justice Kennedy's opinion in *Carhart* did not touch upon the question of whether the Court's prior decisions in *Roe v. Wade* and *Planned Parenthood v. Casey* were valid. Dissenting Justice Ginsburg characterized this aspect of the Court's opinion as follows: "Casey's principles, confirming the continuing vitality of 'the essential holding of *Roe*,' are merely 'assume[d]' for the moment ... rather than 'retained' or 'reaffirmed.'"

FAILED

1-4

5-N

25-LS1139\C.1

Kurtz

1/21/08

AMENDMENT # |

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: HB 301

1 Page 1, following line 2:

2 Insert a new bill section to read:

3 **** Section 1. AS 18.16.050(a) is amended to read:**

4 (a) Notwithstanding compliance with AS 18.16.010, a person may not
5 knowingly perform a partial-birth abortion unless continuation of the pregnancy is
6 likely to result in the pregnant woman's death or poses a substantial risk of
7 permanent injury to the pregnant woman's physical or mental health [A
8 PARTIAL-BIRTH ABORTION IS NECESSARY TO SAVE THE LIFE OF A
9 MOTHER WHOSE LIFE IS ENDANGERED BY A PHYSICAL DISORDER,
10 ILLNESS, OR INJURY AND NO OTHER MEDICAL PROCEDURE WOULD
11 SUFFICE FOR THAT PURPOSE]. Violation of this subsection is a class C felony."
12

13 Page 1, line 3:

14 Delete "Section 1"

15 Insert "Sec. 2"

HB

303



HOUSE JUDICIARY COMMITTEE

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(907) 465-4990

COMMITTEE MEMBERS

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Room, 118
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Rep. Bob Lynn
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Room 204
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Rep. Mike Doogan
Room 112
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: February 19, 2008

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
House Judiciary Committee

Re: Referral File HB303 (25-LS1183\L)

Attached please find the following documents that represent the referral file for HB303:

- Sponsor Statement
- CSHB 303(JUD) 25-LS1183\L with legal memo regarding changes
- Work Draft CSHB 303(JUD) 25-LS1183\K with relevant documents
 - Sponsor's suggested amendments to version \K
 - Fax to Legislative Legal re: House Judiciary Committee amendments
 - Issues raised in committee
 - Representative Holmes potential amendment \K.1
- CSHB 303(L&C) 25-LS1183\E
- HB303 25-LS1183\A
- Sectional Summaries
- Fiscal Note
- Legal Memos
- Support/Opposition
- House Judiciary testifier lists
- House Judiciary Committee Report

Alaska State Legislature

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Juneau, AK 99801
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Representative.Mark.Neuman@legis.state.ak.us

Representative Mark A. Neuman

District 15

House Bill 303

“An Act relating to marine products and motorized recreational products”

Sponsor Statement

HB303 will benefit Alaskan consumers and Alaskan marine and powersports dealerships by creating a more favorable business environment in which to buy or service boats, 4 wheelers, snow machines, and outboard motors.

Alaska is unique in that consumers utilize these products not only for recreational purposes but many rely on them as their primary method of transportation. Whatever the product is used for; commercial, recreational, or transportation, when warranty issues arise the consequence can be significant.

Throughout Alaska and especially in the bush, the costs associated with remedies to warranty issues through services provided by dealers are extremely burdensome to both consumers and dealers.

HB303 will correct long standing inequities and create a more favorable business environment to benefit all Alaskans.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 19, 2008

SUBJECT: CSHB 303(JUD) relating to marine products and motorized recreational products (Work Order No. 25-LS1183\L)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: *JB*
Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Sec. 45.27.100. As we discussed, because the committee decided to remove former sec. 45.27.100(c) from sec. 45.27.100, it was necessary to make some conforming changes within the section. The first was to delete "and may be established by the uniform procedures adopted under (c) of this section" from sec. 45.27.100(a).

The second was to delete sec. 45.27.100(b). It was necessary to delete the first clause of (b) ("if the authorized dealer and the manufacturer or distributor have not established an area of responsibility under (c) of this section") because it was expressly based on (c).

However, the second clause ("if the area of responsibility established by the manufacturer or distributor is rejected by the authorized dealer") also appears to be tied to (c). As I read former (b), this clause is an alternative to when the parties haven't established an area under (c). The sense of this second clause is that if the dealer disagrees with the area established by the manufacturer or distributor under (c)'s uniform procedures, then the area is established by (b)(1) or (2). You may read this differently or you may want to rewrite (b) so as to incorporate (b)(1) or (2) in some way. If either is the case, please advise.

2. Former sec. 45.27.820 (civil penalty). As we discussed, this section has been deleted. It is not necessary to state that the penalties from AS 45.50.471 - 45.50.561 apply to a violation of the new chapter, because bill section 4 makes a violation of the chapter an unfair trade practice under AS 45.50.471 - 45.50.561, and this makes the penalty provisions of AS 45.50.471 - 45.50.561 apply to the violations.

TLB:med
08-113.mcd

Enclosure

Suggested Revisions to HB303

2-18-08

15

- Page 2: Remove Article 2. Area of responsibility entirely (Satisfies Amen 1)
- Page 3: Article 3 – Remove Sec 45.27.120 adding authorized dealer to area of responsibility
Remove Sec 45.27.200 sale of shipment before agreement
Remove Sec 45.27.210 Involuntary order or delivery
- Page 4 Article 3 Remove Sec 45.27.230 sale after termination (Satisfies Amen 2)
Remove Sec 45.27.240 delivery of products in reasonable quantities
Remove Sec 45.27.250 selection of delivery method
Remove Sec 45.27.260 product damage responsibility
- Page 5 Article 4 Sec 45.27.300 **Manufacturer or distributor mandatory repurchase** (change to read) *If a dealer is terminated or non-renewed by a manufacturer or distributor the manufacturer or distributor shall repurchase from the authorized dealers inventory.....(continued thru end of Sec 45.27.300)* (Satisfies Amen 3)
- Page 6 Article 4 Remove Sec 45.27.320 optional retention
Remove Sec 45.27.330 failure to repurchase
Remove Sec 45.27.350 carrier selection and costs
- Page 7 Article 5 Sect 45.27.410 line 10 replace "30 days" with "60 days"
Line 14 replace "30 days" with "60 days"
Article 5 Section 45.27.430 line 25 remove the word "timely"
Line 26 remove the word "timely"
- Page 8 Article 5 Sec 45.27.440 Line 16 -18 Delete "*If a manufacturer's full suggested retail price does not exist, the reimbursement shall be calculated at 1.5 times the authorized dealer's landed cost*" (Per Amen 4)
Article 5 Remove Sect 45.27.450 shipping costs ret'd items (Satisfies Amen 5)
- Page 9 Article 5 Remove Section 45.27.470 boat package warranties and branding
Remove Section 45.27.480 performance of warranty service work

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
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Committee Members:
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Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Terry Bannister
Legislative Legal

Fax #: 2029

Number of pages including cover:

From: Jane Pierson

Date: February 15, 2008

Re: CS for HB 303 (25-LS1183\K)

Please draft a final JUD CS for the above - referenced bill, to reflect the following conceptual amendments:

- 1) P. 2, L. 25-29 Delete sub-section (c).
- 2) P. 4, L. 5 -14 Delete all of AS 45.27.230.
- 3) P. 5, L. 17 Delete "at a minimum."
- 4) P. 8, L. 16 -18 Delete "If a manufacturer's full suggested retail price does not exist, the reimbursement shall be calculated at 1.5 times the authorized dealer's landed cost."
- 5) P. 8, L. 19-23 Delete sub-section (a)
- 6) P. 9, L. 22 After "30 days" insert "after receipt of claim by the manufacturer or distributor."

7) P. 10, L. 20 Under Required posting please include a "If a dealer's service operations employees receive a commission for the amount of work they perform, the motor vehicle dealer shall post a conspicuous sign that is visible to service customers that the dealer's service operations employees work on commission."

8) P. 11, L. 8 Civil penalties in accordance with AS 45.50.471 - 45.50.561. No civil fine of \$5,000 per day. ^{see 1}
₂₀₀₅

8) P. 11, L. 11-12 Delete AS 45.27.830 Criminal penalty.

Thank you.

Issues raised in Judiciary Committee Hearing on HB 303

- Legal opinion requested on which state law applies in case of conflict of laws. Terry Bannister agreed that it was a good idea to pull in statement about 45.45.700 -45.45.900 to indicate which chapter governs, if a conflict occurs.
- Legal opinion requested to look at each section for conflicts with U.C.C.
- Legal opinion requested to analyze the bill and Bankruptcy laws to determine if a conflict exists.
- Question arose whether Consumer Product Safety Act pre-empts any provisions in the bill.
- Rep. Gruenberg requested that the requirement for "notice by mail" be extended to include notice by "electronic means."
- Rep. Holmes expressed concern that anti-trust issues may still exist in Sec. 45.27.100 in determining area of responsibility for multi-product dealers.
- Rep. Gruenberg expressed concerns regarding Section 45.27.240 "reasonable quantities" and the failure to provide a definition for what this means. Rep. Coghill similarly expressed concern regarding "delay" in the same section. These issues were referred to the Rules Committee to address.
- Rep. Holmes concern that Section 45.27.260(c) and (d) created a loophole where a manufacturer could be liable for damage that occurs between the time the product arrives at the dealer and the 10-day written notice period. Referred to the Rules Committee to address.
- Rep. Holmes expressed concern that in Sec. 45.27.330 the phrase "inventory value of products" was undefined. Referred to the Rules Committee to address.
- Rep. Holmes expressed concern that in Sec. 45.27.340 "landed cost" was a broad definition and that what items were included in "landed cost" was left entirely to dealer discretion. Referred to the Rules Committee to address.
- The question of who determines what is "timely warranty service" at Section 45.27.430 was referred to the Rules Committee to address.
- Rep. Holmes expressed concern on the meaning of "readily available" contained in Section 45.27.480. Referred to the Rules Committee to address.
- Rep. Holmes expressed concern that the language "transactions that occurred more than two years" contained in Section 45.27.600 changed the applicable statute of limitations for such transactions. Referred to the Rules Committee to address.
- Rep. Holmes expressed concern that Section 45.27.630 already existed in law and was superfluous. Attorney Ed Sniffen agreed. Referred to the Rules Committee to address.
- Rep. Holmes expressed concern with the indemnification language contained in Section 45.27.810(b)(1). Attorney Ed Sniffen agreed that this was unusual. Referred to the Rules Committee to address.

25-LS1183\K.1
Bannister
2/14/08

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: CSHB 303(JUD), Draft Version "K"

1 Page 2, line 10, through page 3, line 20:

2 Delete all material.

3

4 Renumber the following articles accordingly.

5

6 Page 5, lines 14 - 30:

7 Delete "If an authorized dealer discontinues selling a particular product and gives 60
8 days' advance written notice of the discontinuance to the manufacturer or distributor by mail,
9 the manufacturer or distributor shall, at a minimum, repurchase from the authorized dealer's
10 inventory

11 (1) each new and unused discontinued product of the manufacturer that

12 is

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

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

15 years; and

16 (2) each discontinued product part that

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

18 (B) is listed in the manufacturers' parts price books in the past

19 two years; and

20 (C) has not been damaged or substantially altered to the

21 prejudice of the manufacturer or distributor while in the possession of the

22 authorized dealer."

23 Insert "Unless the agreement provides otherwise, if a manufacturer or distributor

25-LS1183VK.1

1 discontinues a particular product from its product line, the manufacturer or distributor shall
2 repurchase from the authorized dealer's inventory each new and unused discontinued product
3 of the manufacturer that is the current model of the discontinued product and that has not been
4 damaged or substantially altered while in the possession of the authorized dealer."

5

6 Page 6, line 3:

7 Delete "and product parts"

8

9 Page 6, lines 5 - 10:

10 Delete all material.

11

12 Page 6, line 14:

13 Delete "and product parts"

14

15 Page 6, lines 20 - 25:

16 Delete all material.

17

18 Page 6, line 28:

19 Delete "AS 45.27.300 - 45.27.340"

20 Insert "AS 45 27.300 - 45.27.310"

21

22 Page 7, lines 4 - 18:

23 Delete all material.

24

25 Page 8, lines 20 - 21:

26 Delete ", plus 25 percent of the normal authorized dealer's cost as a handling fee,"

27

28 Page 9, line 25, through page 10, line 11:

29 Delete all material.

30

31 Page 10, line 24, through page 11, line 7:

25-LS1183\K.1

1 Delete all material

2

3 Page 11, lines 11 - 12:

4 Delete all material.

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:

Referred:

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.** (a) 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 and may be established by the uniform procedures adopted
16 under (c) of this section.

17 (b) If the authorized dealer and the manufacturer or distributor have not
18 established an area of responsibility under (c) of this section, or if the area of
19 responsibility established by the manufacturer or distributor is rejected by the
20 authorized dealer, the area of responsibility is a

21 (1) 12-mile radius from the authorized dealer if the authorized dealer is
22 located in a municipality containing 4,000 persons or more; or

23 (2) 30-mile radius from the authorized dealer if the authorized dealer is
24 located in a municipality containing fewer than 4,000 persons.

25 (c) The manufacturer or distributor shall adopt uniform procedures to establish
26 an area of responsibility. The uniform procedures must include market research
27 information from identified credible industry sources that project sales of the brand of
28 the products under the agreement between the authorized dealer and the manufacturer
29 or distributor.

30 **Sec. 45.27.110. Changing area of responsibility.** Before changing an area of
31 responsibility, the manufacturer or distributor shall give the authorized dealer at least

1 90 days' written notice by mail before the change. This section does not apply to an
2 authorized dealer who relocates or opens additional facilities within two miles of the
3 authorized dealer's existing facilities unless the relocation would infringe on another
4 authorized dealer's area of responsibility.

