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1 manufacturer or distributor by mail, the manufacturer or distributor shall, at a  
2 minimum, repurchase from the authorized dealer's inventory

3 (1) each new and unused product of the manufacturer that is

4 (A) a current model of the product; or

5 (B) a model of the product from the previous two years; and

6 (2) each product part that

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

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

10 (C) has not been damaged or substantially altered to the  
11 prejudice of the manufacturer or distributor while in the possession of the  
12 authorized dealer.

13 (b) If an authorized dealer discontinues selling a particular product and gives  
14 30 days' advance written notice of the discontinuance to the manufacturer or  
15 distributor by mail, the manufacturer or distributor shall, at a minimum, repurchase  
16 from the authorized dealer's inventory

17 (1) each new and unused discontinued product of the manufacturer that  
18 is

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

20 (B) a model of the discontinued product from the previous two  
21 years; and

22 (2) each discontinued product part that

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

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

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

29 **Sec. 45.27.310. Timing of repurchase.** A manufacturer or distributor shall  
30 make the repurchase required by AS 45.27.300 within 30 days after the authorized  
31 dealer submits to the manufacturer or distributor by mail the authorized dealer's final

1 inventory of all the products and product parts identified under AS 45.27.300 that  
2 apply to the authorized dealer's discontinuance of the manufacturer's products.

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

9 **Sec. 45.27.330. Failure to repurchase.** If a manufacturer or distributor fails,  
10 without just cause, to make the repurchase required by AS 45.27.300, the  
11 manufacturer or distributor shall pay the authorized dealer interest at the rate of 1.5  
12 percent a month or fraction of a month on the inventory value of the products and  
13 product parts that the manufacturer or distributor fails to repurchase. The interest  
14 begins on the 31st day after the manufacturer or distributor receives the final inventory  
15 under AS 45.27.310 and continues until the manufacturer or distributor completes the  
16 required repurchase.

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

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

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

27 **Article 5. Product Warranties.**

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

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

7           (b) Except as provided by (c) of this section, a manufacturer or distributor  
8 shall, within 30 days after an authorized dealer's request, provide the authorized dealer  
9 with the original factory parts required to cure the defective product.

10           (c) If a manufacturer or distributor is unable to supply the authorized dealer  
11 with adequate needed warranty service parts for a defective product within the 30 days  
12 established by (b) of this section or by an agreed upon reasonable alternative time, the  
13 authorized dealer may, at the authorized dealer's option, return the defective product,  
14 and

15           (1) the manufacturer or distributor shall provide an identical product  
16 that is not defective; or

17           (2) the authorized dealer shall receive full credit for the authorized  
18 dealer's landed cost of the product, if the authorized dealer is the original selling  
19 authorized dealer.

20           (d) In this section, "defective product" means a product that is defective in  
21 design, assembly, engineering, or manufacturing.

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

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

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

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

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

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

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

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

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

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

27 (b) A request by the manufacturer, the distributor, or another person involved  
28 in a product's warranty service to an authorized dealer to return a product or a product  
29 part for analysis, testing, or inspection must be in writing and shall be made within 30  
30 days after the filing date of the warranty claim submitted by the authorized dealer.

31 **Sec. 45.27.460. Timely reimbursement or claims.** A manufacturer or

1 distributor shall pay a properly submitted warranty claim within 30 days after  
2 receiving the claim from an authorized dealer. If a manufacturer or distributor fails to  
3 pay a claim within 30 days after receipt, the failure is considered an acceptance of the  
4 claim as submitted, and the manufacturer or distributor shall pay the authorized dealer  
5 interest at the rate of 1.5 percent a month on the claim.

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

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

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

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

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

27 **Article 6. Miscellaneous Business Practices.**

28 **Sec. 45.27.600. Liability resulting from audit.** (a) An authorized dealer is not  
29 liable to a manufacturer or distributor for money that an audit of the authorized  
30 dealer's financial records determines to be owed to the manufacturer or distributor, or  
31 to a wholesaler, distributor branch, or factory branch, if the money is a result of

1 transactions that occurred more than two years before the beginning of the audit,  
2 unless the money is owed as a result of a fraudulent practice of the authorized dealer.

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

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

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

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

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

#### 24 **Article 7. Miscellaneous Provisions.**

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

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

31 (b) Notwithstanding the terms of an agreement with an authorized dealer, a

1 manufacturer and a distributor shall indemnify and hold harmless an authorized dealer  
 2 for damages arising out of complaints, claims, or lawsuits, to the extent that the  
 3 damages arise out of alleged acts of the manufacturer and distributor, that

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

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

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

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

11 **Sec. 45.27.820. Civil penalty.** Notwithstanding AS 45.50.551, a person who  
 12 violates this chapter is liable to the state for a civil fine of not more than \$5,000 for  
 13 each day the violation continues.

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

16 **Sec. 45.27.840. Cumulative provisions.** The provisions of this chapter are in  
 17 addition to any other legal or equitable remedy available under law or under an  
 18 agreement between an authorized dealer and a manufacturer or distributor.

19 **Article 8. General Provisions.**

20 **Sec. 45.27.900. Exemptions.** The following persons are exempt from this  
 21 chapter:

22 (1) an authorized dealer located outside this state;

23 (2) a receiver, a trustee, an administrator, an executor, a guardian, and  
 24 other persons appointed by or acting under a court order;

25 (3) a public officer in the course of performing the public officer's  
 26 duties;

27 (4) a person who holds a security interest in a motor vehicle as part of  
 28 the sale of the motor vehicle to another person;

29 (5) an insurance company;

30 (6) an auctioneer and an auction house handling an estate auction, a  
 31 bankruptcy auction, a farm equipment auction, or a government auction, if the

1 auctioneer and auction house are not engaged in the auction of used products as the  
2 principal part of their business.

3 **Sec. 45.27.990. Definitions.** In this chapter, unless the context indicates  
4 otherwise,

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

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

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

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

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

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

18 (7) "distributor" means a person who

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

20 (B) maintains distributor representatives, including  
21 wholesalers, distributor branches, and distributor sales representatives;

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

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

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

30 (11) "manufacturer" means a person who fabricates, manufactures, or  
31 assembles products; "manufacturer" includes a manufacturer branch and a

1 manufacturer sales representative, but does not include a person who converts,  
2 modifies, or otherwise alters a product fabricated, manufactured, or assembled by  
3 another person;

4 (12) "manufacturer sales representative" means an officer, agent, or  
5 employee hired by a manufacturer to promote the sale of products or to supervise or  
6 contact authorized dealers or prospective authorized dealers;

7 (13) "marine authorized dealer" means an authorized dealer of marine  
8 products;

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

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

18 (16) "part" includes an accessory;

19 (17) "product" means a marine product or a motorized recreational  
20 product;

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

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

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

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

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

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

31 (3) a distributorship agreement, including a franchise agreement, for

1 the sale, repair, or servicing of motor vehicles that are required to be registered under  
2 AS 28.10;

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

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

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

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

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

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

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

20 (53) violating AS 45.27 (marine products and motorized recreational  
21 products).

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

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

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

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

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

# LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY  
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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

Representative Mark Neuman

December 31, 2007

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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.

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.

# 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

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

25-LS1183C  
Bannister  
1/29/08

**CS FOR HOUSE BILL NO. 303( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES NEUMAN, Harris, Thomas, Edgmon, Wilson**

**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. Formation of agreement.** A manufacturer or distributor may  
11 not coerce or attempt to coerce an authorized dealer to enter into an agreement with  
12 the manufacturer or distributor.

13 **Sec. 45.27.020. Cancellation or nonrenewal of agreement.** (a) A  
14 manufacturer or distributor may not threaten to cancel an agreement with an

1 authorized dealer without just cause.

2 (b) A manufacturer or distributor may not, without just cause and 120 days'  
3 advance written notice, cancel or refuse to renew an agreement with an authorized  
4 dealer unless the cancellation or refusal to renew arises out of

5 (1) failure of the authorized dealer to meet the financial requirements  
6 of the agreement; or

7 (2) fraudulent activity of the authorized dealer that results in the  
8 authorized dealer's being convicted of a crime, including being convicted by a plea of  
9 guilty or no contest.

10 **Sec. 45.27.030. Consent to transfer of agreement.** (a) A manufacturer or  
11 distributor may not unreasonably withhold consent to the sale or other transfer of an  
12 agreement by an authorized dealer to a transferee if the transferee

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

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

17 (b) A manufacturer or distributor shall respond in writing to an authorized  
18 dealer's written request for consent under (a) of this section within 30 days after of  
19 receiving the authorized dealer's written request. The request must be on a form, if  
20 any, that is generally used by the manufacturer or distributor for the purpose and that  
21 contains the information required by the manufacturer or distributor.

22 (c) If a manufacturer or distributor fails to respond to an authorized dealer as  
23 required by (b) of this section, the manufacturer or distributor is considered to have  
24 consented to the request.

25 **Sec. 45.27.040. Change in existing agreement.** Except as provided by  
26 AS 45.25.110, a manufacturer or distributor may not change an agreement with an  
27 authorized dealer unless the manufacturer or distributor gives notice by mail to the  
28 authorized dealer at least 90 days before the change.

29 **Article 2. Area of Responsibility.**

30 **Sec. 45.27.100. Determination of area of responsibility.** (a) Unless the  
31 authorized dealer's agreement establishes a smaller area of responsibility, an

1 authorized dealer's area of responsibility may be a geographical area designated by zip  
2 code, municipality, or mileage radius in the authorized dealer's agreement with a  
3 manufacturer or distributor and may be established by the uniform procedures adopted  
4 under (c) of this section.

