

**SENATE BILL NO. 173**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATORS HUGGINS, McGuire, Meyer, Kookesh, Olson, Ellis, Thomas, Paskvan, Menard

Introduced: 3/27/09

Referred: Labor and Commerce

**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 45.25.990(12) is amended to read:

5 (12) "motor vehicle" means a motor vehicle that is required to be  
6 registered under AS 28.10, but does not include a motor home, a recreational vehicle,  
7 or a motorcycle; in this paragraph,

8 (A) "all-terrain vehicle" has the meaning given in  
9 AS 45.27.390;

10 (B) "recreational vehicle" includes an all-terrain vehicle  
11 and a snow machine;

12 (C) "snow machine" has the meaning given in  
13 AS 45.27.390;

14 \* **Sec. 2.** AS 45 is amended by adding a new chapter to read:

1                   **Chapter 27. Marine Products and Motorized Recreational Products.**

2                   **Article 1. Agreement Practices of Product Manufacturers.**

3                   **Sec. 45.27.010. Consent to transfer of agreement.** A manufacturer may not  
4 unreasonably withhold consent to the sale or other transfer of a dealership agreement  
5 by an authorized dealer to a transferee if the transferee

6                   (1) meets the criteria generally applied by the manufacturer when  
7 approving new authorized dealers; and

8                   (2) agrees to be bound by all the terms and conditions of the standard  
9 form of the dealership agreement.

10                  **Sec. 45.27.020. Cancellation or nonrenewal of agreement.** (a) A  
11 manufacturer may not cancel or decline to renew a dealership agreement with an  
12 authorized dealer unless

13                  (1) the manufacturer has

14                               (A) satisfied the notice requirements of this chapter;

15                               (B) shown that there is good cause for the cancellation or  
16 nonrenewal of the dealership agreement, and, if the reasons underlying the  
17 good cause can be corrected by the authorized dealer, the authorized dealer has  
18 failed for 60 days after delivery of the notice required by AS 45.27.030 to  
19 make the corrections; the circumstances identified under AS 45.27.030(a)(2),  
20 for which a 15-day notice of cancellation or nonrenewal is required, do not  
21 qualify as reasons for which correction is allowed under this paragraph; or

22                  (2) the authorized dealer has systematically engaged in fraud

23                               (A) against consumers or the manufacturer; or

24                               (B) in the operation of the authorized dealer's dealership.

25                  (b) Notwithstanding (a)(1) of this section, a manufacturer may not cancel or  
26 decline to renew a dealership agreement with an authorized dealer because of the  
27 death or incapacity of an owner if the owner is not listed in the agreement as one on  
28 whose expertise and abilities the manufacturer relied in the granting of the agreement.

29                  (c) In this section, "good cause" includes circumstances in which the  
30 authorized dealer fails to comply with or observe a material provision of the dealership  
31 agreement with the authorized dealer. For the purpose of determining good cause

1 under this subsection, reasonable sales and service performance criteria and capital  
 2 and facility requirements may be considered material provisions only if the criteria or  
 3 requirements were communicated in writing to the authorized dealer within a  
 4 reasonable period of not less than six months before the effective date of the  
 5 cancellation or nonrenewal, to afford the authorized dealer a reasonable opportunity to  
 6 comply with the criteria or requirements.

7 **Sec. 45.27.030. Notice of cancellation or nonrenewal.** (a) A manufacturer  
 8 shall furnish a notice of cancellation or nonrenewal of a dealership agreement with an  
 9 authorized dealer to an authorized dealer at least

10 (1) 90 days before the effective date of a cancellation or nonrenewal,  
 11 except as provided under (2) of this subsection;

12 (2) 15 days before the effective date of a cancellation or nonrenewal  
 13 when the authorized dealer

14 (A) is insolvent or is the subject of a bankruptcy or receivership  
 15 proceeding;

16 (B) is convicted of a felony involving moral turpitude or fraud  
 17 under the law of this state, another state, the federal government, a territory of  
 18 the United States, or the District of Columbia;

19 (C) has violated a term of the dealership agreement with the  
 20 manufacturer, the violation of which the manufacturer and the authorized  
 21 dealer have agreed in the dealership agreement constitutes a basis for  
 22 cancellation or nonrenewal.