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

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

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

13 (2) a determination of whether the existing authorized dealers of the
14 same line of product makes, models, or classifications in the authorized dealer's area
15 of responsibility are providing adequate representation, competition, and convenient
16 consumer care for the same line of product makes, models, and classifications located
17 in that area of responsibility.

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

21 **Article 3. General Product Provisions.**

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

25 **Sec. 45.27.210. Involuntary order or delivery.** A manufacturer or distributor
26 may not coerce or attempt to coerce an authorized dealer to order or accept delivery of
27 a

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

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

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

5 **Sec. 45.27.230. Sale after termination or nonrenewal.** After an effective
6 termination or nonrenewal of an agreement, a manufacturer or distributor shall
7 continue, for the required time, to sell the authorized dealer parts for products sold by
8 the authorized dealer before the termination or nonrenewal. In this section, "required
9 time" means the shorter of

10 (1) 24 months after the termination or nonrenewal; or

11 (2) the period of time after the termination or nonrenewal until the
12 manufacturer or distributor enters into an agreement with another authorized dealer to
13 provide service to the customers of the authorized dealer whose agreement was
14 terminated or not renewed.

15 **Sec. 45.27.240. Delivery of products in reasonable quantities.** A
16 manufacturer or distributor may not delay, refuse, or fail to deliver products in
17 reasonable quantities to an authorized dealer unless the delay, refusal, or failure is
18 caused by an act beyond the control of the manufacturer, the distributor, or a person
19 related to the manufacturer or distributor.

20 **Sec. 45.27.250. Selection of delivery method.** Unless otherwise provided by
21 the agreement, a manufacturer or distributor may not refuse to allow an authorized
22 dealer to select the method and carrier for the delivery of products to the authorized
23 dealer by the manufacturer or distributor.

24 **Sec. 45.27.260. Product damage responsibility.** (a) A manufacturer or
25 distributor is solely responsible for damage to a product that occurs before the
26 manufacturer or distributor delivers the product to a carrier.

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

30 (c) An authorized dealer is solely responsible for damage to a new product
31 that occurs after the authorized dealer accepts the product from the carrier and before

1 delivery to the ultimate purchaser unless the damage results from a latent or hidden
2 defect or is not reasonably observable at the time the authorized dealer accepts the
3 product. An authorized dealer accepts a product when the authorized dealer signs a
4 delivery receipt for the product.

5 (d) An authorized dealer may refuse to accept a damaged product from a
6 manufacturer or distributor by giving written notice to the manufacturer or distributor
7 within 10 business days after the product is delivered to the authorized dealer. If an
8 authorized dealer refuses to accept the damaged product, the manufacturer or
9 distributor shall, within 10 days after receiving the notice from the authorized dealer,
10 credit the authorized dealer's account for the product cost that the manufacturer or
11 distributor charged to the authorized dealer and any freight and interest charged to the
12 authorized dealer for the product.

13 **Article 4. Product Repurchase Requirements.**

14 **Sec. 45.27.300. Manufacturer or distributor mandatory repurchase.** If an
15 authorized dealer discontinues selling a particular product and gives 60 days' advance
16 written notice of the discontinuance to the manufacturer or distributor by mail, the
17 manufacturer or distributor shall, at a minimum, repurchase from the authorized
18 dealer's inventory

19 (1) each new and unused discontinued product of the manufacturer that
20 is

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

22 (B) a model of the discontinued product from the previous two
23 years; and

24 (2) each discontinued product part that

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

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

28 (C) has not been damaged or substantially altered to the
29 prejudice of the manufacturer or distributor while in the possession of the
30 authorized dealer.

31 **Sec. 45.27.310. Timing of repurchase.** A manufacturer or distributor shall

1 make the repurchase required by AS 45.27.300 within 60 days after the authorized
2 dealer submits to the manufacturer or distributor by mail the authorized dealer's final
3 inventory of all the products and product parts identified under AS 45.27.300 that
4 apply to the authorized dealer's discontinuance of the manufacturer's products.

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

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

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

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

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

30 **Article 5. Product Warranties.**

31 **Sec. 45.27.400. Warranty provided.** A manufacturer shall provide, through

1 the authorized dealer, to the product's ultimate purchaser from an authorized dealer the
2 manufacturer's standard written warranty, if any, that is in effect at the time of delivery
3 of the product to the authorized dealer.

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

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

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

19 **Sec. 45.27.420. Authorized dealer warranty representations.** An authorized
20 dealer may not make a representation about the warranty that is not made by the
21 manufacturer in the written warranty. An authorized dealer shall deliver the manuals
22 on the operation and maintenance of a product to an ultimate purchaser and make the
23 manufacturer's warranty known to the ultimate purchaser, including all disclaimers
24 and limitations.

25 **Sec. 45.27.430. Timely warranty service and claims.** (a) An authorized
26 dealer shall provide timely warranty service in accordance with the manufacturer's
27 applicable warranty on all of the manufacturer's and distributor's products sold by the
28 authorized dealer.

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

31 **Sec. 45.27.440. Basis for reimbursements.** (a) A manufacturer or distributor

1 shall use the bases established in this section to reimburse an authorized dealer for all
2 approved warranty service work performed by the authorized dealer.

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

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

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

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

14 (d) A manufacturer or distributor shall reimburse the authorized dealer for
15 product parts at the current manufacturer's full suggested retail price and shall ship
16 each part to the authorized dealer without cost for freight or handling. If a
17 manufacturer's full suggested retail price does not exist, the reimbursement shall be
18 calculated at 1.5 times the authorized dealer's landed cost.

19 **Sec. 45.27.450. Shipping costs for returned items.** (a) A manufacturer or
20 distributor shall pay for any costs incurred by the authorized dealer, plus 25 percent of
21 the normal authorized dealer's cost as a handling fee, for shipping a part replaced
22 under a warranty that the authorized dealer returns for testing, analysis, or inspection
23 at the request of the manufacturer or distributor.

24 (b) A request by the manufacturer, the distributor, or another person involved
25 in a product's warranty service to an authorized dealer to return a product or a product
26 part for analysis, testing, or inspection must be in writing and shall be made within 30
27 days after the filing date of the warranty claim 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. The notice must contain the
23 specific reasons for the disapproval.

24 **Article 6. Miscellaneous Business Practices.**

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

31 (b) If an authorized dealer retains a product part for at least 30 days after the

1 warranty claim is filed, the authorized dealer is not liable to a manufacturer or
2 distributor for failing to retain the product part for a longer time.

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

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

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

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

21 **Article 7. Miscellaneous Provisions.**

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

24 **Sec. 45.27.810. Manufacturer and distributor liability.** (a) A manufacturer
25 and a distributor shall indemnify and hold harmless an authorized dealer for damages,
26 including fines, suffered by the authorized dealer as a result of the manufacturer's or
27 distributor's violation of this chapter.

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

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

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

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

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

8 **Sec. 45.27.820. Civil penalty.** In addition to the penalties allowed under
9 AS 45.50.471 - 45.50.561, a person who violates this chapter is liable to the state for a
10 civil fine of \$5,000 for each day the violation continues.

11 **Sec. 45.27.830. Criminal penalty.** A person who violates this chapter is guilty
12 of a class B misdemeanor.

13 **Sec. 45.27.840. 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).

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District 15

Sectional Summary for HB 303 version \K

HB 303 Alaska Marine Product and Motorized Recreational Product Act

This is sectional summary of a bill draft and should not be considered an authoritative interpretation of the bill draft and the bill draft itself is the best statement of its contents.

Article 1

Sec. 45.27.010. Prohibits a manufacturer or distributor from threatening to cancel an agreement. Prohibits a manufacturer or distributor from cancelling or refusing to renew an agreement and advance notice unless based on a failure or fraudulent activity of the dealer as described in the section.

Sec. 45.27.020. Prohibits a manufacturer or distributor from unreasonably withholding consent to the sale or other transfer of an agreement if the transferee satisfies certain conditions.

Sec. 45.27.030. Prohibits a manufacturer or distributor from changing an agreement without giving notice for a certain time before the change.

Article 2

Sec. 45.27.100. Indicates that, unless the agreement establishes a smaller area of responsibility, a dealer's area of responsibility may consist of a geographical area designated by zip code, municipality, or mileage radius in the agreement and may be established by the uniform procedures adopted under (c) of this section. Establishes what the area of responsibility consists of if not established under (c) of this section or if the area of responsibility established by the manufacturer or distributor is rejected by the dealer. Requires a manufacturer or distributor to adopt uniform procedures to establish an area of responsibility.

Sec. 45.27.110. Requires a manufacturer or distributor to give a dealer notice for a certain period of time before changing an area of responsibility. Makes an exception to this requirement.

Sec. 45.27.120. Prohibits a manufacturer or distributor from entering into an agreement adding a dealer within an existing dealer's area of responsibility without giving notice for a certain period of time to all potentially affected dealers in the area of responsibility. Establishes the contents of the notice.

Article 3

Sec. 45.27.200. Prohibits a manufacturer or distributor from selling or shipping a product to a dealer before the dealer signs an agreement that complies with AS 45.27.

Sec. 45.27.210. Prohibits a manufacturer or distributor from coercing a dealer to order or accept delivery of a product not voluntarily ordered or certain other products with special features.

Sec. 45.27.220. Prohibits a manufacturer or distributor, without just cause, from refusing to deliver or ship within a certain time to a dealer a product publicly advertised by the manufacturer or distributor as available for immediate delivery.

Sec. 45.27.230. Requires a manufacturer or distributor to continue, for a specified time after the termination or nonrenewal of an agreement, to sell to a dealer parts for the products that the dealer sold before the termination or nonrenewal.

Sec. 45.27.240. Prohibits a manufacturer or distributor from delaying, refusing, or failing to deliver reasonable quantities of products unless caused by an act beyond the control of the manufacturer, the distributor, or a related person.

Sec. 45.27.250. Prohibits a manufacturer or distributor from refusing to allow a dealer to select the method and carrier for product delivery, unless the agreement provides otherwise.

Sec. 45.27.260. Makes a manufacturer or distributor solely responsible for product damage occurring before delivery to a carrier. States that a dealer is not responsible for damage to a new product occurring while in a carrier's possession, unless the dealer selected the method of transportation and the carrier. States that a dealer is solely responsible for damage to a new product occurring after the dealer accepts the product from the carrier and before delivery to the ultimate purchaser, unless the damage is caused by a latent or hidden defect or was not reasonably observable when accepted. Allows a dealer to refuse to accept a damaged product if the dealer gives notice within a certain time, and requires a manufacturer or distributor to credit the dealer within a specified time for the product cost, freight, and interest charged.

Article 4

Sec. 45.27.300. Requires a manufacturer or distributor to repurchase certain products and product parts from a dealer's inventory when a dealer stops being a dealer and gives certain advance notice to the manufacturer or distributor. Requires a manufacturer or distributor to repurchase from a dealer certain products and product parts if a dealer stops selling a product and gives certain advance notice to the manufacturer or distributor.

Sec. 45.27.310. Requires a manufacturer or distributor to make the repurchases within a certain time.

Sec. 45.27.320. Allows a dealer to retain some discontinued products and product parts for certain purposes if the dealer stops being a dealer or selling a particular product.

Sec. 45.27.330. Requires a manufacturer or distributor to pay the dealer interest if the manufacturer or distributor fails, without just cause, to make the required repurchases.

Sec. 45.27.340. Bases the repurchase amount on the dealer's landed cost at the dealer's facility. Requires adjustment of the landed cost for certain rebates and credits.

Sec. 45.27.350. Places the responsibility for transportation and storage costs for repurchased products on the manufacturer or distributor. Allows a manufacturer or distributor to select the method and carrier to transport a repurchased product.

Sec. 45.27.400. Requires a manufacturer to provide to a product's ultimate purchaser from a dealer the manufacturer's standard warranty, if any, in effect at the time of delivery to the dealer.

Sec. 45.27.410. Requires a manufacturer or distributor of a defective product to pay a dealer to complete factory-recommended warranty repairs, solutions, and procedures to cure factory warranty problems. Requires a manufacturer or distributor to provide, within a specified time, the original factory parts required to cure a defective product. Establishes the dealer's options when the manufacturer or distributor is unable to supply the needed warranty service parts as required.

Sec. 45.27.420. Prohibits a dealer from making a warranty representation that is not in the manufacturer's written warranty. Requires a dealer to deliver operation and maintenance manuals to an ultimate purchaser and to make the warranty known to the ultimate purchaser.

Sec. 45.27.430. Requires a dealer to provide timely warranty service in accordance with the manufacturer's warranty. Requires a dealer to make warranty reimbursement claims in the manner required by the manufacturer.

Sec. 45.27.440. Directs a manufacturer or distributor to use the bases established in this section to reimburse a dealer for approved warranty service performed by the dealer. Sets out the bases.

Sec. 45.27.450. Requires a manufacturer or distributor to pay a dealer's shipping costs and a handling fee for shipping a part that is replaced under a warranty and that the dealer returns for testing, analysis, or inspection at the manufacturer's or distributor's request. Requires the return request to be made in writing and within a certain time.

Sec. 45.27.460. Requires a manufacturer or distributor to pay a warranty claim within a certain time. If not so paid, the claim is considered accepted and interest must be paid on the claim.

Sec. 45.27.470. Allows a manufacturer or distributor of a marine product to enter into a warranty service agreement with a dealer of a boat package without violating the area of responsibility of another dealer with an agreement to sell the marine motor brand that is part of the package.

Sec. 45.27.480. Requires a dealer to use a factory-certified or factory-trained technician to perform warranty service work if the certification or training is readily available.

Sec. 45.27.490. Prohibits a manufacturer from restricting the nature or extent of product parts provided or labor performed by a dealer if the restriction impairs the dealer's ability to satisfy the manufacturer's warranty.

Sec. 45.27.500. Requires a manufacturer or distributor to issue a notice of disapproval to a dealer within a certain time after disapproving a claim. Requires the notice to contain specific reasons for the disapproval.