5 (b) If the authorized dealer and the manufacturer or distributor have not  
6 established an area of responsibility under (c) of this section, or if the area of  
7 responsibility established by the manufacturer or distributor is rejected by the  
8 authorized dealer, the area of responsibility is a

9 (1) 12-mile radius from the authorized dealer if the authorized dealer is  
10 located in a municipality containing 4,000 persons or more; or

11 (2) 30-mile radius from the authorized dealer if the authorized dealer is  
12 located in a municipality containing fewer than 4,000 persons.

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

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

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

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

30 (1) a determination that the community or territory can support an  
31 additional authorized dealer;

1 (2) a calculation of the financial effect on the new authorized dealer  
2 and the existing authorized dealers who may be affected; and

3 (3) a determination of whether the existing authorized dealers of the  
4 same line of product makes, models, or classifications in the authorized dealer's area  
5 of responsibility are providing adequate representation, competition, and convenient  
6 consumer care for the same line of product makes, models, and classifications located  
7 in that area of responsibility.

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

### 11 **Article 3. General Product Provisions.**

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

15 **Sec. 45.27.210. Involuntary order or delivery.** A manufacturer or distributor  
16 may not coerce or attempt to coerce an authorized dealer to order or accept delivery of  
17 a

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

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

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

26 **Sec. 45.27.230. Sale after termination or nonrenewal.** After an effective  
27 termination or nonrenewal of an agreement, a manufacturer or distributor shall  
28 continue, for at least 24 months, to sell the authorized dealer parts for products sold by  
29 the authorized dealer before the termination or nonrenewal.

30 **Sec. 45.27.240. Delivery of products in reasonable quantities.** A  
31 manufacturer or distributor may not delay, refuse, or fail to deliver products in

1 reasonable quantities to an authorized dealer unless the delay, refusal, or failure is  
2 caused by an act beyond the control of the manufacturer, the distributor, or a person  
3 related to the manufacturer or distributor.

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

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

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

14 (c) An authorized dealer is solely responsible for damage to a new product  
15 that occurs after the authorized dealer accepts the product from the carrier and before  
16 delivery to the ultimate purchaser unless the damage results from a latent or hidden  
17 defect or is not reasonably observable at the time the authorized dealer accepts the  
18 product. An authorized dealer accepts a product when the authorized dealer signs a  
19 delivery receipt for the product.

20 (d) An authorized dealer may refuse to accept a damaged product from a  
21 manufacturer or distributor by giving written notice to the manufacturer or distributor  
22 within 10 business days after the product is delivered to the authorized dealer. If an  
23 authorized dealer refuses to accept the damaged product, the manufacturer or  
24 distributor shall, within 10 days after receiving the notice from the authorized dealer,  
25 credit the authorized dealer's account for the product cost that the manufacturer or  
26 distributor charged to the authorized dealer and any freight and interest charged to the  
27 authorized dealer for the product.

#### 28 **Article 4. Product Repurchase Requirements.**

29 **Sec. 45.27.300. Manufacturer or distributor mandatory repurchase.** (a) If  
30 an authorized dealer discontinues engaging in the business of being an authorized  
31 dealer and gives 30 days' advance written notice of the discontinuance to the

1 manufacturer or distributor by mail, the manufacturer or distributor shall, at a  
2 minimum, repurchase from the authorized dealer's inventory

3 (1) each new and unused product of the manufacturer that is

4 (A) a current model of the product; or

5 (B) a model of the product from the previous two years; and

6 (2) each product part that

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

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

10 (C) has not been damaged or substantially altered to the  
11 prejudice of the manufacturer or distributor while in the possession of the  
12 authorized dealer.

13 (b) If an authorized dealer discontinues selling a particular product and gives  
14 30 days' advance written notice of the discontinuance to the manufacturer or  
15 distributor by mail, the manufacturer or distributor shall, at a minimum, repurchase  
16 from the authorized dealer's inventory

17 (1) each new and unused discontinued product of the manufacturer that  
18 is

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

20 (B) a model of the discontinued product from the previous two  
21 years; and

22 (2) each discontinued product part that

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

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

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

29 **Sec. 45.27.310. Timing of repurchase.** A manufacturer or distributor shall  
30 make the repurchase required by AS 45.27.300 within 30 days after the authorized  
31 dealer submits to the manufacturer or distributor by mail the authorized dealer's final

1 inventory of all the products and product parts identified under AS 45.27.300 that  
2 apply to the authorized dealer's discontinuance of the manufacturer's products.

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

9 **Sec. 45.27.330. Failure to repurchase.** If a manufacturer or distributor fails,  
10 without just cause, to make the repurchase required by AS 45.27.300, the  
11 manufacturer or distributor shall pay the authorized dealer interest at the rate of 1.5  
12 percent a month or fraction of a month on the inventory value of the products and  
13 product parts that the manufacturer or distributor fails to repurchase. The interest  
14 begins on the 31st day after the manufacturer or distributor receives the final inventory  
15 under AS 45.27.310 and continues until the manufacturer or distributor completes the  
16 required repurchase.

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

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

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

#### 27 **Article 5. Product Warranties.**

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

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

7           (b) Except as provided by (c) of this section, a manufacturer or distributor  
8 shall, within 30 days after an authorized dealer's request, provide the authorized dealer  
9 with the original factory parts required to cure the defective product.

10           (c) If a manufacturer or distributor is unable to supply the authorized dealer  
11 with adequate needed warranty service parts for a defective product within the 30 days  
12 established by (b) of this section or by an agreed upon reasonable alternative time, the  
13 authorized dealer may, at the authorized dealer's option, return the defective product,  
14 and

15                   (1) the manufacturer or distributor shall provide an identical product  
16 that is not defective; or

17                   (2) the authorized dealer shall receive full credit for the authorized  
18 dealer's landed cost of the product, if the authorized dealer is the original selling  
19 authorized dealer.

20           (d) In this section, "defective product" means a product that is defective in  
21 design, assembly, engineering, or manufacturing.

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

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

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

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

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

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

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

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

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

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

27 (b) A request by the manufacturer, the distributor, or another person involved  
28 in a product's warranty service to an authorized dealer to return a product or a product  
29 part for analysis, testing, or inspection must be in writing and shall be made within 30  
30 days after the filing date of the warranty claim submitted by the authorized dealer.

31 **Sec. 45.27.460. Timely reimbursement for claims.** A manufacturer or

1 distributor shall pay a properly submitted warranty claim within 30 days after  
2 receiving the claim from an authorized dealer. If a manufacturer or distributor fails to  
3 pay a claim within 30 days after receipt, the failure is considered an acceptance of the  
4 claim as submitted, and the manufacturer or distributor shall pay the authorized dealer  
5 interest at the rate of 1.5 percent a month on the claim.

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

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

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

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

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

27 **Article 6. Miscellaneous Business Practices.**

28 **Sec. 45.27.600. Liability resulting from audit.** (a) An authorized dealer is not  
29 liable to a manufacturer or distributor for money that an audit of the authorized  
30 dealer's financial records determines to be owed to the manufacturer or distributor, or  
31 to a wholesaler, distributor branch, or factory branch, if the money is a result of

1 transactions that occurred more than two years before the beginning of the audit,  
2 unless the money is owed as a result of a fraudulent practice of the authorized dealer.

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

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

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

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

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

24 **Article 7. Miscellaneous Provisions.**

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

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

31 (b) Notwithstanding the terms of an agreement with an authorized dealer, a

1 manufacturer and a distributor shall indemnify and hold harmless an authorized dealer  
2 for damages arising out of complaints, claims, or lawsuits, to the extent that the  
3 damages arise out of alleged acts of the manufacturer and distributor, that

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

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

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

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

11 **Sec. 45.27.820. Civil penalty.** Notwithstanding AS 45.50.551, a person who  
12 violates this chapter is liable to the state for a civil fine of not more than \$5,000 for  
13 each day the violation continues.

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

16 **Sec. 45.27.840. Cumulative provisions.** The provisions of this chapter are in  
17 addition to any other legal or equitable remedy available under law or under an  
18 agreement between an authorized dealer and a manufacturer or distributor.

#### 19 **Article 8. General Provisions.**

20 **Sec. 45.27.900. Exemptions.** The following persons are exempt from this  
21 chapter:

22 (1) an authorized dealer located outside this state;

23 (2) a receiver, a trustee, an administrator, an executor, a guardian, and  
24 other persons appointed by or acting under a court order;

25 (3) a public officer in the course of performing the public officer's  
26 duties;

27 (4) a person who holds a security interest in a motor vehicle as part of  
28 the sale of the motor vehicle to another person;

29 (5) an insurance company;

30 (6) an auctioneer and an auction house handling an estate auction, a  
31 bankruptcy auction, a farm equipment auction, or a government auction, if the

1 auctioneer and auction house are not engaged in the auction of used products as the  
2 principal part of their business.

3 **Sec. 45.27.990. Definitions.** In this chapter, unless the context indicates  
4 otherwise,

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

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

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

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

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

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

18 (7) "distributor" means a person who

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

20 (B) maintains distributor representatives, including  
21 wholesalers, distributor branches, and distributor sales representatives;

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

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

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

30 (11) "manufacturer" means a person who fabricates, manufactures, or  
31 assembles products; "manufacturer" includes a manufacturer branch and a

1 manufacturer sales representative, but does not include a person who converts,  
2 modifies, or otherwise alters a product fabricated, manufactured, or assembled by  
3 another person;

4 (12) "manufacturer sales representative" means an officer, agent, or  
5 employee hired by a manufacturer to promote the sale of products or to supervise or  
6 contact authorized dealers or prospective authorized dealers;

7 (13) "marine authorized dealer" means an authorized dealer of marine  
8 products;

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

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

18 (16) "part" includes an accessory;

19 (17) "product" means a marine product or a motorized recreational  
20 product;

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

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

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

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

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

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

31 (3) a distributorship agreement, including a franchise agreement, for

1 the sale, repair, or servicing of motor vehicles that are required to be registered under  
2 AS 28.10;

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

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

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

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

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

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

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

20 (53) violating AS 45.27 (marine products and motorized recreational  
21 products).