Article 6

Sec. 45.27.600. Provides that a dealer is not liable to a manufacturer or distributor for money revealed by an audit if the money results from transactions occurring more than two years before the audit, unless fraud is involved. States that a dealer is not liable to a manufacturer or distributor for money when an audit shows that the dealer failed to retain product parts for more than a specified time.

Sec. 45.27.610. Prohibits a manufacturer or distributor from competing with a dealer.

Sec. 45.27.620. Indicates what information a manufacturer or distributor must include in a factory recall notice to ultimate purchasers and dealers.

Sec. 45.27.630. Prohibits a manufacturer or distributor from using false or misleading advertising in connection with a dealer's agreement or the sale of products.

Sec. 45.27.640. Requires a dealer to post a notice with the dealer's retail labor rate. Requires the notice to state that warranty service work is performed by a factory-certified or factory-trained technician, if applicable.

Article 7

Sec. 45.27.800. Makes an agreement provision not enforceable if it violates AS 45.27.

Sec. 45.27.810. Requires a manufacturer and a distributor to indemnify and hold a dealer harmless for damages suffered by the dealer due to the manufacturer's or distributor's violation of AS 45.27. Requires a manufacturer and a distributor to indemnify and hold a dealer harmless for damages due to complaints, claims, or lawsuits to the extent the damages arise out of certain acts of the manufacturer or distributor.

Sec. 45.27.820. Establishes a civil penalty for violating AS 45.27.

Sec. 45.27.830. Establishes a criminal penalty for violating AS 45.27.

Sec. 45.27.840. States that the provisions of AS 45.27 are in addition to any other remedies available under law or under an agreement between a dealer and a manufacturer or distributor.

Article 8

Sec. 45.27.900. Exempts certain persons from AS 45.27.

Sec. 45.27.990. Defines terms for AS 45.27.

Sec. 45.27.995. Gives AS 45.27 a short title.

Section 3. Exempts marine product and motorized recreational product agreements from the provisions on distributorships.

Section 4. Adds a violation of AS 45.27 to the list of unfair trade practices.

Section 5. Removes action that is taken or refrained from in order to comply with AS 45.27 from the coverage of the state's provisions on monopolies and restraint of trade.

Section 6. States that this Act does not apply to an agreement entered into before the effective date of this Act.

Section 7. Within 180 days after the effective date of this Act, this transition section for new sec. 45.27.200 allows a manufacturer or distributor to sell or ship a product to a dealer before the dealer signs an agreement complying with AS 45.27.

Section 8. Gives this Act an immediate effective date.

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

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Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Explanation of Changes to HB 303 version \E to version \K

- 1) Page 1 Deleted **Sec. 45.27.010 Formation of agreement**
- 2) Page 1 **Sec. 45.27.020 Cancellation or nonrenewal of agreement.** removed just cause and changed cancellation or nonrenewal written notice to 90 days from 120 days.
- 3) Page 2 **Sec. 45.27.030 Consent to transfer of agreement.** deleted subsections (b) and (c), which added unnecessary requirements on a manufacturer; requiring a manufacturer to may not "unreasonable without consent" is consistent with standard practice.
- 4) Page 3 **Sec. 45.27.120. Adding authorized dealer to area of responsibility.** Deleted section (b)(2).
- 5) Page 4 **Sec. 45.27.230 Sale after termination or nonrenewal.** Changed the language from 24 months to until the manufacturer or distributor enters a new agreement with the dealer who will service the customers of the terminated dealer, or 24 months, whichever occurs first.
- 6) Page 5 **Sec. 45.27.300 Manufacturer or distributor mandatory repurchase.** Deleted sec. (a). These repurchase agreements are addressed in AS 45.45.710 - .740.
- 7) Page 6 **Sec. 45.27.310 Timing of repurchase.** Changed from 30 days to 60 days.
- 8) Page 7 **Sec. 45.27.330 Failure to repurchase.** Changed language to include the amount allowed by law, which will cover rate changes.
- 9) Page 7 **Sec. 45.27.410 Defective products.** Deleted all and combine section (b) and (c) to read: "A manufacturer or distributor shall, within 30 days after a request made by an authorized dealer, provide the authorized dealer with original factory parts required

to perform warranty service on a defective product. If a manufacturer or distributor is unable to supply factory parts needed to complete the warranty repair for a defective product within 30 days, the authorized dealer may return the defective product and receive full credit for the dealer's landed cost of the product, plus 100% of the freight charges to return the product." This gives the dealer significant protection against being stuck with a defective product.

10) Page 12 **Sec. 45.27.820 Civil penalty.** Enhances the penalties allowed under AS 45.50.4721 – 561 to include a civil fine of up to \$5,000 a day.

LEGAL SERVICES

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
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MEMORANDUM

December 31, 2007

SUBJECT: Sectional summary of bill draft relating to marine products and motorized recreational products (Work Order No. 25-LS1183A)

TO: Representative Mark Neuman
Attn: Rex Shattuck

FROM:  Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill draft. As a preliminary matter, note that a sectional summary of a bill draft should not be considered an authoritative interpretation of the bill draft and the bill draft itself is the best statement of its contents.

Section 1. Adds sec. 45.25.920 to resolve conflicting provisions in AS 45.25 and AS 45.27. Resolves them in favor of the AS 45.27 provisions.

Section 2. Adds AS 45.27, a new chapter relating to marine products and motorized recreational products.

Sec. 45.27.010. Prohibits a manufacturer or distributor from coercing a dealer to enter into an agreement.

Sec. 45.27.020. Prohibits a manufacturer or distributor from threatening to cancel an agreement without just cause. Prohibits a manufacturer or distributor from cancelling or refusing to renew an agreement without just cause and advance notice unless based on a failure or fraudulent activity of the dealer as described in the section.

Sec. 45.27.030. Prohibits a manufacturer or distributor from unreasonably withholding consent to the sale or other transfer of an agreement if the transferee satisfies certain conditions. Requires a manufacturer or distributor to respond to a request for consent within a certain time, and failure to respond as required is considered consent.

Sec. 45.27.040. Prohibits a manufacturer or distributor from changing an agreement without giving notice for a certain time before the change.

Sec. 45.27.100. Indicates that, unless the agreement establishes a smaller area of responsibility, a dealer's area of responsibility may consist of a geographical area designated by zip code, municipality, or mileage radius in the agreement and may be established by the uniform procedures adopted under (c) of this section. Establishes what

the area of responsibility consists of if not established under (c) of this section or if the area of responsibility established by the manufacturer or distributor is rejected by the dealer. Requires a manufacturer or distributor to adopt uniform procedures to establish an area of responsibility.

Sec. 45.27.110. Requires a manufacturer or distributor to give a dealer notice for a certain period of time before changing an area of responsibility. Makes an exception to this requirement.

Sec. 45.27.120. Prohibits a manufacturer or distributor from entering into an agreement adding a dealer within an existing dealer's area of responsibility without giving notice for a certain period of time to all potentially affected dealers in the area of responsibility. Establishes the contents of the notice. Gives potentially affected dealers a certain time to provide information and comments before the manufacturer or distributor makes a final decision.

Sec. 45.27.200. Prohibits a manufacturer or distributor from selling or shipping a product to a dealer before the dealer signs an agreement that complies with AS 45.27.

Sec. 45.27.210. Prohibits a manufacturer or distributor from coercing a dealer to order or accept delivery of a product not voluntarily ordered or certain other products with special features.

Sec. 45.27.220. Prohibits a manufacturer or distributor, without just cause, from refusing to deliver or ship within a certain time to a dealer a product publicly advertised by the manufacturer or distributor as available for immediate delivery.

Sec. 45.27.230. Requires a manufacturer or distributor to continue, for a specified time after the termination or nonrenewal of an agreement, to sell to a dealer parts for the products that the dealer sold before the termination or nonrenewal.

Sec. 45.27.240. Prohibits a manufacturer or distributor from delaying, refusing, or failing to deliver reasonable quantities of products unless caused by an act beyond the control of the manufacturer, the distributor, or a related person.

Sec. 45.27.250. Prohibits a manufacturer or distributor from refusing to allow a dealer to select the method and carrier for product delivery, unless the agreement provides otherwise.

Sec. 45.27.260. Makes a manufacturer or distributor solely responsible for product damage occurring before delivery to a carrier. States that a dealer is not responsible for damage to a new product occurring while in a carrier's possession, unless the dealer selected the method of transportation and the carrier. States that a dealer is solely responsible for damage to a new product occurring after the dealer accepts the product from the carrier and before delivery to the ultimate purchaser, unless the damage is caused by a latent or hidden defect or was not reasonably observable when accepted.

Allows a dealer to refuse to accept a damaged product if the dealer gives notice within a certain time, and requires a manufacturer or distributor to credit the dealer within a specified time for the product cost, freight, and interest charged.

Sec. 45.27.300. Requires a manufacturer or distributor to repurchase certain products and product parts from a dealer's inventory when a dealer stops being a dealer and gives certain advance notice to the manufacturer or distributor. Requires a manufacturer or distributor to repurchase from a dealer certain products and product parts if a dealer stops selling a product and gives certain advance notice to the manufacturer or distributor.

Sec. 45.27.310. Requires a manufacturer or distributor to make the repurchases within a certain time.

Sec. 45.27.320. Allows a dealer to retain some discontinued products and product parts for certain purposes if the dealer stops being a dealer or selling a particular product.

Sec. 45.27.330. Requires a manufacturer or distributor to pay the dealer interest if the manufacturer or distributor fails, without just cause, to make the required repurchases.

Sec. 45.27.340. Bases the repurchase amount on the dealer's landed cost at the dealer's facility. Requires adjustment of the landed cost for certain rebates and credits.

Sec. 45.27.350. Places the responsibility for transportation and storage costs for repurchased products on the manufacturer or distributor. Allows a manufacturer or distributor to select the method and carrier to transport a repurchased product.

Sec. 45.27.400. Requires a manufacturer to provide to a product's ultimate purchaser from a dealer the manufacturer's standard warranty, if any, in effect at the time of delivery to the dealer.

Sec. 45.27.410. Requires a manufacturer or distributor of a defective product to pay a dealer to complete factory-recommended warranty repairs, solutions, and procedures to cure factory warranty problems. Requires a manufacturer or distributor to provide, within a specified time, the original factory parts required to cure a defective product. Establishes the dealer's options when the manufacturer or distributor is unable to supply the needed warranty service parts as required.

Sec. 45.27.420. Prohibits a dealer from making a warranty representation that is not in the manufacturer's written warranty. Requires a dealer to deliver operation and maintenance manuals to an ultimate purchaser and to make the warranty known to the ultimate purchaser.

Sec. 45.27.430. Requires a dealer to provide timely warranty service in accordance with the manufacturer's warranty. Requires a dealer to make warranty reimbursement claims in the manner required by the manufacturer.

Sec. 45.27.440. Directs a manufacturer or distributor to use the bases established in this section to reimburse a dealer for approved warranty service performed by the dealer. Sets out the bases.

Sec. 45.27.450. Requires a manufacturer or distributor to pay a dealer's shipping costs and a handling fee for shipping a part that is replaced under a warranty and that the dealer returns for testing, analysis, or inspection at the manufacturer's or distributor's request. Requires the return request to be made in writing and within a certain time.

Sec. 45.27.460. Requires a manufacturer or distributor to pay a warranty claim within a certain time. If not so paid, the claim is considered accepted and interest must be paid on the claim.

Sec. 45.27.470. Allows a manufacturer or distributor of a marine product to enter into a warranty service agreement with a dealer of a boat package without violating the area of responsibility of another dealer with an agreement to sell the marine motor brand that is part of the package.

Sec. 45.27.480. Requires a dealer to use a factory-certified or factory-trained technician to perform warranty service work if the certification or training is readily available.

Sec. 45.27.490. Prohibits a manufacturer from restricting the nature or extent of product parts provided or labor performed by a dealer if the restriction impairs the dealer's ability to satisfy the manufacturer's warranty.

Sec. 45.27.500. Requires a manufacturer or distributor to issue a notice of disapproval to a dealer within a certain time after disapproving a claim. Requires the notice to contain specific reasons for the disapproval.

Sec. 45.27.600. Provides that a dealer is not liable to a manufacturer or distributor for money revealed by an audit if the money results from transactions occurring more than two years before the audit, unless fraud is involved. States that a dealer is not liable to a manufacturer or distributor for money when an audit shows that the dealer failed to retain product parts for more than a specified time.

Sec. 45.27.610. Prohibits a manufacturer or distributor from competing with a dealer.

Sec. 45.27.620. Indicates what information a manufacturer or distributor must include in a factory recall notice to ultimate purchasers and dealers.

Sec. 45.27.630. Prohibits a manufacturer or distributor from using false or misleading advertising in connection with a dealer's agreement or the sale of products.

Sec. 45.27.640. Requires a dealer to post a notice with the dealer's retail labor rate. Requires the notice to state that warranty service work is performed by a factory-certified or factory-trained technician, if applicable.

Representative Mark Neuman
December 31, 2007
Page 5

Sec. 45.27.800. Makes an agreement provision not enforceable if it violates AS 45.27.

Sec. 45.27.810. Requires a manufacturer and a distributor to indemnify and hold a dealer harmless for damages suffered by the dealer due to the manufacturer's or distributor's violation of AS 45.27. Requires a manufacturer and a distributor to indemnify and hold a dealer harmless for damages due to complaints, claims, or lawsuits to the extent the damages arise out of certain acts of the manufacturer or distributor.

Sec. 45.27.820. Establishes a civil penalty for violating AS 45.27.

Sec. 45.27.830. Establishes a criminal penalty for violating AS 45.27.

Sec. 45.27.840. States that the provisions of AS 45.27 are in addition to any other remedies available under law or under an agreement between a dealer and a manufacturer or distributor.

Sec. 45.27.900. Exempts certain persons from AS 45.27.

Sec. 45.27.990. Defines terms for AS 45.27.

Sec. 45.27.995. Gives AS 45.27 a short title.

Section 3. Exempts marine product and motorized recreational product agreements from the provisions on distributorships.

Section 4. Adds a violation of AS 45.27 to the list of unfair trade practices.

Section 5. Removes action that is taken or refrained from in order to comply with AS 45.27 from the coverage of the state's provisions on monopolies and restraint of trade.

Section 6. States that this Act does not apply to an agreement entered into before the effective date of this Act.

Section 7. Within 180 days after the effective date of this Act, this transition section for new sec. 45.27.200 allows a manufacturer or distributor to sell or ship a product to a dealer before the dealer signs an agreement complying with AS 45.27.

Section 8. Gives this Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:lmb
07-170.lmb

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: HB303-LAW-CIV-01-28-08
 Bill Version: HB303
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
 Title: An Act relating to marine and motorized recreational products. RDU: CIVIL
 Sponsor: REPRESENTATIVE(s) NEUMAN Component: COMMERCIAL & FAIR BUSINESS
 Requester: HOUSE L&C Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	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	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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: Robert Meiners, Administrative Services Manager
 Division: Administrative Services Division
 Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-5427
 Date/Time 1/28/08 4:10 PM
 Date 1/28/2008

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

BILL NO. HB303

ANALYSIS CONTINUATION

HB 303 adds a section to Title 45 that will govern the relationship between dealers and manufacturers or distributors of marine and motorized recreational products. The bill contains significant restrictions on manufacturers and distributors from freely negotiating agreements with dealers in Alaska. These include prohibitions on termination and non-renewal of agreements, requirements to change or transfer an agreement, and various requirements that restrict a manufacturer or distributor from changing a dealer's area of responsibility, or adding a new dealer to an area occupied by an existing dealer. The bill requires manufacturers and distributors to comply with various shipping requests made by the dealer, to deliver products within a certain time, to allow the dealer to select the shipping method, and to take responsibility for product damage prior to acceptance of the product by the dealer. There are several repurchasing provisions in the bill that require a manufacturer or distributor to repurchase a dealer's inventory if a dealer discontinues in the business or decides to stop selling a particular product. The bill contains provisions that require manufacturers and distributors to comply with advertised warranty provisions, and supply necessary repair parts in a timely manner. Dealers must have factory trained technicians to perform warranty service. The bill limits a dealer's liability for money owed to a manufacturer or distributor as the result of a dealer audit unless the audit is conducted within two years, or if the dealer failed to retain parts for more than three months. Finally, the bill adds civil and criminal penalties for failure to comply with its terms, makes a violation of the statute an unfair trade practice under AS 45.50.471, and exempts conduct under the bill from Alaska's antitrust laws.

There are significant legal issues with this bill, including direct conflicts with federal law, that would necessitate research and further legal analysis. However, any resulting complaints made to the Department of Law as a result of this bill are anticipated to be minimal, and absorbed within existing resources.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE (907) 269-5100
FAX (907) 276-8554

February 13, 2008

Representative Mark Neuman
Alaska State Legislature
State Capitol, Room 432
Juneau, AK 99801-1182

Re: HB 303 - ATV and Marine Product Dealers

Dear Representative Neuman:

Thank you for working with the Department of Law on the concerns with HB 303 that we expressed in our letter to you dated February 6, 2008. I have been working with your staff and representatives of local ATV and marine retailers to address our concerns. Many of my recommended changes have been made to the bill and I understand these changes will be incorporated into a new CS. While we remain concerned with legislation that could interfere with the free flow of commerce, these changes address our major concerns with the potential competitive impacts this bill can have on the market for these products, and resulting impacts on consumers. We base this conclusion largely on information provided to us from retailers about how this complicated industry operates in Alaska.

Some overlap between HB 303 and other areas of law are still present in the bill, but none of these laws prevent the Legislature from enacting laws that provide more or different requirements. We have also done some additional research on the potential preemption of parts of HB 303 by the Consumer Product Safety Act ("CPSA") relating to recall notices (45.27.410 and 45.27.620). It is unclear whether these provisions create a conflict with the procedures mandated by the CPSA. We understand, but have not confirmed, that other states have adopted similar provisions. To the extent there may be a conflict, those provision of HB 303 that are found to be preempted would be unenforceable.

Representative Mark Neuman
Alaska State Legislature

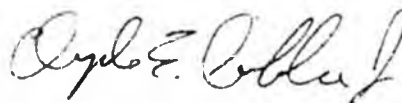
February 13, 2008
Page 2

We are available to assist you with any questions you have about the bill.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By:



Clyde E. Sniffen, Jr.
Chief Assistant Attorney General

Cc: Deborah Behr
Mike Ford
Russ Kelly

CES/sjm

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

*1031 WEST 4TH AVENUE,
SUITE 200
ANCHORAGE, ALASKA
99501-5903*

February 6, 2008

Representative Mark Neuman
Alaska State Legislature
State Capitol, Room 432
Juneau, AK 99801-1182

Re: Department of Law Comments on HB 303 – Recreational and Vehicles and Marine Products.

Introduction.

HB 303 will impose strict requirements on manufacturers and distributors (M/D's) of recreational vehicles and marine products when dealing with its Alaska dealers. Some provisions of the bill conflict with existing Alaska and Federal law. The bill contains some provisions that are aimed at protecting consumers from unreasonable warranty practices, but also impose strict requirements on M/D's to respond to dealer demands within an extremely short time. The bill contains restrictions on the establishment and closing of dealerships that may conflict with antitrust law, which could lead to adverse impacts on consumers.

Existing Law That Regulates Manufacturer's and Distributors.

There are several sources of law that already govern many of the practices targeted by HB 303:

1. The Alaska Uniform Commercial Code ("UCC").

The UCC, found at AS 45.01 through AS 45.08 plus AS 45.12, AS 45.14, and AS 45.29, address the general conduct of parties to a commercial transaction. AS 45.02, the chapter dealing with "sales," contains provisions that address the general obligations of parties to a contract, the performance of those parties, and the remedies available for breach of a contract. For the most part, the UCC allows parties to a contract to agree to any terms they desire so long as they are not "unconscionable." It is difficult to determine whether any provisions of HB 303 rise to the level of being unconscionable, but M/D's will need to think carefully about entering agreements with dealers in Alaska. Articles 3 and 4 of HB 303 contain several provisions that are addressed by the UCC:

- **45.27.210. Refusal to deliver or ship.** This provision conflicts with AS 45.02.601 - .616 (dealing with rights and remedies to rejected goods);
- **45.27.230. Sale after termination or nonrenewal.** This provision conflicts with AS 45.02.701 - .725 (dealing with remedies for both buyers and sellers when insolvency occurs);
- **45.27.240. Delivery of products in reasonable quantities.** This provision conflicts with AS 45.02.501 - .515 (dealing with performance of parties to a contract) and AS 45.02.601 - .616 (dealing with breach of contracts);
- **45.27.250. Selection of delivery method.** While not a technical conflict, this provision is at odds with the intent of AS 45.02.503 which addresses the manner of a seller's tender of delivery; AS 45.02.308 and .309 which addresses the specified time and place for delivery of goods; and AS 45.02.204 which generally allows parties to negotiate any contract they want;
- **45.27.260. Product damage responsibility.** This provision conflicts with AS 45.02.509 - .510 (dealing with risk of loss) and AS 45.02.701 - .725 (dealing with remedies available for breach of a contract and for damaged goods);
- **45.27.300. Manufacturer or distributor mandatory repurchase.** This provision conflicts with AS 45.02.309 (dealing with notice of termination) and AS 45.02.702 (dealing with remedies for buyer's insolvency).
- **45.27.310. Timing of repurchase.** This provision is inconsistent with several provisions of AS 45.02.701 - .725 that address remedies for both buyers and sellers when under an agreement between the parties.
- **45.27.320. Failure to repurchase.** This provision conflicts with AS 45.45.010 dealing with interest rates.
- **45.27.340. Landed costs.** This provisions conflicts with AS 45.02.701 - .725 (dealing with remedies for breach of contract);

The UCC is intended, in large part, to provide a framework for interpreting contracts that do not contain specific provisions dealing with various situations. HB 303 is inconsistent with this model because it will require contractual provisions that the parties will not be free to negotiate. In most free enterprise systems, it is desirable to allow as much freedom between contracting parties as possible to negotiate any terms they want, so long as those terms are not unconscionable.

The UCC also contains warranty provisions that allow sellers of products to limit warranty representations if done clearly and in writing. HB 303 does not appear to limit a M/D from disclaiming warranties, although several sections of HB 303 require M/D's to follow prescribed procedures to address warranty claims.

2. AS 45.45.700 – Distributorships.

AS 45.45.700 *et seq.* contains several provisions that prohibit M/D's from engaging in various kinds of conduct:

- 45.45.700 prohibits M/D's from coercing dealers to perform certain acts;
- 45.45.710 requires a M/D to repurchase merchandise from a dealer (or allow a dealer to pay for merchandise), at fair market value plus 100% of the transportation cost;
- 45.45.720 allows three months for this payment;
- 45.45.730 requires the repurchase of inventory upon the death or disability of a dealer;
- 45.45.740 provides that if a distributor terminates a dealer, the M/D must repurchase certain supplies, and compensate a dealer for changes made by the dealer at commercially reasonable rates;
- 45.45.750 prohibits certain terms in a distributorship agreement;
- 45.45.760 allows a dealer to bring a civil action for violations of the statute.

HB 303 overlaps with this statute in several places, making recreational vehicle dealers more favored than other dealers in the state when dealing with M/D's.

3. Alaska Antitrust Law.

AS 45.50.562 *et seq.* contains several provisions that prohibit monopolies, attempts to monopolize, and other conduct that restricts competition. These laws aim to ensure consumer choice by prohibiting illegal agreements that restrain competition. When competition is open and unrestricted, consumer choice becomes a powerful incentive for sellers of any product to keep prices low and quality high.

More competitors in any market helps ensure free and open competition. Thus, any restrictions that limit the ability of competitors to freely enter a market are generally disfavored. HB 303 contains provisions in Article 1 and Article 2 that have the effect of restricting the number of competitors in a certain area, and of restricting M/D's from terminating unproductive dealers without "just cause." Sec. 45.27.030 also requires M/D's to consent to the transfer of an agreement to anyone selected by the dealer that meets the M/D's criteria. In most cases, the restrictions in HB 303 will result in only one dealer in any city or village. This discourages new dealers from entering the market since existing dealers will have powerful control over who its replacement will be. This will have adverse impacts on consumers, who may be "stuck" with a dealer that provides bad

customer service and charges unreasonable prices, but who cannot be terminated by a M/D because the dealer is meeting the minimum requirements of an agreement.

State's are generally free to enact laws that restrict competition in this manner so long as it is the clear intent of the legislature to do so. In most cases, governmental restrictions on competition are enacted to accomplish a compelling public policy goal. For example, the need to ensure a reliable supply of product may outweigh competitive concerns in certain circumstances. The restrictions contained in HB 303, however, do not appear to address compelling problems that outweigh the competitive restrictions in the bill.

4. The Consumer Product Safety Act.

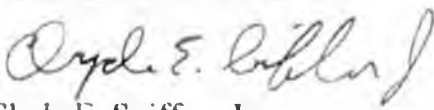
Several provisions of HB 303, and specifically 45.27.410 and 45.27.620, require M/D's to pay factory recommend warranty repairs on defective products. If unable to supply repair parts within 30 days, the M/D is required to repurchase the product or provide an identical product that is not defective. The Consumer Product Safety Act, and regulations adopted pursuant to the Act, provides a comprehensive procedure for discovering, notifying, and addressing safety defects in consumer products. HB 303 is inconsistent with those provisions, and may be preempted by the Act.

Summary and Recommendations.

HB 303 creates unnecessary conflicts with existing law, and some provisions may be preempted by federal law. It will also restrict competition, leaving a small number of dealers with excessive market power, limiting consumer choice, and creating an unfavorable environment for new competition. The Department recommends that this bill be assigned to a subcommittee so that dealers and M/D's can meet to discuss the issues that are the target of this bill, and formulate legislation that meets the goals of all interested parties while still preserving competition in the marketplace.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: 
Clyde E. Sniffen, Jr.
Senior Assistant Attorney General

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 13, 2008

SUBJECT: CSHB 303(JUD) relating to marine products and motorized recreational products (Work Order No. 25-LS1183\K)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: ^{TB} Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Interstate commerce. Because this draft could apply to out-of-state product manufacturers and distributors, it raises a constitutional interstate commerce issue. Whenever a bill establishes a requirement that may affect persons operating from another state, there is always a question whether the requirement places a burden on interstate commerce that would not satisfy the federal constitutional commerce clause. Unless the burden it imposes on interstate commerce is clearly excessive in relation to the anticipated local benefits, the requirement is likely to be valid under the commerce clause. I do not have enough information to evaluate the burden that this bill will impose.

2. Possible antitrust issue. In the section of the bill adding a dealership to an existing dealer's area of responsibility (AS 45.27.120), the language imposes certain notice requirements. This provision may raise an antitrust issue. The bill contains a provision that excludes the chapter's provisions from coverage by the state's antitrust statutes (AS 45.45.562 - 45.45.596). However, the new section may still be subject to federal antitrust law. Because the state does not "actively supervise" the activities under the bill, it does not appear that the state action immunity doctrine would remove them from coverage by federal antitrust law. I have not researched this matter in any depth, so I am not certain that this is a significant matter, but I wanted you to be aware that the provision may raise an antitrust issue.

If I may be of further assistance, please advise.