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

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

26 \* Sec. 6. The uncoded law of the State of Alaska is amended by adding a new section to  
27 read:

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

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

# Alaska State Legislature

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Representative.Mark.Neuman@legis.state.ak.us

## ***Representative Mark A. Neuman*** *District 15*

### MEMORANDUM

**TO:** Representative Kurt Olson  
**FROM:** Representative Mark Neuman  
**DATE:** January 22, 2008  
**SUBJECT:** Hearing Request for HB 303

---

Attached is a committee package for House Bill 303, "An Act relating to marine products and motorized recreational products; and providing for an effective date." The package includes the current version of the bill, sponsor statement, and backup materials.

I would appreciate you scheduling this legislation so that it may be presented to the Labor and Commerce Committee at the earliest possible date. Please feel free to contact me, or my aide Rex Shattuck, with any questions.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Mark Neuman".

# Alaska State Legislature

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## *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

December 31, 2007

**SUBJECT:** Sectional summary of bill draft relating to marine products and motorized recreational products (Work Order No. 25-LS1183\A)

**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

Representative Mark Neuman

December 31, 2007

Page 2

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.

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.

**HB**

**315**

# Audit Report

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DEPARTMENT OF COMMERCE, COMMUNITY,  
AND ECONOMIC DEVELOPMENT

BIG GAME COMMERCIAL SERVICES BOARD  
SUNSET REVIEW

August 16, 2007

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Audit Control Number:

08-20052-07

Division of Legislative Audit  
P.O. Box 113300, Juneau, Alaska 99811-3300

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed as mandated by Alaska Statutes or at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in Juneau, Anchorage, or at our website <http://www.legaudit.state.ak.us/>

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**Pat Davidson, CPA**  
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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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August 30, 2007

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes, the attached report is submitted for your review.

### DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT BIG GAME COMMERCIAL SERVICES BOARD SUNSET REVIEW

August 16, 2007

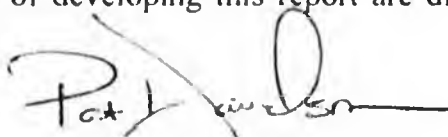
Audit Control Number

08-20052-07

The audit was conducted as required by AS 44.66.0.0 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, AS 08.03.010(c)(22) states that the Big Game Commercial Services Board (board) will terminate on June 30, 2008 and will have one year from that date to conclude its administrative operations.

In our opinion, the termination date for the board should be extended. The licensing of qualified guide-outfitters and transporters benefits the public's safety and welfare. We recommend the legislature extend the termination date of the board to June 30, 2012.

The audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are discussed in the Objectives, Scope, and Methodology section.

  
Pat Davidson, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Big Game Commercial Services Board (board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. Currently, AS 08.03.010(c)(22) states that the board will terminate on June 30, 2008 and will have one year from that date to conclude its administrative operations.

### Objectives

Our specific audit objectives were:

1. To determine if the termination date of the board should be extended;
2. To determine if the board is operating in the public interest; and,
3. To determine if the board has exercised appropriate regulatory oversight of licensed guide-outfitters and transporters.

### Scope:

Our audit reviews the operations and activities of the board for the period July 26, 2005 through June 30, 2007. The assessment of the board is based on criteria set out in AS 44.66.050(c).

### Methodology:

To accomplish the audit objectives, we:

- Reviewed applicable federal regulations and state guide-outfitter/transporter statutes and regulations;
- Read annual reports and minutes of board meetings related to, or issued by, the board;
- Examined licensing files including hunt records, transporter reports and hunt contracts;
- Examined complaint and investigation files for guide-outfitter and transporters;
- Reviewed various state and federal websites containing hunt and land use information;
- Read departmental correspondence files relating to board and licensee activities;
- Reviewed professional hunter website information;
- Analyzed board revenue and expenditure from FY 06 through FY 07;
- Reviewed legal information from the Department of Law and the courts;

- Reviewed the 2003 Special Audit No. 08-30025-03, *Department of Community and Economic Development, Division of Occupational Licensing, Guides and Transporters (October 16, 2003)*.

We also compared 1995 provisions of the former Big Game Commercial Services Board's statute and regulations with those since the board reinstatement.

We interviewed:

- Members of the Alaska Professional Hunters Association;
- Members of the Board of Big Game Commercial Services;
- Staff of the Division of Corporations, Business, and Professional Licensing within the Department of Commerce, Community, and Economic Development;
- Staff of the Division of Mining, Land, and Water within the Department of Natural Resources
- Staff of the Division of Fish and Wildlife Protection within the Department of Public Safety
- Staff at the Department of Fish and Game
- Staff at the Natural Resources Civil Division, Department of Law who regularly assist the board with statute and regulatory issues.
- Staff of the U.S. Forest Service, U.S Fish and Wildlife Service, and U.S. Department of the Interior's Bureau of Land Management

Additionally, during the course of the review we were contacted directly by interested members of the public conveying their concerns and issues over board proceedings and matters.

## ORGANIZATION AND FUNCTION

The Big Game Commercial Services Board (board) was reestablished by Chapter 84, Section 3, SLA 2005 and became effective July 26, 2005. The board is responsible for licensing and regulating activities of big game guides and transporters. Guiding involves providing, services, equipment or facilities to a big game hunter in the field. Transporting, which can be provided both by a guide or separately licensed transporter means delivery of big game hunters, their equipment or harvested animals to, from or in the field. Alaska Statutes require nonresident U.S. citizens and nonresident foreign nationals to be accompanied by a licensed guide when hunting big game species in Alaska.<sup>1</sup>

Previously, the board was terminated effective June 30, 1995 and its regulatory responsibility was transferred to the Division of Corporations, Business, and Professional Licensing (the division or DCBPL) within the Department of Commerce, Community, and Economic Development (DCCED). DCBPL staff performed the oversight, licensing, and investigations of guide-outfitters' and transporters' licensees from July 1995 through July 2005. Upon reinstatement the regulatory responsibilities were transferred back to the board.

### Membership on the Board

The board is composed of nine members. Membership consists of two public members, two currently licensed registered guide-outfitters, two licensed transporters, one member of the Board of Game, and two private landholders.

The public members cannot be engaged in the guiding or transporting profession, or have a direct financial interest in the piloting profession. All members must be residents of Alaska.

### Duties of the Board

1. Prepare and grade a qualification examination for registered guide-outfitter licenses that require demonstration that the applicant is generally qualified to provide guided and outfitted hunts and, in particular, possess knowledge of fishing, hunting, and guiding laws and regulations.

<sup>1</sup> AS 16.05.407 and .408

### **Exhibit 1**

#### **Big Game Commercial Services Board Members As of June 30, 2007**

##### Licensed Registered Guide-Outfitter Members

Paul Johnson - Chairman  
Richard Roher

##### Transporter Members

Colin Brown  
Leif Wilson

##### Private Landholder Members

Raymond Stoney  
*Vacant*

##### Public Members

Bob Mumford  
Betty Jo Schmitz

Member of the Board of Game  
Ted Spraker

2. Prepare and grade a certification examination for each game management unit (GMU) in which the registered guide-outfitter intends to provide big game hunting services. The exam requires demonstration by the guide-outfitter that they possess knowledge of the terrain, transportation problems, game, and other characteristics of the GMU.
3. Provide for administration of examinations for registered guide-outfitters at least twice a year.
4. Authorize the issuance of registered guide-outfitter, master guide-outfitter, class-A assistant guide, assistant guide, and transporter licenses. Prior to issuance or renewal the applicant of any class of guide or transporter license must certify by signed document the right to obtain, or exercise the privileges granted by a hunting, guiding, outfitting, or transportation services license is not revoked or suspended in this state, another state, or Canada.
5. Impose appropriate disciplinary sanctions on a licensee.
6. Regularly disseminate information regarding examinations and other qualifications for all classes of guide licenses to residents of the rural areas of the State.
7. Adopting procedural and substantive regulations.
8. Meet at least twice annually.

Division of Corporations, Business, and Professional Licensing (DCBPL or division)

DCBPL provides administrative assistance to the board. Administrative assistance includes budgetary services/functions such as collecting fees, maintaining files, receiving/issuing application forms; publishing notice of examinations and meetings; and compiling/maintaining a current register of licensees. On its own initiative, the division may conduct an investigation if it appears an individual has engaged, or is about to engage, in a practice over which the division has authority. DCBPL can issue an order that the individual stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of a license holder and/or association, and issue subpoenas for the attendance of witnesses and records.

Licensing examiners at DCBPL are assigned the function of administering and grading the written portion of the registered guide-outfitter and game management unit examinations, issuing initial and renewal licenses for all types of guide-outfitters and transporters, reviewing and data entry of information contained on hunt records and transporter activity reports from guide-outfitter and transporter licensees, handling requests for information, issuing and receiving correspondence over licensees, and refer complaints received to the investigation section within DCBPL.

An investigator at DCBPL is assigned to conduct investigations of complaints on behalf of the board which are received from clients of a guide-outfitter or transporter, the public, other guide-outfitters and transporters, licensing examiners, and other state or federal agencies. A complaint which is clearly a potential criminal violation is referred by the investigator to an appropriate law enforcement agency.