TLB:lmb
08-031.lmb

Enclosure

LEGAL SERVICES

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STATE OF ALASKA

(907) 465-3867 or 465-2450
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Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 30, 2008

SUBJECT: CSHB 303(L&C) relating to marine products and motorized recreational products (Work Order No. 25-LS1183\E)

TO: Representative Kurt Olson
Chair of the House Labor & Commerce Committee
Attn: Eleanor Wolfe

FROM: ⁰¹³ Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Impairment of contracts issue. The provisions of the bill will apply to situations for which contract provisions may already be in place among dealers, manufacturers, distributors, and other persons. To the extent these new provisions change those existing contracts, they raise an issue under the constitutional provisions that prohibit the impairment of contracts (U.S. Constitution art. I, sec. 10, and Alaska Constitution art. I, sec. 15). The impairment must be substantial in order to be prohibited. I do not know whether this would be a serious problem in this situation, but I wanted you to be aware that the issue exists.
2. Interstate commerce. Because this draft could apply to out-of-state product manufacturers and distributors, it raises a constitutional interstate commerce issue. Whenever a bill establishes a requirement that may affect persons operating from another state, there is always a question whether the requirement places a burden on interstate commerce that would not satisfy the federal constitutional commerce clause. Unless the burden it imposes on interstate commerce is clearly excessive in relation to the anticipated local benefits, the requirement is likely to be valid under the commerce clause. I do not have enough information to evaluate the burden that this bill will impose.
3. Adding dealership to area of responsibility (AS 45.27.120). In the section of the bill adding a dealership to area of responsibility (AS 45.27.120), the language imposes certain notice requirements. This provision may raise an antitrust issue. The bill contains a provision that excludes the chapter's provisions from coverage by the state's antitrust statutes (AS 45.45.562 - 45.45.596). However, the new section may still be subject to federal antitrust law. Because the state does not "actively supervise" the activities under the bill, it does not appear that the state action immunity doctrine would remove them from coverage by federal antitrust law. I have not researched this matter in any depth, so

Representative Kurt Olson
January 30, 2008
Page 2

I am not certain that this is a significant matter, but I wanted you to be aware that the issue exists.

If I may be of further assistance, please advise.

TLB:med
08-065.med

Enclosure

SAME

FILE

CONTINUES

LEGAL SERVICES

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Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 29, 2008

SUBJECT: CSHB 303() relating to marine products and motorized recreational products (Work Order No. 25-LS1183\C)

TO: Representative Mark Neuman
Attn: Rex Shattuck

FROM: Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

Impairment of contracts issue. The provisions of the bill will apply to situations for which contract provisions may already be in place among dealers, manufacturers, distributors, and other persons. To the extent these new provisions change those existing contracts, they raise an issue under the constitutional provisions that prohibit the impairment of contracts (U.S. Constitution art. I, sec. 10, and Alaska Constitution art. I, sec. 15). The impairment must be substantial in order to be prohibited. I do not know whether this would be a serious problem in this situation, but I wanted you to be aware that the issue exists.

As I have already indicated, to avoid this issue altogether you could limit the application of the language to contracts entered into on or after the effective date of the Act. However, it is my understanding that you have chosen not to proceed this way.

If I may be of further assistance, please advise.

TLB:med
08-055.med

Enclosure



February 13, 2007

Mr. Chairman and Members of the Committee:

Due to a travel schedule that will find me in the air tomorrow and unable to thoroughly review the Committee Substitute and provide line-by-line analysis as requested by tomorrow morning, I have tried to compile this evening some of our remaining concerns with the bill with section and page references.

Please accept these comments with the understanding that due to the very short time frame to review and analyze the Committee Substitute because of time differences and travel schedule, I am unable to provide more extensive analysis and comment at this time.

Thank you for your consideration of our numerous concerns.

Sincerely,

A handwritten signature in cursive script that reads 'Kathy R. Van Kleeck'.

Kathy R. Van Kleeck
Sr. Vice President
Government Relations



COMMENTS IN OPPOSITION TO HB 303

The Specialty Vehicle Institute of America (SVIA) is a not-for-profit national trade association representing manufacturers and distributors of all-terrain vehicles.

SVIA opposes HB 303 as unnecessary and simply bad public policy. Enactment of HB 303 would have a negative impact not only on ATV and snowmobile manufacturers and distributors, but probably more importantly to the Committee, on Alaska consumers.

Testimony provided by the proponents has referred to seven other states that have enacted similar laws. There are indeed some states that regulate boat and/or ATV and snowmobile dealerships; however I am aware of no law that contains the unreasonable provisions contained in HB 303. The Montana law which was referred to in testimony was pushed through with little consideration of its effects on the industry in Montana in 2007. As a result, manufacturers have been forced to change the way they do business there. Dealers in Montana have indicated that the Montana law has proven to be detrimental to dealers and some want to try to repeal it. Currently, the Montana law is the subject of a lawsuit.

There are numerous problems with this legislation - some provisions are egregious, some unnecessary or in conflict with existing state or federal law, and some simply poorly crafted and ill-conceived.

We believe the issues addressed in this legislation are more appropriately addressed between the individual manufacturers and their dealers rather than by statute. These issues involve competitive considerations. The majority of powersports dealerships are multi-brand dealers. Every dealer signs a dealer agreement with its manufacturer or distributor clearly setting forth the terms to which both the dealer and the manufacturer agree. We have not been informed of dealer concerns and would welcome the opportunity to discuss specific concerns with the dealers, should they be ATV-related, rather than the boat-related issues that were discussed at the House Commerce and Labor Committee hearing.

Alaska already has a body of law [Title 45, Chapter 45, Article 9A] providing numerous protections to all dealers. We do not believe that a particular class of dealers should be singled out for special treatment under the law.

Sec. 45.27.230 (page 4): The bill provides that the manufacturer must continue to provide the dealer with product parts for 2 years AFTER termination or until a new dealer is established to provide service to the terminated dealer's customers.

Sec. 45.27.320 (page 6): This allows any dealer who discontinues engaging in business to, at his sole discretion, retain discontinued products and parts, effectively ensuring that the underperforming, or nonperforming, dealer continues to represent the brand name. This provision and the provision above (Sec. 45.27.230) are extremely egregious.

Our dealerships are full-line dealerships designed to both sell and service our products and to provide our customers with the highest quality experience in terms of product choice, after-sale service and customer support. Dividing product sale from parts sale and enabling dealers to provide one of these vital functions but not the other is unacceptable. It will enable unfair competition, cause customer confusion, have a negative impact on the permanent investment of full-line vehicle dealers and disrupt the manufacturers' distribution channel. Replacement parts represent a significant profit center for our dealers who make a

sizable permanent investment in facility, inventory, staffing and advertising. A parts-only dealer could, and likely would, capture this lucrative profit opportunity while making little to no permanent investment. The parts could even be sold on-line, where no facility or customer interface is required. Allowing terminated dealers to continue to engage in the sale of parts undercuts all the valued dealers in Alaska who are carrying a full line of products and parts and providing quality service to the consumer.

All of our manufacturers reasonably reimburse dealers for the required warranty service they provide on our products. While each manufacturer establishes its reimbursement rates, which are agreed upon by the dealer in its dealer agreement, the ATV industry generally reimburses dealers at the posted shop rate for warranty and recall work, and at least dealer cost for parts plus a 10% mark-up and in many cases a higher mark-up.

Sec.45.27.410 (page 7): The provision mandating a 30-day time limit for providing warranty parts and require the manufacturer to provide full credit to the dealer for the landed cost [includes dealer's original cost, plus all freight, transportation, flooring expense, interest expense, authorized dealer preparation cost, assembly cost, and reasonable handling costs] if this time limit is not met for any reason is of grave concern. Obviously, manufacturers strive to make parts for warranty repairs available as quickly as possible, but I am not aware of any state law that mandates these requirements, and especially in Alaska where transport is at times more time-consuming, an absolute time by which a repair part must be supplied to the dealer, is not only extremely problematic, but grossly unreasonable. The overriding objective of warranty repair and recalls is consumer safety. Curing a defect may involve reengineering and manufacture, in addition to distribution and these functions cannot be rushed to meet an unrealistic deadline.

Sec. 45.27.450 (page 8): Not only does this bill require warranty service work to be reimbursed at the dealer's retail rate (which anyone who has ever had service work done knows is not a cut rate), but in addition requires reimbursement of yet an additional hour at the retail rate for administration of each claim AND an additional mark-up of 25% of the dealer's normal handling fee for shipping a part replaced under a warranty that the dealer returns for testing or inspection at the manufacturer's request. We don't think anyone would find anything reasonable about these provisions.

Sec. 45.27.250 (page 4): We are not aware of any other state statute providing that a dealer can dictate the method and carrier for product delivery. Manufacturers have an established delivery system and using another carrier or method will raise costs, not only for delivery itself, but also in manpower costs for administering different systems.

Sec. 45.27.260 (page 5, line 8): The provision allowing a dealer to refuse to accept a damaged product from a manufacturer or distributor by giving written notice to the manufacturer or distributor within 10 business days after the product is delivered is seriously problematic. This would enable a dealer to return vehicles that he or she ordered and have already been delivered to the dealership without good cause. Transportation-related issues are already heavily regulated by the Uniform Commercial Code and Alaska state law that provide the dealer with remedies related to shipping damages and problems.

Sec. 45.27.100-120 (pages 2-3): The language enacting provisions relative to area of responsibility and restricting the establishment of new dealerships limits competition and is very convoluted. We particularly oppose the requirement that a manufacturer give at least 90 days' notice. This lengthy time period ties the hands of both the prospective new dealer and the manufacturer and since ATV dealership facilities can be used for many other types of retail outlets, the planned facility may no longer be available if it takes too long to approve the decision to establish the new dealer. The bill also makes a manufacturer responsible for calculating the financial effect on the new dealer and the existing dealers who may be affected. It is not realistic to require the manufacturer to do this. There are too many variables and the dealers may not supply the needed input to the manufacturer. These are not appropriate requirements at the time notice of a new dealer would be provided. Should there be a hearing on the merits of the establishment, these factors may be considered or determined.

Sec. 45.27.300-340 (page 5-6): Inventory repurchase is already addressed in the current Alaska distributorship law referenced above, so this provision too is unnecessary. The legislation basically requires manufacturers to insulate dealers from all risk normally assumed by any business owner in the free enterprise system. These provisions add extensive inventory repurchase obligations upon any franchise termination, regardless of the reason. If a dealer simply decides to go out of business and terminates his franchise, the manufacturer is responsible for repurchasing his inventory. The manufacturer becomes a financial guarantor for the dealer. The dealer makes the decisions regarding inventory purchase and should be responsible to bear the risk of costs when making such decisions. If a dealer is guaranteed that any excess inventory will be repurchased, there is no reason to make wise business decisions. A dealer can order too many parts and have a parts department bloated with parts which the manufacturer must repurchase at the dealer's LANDED COST. Landed cost includes not only the dealer's original cost for the inventory, but all freight, transportation, flooring expense, interest expense, authorized dealer preparation cost, assembly cost, and reasonable handling costs. This would significantly and unreasonably raise the cost of doing business in Alaska. Manufacturers should not be required under law to insulate their dealers from loss when other business owners assume that risk in the free enterprise system. Further, this bill requires inventory repurchase within 30 days after a terminated dealer submits to the manufacturer the final inventory. This illustrates the poorly conceived nature of this legislation, since there is no requirement that the dealer first provide clear title to the inventory proposed to be repurchased. Under this provision, a dealer could sell back inventory that he does not own.

Sec. 45.27.830 (page 11): Creating a criminal penalty is an unreasonably harsh consequence for a business dealing dispute.

A law such as this would disproportionately protect poorly or underperforming dealers that are not providing the appropriate level of sales and service support to consumers at the expense of other dealers and the consumers of Alaska. The dealers that are investing in the brand are harmed because underperforming dealers remain in the network for a longer period of time and offer buyers poor experiences – both in terms of service and availability of product. It hurts both the brand name and our consumers. And, higher operation costs for manufacturers and increased litigation costs only lead to higher product costs for consumers.

Regulating dealerships in this manner will only serve to increase the cost of doing business, reduce consumer choice, decrease competition and ultimately increase the cost of recreational products to Alaskans.

We respectfully ask that you oppose this legislation. The provisions of this bill are extremely overreaching and would make it difficult for manufacturers to do business in Alaska. If enacted, the interests of retail purchasers, distributors and manufacturers will be harmed and Alaska law would contain extremely onerous and unneeded provisions, some of which do not exist in any other state for either recreational product franchises or even for automobile franchises.



To: Honorable Chairman and House Judiciary Committee Members
 From: Paul C. Vitrano, Executive Vice President and General Counsel
 Date: February 13, 2008
 Re: Comments in Opposition to HB 303

The Specialty Vehicle Institute of America (SVIA) opposes HB 303 as unnecessary and simply bad public policy. In addition to the comments submitted by my colleague, Kathy Van Kleeck, we describe below legal or regulatory inconsistencies and concerns raised by the bill.

First, as noted in the letter from Senior Assistant Attorney General Clyde E. Sniffen, Jr. to the Honorable Mark Neuman, dated February 6, 2008, several provisions of HB 303 address obligations, conduct and remedies in conjunction with sales transactions between dealers and manufacturers and distributors. Those provisions are not necessary because Alaska has adopted the Uniform Commercial Code (UCC), which already addresses the same subjects. To the extent HB 303 conflicts with the UCC, such provisions would add unnecessary restrictions to the freedom of contract between dealer and manufacturer/distributor, and add complexity to dealer agreements, without justification. Among the provisions of HB 303 that appear to be in conflict with existing Alaska law are:

Provisions in HB 303	In apparent conflict with existing law
45.27.210. Refusal to deliver or ship.	AS 45.02.601-.616 (dealing with rights and remedies to rejected goods)
45.27.240. Delivery of products in reasonable quantities.	AS 45.02.501-.515 (dealing with performance of parties to a contract); AS 45.02.601-.616 (dealing with breach of contract)

Provisions in HB 303	In apparent conflict with existing law
45.27.260. Product damage responsibility.	AS 45.02.509-.510 (dealing with risk of loss); AS 45.02.701-.725 (dealing with remedies available for breach of contract and for damaged goods)
45.27.300. Manufacturer or distributor mandatory repurchase.	AS 45.02.309 (dealing with notice of termination); AS 45.02.702 (dealing with remedies for buyer's insolvency)
45.27.340. Landed costs.	AS 45.02.701-.725 (dealing with remedies for breach of contract)

Second, Section 45.27.410(b) would restrictively mandate the response by manufacturers/distributors to all alleged "defects." HB 303's approach is inconsistent with the Consumer Product Safety Act's regulatory scheme.