(Intentionally left blank)

## REPORT CONCLUSIONS

Under AS 08.03.010(22), the Big Game Commercial Services Board (board) will terminate on June 30, 2008. If the legislature does not take action of extending the board's termination date, then AS 08.03.020 provides the board one year in which to conclude its administrative operations.

The regulation and licensing of qualified, registered guide-outfitters and transporters benefits the public's safety and welfare as well as protection of the state's wildlife resources. The board provides reasonable assurance that the individuals licensed to guide and or outfit hunts, as well as transportation of hunters to and from hunt locations in Alaska, are qualified to do so. The board has also successfully developed and adopted regulatory changes to improve the big game commercial services industry in Alaska.

As indicated in the Analysis of Public Need section of this report, the board has met the various statutory sunset criteria, generally, in an effective and efficient manner; exceptions are discussed in the Findings and Recommendations section. In our opinion, the board serves an important public purpose. Based on the operational deficiencies identified and the limited time the board has functioned since reinstatement, we recommend the board continue in statute and its termination date be extended for four years until June 30, 2012.

(Intentionally left blank)

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The director of the Division of Corporations, Business, and Professional Licensing should ensure procedures are adhered to by division staff for the efficient and effective support of the Big Game Commercial Services Board's day-to-day operations.

Several processes and procedures, required of the Division of Corporations, Business, and Professional Licensing (DCBPL or division) staff to provide adequate support of the Big Game Commercial Services Board (board), were identified as untimely and inaccurate. Issues identified were:

1. Licensee files missing required documentation. One of eight newly-licensed registered guide-outfitter, and one of six assistant guide-outfitter, reviewed license renewals did not have all documentation required for licensure. The registered guide's file was missing both scores showing successful completion of the practical exam and proof of financial responsibility.<sup>2</sup> The assistant guide's file was missing proof of first aid.<sup>3</sup>

Without required documentation to prove compliance with eligibility requirements, it is unclear whether requirements were met. The procedure to ensure all required licensing support documentation be retained in the licensee file was not followed.

2. Public notice not issued for exam. Of the four examinations held from October 2005 through March 2007, one examination<sup>4</sup> was not publicly noticed as required by AS 08.01.050(a)(6). Failure to adequately publish dates of examinations means applicants who would otherwise take the exam, were not aware it was scheduled. The procedure, to ensure public notice is adequately posted by divisional staff, was not followed.
3. Proposed regulations issued by the board were not publicly noticed in a timely manner. By mis-prioritizing work efforts, division staff failed to publicly notice the draft regulations in a timely manner prior to an upcoming board meeting. The result was insufficient time for public comments to be received. In the adoption of new regulations, the board must allow an adequate period for public comments.<sup>5</sup> Consequently, the board incurred additional and unnecessary costs in order to adopt the regulatory changes at a later meeting.

<sup>2</sup> AS 08.54.610(a)(3) and (4) and 12 AAC 75.220(b)(2)(A) and (B)

<sup>3</sup> 12 AAC 75.130(3)

<sup>4</sup> The October 28, 2005 exam

<sup>5</sup> AS 44.62.190(a)

4. Meeting minutes not completed timely, accurately, or consistently posted on the board's website.

The board delegates minutes' preparation to the division. Issues with the division's minutes from board meetings include:

- Three of eight board meetings did not have minutes drafted within the statutory 20 days following the meeting.<sup>6</sup> Further, one of the three was not completed until six months later.
- Two of eight board meetings, reviewed, found discrepancies between the documented minutes when compared to the taped recordings.
- Four of eight board meeting minutes were not posted on the division's website.

Due to the division staff's mis-prioritizing work efforts and lack of attention to detail, interested parties using board minutes' information may take action or make decisions they, otherwise, would not have.

Although each individual item by itself may not significantly affect board operations, taken as a whole they hinder the board's ability to effectively and efficiently function in the public's interest. Many items identified were due, in part, to a lack of follow-through and adherence to regulatory requirements and division-established policy and procedures by staff. Accordingly, we recommend the DCBPL director ensure adherence to statute, regulations, and policy and procedures by the division staff responsible for providing support functions in the board's day-to-day operations.

Recommendation No. 2

The division's director should ensure staff adheres to investigative case management procedures.

Lack of monitoring the status of investigations has hampered the effectiveness of board operations. The issues identified are:

1. Open status classification on the case management system is not accurate. A review of status reports found four out of eight complaints, and three of ten investigations, were not closed in a timely manner on the division's case management information system (system). The complaints or investigations were either resolved or referred to a law enforcement agency, but remained open on the system.

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<sup>6</sup> AS 08.01.070(7)

Several reasons were identified for complaints and investigations remaining open on the system. In part, it was due to a combination of extended vacancy of the board-assigned investigator and limited available resources to adequately perform monitoring of case statuses for accuracy. Further, the system does not provide adequate case status notification to alert staff that cases remain open for protracted periods of time.

2. Closed status classification on the system is not accurate. Review of complaints found one of 18 in a closed status which should have been reported as an active investigation. The complaint was classified as closed for over seven months. When the investigative staff was notified of this error, they reopened the complaint as an investigation immediately.

The process to change a complaint to an investigation on the system is manual. As such, the followed procedure must be performed thoroughly and completely to prevent premature closure of an investigation. The possibility exists that licensees reported to the investigative section, who might have otherwise been found in violation of either a civil or criminal action, are not adequately and appropriately investigated. This situation could potentially place public safety and wildlife resources at risk.

The responsibility to investigate and monitor occupational licensing complaints is statutorily the duty of the Department of Commerce, Community, and Economic Development, as set out in AS 08.01.050(a)(19). Without available accurate case management system status reports, investigative staff and the board do not have reliable information to effectively or efficiently manage limited available investigative resources.

Accordingly, we recommend the division's director ensure adherence over procedures to accurately reflect case status on the case management system to support board operations.

### Recommendation No. 3

The division, in conjunction with the board, should increase licensing fees to mitigate the board's current and projected operating deficits.

At the end of FY 07, the board had an estimated operating deficit of \$52,000. Based on expenditures and revenues to-date, we project that it is likely the board will be in a deficit again at the end of FY 08. Alaska Statute 08.01.065(c) requires fees for an occupation be set to approximate the regulatory costs related to that occupation.

Contributing factors to the deficit include increased expenditures for administrative, investigative, and contracted support staff, as well as increased board travel costs. Without increases to licensing fees, a deficit will remain and it is unlikely the board will cover annual operating costs in FY 08 or FY 09.

We recommend that the division and the board review licensing fees and regulatory costs, increasing fees to cover the annual operating costs to eliminate the deficit.

#### Recommendation No. 4

The board should consider modifying regulatory first aid requirements to provide consistency between guide-outfitter licensee types.

Registered guide-outfitters are not required to maintain a valid first aid card. Yet assistant guide-outfitter licensee types are required to possess a current first aid card issued by the Red Cross or similar organization for licensure. Public safety is placed at risk by not requiring all guide-outfitter licensee types to provide proof of current first aid training at the time of initial and renewal of licenses.

It is unclear why the first aid requirements are inconsistent among guide licensee types. However, registered guide-outfitters must have practical field experience in first aid.<sup>7</sup> Due to the nature of the big game commercial services industry and remoteness of activity, it is imperative that all the board's guide licensees are skilled and trained in current first aid procedures to ensure public safety.

We recommend the board make appropriate changes to regulations which require proof of current first aid certification for all guide-outfitters, under board purview, for both initial and renewed licenses.

#### Recommendation No. 5

The board should cease the electronic accumulation of information gathered from hunt records and transporter reports.

Staff resources were ill-spent recording historic licensee reports into an electronic database. The board did not identify specific use of the data or the amount of time and resources to allot for the task prior to assigning it to the division. The consensus, of anticipated users (state and federal agencies, plus the board, itself), of this information was only current activity<sup>8</sup> would be useful, with some preferring imaged copies over data reports.

It is the responsibility of the department to collect and maintain<sup>9</sup> the required records and reports from licensees, but statute is silent on what format the information should be maintained. In addition, compilation of data from the reports *may* be included in

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<sup>7</sup> AS 08.54.610(a)(2)

<sup>8</sup> Current activity was identified as the previous 12 months.

<sup>9</sup> AS 08.54.760(a)

departmental reports, but is not required.<sup>10</sup> Avoiding waste of resources is a fundamental, good business practice. Lacking a clear understanding of both the use of information and resources required has interfered with the division accomplishing critical board functions and contributed to the financial deficit which will have to be paid by all licensees.

We recommend the board cease electronic data accumulation of licensee reports until the following are identified: (1) concise and clear use of the information, (2) specific stakeholders, (3) timeframe to reasonably complete the work, and (4) costs associated with the data collection prior to directing division staff to proceed.

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<sup>10</sup> AS 08.54.760(b)

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## A ANALYSIS OF PUBLIC NEED D

### Limited Analysis

The following analyses of Big Game Commercial Services Board (board) activities relate to the public-need factors defined in the sunset law, AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas covered within the scope of our review.

***Determine the extent to which the board, commission, or program has operated in the public interest.***

The regulation and licensing of qualified registered guide-outfitters and transporters benefits the public's safety and welfare as well as protects the state's wildlife resources. The board provides reasonable assurance that the individuals licensed to guide and/or outfit hunts, as well as the transporting of hunters, are qualified to do so.

The board has issued licenses in a uniform manner, held required meetings, and administered examinations in accordance with statutory requirements. During our review period, the board expanded professional ethics regulations for both guides and transporters, as well as enhanced the registered guide-outfitter exam. In addition, the board implemented regulations detailing client contract requirements for registered guide-outfitter. As of May 31, 2007, the board had 2,464 licensed guide-outfitters and transporters.

***Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.***

### Board Finances

State law requires that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation.<sup>11</sup> Division of Corporations, Business, and Professional Licensing (DCBPL or division), with input from the board, sets fees based on a two-year cycle, with the majority of the revenue collected in even-numbered fiscal years. With the reestablishment of the board, the division understands the licensing rate fees will need to be reassessed to cover any increase in operational costs. The exhibit, below, summarizes the board's operating costs and revenues for the period FY 04 through FY 07.

Exhibit 2, on the following page, identifies a cumulative deficit at the end of FY 07. Increases for administrative and investigative services from DCBPL staff, contract services for new regulatory development, and increased travel costs contributed to the deficit. Given

<sup>11</sup> AS 08.01.065(c)

the increased costs for general board operations, it is likely the board will continue to incur a revenue deficit during the next licensing period. DCBPL and the board should increase licensing fees. (See Recommendation No 3.)

**Exhibit 2**

<b>Big Game Commercial Services Board</b>				
<b>Schedule of License Revenue and Expenditures</b>				
<b>As of June 30, 2007</b>				
<b>(Unaudited)</b>				
	(Prior to Board Reinstatement)		(After Board Reinstatement)	
	FY 04	FY 05	FY 06	FY 07
Total Revenues	<u>\$ 325,600</u>	<u>\$ 88,000</u>	<u>\$ 333,738</u>	<u>\$ 68,879</u>
Direct Expenditures				
Personal Services	65,200	54,000	113,541	170,896
Travel	900	500	16,310	33,159
Contractual	11,400	24,600	35,724	64,713
Supplies	<u>100</u>	<u>500</u>	<u>553</u>	<u>2,455</u>
Total Direct Expenditures	<u>77,600</u>	<u>79,600</u>	<u>166,128</u>	<u>271,223</u>
Administrative Indirect Costs	<u>128,400</u>	<u>112,700</u>	<u>114,907</u>	<u>127,976</u>
Total Expenditures	<u>206,000</u>	<u>192,300</u>	<u>281,035</u>	<u>399,199</u>
Annual Revenues over (under) Expenditures	<u>119,600</u>	<u>(104,300)</u>	<u>52,703</u>	<u>(330,320)</u>
Beginning Cumulative Surplus (Deficit)	210,300	329,900	225,600	278,303
Ending Cumulative Surplus (Deficit)	<u>\$ 329,900</u>	<u>\$ 225,600</u>	<u>\$ 278,303</u>	<u>\$ (52,017)</u>

Division Support Activities

The divisional support activities of the board, as set out in statute,<sup>12</sup> have not been effective or efficient for the board's needs since reinstatement. Several activities are identified as needing improvement and resulted in hampering the general operations of the board. (See Recommendation Nos. 1 and 2.)

Board Directive Over Hunt Records and Transporter Reports

The board issued a directive for the division to begin data entry of all information contained on required hunt records and transporter reports which had not been previously entered into the division's database. The benefit, over cost, is questionable and results in an inefficient use of available resources. (See Recommendation No 5.)

<sup>12</sup> AS 08.01.050 and AS 08.01.087

***Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.***

During the past two years, the board has supported proposed statutory changes and has recommended and adopted regulations of general benefit to the public interest in areas such as professional ethics, client-guide contract, and licensing requirements to ensure guide and transporter standards are clearly defined. In addition, examination requirements of candidates for registered guide-outfitter were improved to address the current needs of the industry by ensuring new licensees have demonstrated practical knowledge covering several specific abilities.

Other regulations were added requiring documented proof of various items for licensure such as authorization from landowners, in advance, of guiding in an area and criminal background reports. However, regulations over first aid requirements are inconsistent. (See Recommendation No 4.)

***Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.***

The board has published notices of examinations, meetings, and prospective regulation changes. Public notice of meetings and exams are made in newspapers of general circulation and also in the State of Alaska's *Online Public Notice* website. Additionally, a period of time for public comment was available at each board meeting.

DCBPL maintains a list of individuals or organizations who are interested in the regulations of that occupation. The division sends a *Notice of Proposed Regulations* automatically to the parties on the occupation listing, each time there is a proposed change in the occupation's regulations.

However, during the period under review, one exam was not publicly noticed by the division. (See Recommendation No 1.)

***Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.***

Each board meeting's agenda allows time for public comment. The public has been encouraged to use these public comment periods to express concerns, obtain information from the board, and participate in the regulatory process. Interested parties may attend the meetings in person or by teleconference. In addition, the board has established multiple subcommittees in which the public has had substantial input over various proposed regulatory developments.

***Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.***

No complaints were filed with the Office of the Ombudsman or the Office of Victims Rights in recent years regarding the operations of the board, specifically, or guide-outfitters and transporters in general. The board revoked one registered guide-outfitter license in FY 07. The revocation was the result of the guide's actions.

Complaints and concerns regarding decisions and activities of the board, as well as complaints about the performance of licensed guide-outfitters and transporters, were generally handled and resolved in an appropriate manner consistent with its priority and limited staff resources of the division. However, during the sunset period, one investigation was not followed through and remained uninvestigated for approximately seven months. (See Recommendation No. 2.)

For the period July 26, 2005 to May 31, 2007, the division opened 53 investigations. Another 63 complaints were filed during the same period, of which 45 were not investigated further due to lack of jurisdiction or were not determined significant enough for an investigation.

***Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.***

Exhibit 3, below, illustrates the number of active licensees of the board as of May 31, 2007.

**Exhibit 3**

<b>Schedule of Guide-Outfitters and Transporters as of May 31, 2007</b>			
<b>New Licenses Issued (exclusive of renewals)</b>			<b>Current Licenses (as of May 31, 2007)</b>
	<b>FY 06</b>	<b>FY 07</b>	
<b>Master Guide</b>	7	4	113
<b>Registered Guide-Outfitter</b>	22	10	548
<b>Class-A Assistant Guide-Outfitter</b>	10	11	193
<b>Assistant Guide-Outfitter</b>	192	142	1,338
<b>Transporter</b>	35	32	272
<b>Totals</b>	<u>266</u>	<u>199</u>	<u>2,464</u>

The application process and required documentary support for licensing is reasonable and appropriate. Each applicant is required to satisfy the requirements for licensing. The licensing process has been enhanced due to new regulations instituted by the board and is neither unduly restrictive nor too lenient. One inconsistency in the licensing requirement was identified relating to required first aid proficiency by the guide-outfitter licensee group. (See Recommendation No 4.)

While our review of licensee files did not identify significant issues with the division's board-delegated responsibility of issuing new and renewed licenses, two files lacked required supporting documentation as proof of meeting board requirements. (See Recommendation No 1.)

***Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.***

No evidence indicated that hiring practices or the board's appointments were contrary to state personnel practices. No complaints have been filed with the Human Rights Commission, the Governor's Office, the Office of the Attorney General, the Office of the Ombudsman, and the Office of Victim's Rights.

In addition, each time the board has denied an applicant a license, the reason has been based on experience requirements and not personal attributes of the applicant.

***Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.***

Specific recommendations for operational changes, enabling the board to better serve the public interest, are described in Recommendations Nos. 1 through 5 of this report.

***Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.***

Generally, the board has effectively attained its objectives since reestablishment on July 26, 2005. The board has protected the public through the implementation of regulations over ethics, improvements over the licensing and examination process, and administrative actions. It has proposed and implemented regulatory and supported, proposed statutory changes of benefit to the public.

However, several operational related deficiencies have hampered the efficiency of the board. Specific issues are described in Recommendation Nos. 1, 2, and 5.

***Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.***

No duplication of efforts or activities of the board was identified with the private sector, other governmental agencies, including both state and federal agencies. Further, the statutorily required hunt records and transporters reports were not found to be generally duplicative of other state agencies' required post hunt and transport reports.



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Office of the Commissioner

*Sarah Palin, Governor*  
*Emil Notti, Commissioner*

September 17, 2007

Ms. Pat Davidson  
Legislative Auditor  
Legislative Budget and Audit Committee  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, Alaska 99811-3300

RECEIVED  
SEP 26 2007  
LEGISLATIVE AUDIT

Dear Ms. Davidson:

RE: Preliminary Audit Report, Big Game Commercial Services Board

Thank you for the opportunity to comment on the findings addressed in your Preliminary Audit Report concerning the Big Game Commercial Services Board. The Department of Commerce Community and Economic Development ("DCCED") appreciates and agrees with your Office's recommendation that regulation and licensing of qualified guide-outfitters and transporters by the Big Game Commercial Services Board benefits the public's safety and welfare as well as protects the State's wildlife resources.

The comments shared with your Division in earlier communications concerning the Big Game Commercial Services Board audit remain unchanged.

DCCED is aware of the administrative deficiencies identified in your findings and recommendations and has undertaken steps to correct this situation. The Director of the Division of Corporations, Business and Professional Licensing has taken and will continue to take steps to ensure that any deficiencies identified in your report are resolved. To that end, I would like to address the Recommendations in your preliminary audit report.

Recommendation No. 1: The director of the Division of Corporations, Business and Professional Licensing (DCBPL or division) should ensure procedures are adhered to by division staff for the efficient and effective support of BGCSB's day-to-day operations.

We concur with this recommendation. The issues identified in item #1 regarding missing and incomplete documentation in license files have been corrected by the use of new staff, and new check sheets which staff use to insure that each file is complete. With respect to item #2 which dealt with a lack of public noticing an examination, this matter has been discussed internally and procedures has been put in place so that the public receives a timely notice of such examinations.

With respect to Item #3 DCCED shares your concerns about proposed regulations being issued without adequate public notice. New staff arrangements and training are in place and are designed to prevent a re-occurrence.