The applicable CPSA regulations (C.F.R. § 1115.20(a) et seq.) provide manufacturers and distributors the option of submitting to the Consumer Product Safety Commission (CPSC) a corrective action plan outlining remedial action to protect the public from "substantial product hazards." The regulations (C.F.R. § 1115.20(a)(1)(viii)) specifically require "[a] statement of the action which will be undertaken to correct product units in the distribution chain, including a timetable and specific information about the number and location of such units." Recognizing that appropriate and efficient responses depend on the particular circumstances, the CPSA regulations permit manufacturers and distributors to develop a flexible, situation-specific response for units within the distribution chain, and that response shall be approved by CPSC. HB 303's mandating of an unreasonably short initial response time – and punitive remedies for a late initial response – is inconsistent with the letter and spirit of the CPSA's regulatory scheme.

HB 303 Section 45.27.410(b) also is problematic because it is overly broad. As defined, the term "defective product" would encompass significantly more products than would be considered "substantial product hazards" under the CPSA. It is incongruous for state law to provide for onerous and restrictive responses in connection with all alleged defects, while federal law provides for a flexible, situation-specific response in connection with potentially dangerous defects.

Third, the term "defective product," as used in Section 45.27.410, is vague and thereby subject to unreasonable interpretations. As proposed, the bill would permit a dealer to declare an entire unit to be a "defective product," even if only a single part or component does not work. The ability to make such a characterization allows the dealer to unilaterally decide whether to dramatically increase the punitive remedies for which manufacturers/distributors would be liable under the bill. And the only way for a manufacturer/distributor to prevent such an interpretation would be to initiate costly litigation.

Fourth, Section 45.27.600(a) would exempt dealers from paying manufacturers/distributors money revealed by audit to be due and owing, if underlying transaction occurred more than two years prior to beginning of an audit. That provision would create a special statute of limitations without justification. Alaska Statutes Section 09.10.053 provides for a three-year statute of limitation for express or implied contractual claims. HB 303 would alter established Alaska law regarding the contractual limitations period for a single class of claimants, i.e. manufacturers/distributors. There is no need or justification for such unique and discriminatory treatment.

SVIA respectfully requests that you oppose this legislation because of the described legal or regulatory inconsistencies and concerns, among other reasons.



National Marine
Manufacturers Association

Comments regarding HB 303/LS183/K

Provided by

David Dickerson
Director of State Government Relations
National Marine Manufacturers Association
February 14, 2008

Dear members of the Judiciary Committee:

Although I have gladly provided our concerns regarding specific portions of HB 303 LS1183/K, it is important that the bill be viewed in its specifics as well as its total impact upon the Alaska marketplace and its residents.

Overall, the bill absolutely shifts risk regarding inventory controls, performance and customer service from the dealer to the manufacturer of marine engines and boats. During testimony yesterday, there were many comments that bills of this sort have had no impact, or benefited, on the marketplace. This is a very selective analysis. First, there is no law in the country that includes all the restrictions found in HB 303/K. Among the seven states touted as examples, only one comes close to the breadth of this bill -Louisiana. Because of its law, I can confirm that more than 15 well-know brands have withdrawn from the Louisiana marketplace rather than deal with the burdens of the bill. And the Louisiana bill does not require buy-back of inventory upon dealer-initiated nonrenewal/cancelation, requires a third-party assessment of the wholesale market value inventory in the event of a manufacturer, and does not require buyback of three-year-old boats. Louisiana's sales territory restrictions are less restrictive that HB 303, but have still caused havoc as the state has recouped from Hurricane Katrina. Those dealers who went out of business after Katrina were unable to open a new business representing the same brands in the area because of legal restrictions on territories.

Alaska is indeed unique. The states where laws with some, but not all, of the restrictions in HB 303 have not caused people to "stop buying boats," which is a pretty poor test of a government mandate. However, the impact of these laws on price and availability somewhat reduced by competitive pressure from surrounding states without these laws. Alaska does not have those pressures; it stands alone in the American market. Price increases and withdrawal of brands from the some or all of the Alaska marketplace will be unique, and likely unwelcome to the consumer. This bill does strike the heart of the competitive marketplace and as a whole establishes a very uneven marketplace that should not be supported.

SECTION 2

Page 1, line 13: Consent to transfer agreement:

Executive Committee

Chairman
Vice Chairman

Executive Committee

Chairman
Vice Chairman
Secretary

Executive Committee

Chairman
Vice Chairman
Secretary

Executive Committee

Chairman
Vice Chairman
Secretary

Executive Committee

Chairman
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Secretary



This provision prevents a manufacturer from using the opportunity presented by the sale of a dealership to discontinue its representation in an area or accepting requests from competing dealers to represent the brand. The quality of the buyer is but one of many factors considered by a brand owner when deciding to transfer a contract to a new owner.

Page 2, lines 11-29

In total, the mandate that a dealer can demand a territory of 12- or 30-miles removes all negotiation from one of the key aspects of the dealer/manufacture relationship. It is unclear why there should be a specific law mandating sales territories, particularly one that ignores the unique geography of Alaska. The argument that Alaska is unique only seems to be discussed when this fact benefits the dealer.

Page 4, line 15-19

Deliver of product: Combined with the buy-back provisions in other sections of this bill, the manufacturer has no way to make individual judgments that protect its exposure to risk should it determine that a dealership is near to failing or is over loaded with inventory.

Page 4, line 20-23

Election of delivery method: The dealer can select a significantly more expensive delivery method at will. At the very least, the dealer should bear the expense of selecting a delivery option that is more expensive than the method selected by the manufacturer.

ARTICLE 4

This article shifts all risk for inventory control to the manufacturer and leaves the manufacturer powerless to control his exposure to this risk.

Page 5, line 19: The manufacturer is required to buy back boats and parts up to three years old upon demand. This mandate is in effect whether a dealer cancels the contract in order to switch to a new brand, uses this provision to stave off bankruptcy or to reduce his debt prior to declaring bankruptcy.

Page 6, lines 5-10: The dealer can drop a particular brand but remain in the marketplace representing that brand at will by forbidding a manufacturer from making a "clean break" from the consumer. Again, the dealer has the final say over how a manufacturer manages his brand and presents it to Alaska consumers.

Page 7, Section 45.27.500: Despite implications provided during previous hearings, this section does not require authorization payment or address in any way a dealer's decision to provide warranty repairs away from the dealership. However, these requests for off-site repair are rare and handled on a case-by-case basis. Mercury marine received 380 requests for warranty service from Alaska dealers in 2007. Only two of those requests included a request for reimbursement for travel off-site. Both were approved.

Page 7, line 10: This provision ignores the complexity and unique nature of boats. Also, according to the unclear definition of "product" found on Page 13, line 12, failure to provide parts within 30 days could require a dealer to provide an entirely new boat should a non-critical part be unavailable. Boats are different from cars and many other consumer products. A boat more than about 30 feet long has numerous warranted by the manufacturer of the component. Should a refrigerator manufacturer not provide a needed part within 30 days, the dealer could demand replacement of the entire vessel.

Page 7, line 25 Timely warranty service: There is no definition for "timely warranty service," although there are numerous similar time restrictions upon manufacturer performance.

Page 9, line 12: Performance of warranty service work shall be done by a factory-certified technician, if certification or training is readily available. Given the unique nature of Alaska, it is very unclear what "readily available" is meant to be. Also, given the criminal nature of this legislation, a dealer would face a 3rd-degree misdemeanor for failure to provide this level of service.

Page 9, line 20: Disapproval. There is no definition of when the "30-day clock" begins regarding a written notice of disapproval.

Page 9, line 25: The two-year limit on liability of debt revealed by audit is contrary to UCC law. Marine dealers should not be made an exclusive category of liability.

Page 10, line 12: Given UCC provisions regarding illegal or misleading advertising, this provision is duplicative.

Page 10, line 16: Required posting. If a dealer must post that it uses "authorized" technicians, it should also be required to post that it does not use "authorized" technicians under penalty of law or fines up to \$5,000 per day.

Page 10, line 24: Liability: A manufacturer should also be held harmless for damages, including fines, as a result of a dealer's violation of this chapter. This should include Page 7, line 25, failure to provide timely repairs.

Page 12, line 21: Landed cost definition. This provision allows a dealer to demand repurchase at the price he paid for a boat or engine up to three years after it was delivered to his showroom floor. This requires a manufacturer to pay top-dollar for a boat that barely qualifies in a consumer's mind as a "new boat," and severely limits a manufacturer's ability to convince another dealer in Alaska to accept the vessel for future sale.

Page 12, line 23: The reimbursement for landed cost includes a mandate for double payment by the manufacturer. Payments for authorized dealer preparation costs, assembly costs and handling costs already are paid to dealers in the normal course of business or are part of warranty reimbursements.



National Marine
Manufacturers Association

Testimony Regarding CS HB 303

Provided by
David Dickerson, Director of State Government Relations
National Marine Manufacturers Association
February 13, 2008

Before the
Alaska House Judiciary Committee

Dear Chairman Ramras and Members of the Judiciary Committee:

I am writing on behalf of the National Marine Manufacturers Association to draw attention to sections of CS HB 303 that are of significant concern to consumers of recreational boats and marine engines, as well as to manufacturers of boats and engines. There are unworkable restraints that protect marine dealers from poor business practices in every major section of the bill. These protections will harm consumers by discouraging boat builders from doing business in the state, raising the price of boats that are sold in Alaska and protecting poor performing dealers at the expense of those who provide great service and competitive sales expertise.

- The bill gives blanket protection to dealers from poor performance by making it a criminal offense to not renew or cancel a contract without "just cause." Just cause is not defined. Thus, the state would make it very difficult for a high-performing dealer to sign on a brand unless another dealer relinquishes control of it.
- The dealer shoulders no risk or responsibility for his or her decisions regarding inventory levels of boats and parts.
- The government will control the size and shape of sales territories should the marine dealer reject the area of responsibility offered by a manufacturer.
- Restrictions on how warranty service is handled by dealers and manufacturers threaten to raise prices on the boats and engines most popular with buyers who depend upon them for essential transportation, hunting, fishing and hauling.

By way of background, NMMA is the nation's largest recreational marine industry association, representing nearly 1,700 boat builders, engine manufacturers, and marine accessory manufacturers. NMMA members collectively produce more than 80 percent of all recreational marine products made in the United States. There are nearly 72.6 million boaters nationwide and over 13.6 million registered boats. The recreational boating industry is a substantial contributor to the nation's economy with total retail expenditures on recreational marine products and services of over \$39.5 million in 2006 alone.

The extensive restrictions in HB 303 will create high hurdles to competition that will have to be leaped by dealers looking to expand their presence in the state or to adjust a sales strategy supporting a brand. Lack of competition and the shift of risk onto the manufacturer also will force consumers to pay higher prices

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Vice Chairman: NMMA

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Vice Chairman: PERKINS

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Chairman: PERKINS
Vice Chairman: PERKINS

EMO Representative

Chairman: PERKINS
Vice Chairman: PERKINS
Chairman: PERKINS
Vice Chairman: PERKINS

NMMA Representative

Chairman: PERKINS
Vice Chairman: PERKINS
Chairman: PERKINS
Vice Chairman: PERKINS



because the risky nature of doing business under Alaska law will be reflected in the prices paid by the consumer.

I would like to take a few minutes to expand on how each of these concerns would play out in the marketplace.

- Section 1 is the most damaging section of HB 303. It would force a manufacturer to renew a dealership's contract unless a manufacturer can establish "just cause," a term not defined in the bill. The sales of boats in 2007 dropped 13 percent, and experts expect even greater declines in 2008. Under this bill, manufacturers cannot respond to these market pressures by adjusting its presence in a market. The manufacturer even must continue to do business with a dealership if it is sold; the manufacturer is locked in by law even if the dealer sells a struggling business.
- A dealer can respond to the market without risk; a manufacturer cannot. A dealership can force a total buy-back of his inventory on 30 days notice for any reason. For instance, if the dealership is on the brink of bankruptcy, it has excess inventory or it sees greater opportunity by dropping one brand and picking up another, the manufacturer must deliver a check within 60 days paying the dealer his original cost of for inventory up to three years old. Thus, the inflexible rule of law would allow the dealership to sidestep much of the risk of being a business owner. Because the buy-back cash can be used to pay off commercial loans, the government has issued a "get out of debt free card" that can be used by a dealership at any time. Article 1 would require that a manufacturer give three months notice and establish "just cause" before its decision to not renew a contract with a marine dealer. "Just cause" is undefined. Article 4 allows a dealer to give as little as 60 days notice to cancel or not renew a contract.
- Deceive consumers into believing that a dealership provides factory-authorized service, when it has not been renewed for poor service and it is no longer "authorized." Article 3 requires a manufacturer to sell parts for two years to a dealer who not renewed because it provided poor service to consumers or the contract is severed for any other reason. This allows the dealership to present itself as providing service with "factory-authorized" parts, allowing consumers to believe that the service is provided by factory-authorized technicians even when that designation has been removed.
- Ignore the system by which boat dealers and manufacturers regulate their business practices. Every August or September, dealers pre-order the number and type of boats they expect to sell during the following year's boating season. These numbers are used by manufacturers to determine how many boats it will build over the winter. In effect, dealers reserve a certain amount of inventory for its dealership. If dealer cancels the contract under Article 4, the manufacturer is left with this reserved inventory. Therefore, there is no risk associated with a dealer reserving any number of boats. If the dealer cancels the contract, Article 4 requires the manufacturer to absorb the unexpected cost of either carrying over this inventory or finding new buyers. Again, the risk is shifted entirely to the manufacturer.
- The bill will create an anti-competitive, inflexible mandate on dealer territories. Article 2 allows a dealer to demand, without negotiation, a sales territory of at least a 30- or 12-mile radius around his dealership, depending on the local population. These unyielding radii do not reflect the topography of Alaska and the great difference in travel time a consumer may face to reach a dealer. A manufacturer's stipulation of a territory of less than the 30- or 12-mile radius can be rejected and the manufacturer would have no choice but to accept the 30- or 12-mile territory mandated by the bill. Article 2 removes all negotiation from this key aspect of how a brand is brought to market. Article 2 is written so broadly that any change in territory will be mired in litigation, or forbidden by law.