Since reestablishment of the BGCSB, there have been three major regulation projects, and all three were all posted in a timely manner once the information reached the regulations staff. The regulations project referred to in your findings was public noticed on March 10, 2007; it was to announce "oral comments – public hearing" that was being held in conjunction with the Board meeting on March 19-20, 2007. The "written" comments deadline ended on April 10, 2007. Once the comment period ended, the Board adopted the regulations via a teleconferenced meeting on May 18, 2007. Due to a one time miscommunication, the Board's wishes were not conveyed to the regulations staff in sufficient time for the notice to be sent out. As a result, the Board itself misunderstood what the status was of their regulation project. The public notice on March 10, 2007 and timeline for the series of events that followed were appropriate and acceptable to the regulations attorney's office in the Department of Law. The Division of Corporations, Business and Professional Licensing has adopted procedures to create better communication between the Big Game board and the staff.

Item #4 concerned with Board minutes which were not drafted within 20 days. This issue again was a matter of staffing and the division has taken steps to resolve these staffing matters. However, the audit also mention that minutes were not posted to the division's website in conformity with 2 AAC 96.210(a). Please note, this regulation does not necessarily mandate that minutes be posted to the division's website. It requires that the minutes be made available to requestors of the information. The division posts meeting minutes to websites for convenience of website users and will continue this practice.

Recommendation No. 2: The director of DCBPL should ensure staff adheres to investigative case management procedures.

We appreciate your recognizing the extended board assigned investigator vacancy and the lack of appropriate case management tracking systems as the causes for the investigative deficiencies. The division has tried for some time to procure an adequate case management tracking system that would benefit investigations for all regulatory programs. DCCED is currently implementing internal reforms aimed at creating a system for monitoring investigations and ensuring that they are completed in a reasonable time frame. The department embraces the use of new technology and the department will continue to provide its investigators with tools they need to address the investigative deficiencies. In that regard the department is in the process of the procurement of an automated case management tracking system.

Recommendation No. 3: The division, in conjunction with BGCSB, should increase licensing fees to mitigate the board's current and projected operating deficits.

The department concurs with this recommendation. A review of each program's financial status is conducted by the division prior to a license renewal. Licenses for guide-outfitters and transporters expire on December 31, 2007; and therefore, the fees are currently under review.

Recommendation No. 4: The board should consider modifying regulatory first aid requirements to provide consistency between guide-outfitter licensee types.

The department concurs with this recommendation. The division will review statutes and regulations with the Board to standardize first aid requirements among all categories of licensure within the BGCSB program.

Recommendation No. 5: The board should cease the electronic accumulation of information gathered from hunt records and transporter reports.

The department has already invested significant time and resources in electronic accumulation of information from hunt records and transporter reports. We agree the data requested on the reports should be streamlined and its purpose should relate specifically to the licensing of guide-outfitters and transporters. We concur with your recommendation to the division work with the Board to identify (1) concise and clear use of the information; (2) specific stakeholders; (3) timeframe to reasonably complete the work; and (4) costs associated with the data collection.

Given the amount of resources already invested in electronically capturing the data from these reports, we think it behooves the department to continue collecting information from hunt and transporter records. Additionally, capturing the information electronically will ultimately save valuable staff time from having to manually copy paper reports for enforcement purposes.

The department will commit to working with the Board to identify the points you raised, and will focus its attention on data capture of current information for now.

I assure you the administrative issues identified in your preliminary audit report will be addressed and corrected. We believe that the Board has made a significant contribution to improve commercial guide services in Alaska; and the department will provide the support needed to make this regulatory program operate for the benefit of the industry and the citizens of this State.

Thanks again for allowing us to comment on your findings.

Sincerely,

  
Emil Notti  
Commissioner

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# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 315  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB315-CED-OL-02-25-08 Dept. Affected: DCCED  
 Title Extend Big Game Commercial Services Board RDU Corp. Bus & Prof Licensing (117)  
 Component Corp. Bus & Prof Licensing  
 Sponsor Rules by Request of LB&A  
 Requester Senate Resources Component Number 2360

**Expenditures/Revenues** (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services		215.7	215.7	199.2	199.2	199.2	
Travel		25.6	25.6	25.6	25.6	25.6	
Contractual		163.8	163.8	108.5	108.5	108.5	
Supplies		19.6	19.6	14.5	14.5	14.5	
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>424.7</b>	<b>424.7</b>	<b>347.8</b>	<b>347.8</b>	<b>347.8</b>	

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( 1156 )</b>	<b>0.0</b>	<b>849.4</b>	<b>0.0</b>	<b>695.6</b>	<b>0.0</b>	<b>347.8</b>	
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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							
1156 Receipt Supported Services		424.7	424.7	347.8	347.8	347.8	
<b>TOTAL</b>	<b>0.0</b>	<b>424.7</b>	<b>424.7</b>	<b>347.8</b>	<b>347.8</b>	<b>347.8</b>	

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

This legislation extends the Big Game Commercial Services Board to June 30, 2012. In accordance with AS08.03.020, funding is extended one year following the termination date allowing the Board to conclude its affairs. Programs operate on a two year cycle (biennium). Operating expenditures are calculated by averaging the last full biennium cycle and anticipated increases in program costs. Anticipated new costs for this time frame include funds for contractual services for investigations, for the development and maintenance of a new database program, for managing guide applications, as well as for increased publication costs for examination materials. FY 2009 funding is included in the Operating Budget request. The program is required to cover its costs with licensing fees under AS 08.01.065. Revenue generated by board fees collected on a biennial renewal basis is anticipated to cover the full operating costs.

Prepared by: Chris Wyatt, Administrative Officer  
 Division: Corporations, Business, and Professional Licensing  
 Approved by: Emil R. Notti, Commissioner  
 Agency: Commerce, Community, and Economic Development

Phone (907) 465-2572  
 Date/Time 2/25/08 11:14 AM  
 Date 2/25/2008




**Representative Ralph Samuels**

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**House District 29**

Date: January <sup>17</sup>~~15~~, 2008

To: Representative Kurt Olson, Chair  
House Labor & Commerce Committee

From: Representative Ralph Samuels 

RE: Hearing Request for HB 315

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Please schedule a hearing for HB 315 - Extend Big Game Commercial Services Board at your earliest convenience.

Attached please find:  
HB 315  
LB&A Audit # 08-20052-07

Further backup information will be delivered to your office as quickly as possible. Please contact Linda Hay of my office with any questions at x 6791.

Thank You.



## **LEGISLATIVE BUDGET & AUDIT COMMITTEE**

Representative Ralph Samuels, Chairman

### **Sponsor Statement**

#### **HB 315 Extend Big Game Commercial Services Board**

*An Act extending the termination date of the Big Game Commercial Services Board; and providing for an effective date*

**House Bill 315** extends the sunset date of the Big Game Commercial Services Board until June 30, 2012.

The Big Game Commercial Services Board was reestablished by Chapter 84, Section 3, SLA 2005 and became effective July 26, 2005. The board is responsible for licensing and regulating activities of big game guides and transporters. Guiding involves providing, services, equipment or facilities to a big game hunter in the field. Transporting, which can be provided both by a guide or a separately licensed transporter means delivery of big game hunters, their equipment or harvested animals to, from or in the field.

The board is comprised of nine members. Membership consists of two public members, two currently licensed registered guide-outfitters, two licensed transporters, one member of the Board of Game, and two private landholders.

It is the opinion of the Legislative Budget and Audit Committee that the Big Game Commercial Services Board should be extended. I ask for your support in extending its sunset date to June 30, 2012.

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE



Division of Legislative Audit

P.O. Box 113300  
Juneau, AK 9811-3300  
(907) 465-3830  
FAX (907) 465-2347  
legaudit@legis.state.ak.us

SUMMARY OF: A Sunset Review of the Department of Commerce, Community, and Economic Development, Big Game Commercial Services Board, August 16, 2007.

### PURPOSE OF THE REPORT

In accordance with Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Big Game Commercial Services Board (board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, AS 08.03.010(c)(22) states that the board will terminate on June 30, 2008 and will have one year from that date to conclude its administrative operations. Our report objectives were as follows:

1. To determine whether there is a public need for the board and if its existence should be extended.
2. To review the board's major functions of licensing and investigations for effectiveness in meeting public need and for efficiency of operation.

### REPORT CONCLUSIONS

In our opinion, the termination date of the board should be extended. The board has demonstrated a need for its continued existence for regulating and licensing qualified, registered guide-outfitters and transporters which benefits the public's safety and welfare as well as protection of the state's wildlife resources. The board has also successfully developed and adopted regulatory changes to improve the big game commercial services industry in Alaska.

As indicated in the Analysis of Public Need section of this report, the board has met the various statutory sunset criteria, generally, in an effective and efficient manner; exceptions are discussed in the Findings and Recommendations section. In our opinion, the board serves an important public purpose.

Based on the operational deficiencies identified and the limited time the board has functioned since reinstatement, we recommend the board continue in statute and its termination date be extended for four years until June 30, 2012.

#### FINDINGS AND RECOMMENDATIONS

1. The director of the Division of Corporations, Business, and Professional Licensing (DCBPL) should ensure division staff adheres to statute, regulations, and policy and procedures for efficient and effective support of the board's day-to-day operations.
2. The division's director should ensure case management procedures are adhered to by staff to accurately reflect case status on the case management system in support of the board's operations.
3. The board and the division should review licensing fees and regulatory costs, and increase fees to cover the annual operating costs to eliminate the anticipated deficit. At the end of FY 07, the board had an estimated operating deficit of \$52,000.
4. The board should make appropriate changes to regulations which require proof of current first aid certification for all guide-outfitters, under board purview, for both initial and renewed licenses.
5. The board should cease the electronic accumulation of information gathered from hunt records and transporter reports. Staff resources were ill-spent recording historic licensee reports into an electronic database. The cost versus the benefit of capturing information from reports is questionable.

# Big Game Commercial Services Board

State of Alaska > Commerce > Professional Licensing > Big Game

**Licensing Information**

In the interest of the state's wildlife resources, the Big Game Commercial Services Board adopts regulations governing the big game commercial service industry in Alaska.

**Application/Forms**

**Examinations**

The board makes final licensing decision and takes disciplinary actions against persons who violate licensing laws.

**Guide Use Areas**

**List of Licensees**

The Big Game Commercial Services Board is staffed by the Division of Corporations, Business and Professional Licensing.

**> Frequently Asked Questions**

The Big Game Commercial Services Board consists of two licensed Registered Guide-Outfitters, two licensed Transporters, two private landholders, two public members, and one member from the Board of Game.

**Board Business**

**Minutes**

**Meetings**

Board members are appointed by the Governor and confirmed by the Legislature.

**> What's New**

**Board Members**

**Board Sanctioned Subcommittees**

**The Revised BGCSB Statute and Regulation book is now available (dated June 2007).**

**Statutes and Regulations**

**Regulated Professions**

**BGCS Statutes and Regulations**

- a. Assistant Guide
- b. Class-A Assistant Guide
- c. Master Guide-Outfitter
- d. Registered Guide-Outfitter
- e. Transporter

**Centralized Licensing Statutes**

**Centralized Licensing Regulations**

**Contact Information**

Mail: P.O. Box 110806  
Juneau, AK 99811-0806

Vacant  
**Licensing Examiner**  
Phone: (907) 465-2543  
Fax: (907) 465-2974

Cynthia Cintra  
**Licensing Examiner**  
cynthia.cintra@alaska.gov  
Phone: (907) 465-2691  
Fax: (907) 465-2974

**Investigations/Complaints**

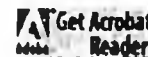
To file a complaint or to bring a matter pertaining to the actions of a licensed, or unlicensed, professional to the attention of our investigative staff, please send an email to: [investigations@alaska.gov](mailto:investigations@alaska.gov)

**Quick Links...**

- Buy a Business License
- Business License Search
- Professional License Search
- Download List of License Holders

**Of Interest...**

- Business Licensing
- Small Business Development
- Other Occupations Licensed in Alaska
- Notices of Proposed Regulations



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Other application forms may be mailed to you or picked up at a division office. Completed applications must be signed and submitted to the division with the appropriate fees.

**BE ADVISED**

The Board will seek maximum penalties of big game commercial services license holders who are found to be in violation of any state hunting, guiding, outfitting or transportation services statute and/or regulation.

Acupuncturists  
Architects, Engineers, and Land Surveyors  
Audiologists and Speech-Language Pathologists  
Barbers and Hairdressers  
Big Game Commercial Services Board  
Chiropractic Examiners

Webmaster    Contact the Division

# Big Game Commercial Services Board

State of Alaska > Commerce > Professional Licensing > Big Game > Board Members

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### BGCS Statutes and Regulations

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### Centralized Licensing Regulations

## Board Members

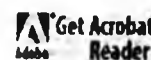
Member/Address	Position	Term Expires
Vacant	Private Landholder	
Collin B. Brown Yukon Eagle Air P.O. Box 203 Galena, AK 99741	Licensed Transporter	3/01/2009
Paul E. Johnson Gull Cove Lodge P.O. Box 22 Elfin Cove, AK 99825	Board Chair License Registered Guide-Outfitter	3/01/2009
Bob Mumford - Link to Bio 13391 Baywind Drive Anchorage, AK 99615	Public Member	3/01/2010
Richard A. Rohrer - Link to Bio P.O. Box 2219 Kodiak, AK 99615	Licensed Registered Guide-Outfitter	3/01/2011
Betty Jo Schmitz P.O. Box 57268 North Pole, AK 99705	Public Member	3/01/2009
Ted H. Spraker - Link to Bio 49230 Victoria Avenue Soldotna, AK 99669	Board of Game	3/01/2008
Raymond Stoney P.O. Box 70 Kiana, AK 99749	Private Landholder	3/01/2010
Leif Wilson 40-Mile Air P.O. Box 707 Tok, AK 99780	Licensed Transporter	3/01/2011

## Quick Links...

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## Of Interest...

- > Business Licensing
- > Small Business Development
- > Other Occupations Licensed in Alaska
- > Notices of Proposed Regulations



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Acupuncture  
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Big Game Commercial Services Board  
Chiropractic Examiners

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# Big Game Commercial Services Board

State of Alaska > Commerce > Professional Licensing > Big Game > Board Sanctioned Subcommittees

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### Centralized Licensing Regulations

## Board Sanctioned Subcommittees

Subcommittees generally meet during break-out sessions at regularly scheduled Board meetings. Licensees and public are welcome to attend and participate in subcommittee meetings. Please visit the "Meetings" link to obtain meeting dates, location and agenda.

### Subcommittees

Drawing Permits Subcommittee

Guide Examination Subcommittee

State Lands Subcommittee

## Quick Links...

- » Buy a Business License
- » Business License Search
- » Professional License Search
- » Download List of License Holders

## Of Interest...

- » Business Licensing
- » Small Business Development
- » Other Occupations Licensed in Alaska
- » Notices of Proposed Regulations



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Architects, Engineers, and Land Surveyors  
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Big Game Commercial Services Board  
Chiropractic Examiners

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# Big Game Commercial Services Board

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Centralized Licensing Regulations

## Applications/Forms

Please click on category below for available licensing forms. All forms may be viewed and printed with the free Adobe Acrobat Reader 6.0 or higher.

Initial License Applications	License Renewal Applications	Guide Use Area Registration Forms
------------------------------	------------------------------	-----------------------------------

## Sample Contracts

Alaska Statute 08-54-680 and regulations under 12 AAC 75 require Registered Guide-Outfitters and Transporters to provide a written contract to clients. Sample contracts are provided below. The contracts below may be used to meet the requirements in statute and regulation, or a licensee may choose to develop his/her own personalized contracts. It is very important that the contracts utilized meets all the specific requirements listed in AS 08.54.680 and 12 AAC 75.450 for Transporters, and 12 AAC 75.260 for Registered Guide-Outfitters.

Sample Transporter Contract, #08-0002, New 09/21/06.  
 Sample Guide-Outfitter Contract, #08-0001, New 09/25/06.

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- Acupuncture
- Architects, Engineers, and Land Surveyors
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- Chiropractic Examiners

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# Big Game Commercial Services Board

State of Alaska > Commerce > Professional Licensing > Big Game > Minutes

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October Teleconference

## Application/Forms

May Teleconference

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March Meeting

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February Teleconference

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December Meeting

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October Meeting - DRAFT

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Acupuncturists  
Architects, Engineers, and Land Surveyors  
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# Big Game Commercial Services Board

State of Alaska > Commerce > Professional Licensing > Big Game > Frequently Asked Questions

## Licensing Information

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## Frequently Asked Questions

### 1. Do I need a guide?

Nonresidents who hunt Brown Bear, Dall Sheep, or Mountain Goat must be accompanied in the field by licensed Alaska Big Game Registered Guide-Outfitter or be accompanied in the field by an Alaska resident 19 years or older who is within the second degree of kindred.

Nonresident aliens (non-U.S. citizens) hunting any big game must be accompanied in the field by an Alaska Big Game Registered Guide-Outfitter.

### 2. How can I receive a list of big game guides?

Download List of Licensees from Internet.

To receive a list in the mail of all currently licensed Big Game Master/Registered Guides-Outfitters and Transporters, submit a check or money order in the amount of \$5 (U.S. currency), made payable to the State of Alaska. Upon receipt of your written request and \$5 fee, a list will be forwarded to you. The \$5 fee and written request can be mailed to:

Division of Corporations, Business and Professional Licensing  
Big Game Commercial Services Board  
P.O. Box 110806  
Juneau, AK 99811-0806

If a guide-outfitter intends to provide big game services during the calendar year, the roster will provide the guide use area(s) that the master or registered guide-outfitter is authorized to provide big game services and the addresses of the master/registered guide-outfitters and transporters.

### 3. How do I get a list of big game guide-outfitters that provide services for a particular species?

Obtain the most current hunting regulations from the Department of Fish and Game, Wildlife Conservation (907 465-2376), to determine which Game Management Unit(s) list the type of species you are interested in hunting. Once you have determined the Game Management Unit(s) you want to hunt in, you can request a list of currently licensed big game master/registered guide-outfitters who provide services in the unit(s) (see number 4 below).

### 4. Can I obtain a list of guide-outfitters who are providing big game services in a specific Game Management Unit (GMU)?

There are two ways you can obtain this information:

1. Click here for the website that provides a list of guides-outfitters who are providing big game services in a specific game management unit.
2. Submit a written request and state which GMU(s) you

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would like. Enclose a check or money order in the amount of \$5 (U.S. currency), made payable to the State of Alaska, and mail to the address above. Upon receipt of your written request and \$5 fee, the list will be forwarded to you.

**NOTE:** Each guide-outfitter can only operate within three GUAs for which he registers annually. GUAs are subdivisions of GMUs.