- A manufacturer cannot make prudent decisions regarding the transfer of his contract to a new dealership owner. Article 1 gives the manufacturer no flexibility in managing his dealer network should a dealership change hands. A manufacturer is forced to transfer his brand to a new owner if the buyer meets standard requirements. Yet, the acceptability of the buyer is only one of many factors that must be considered when transferring a contract. The competitive landscape, changes in the marketplace and other issues are equally important. Simply put, the manufacturer must remain in a market, with a particular dealership, regardless of whether it makes good business sense.
- The bill would "fix" a warranty repair system that is not broken. Warranty repair is not as simple as the legally mandating the hourly rate that will be paid to a dealer for performing repairs covered by a manufacturer's warranty. As with most other services or products, volume buyers expect discounts. Dealers know the bill for authorized repairs will be paid. The costs of providing warranty can be offset by other transactions, such as greater subsidies of boat show fees, lower wholesale prices that allow for more profit on a retail sale and other methods. In addition, the requirement that parts be "sold" to a dealer at retail rates ignores common practices in the marine industry. In a majority of instances, dealers receive no-interest loans on the parts they purchase for warranty or retail repair. Requiring a manufacturer to reimburse warranty parts at retail will throw into question the no-interest loan system.
- These government mandates would over-run a voluntary, significant change in the market place that underway among the dealers and manufacturers nationwide. Voluntary, market-driven changes are best for all concerned. More than 24 dealers and boat builders from throughout the country developed "recommended contract language" a little over two years ago. More than 100 brands representing more than 60 percent of the market have *voluntarily* adopted some or all of these recommendations. There is an important difference to the consumer between voluntarily changes brought on by changing market and inflexible laws and mandates. Popular low-cost brands will be the most likely to raise prices significantly under mandates that apply the same reimbursement, buyback, territory and dealer policies to all dealer manufacturer relationships. These mandates will undercut the methods used by dealers and manufacturers to sell value brands at low cost, while luxury brands will be less affected. Therefore, these proposed government mandates will most harm consumers buying value-priced, good-quality boats and engines that they need for essential transportation, fishing, hunting and other uses.
- The bill attempts to force automobile franchise laws upon contracts between two private businesses; the boat business is significantly different in size, type and practices. Contracts between boat builders and marine dealers are not franchises. While HB 303 cherry-picks some aspects of Alaska's franchise law, these segments do not equate to a new "recreational equipment franchise" in any way. Automobiles and outdoor recreational products are made and sold in distinctly different ways. For instance, boat manufacturers do not control which, or how many, brands are carried by a dealer. Alaska dealers follow this national model. It is common for one dealer to represent competing brands of marine engines and boats. Consumers and dealers have hundreds of boat brands to choose among, including specialized boats that met the unique needs of Alaskan boaters. Each of these brands fight fiercely for market share, which will be stifled by mandates found in HB 303.

In closing, I ask that you oppose HB 303. This bill would stifle competition, increase the cost of boats and marine engines to consumers and mandate an unheard of shift of risk away from the dealer and onto the manufacturer.



National Marine
Manufacturers Association

**Testimony on HB 303
Before the Alaska House Judiciary Committee
February 6, 2008**

**Presented by
David Dickerson
Director of State Government Relations
National Marine Manufacturers Association**

Executive Committee

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Vice Chairman: NMMMA

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NMMMA

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nmma.org



HB 303 would shift all risk associated with selling recreational boats from the marine boat and engine builder to the marine dealer. Instead of the typical sharing of risk between two private businesses, the manufacturer would assume all costs associated with poor inventory control, poor service to customers in a dealer's territory, the cost of replacement parts overcharging for warranty repairs selling territories and control of key contractual requirements.

Under HB 303, there are several provision of significant concern, including:

Warranty Issues: The bill would have marginal, at best, affect regarding the warranty service and repairs provided to consumers. The focus of the warranty provisions are on reimbursement rates and conditions spelled out in contracts between boat dealers and manufacturers. These clauses ignore significant changes in the marine industry in the past two years, especially by manufacturers of the most popular boat brands in Alaska These changes provide for warranty reimbursement at "retail rates," i.e. the rates paid by consumers. Overall, the private sector is addressing these issues aggressively and successfully to the satisfaction of dealers and manufacturers. Other provisions mandating delivery of parts within 30 days greatly over-reach. If a manufacturer does not deliver replacement parts within 30 days, the dealer may return the entire boat for exchange or demand a full refund of the boat's purchase price. Considering that HB 303 discusses boats up to three model years old, this is an unacceptable penalty and mandate. Particularly with larger boats, hatches, stoves, toilets and other components may not be readily available. There is no limit on the magnitude or importance of a part in triggering the exchange/refund mandate.

The bill also requires the manufacturer to allow the dealer the right to buy authorized parts for 24 months after either the dealer or manufacturer has ended the contractual relationship. This works directly against consumers and harms new dealers who count on revenue from repairs. Even though the out-going dealer no longer is factory authorized and need not use authorized technicians to perform repairs, he or she can present dealership to the public in away that would imply that it is an authorized repair facility.

The bill requires dealers to be reimbursed for parts used to complete warranty repairs at retail cost, or up to 1.5 times his cost. This provision does not reflect standard business practices in the marine industry in which parts are either provided to dealers without charge or the charge is deducted from ongoing financial obligations of the dealer. Therefore the dealer's cost for specially-shipped parts requires no cash outlay or inventory/handling costs or in the case of parts from inventory, the dealer is reimbursed through reduction of standard debt that is carried by dealers with their manufacturers.

Sale of Dealership and transfer of contracts: The bill gives the manufacturer no choice but to approve the transfer of a contract to the buyer of a dealership if he or she meets standard requirements. This would require a manufacturer to keep a dealership open for the length of the existing contract even if the manufacturer decides that market conditions require that sales efforts be moved or consolidated with other dealers.

Territory: A Dealer has complete veto power over any relevant market area proposed by a manufacturer unless the territory exceeds the 12- and 30-mile mandates in the bill. The bill offers no provision for negotiation if a dealer rejects the territory proposed by the manufacturer.

Executive Committee

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nima.org



National Marine
Manufacturers Association

Mandatory delivery of parts: Given the bill's requirement that dealers buy back inventory in all instances and that manufacturers deliver all orders, it is impossible for a boat builder to manage his exposure to risk and costly buybacks. Even if a dealer has a dwindling sales record, the manufacturer must continue to fill orders.

Mandatory repurchase: The manufacturer under this provision assumes all risk associated with a dealers most expensive investment – his boat and engine inventory. Should a dealership decide to cancel a brand or go out of business, he or she can force a manufacturer to buy back boats up to three model years old, as well as parts and accessories at the price originally paid by the dealer. This provision holds whether the manufacturer gives the required 120 days notice or the dealer cancels with 30 days notice. This provision undermines a manufacturers desire to do business in Alaska. The manufacturer also must complete all buyback transactions within 30 days or face even greater financial penalties, as well as criminal sanctions. In addition to the cost of buying back boats after they have been on a dealer's showroom floor for up to three years, he is required to pay to store and transport the repurchased inventory. This is a further deterrent to a manufacturer doing business in a state or expanding his dealer network beyond a bare minimum, thereby limiting consumer choice.

Liability resulting from audit:

This provision attempts to establish a unique statute of limitations on business transactions that may not exist in Alaska law for other contracts between other private businesses.

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LEGAL DEPARTMENT

February 13, 2008

VIA FACSIMILE: 907-465-2070
Alaska House Judiciary Committee
Rep. Jay Ramras, Chair

Re: CS HB 303 – Marine Product and Motorized Recreational Products

Dear Representative Ramras and Committee Members:

Please accept this letter on behalf of Brunswick Corporation and Brunswick Boat Group in lieu of testimony concerning CS HB 303. Brunswick Boat Group has 19 boats brands, including Sea Ray, Boston Whaler, and Lund to name a few, as well as parts and accessories manufacturers and distributors such as Attwood and Land 'N Sea. Brunswick Corporation also owns Mercury Marine, which manufactures Mercury outboard engines and Mercruiser inboard and stern-drive engines (also known as inboard/outboard or I/O engines).

Brunswick supports the position of the National Marine Manufacturers Association as set forth by Mr. David Dickerson, but through this letter Brunswick wishes to complement the statements made by Mr. Dickerson.

It can not be stated enough that by protecting underperforming dealers, CS HB 303 runs the very real risk of harming boat owners and the boating industry. And make no mistake about it, that is exactly what CS HB 303 does – it protects underperforming dealers. As importantly, if not more importantly, CS HB 303 removes any incentive that dealers have to improve their business practices.

As Mr. Dickerson has pointed out, the “just cause” required for terminations and non-renewals is not defined. The trial lawyers are thus given free reign to sue manufactures for decisions made with the good faith desire to improve its brand and enhance the boat ownership experience of Alaskans. Manufacturers will be reluctant to transition away from an underperforming dealer for fear of expensive, time-consuming and risky litigation, not to mention that the proposed law would elevate any violation into a crime. In the end, by empowering the plaintiffs bar, CS HB 303 will hamstring manufacturer’s ability to make changes where appropriate.

Of course, marine dealers would remain free to walk-away (or threaten to walk-away) from a manufacturer at will.

Today there is a relative good balance between manufacturers and dealers. The legislature may not be aware but a few years ago representatives of manufacturers and dealers across the United States formed a

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Rep. Jay Ramras, Chair
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Page 2

joint task force to work on suggested guidelines for dealership agreements. The task force proved successful and the representatives were able to develop such guidelines to be used in dealer agreements. The guidelines addressed many issues in CS HB 303, such as longer term dealer agreements, opportunities for dealers to achieve retail labor rates for warranty services, and permissible transfers of dealership. However, the suggested guidelines maintained fairness, balance and equity which respectfully Brunswick finds lacking in CS HB 303. Mr. Dickerson will be able to discuss the work of the joint task force if anyone has additional questions.

In closing, Brunswick urges that CS HB 303 not be passed by your legislature.

Sincerely,

BRUNSWICK BOAT GROUP



W. Allen McDonald
Assistant General Counsel

BELLAVIA GENTILE
&
ASSOCIATES, LLP
ATTORNEYS AT LAW

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February 12, 2008

Representative Mark Neuman
Alaska State Legislature
State Capitol, Room 432
Juneau, AK 99801-1182

Re: Support for House Bill No. 303 – Recreational and Vehicles and Marine Products

Dear Representative Neuman:

This letter is written in support of House Bill No. 303, and to further explain the legal implications of the bill. Presently, the House Committee on Labor and Commerce has received opposition to the proposed statute from the National Marine Manufacturers Association and an unfavorable review from the Department of Law. Obviously, manufacturers would oppose this legislation as it attempts to provide individual dealers with certain rights and remedies against manufacturers who take unfair actions against the dealers.

As a starting point, it is necessary to recognize the great disparity in bargaining power between the marine vehicle manufacturer and the marine vehicle dealer. HB 303 provides certain basic protections for the marine vehicle dealer who frequently has millions of dollars invested in dealership real property, equipment and good will, but can do nothing to oppose the will of the manufacturer without jeopardizing this substantial investment.

The relationship between marine vehicle manufacturers and marine vehicle dealers is similar to the relationship between automobile manufacturers and automobile dealers. To date, every state legislature, including Alaska¹, as well as the federal legislature, have passed statutes to protect automobile dealers from abuses by automobile manufacturers.

¹ AS § 42.25.110 et seq

Like the sale and distribution of motor vehicles, boat commerce is an important part of this state's economy, vitally affecting the public interest and the public welfare. Boat dealerships employ a significant number of people and provide the means by which many Alaskans make their living. HB 303 is necessary to prevent fraud and other abuses against a party with less bargaining power (i.e. the dealerships), and to protect and preserve the investments and properties of the citizens of Alaska who have invested in boat dealerships.

To the extent that marine dealers have invested significant time, effort and financial resources to their businesses, it is the intention of HB 303 to afford marine vehicle dealers with certain protections regarding the possible resale of the dealerships, market area protections, repurchase obligations, and warranty obligations.

Existing law fails to provide these needed protections.

On the one hand, the Office of the Attorney General argues that HB 303 is unnecessary, as current Alaskan state law addresses the general conduct of parties to a commercial transaction; and on the other hand, the National Marine Manufacturers Association ("NMMA") states that "HB 303 represents a significant departure from the standard business arrangement between two private businesses."

In fact, HB 303 is meant to provide additional safeguards beyond the "general conduct of parties to a commercial transaction." HB 303 affects the relationship between a large manufacturer distributor and oftentimes an individual business person. Due to the power imbalance, additional protections are needed to ensure the party with significantly more power does not take advantage of the other.

Rather than being a "significant departure" from the standard business practices, HB 303 in fact brings Alaska closer to nationwide standard practices between automobile, boat and recreational vehicle manufacturers and dealers as codified by state legislatures. As previously stated, every state has passed legislation regulating the relationship between automobile manufactures and dealers. The trend is to now extend these statutes to marine and power sport dealers. Thus far, California, Georgia, Louisiana, New York, Missouri, Oklahoma and Texas Legislatures have passed Marine Dealer statutes containing similar provisions as HB 303.

Cancellation or Non-renewal of Franchise Agreement (Section 45.27.020)

HB 303 does not "absolve the dealer from the impact of poor decisions" or eliminate any risks for the dealer, as argued by the opposition. Under HB 303, the dealer must still maintain good, sound business practices to solicit customers and increase sales, and the manufacturer retains the right to remove the dealer upon "good cause".

This provision simply seeks to protect the significant investments of marine vehicle dealers which often accompany the acquisition and operation of a marine dealership, by requiring that the manufacturer or distributor provide a dealer with 90 days notice prior to refusing to renew a franchise agreement. The requirement for "just cause" appears obvious. If a marine dealer has been operating his or her business properly and within all the guidelines established by a manufacturer, there should be no basis upon which the manufacturer should seek to avoid its obligation to a particular dealership.

This provision of HB 303 safeguards marine vehicle dealerships against unjust terminations. First, the manufacturer is compelled to justify a termination or non-renewal, and can no longer resort to arbitrary, bad faith decisions. Secondly, the 90 day period provides the dealer with a meaningful opportunity to challenge the legal sufficiency of the purported termination. Third, the dealer can use this period of time to resolve its differences with the manufacturer if possible. Finally, the dealer can use this time to market and sell its assets to a suitable purchaser to preserve, and benefit from, its investment and good will in the business.

This provision of HB 303 is similar to existing legislation pertaining to automobile manufacturers and dealers. Under AS §§ 45.25.110 & 45.25.120, an automobile manufacturer may not terminate a franchise with a motor vehicle dealer has shown there is good cause for the termination, and must give 90 days notice of termination.

Further, California, Georgia, Louisiana, Missouri, New York, Oklahoma and Texas have all passed similar legislation prohibiting the termination of a marine dealership franchise without good cause.

The Alaskan State Legislature must step in and provide necessary protections for the marine vehicle dealerships, as it did for automobile dealerships, and as more and more states are providing for marine dealerships.

Consent to Transfer of Franchise Agreement (Section 45.27.030)

This provision of HB 303 merely seeks to allow an existing marine vehicle dealer the opportunity to sell its business and realize the value of the same as a going concern. The only restriction placed upon the manufacturer is that it may not "unreasonably withhold consent to the sale" provided that the proposed purchaser generally meets the criteria established by the manufacturer for approving new dealers, and provided that the incoming dealer agrees to be bound by the terms and conditions of the standard dealer agreement established by the manufacturer at the time of transfer. These restrictions are very reasonable and do not seek to place anything other than reasonable standard upon the manufacturer.

Existing state law provides similar protections for automobile dealerships. Pursuant to AS § 45.25.150, an automobile "manufacturer may not unreasonably present or refuse to honor a transfer of ownership of a new motor vehicle dealership."

As mentioned above, marine vehicle dealers often invest millions of dollars in a franchise dealership and the property upon which it is located. In order to preserve a dealer's right to benefit and profit from the success of a dealership business, the Legislature must grant dealers important protections concerning the sale and transfer of a dealership.

If HB 303 is passed, a manufacturer still retains discretion concerning the approval of a proposed sale, except that it may not unreasonably withhold consent and must respond in writing to a dealer's request for consent to sell to the proposed buyer. HB 303 will ensure that all parties act in good faith during the approval process, and preclude a manufacturer, with exceedingly more power, from imposing unreasonable restrictions on a sale or transfer, including any attempt by the manufacturer to prevent a dealer from obtaining the fair market value of the dealership as a going concern.

Determination of Area of Responsibility Provision is Consistent With Federal and State Anti-Trust Laws (Section 45.27.100)

Marine dealers are often required to make long-term commitments regarding the lease or purchase of real property necessary to maintain their dealerships. In addition, dealers are often required by a manufacturer to repair, renovate or upgrade facilities in order to continue their relationship. In light of these long-term financial commitments on the part of the dealers, it only stands to reason that they should be afforded some protection from competition.

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This statute does not seek to prohibit, nor should it prohibit, competition among various manufacturers. Rather the statute seeks to afford a dealer a protected area within which the manufacturer may not establish or relocate an additional point or dealership which would be in direct competition with the pre-existing dealer. Such restrictions would not have an impact upon competition as the protected areas are limited based upon populations within a particular territory and as well as market research information regarding projected sales of the manufacturer's brand, in order to establish a dealership's "area of responsibility."

The areas of responsibility are so limited in geographic scope so as to not adversely impact competition. Rather, these restrictions would permit dealers who have made significant investments to continue to run their dealerships properly and make continued investments with the comfort and security of knowing that the same manufacturer cannot open a competing dealership across the road.

In determining whether an arrangement violates antitrust law, the preliminary question is whether the exclusive territory originates from a restriction between the manufacturer and its dealers or whether they originate between the dealers themselves. If the exclusive territory originates from a restriction or agreement between manufacturers (i.e. an agreement between competitors), antitrust law characterizes this as a "horizontal restraint of trade." If the exclusive territory originates from a restriction or agreement between a common manufacturer represented by dealers (i.e. an agreement between a supplier and a dealer), antitrust law characterizes that as a "vertical restraint of trade."

Vertical restraints of trade are subject to "rule of reason", making them lawful in most circumstances. See *Continental TV, Inc. v. GTE Sylvania, Inc.* 433 U.S. 36 (1977). The basis for the United States Supreme Court relatively lenient treatment of vertical restraints is the recognition that in most circumstances, vertical territorial restraints enhance inter-brand competition (competition between brands of different manufacturers) to a greater extent than they restrain intra brand competition (competition between dealers of the same manufacturer's brand), and that enhancing inter-brand competition is the primary focus of the antitrust laws.

HB 303 proposes a "vertical restraint of trade" whereby the restriction pertains to the supplier and dealer, not to competitor manufacturers. HB 303 does not prevent another manufacturer from opening a dealership across the road, but only prevents a common manufacturer from opening up a dealership, selling the same brand, across the street from an existing dealership.

The "areas of responsibility" proposed by HB 303 are similar to restrictions imposed by the Alaskan with regard to automobile dealerships (AR § 45.25.180), as well as restrictions imposed by other states with regard to marine dealership franchises.

For instance, Georgia law (Ga. Code Ann., § 10-1-679.2) provides that the marine manufacturer must designate in writing the area of sales responsibility assigned to a marine dealer and not change such area or establish another marine dealer in the same area without showing good cause. Louisiana law (LSA-R.S. 32:812(A)(2)(I)) prevents a marine manufacturer from competing with a dealer in the same-line make. Oklahoma law (63 Okl.St. Ann. § 4037.1) sets forth restrictions on the establishment of marine dealerships in market areas whether the same product line is represented.

Certainly if other states have enacted similar restrictions, they are not illegal restraints. The geographic restrictions set forth in HB 303 are permissible and effective, and do not violate anti-trust law.

General Product Provisions (Section 45.27.200 et seq.)

As argued prior, the fact that the UCC covers the general conduct of parties to a commercial transaction does not vitiate the need for HB 303. HB 303 will impose contractual provisions that work to safeguard the dealership's investment, which dealers are typically not free to negotiate. While it is true it is desirable to allow as much freedom between contracting parties to negotiate terms, when there is a large disparity between the bargaining power of the parties, the weaker party is stripped of freedom to negotiate. These general provision of HB 303 will, again, level the playing field and promote the free enterprise system.

Product Repurchase Requirements (Section 45.27.300)

This section of HB 303 requires a marine manufacturer to repurchase the dealer's inventory (with certain limitations) when the dealer discontinues business. The opposition contends that this provision will "ignore the system by which boat dealers and manufacturers regulate manufacturing rates and inventory and would absolve the dealer from crucial decisions regarding the operation of his business." Further, the opposition rings the alarm that dealers will be able to order an unreasonable number of boats, cancel the contract, and have no obligation to pay for said boats. These arguments are wholly without merit.

First, while boat dealers often pre-order the number of boats needed during a boating season for the following year, these orders are typically based upon minimum standard requirements established by the manufacturer. To the extent that the dealer requests additional boats beyond the minimum amount required by the manufacturer, such additional orders are typically based upon actual orders obtained from specific customers. These boats are essentially "pre-sold" and therefore the concerns expressed by the NMAA are not realistic.

This provision is necessary to correct an industry-wide practice of manufacturers coercing dealers to order additional products weeks after initial orders are placed. If the dealer refuses, then he or she is not eligible to participate in financial incentives offered by the manufacturer. This provision of HB 303 will prohibit manufacturers from taking advantage of one-sided agreements. If the manufacturer knows it will be liable to repurchase inventory should the dealership go out of business, it will be less likely to impose requirements upon dealers to purchase inventory they do not want or need. At the very least, the manufacturer should be required to repurchase unused inventory if the manufacturer terminates the franchise.

Product Warranties (Section 45.27.400)

While Alaska's Consumer Product Safety Act provides procedures for discovering, notifying, and addressing safety defects in consumer products, its focus is on the protection of the consumer, not the dealer.

This section of HB 303 is necessary to ensure that the dealer will be able to provide the consumer with necessary protections from defective products and allow the dealer to enforce warranties on behalf of the consumer without undue burden.

Under HB 303, the manufacturer will be required to pay (1) in accordance with the standard warranty service claim procedures and method of the industry; (2) reimburse the dealer for all approved warranty service work performed by the dealer at prevailing rates; (3) pay for costs incurred by the dealer for shipping parts replaced by warranty; (4) timely reimburse dealers for claims made under warranty; and (5) provide written notice of disapprovals of warranty claims. Certainly if the product manufactured by the manufacturer is defective, and the dealer is required to correct the problem, the manufacturer should be responsible for holding up its end of the bargain to the consumer and reimburse the dealer for its efforts to correct the defect.

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HB 303 also places accountability on the dealer. Under HB 303, the dealer is required to *inter alia* (1) not make representations about the warranty that are not made by the manufacturer; (2) make all claims for warranty reimbursement in the manner established by the manufacturer; (3) provide timely warranty service in accordance with the manufacturer's warranty; and (4) use factory-certified or trained technicians to perform warranty work if certification is available.

Conclusion

The Alaskan Legislature should take the lead in providing protection for marine vehicle dealers and the industry's consumers. HB 303 will help to correct the many inequities caused by the extreme imbalance of bargaining power between the manufacturers and dealers, just as the automobile franchise laws adopted by every state have served to level the playing field in the automobile industry.

Very truly yours,

BELLAVIA GENTILE & ASSOCIATES, LLP

By: _____

JOHN G. GENTILE

Burkeshore Marina, LLC

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Dear Representative Ramras,

Alaskan consumers and Alaskan dealers of boats outboards, snowmobiles and ATV's need your help. I am one of your constituents and I want to bring to your attention HB303. The quick passage this session of HB303 is very important to my customers and dealership. It helps to prevent the manufactures of boats, outboard motors, snowmobiles, and ATV's from continuing the industry practice of shifting significant warranty repair and product defect cost onto the Alaskan dealer and consumer as has been done for many years.

The manufacturers have pulled out all the stops to try and stop HB303 and the needed changes it contains. They are also doing the same thing in four other states that have introduced similar legislation. Seven states already have successfully passed warranty and dealer agreement reform in the past several years including Texas, Oklahoma, Louisiana, and New York. During the successful legislative efforts in these states, the manufacturers and their associations and paid lobbyists distorted many facts and tried their best to prevent fair and equitable treatment for consumers and dealers.

The abusive one-sided dealer agreements and the warranty service and design defect cost being put on consumers are a well-documented fact within the industry. For many years Dealers and the Marine Retailers Association of America (MRAA) have tried to get the manufacturers to have more equitable dealer agreements, warranty service and defective product design support policies to no avail.

In summary, the manufacturers want to stop HB303 so that they can continue their practice of shifting their warranty service and defective product costs to Alaskan consumers and dealers, and put all of those cost savings into their pockets. This issue is one of the most important that exists for my dealership and my customers. I am asking for your help on co-sponsoring and quickly passing HB303 to ensure that the manufacturers will finally be held accountable for their warranty service and defect issues.

Sincerely,



Jeremy S. Lindamood
Sales Manager
Burkeshore Marina LLC.

Rex Shattuck

From: Dudley Benesch [dudley@akmining.com]
Sent: Monday, January 28, 2008 12:02 PM
To: Rex Shattuck
Subject: HB303.doc

The Alaska State Snowmobile Association



To Whom It May Concern:

I would like to take a moment and reiterate the Alaska State Snowmobile Association's support for HB 303. This legislation is designed to address the current gap in published manufacturer's warranty assurances to the end consumers who purchase a product and the manufacturer's support of these warranty items to the local dealer. While there are several levels of consumer protection for vehicles that are DMV titled, the non-DMV titled vehicles have lagged considerably behind in the consumer protection process.

While the legal stipulations of this legislation are complex and beyond the ASSA realm of review, the impetus for compensating authorized dealers fairly for warranty work is without question worthy of support. As an organization participating in both statewide and national forums, we have seen this issue addressed throughout the ORV spectrum. Each one of us has either a personal anecdote or a close associate who has struggled with this issue. In almost every case, the local dealer is attempting to take care of a personal customer and struggling to do it within sometime arbitrary limitations set by manufacturers. Mandating that the manufacturers fulfill their commitments to both their local representatives and to the end user is overdue and will be a welcome item for consumers.

In conclusion, the Alaska State Snowmobile Association supports this legislation and offers our appreciation to Representative Neuman for sponsoring it.

Kevin Hite
President
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