**5. How do I obtain a hunting license, tags, drawing permit, or hunting regulations?**

To obtain any of the above items, click on the following web address:

<http://www.wildlife.alaska.gov/>

**6. How do I get an application to become a Fishing Guide or obtain a list of Fishing Guides?**

To obtain any information regarding fishing guides, click on the following web address: [http://www.sf.adfg.state.ak.us/statewide/SF\\_home.cfm](http://www.sf.adfg.state.ak.us/statewide/SF_home.cfm)

Fishing guides also need a Business License. Please visit: [www.commerce.state.ak.us/occ](http://www.commerce.state.ak.us/occ)

**7. Can I pay application, examination, license, or the big game guide-outfitter and transporter list fees by credit card?**

Yes, this office does accept credit cards for the application, examination, licensing fees, or for the list of big game guide-outfitters and transporters. Please visit: [www.commerce.state.ak.us/occ](http://www.commerce.state.ak.us/occ) and click on "Credit Card Authorization Form."

**8. I am a registered guide-outfitter in need of an assistant who is looking for work. Does the board maintain a list of guides seeking employment?**

The board does not maintain a list of licensed guides seeking employment. However, you can purchase a list of all currently licensed guides or you can download the information from the Internet. See FAQ #2.

**9. How do I notify the office of a change of address?**

We must have the request for address change in writing. We will accept a fax, E-mail, or written notice that comes directly from you. We cannot accept a telephone call for a change of address.

**10. I lost my license and I need a new one, how do I get a copy? Can you fax it?**

To obtain a copy of your license, submit a written request and a duplicate license fee of \$5 (U.S. Currency). The duplicate license fee can be paid in the form of a check or money order made payable to the State of Alaska, and mailed to the address above. Upon receipt of your written request and \$5 duplicate license fee, we will mail the duplicate license to you. We do not fax licenses.

**11. When will I receive my license renewal form?**

Master/Registered Guide-Outfitter, Class-A Assistant Guide, Assistant Guide, and Transporter licenses expire on December 31 on odd-numbered years. Renewal forms are mailed to all current licensees

approximately 30 days prior to the expiration date.

**12. I am a guide/outfitter in another state. Does the Alaska Big Game Commercial Services Board have reciprocity with any other states?**

The board does not offer reciprocity. To become a contracting guide in Alaska, you must have performed the services of either a licensed class-A assistant or assistant guide in the state for a part of each three years (Alaska Statute (AS) 08.54.610(6)) and meet the requirements of AS 08-54.605 and .610.

Application forms describe the qualification requirements for licensure.

**13. Can a nonresident or nonresident alien obtain a guide or transporter license?**

A nonresident can obtain a guide or transporter license by meeting the qualifications under Alaska Statute 08.54 and 12 AAC 75.

A nonresident alien may also obtain a guide or transporter license by meeting the qualifications under Alaska Statute 08.54 and 12 AAC 75.

Although the board may issue a nonresident alien a professional license, that does not mean the board is giving the individual authority to work in the United States. Licensees must meet all the requirements of the State and Federal government. The board advises each nonresident alien who obtains a professional license to contact immigration officials regarding the process for receiving authority to actually work in the United States.

**14. Can I take the Registered Guide-Outfitter or Game Management Unit Certification examination in another location or time other than what is specified on the examination schedule?**

The Registered Guide-Outfitter and Game Management Unit (GMU) certification examination locations and dates are predetermined and set by current statute (Alaska Statute 08.54.600(8) and regulations 12 AAC 75.100-.110)

We do not administer Registered Guide-Outfitter and GMU examinations at any different location or dates.

**15. What first aid courses are recognized by the board?**

The following are first aid courses recognized by the board:

- The American Red Cross
- American Heart Association
- Medic First Aid
- National Safety Council

*(We do not have telephone numbers for the above first aid administrators.)*

Acupuncturists  
Architects, Engineers, and Land Surveyors  
Audiologists and Speech-Language Pathologists  
Barbers and Hairdressers  
Big Game Commercial Services Board  
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## What's New!

Below is a summation of changes to the Big Game Commercial Services Board regulations (12 AAC 75). We have provided the regulation number and on some the statute number to assist you in locating the topic in the Board's Statutes and Regulations Booklet. The date in parenthesis behind the title is the effective date of the regulation.

### **APPLICATION FOR REGISTERED GUIDE-OUTFITTER EXAMINATION (6/07)**

#### 12 AAC 75.100(a)(1)

Outlines what documents must be submitted at least 120 days before the next scheduled registered guide-outfitter examination.

#### 12 AAC 75.100(a)(2)

Outlines what documents must be submitted at least 45 days before the next scheduled registered guide-outfitter examination.

### **GAME MANAGEMENT UNIT CERTIFICATION EXAMINATION (6/07)**

#### 12 AAC 75.112(a)

Provides the applicant different ways to demonstrate to the department, that the applicant has 60 days of experience in the game management unit for which certification is requested.

#### 12 AAC 75.112(c)

States the requirements needed for the department to place the game management unit of a registered guide-outfitter license and outlines what the applicant will be tested on for each game management unit examination.

### **REGISTERED GUIDE-OUTFITTER EXEMPT FROM EXAMINATION (6/07)**

#### 12 AAC 75.115

This section was amended to mirror 12 AAC 75.100.

### **APPLICATION FOR CLASS-A ASSISTANT GUIDE LICENSE (6/07)**

#### 12 AAC 75.120

In addition to all other requirements that have been in place for the past 11 years, an applicant who is applying for a class-A assistant guide license shall submit a complete report of criminal justice information, including fish and wildlife violations for this state and the applicant's primary state of residence; verification of licensure status in any other state or Canadian province where the applicant holds or has held a license to guide, outfit, provide transportation or other hunting services.

### **APPLICATION FOR ASSISTANT GUIDE LICENSE (6/07)**

#### 12 AAC 75.130

In addition to all other requirements that have been in place for the past 11 years, an applicant who is applying for a assistant guide license shall submit a complete report of criminal justice information, including fish and wildlife violations for this state and the applicant's primary state of residence; verification of licensure status in any other state or Canadian province where the application holds or has held a license to guide, outfit, provide transportation or other hunting services.

### **APPLICATION FOR A TRANSPORTER LICENSE (6/07)**

#### 12 AAC 75.145 – NEW

In addition to all other requirements that have been in place for the past 11 years, an applicant who is applying for a transporter license must submit copies of the Federal Aviation Administration and United States Coast Guard licenses applicable to the applicant's operations.

## **GUIDE USE AREA REGISTRATION (6/07)**

12 ACC 75.230

Provides the ability to register a guide use area for multiple years and sets the expiration date for registration.

## **REGISTERED GUIDE-OUTFITTER CONTRACT REQUIREMENTS (6/07)**

12 AAC 75.260

A registered guide-outfitter shall retain a copy of the contract for at least four years.

## **PROFESSIONAL ETHICS STANDARDS FOR GUIDES (6/07)**

12 AAC 75.340

New section added to (a)(2) that requires all class of guides to self report to the board within 30 days after the date of conviction, a conviction in this state, another state, or the United States for a violation of a state or federal statute or regulation relating to guiding, outfitting, transportation services, or other hunting services.

12 AAC 75.340(d)(8)

An exception to this section has been inserted allowing all classes of guides to use an aircraft in any manner to spot big game for the purpose of taking a specific animal if specifically authorized under statute or regulation.

## **TRANSPORTER CONTRACT REQUIREMENTS (6/07)**

12 AAC 75.450

A transporter shall retain a copy of the contract for at least four years.

## **DEPARTMENT REQUEST FOR COPY OF CONTRACT (6/07)**

12 AAC 75.930 – NEW

Outlines when the Department can request a copy of a contract and the amount of time in which the licensee has to respond.

## **HUNTING AND GUIDING EXPERIENCE (6/07)**

12 AAC 75.920(b)

For the purposes of satisfying the hunting experience requirements for a class-A assistant guide license the applicant must document at least 20 days of big game hunting activity in a calendar year in order to receive credit for one year and must also show the harvest of one big game animal in Alaska.

12 AAC 75.920(c)

For the purposes of satisfying the hunting experience requirements for an assistant guide license the applicant must document at least 30 days of big game hunting activity in a calendar year in order to receive credit for one year and must also show the harvest of one big game animal in Alaska.

**HB**

**316**

**Chair, Judiciary  
Labor & Commerce  
Oil & Gas  
Military & Veteran Affairs**  
1292 Sadler Way, Suite 324  
Fairbanks, Alaska 99701  
Phone: (907) 452-1088  
Fax: (907) 452-1146

## Alaska State Legislature House of Representatives



While in Session  
**State Capitol, Room 118  
Juneau, Alaska 99801-1182**  
(907) 465- 3004  
Fax: (907) 465-2070  
Toll Free: (877) 465-3004

**Representative Jay Ramras  
District 10**

### Changes in Blank CS for HB316

#### Section 2.

Subsection (b) (4) – Removed language requiring information from person picking up medication

(7) – Removed language requiring information regarding dosage, quantity, and frequency

Subsection (d) - Adds language to ensure the Board of Pharmacy will maintain the security and confidentiality of the database and the information contained within the database.

(5) - Clarifies language regarding access for law enforcement authorities

Subsection (f) - Adds language to encourage the Board of Pharmacy to enter into agreements with tribal and military health care agencies to provide data to the database. Currently, they are exempt from following the state's prescription monitoring program because they follow federal mandate which supersedes state law.

Subsection (g) – Adds language which requires the Board of Pharmacy to notify the Legislature if the federal funding becomes unavailable to pay for the prescription monitoring program. This will allow the Legislature to plan for other methods of funding.

Subsection (h) – Adds language which relieves practitioners and dispensers from obligations to access or check the database before dispensing, prescribing, or administering a medication, or providing medical care to a person. Dispensers or practitioners may not be held civilly liable for accessing or failing to access the database.