23 (b) Notice required under (a) of this section must be in writing, shall be sent  
 24 by certified mail or personally delivered to the authorized dealer, and must contain

25 (1) a statement of intention to cancel or not renew the dealership  
 26 agreement;

27 (2) a statement of the reasons for the cancellation or nonrenewal; and

28 (3) the date on which the cancellation or nonrenewal takes effect.

29 (c) In this section, "mail" means registered or certified mail, return receipt  
 30 requested.

31 **Sec. 45.27.040. Threat of cancellation or nonrenewal.** (a) A manufacturer or

1 manufacturer's representative may not coerce or attempt to coerce an authorized dealer  
 2 to enter into a dealership agreement with the manufacturer or a subsidiary of the  
 3 manufacturer, or to perform any other act unfair to the authorized dealer, by  
 4 threatening to terminate a dealership agreement between the manufacturer or  
 5 subsidiary of the manufacturer and the authorized dealer.

6 (b) This section does not prohibit a voluntary agreement between a  
 7 manufacturer and an authorized dealer to settle legitimate disputes.

8 (c) In this section, "manufacturer's representative" means an employee or  
 9 agent of a manufacturer who engages in the business of contacting a manufacturer's  
 10 authorized dealer for the purpose of making or promoting the sale of the  
 11 manufacturer's products or product parts.

12 **Sec. 45.27.050. Repurchase obligations on cancellation or nonrenewal.** (a)

13 On the cancellation or nonrenewal of a dealership agreement by a manufacturer, the  
 14 manufacturer shall repurchase from the authorized dealer's inventory

15 (1) each new and unused product of the manufacturer that is a current  
 16 product model, or a product model from the previous two years; and

17 (2) each product part that

18 (A) was purchased from the manufacturer by the authorized  
 19 dealer;

20 (B) is listed in the manufacturer's parts price books in the  
 21 previous two years; and

22 (C) has not been damaged or substantially altered to the  
 23 prejudice of the manufacturer while in the possession of the authorized dealer.

24 (b) Within 90 days after the effective date of the cancellation or nonrenewal,  
 25 the authorized dealer shall return the property required by (a) of this section to be  
 26 repurchased to the manufacturer at the manufacturer's expense. The manufacturer shall  
 27 pay the compensation for the property within 60 days after the tender of inventory and  
 28 other items if the authorized dealer has clear title to the property and is in a position to  
 29 convey that title to the manufacturer. If the property is subject to a security interest,  
 30 the manufacturer may make the payments jointly to the authorized dealer and the  
 31 holder of the security interest, and the manufacturer may offset the payment.

1 (c) The amount of a repurchase required by (a) of this section must be based  
2 on the authorized dealer's landed cost at the authorized dealer's facility, subject to  
3 adjustments to landed costs for quarterly or annual purchase rebates and credits given  
4 to the authorized dealer on the products or product parts.

5 **Article 2. Product Warranties.**

6 **Sec. 45.27.100. Warranty provided.** A manufacturer shall provide, through  
7 the authorized dealer, to the product's ultimate purchaser from an authorized dealer the  
8 manufacturer's standard written warranty, if any, that is in effect at the time of delivery  
9 of the product to the authorized dealer.

10 **Sec. 45.27.110. Defective products.** (a) A manufacturer of a defective product  
11 shall, during the original warranty period, pay an authorized dealer to complete  
12 factory-recommended warranty repairs, solutions, and procedures to cure factory  
13 warranty problems with a defective product. The manufacturer shall make the  
14 payment in accordance with the standard warranty service claim procedures and  
15 methods of the industry and with AS 45.27.100 - 45.27.170.

16 (b) A manufacturer shall, within 60 days after an authorized dealer's request,  
17 provide the authorized dealer with the original factory parts required to perform  
18 warranty service on a defective product. If a manufacturer is unable to supply original  
19 factory parts needed to complete the warranty repairs for a defective product within 60  
20 days, the authorized dealer may return the defective product and receive full credit for  
21 the authorized dealer's landed cost of the product, plus 100 percent of the freight  
22 charges to return the product.

23 (c) In this section, "defective product" means a product that is defective in  
24 manufacture, including design, assembly, engineering, or manufacturing.

25 **Sec. 45.27.120. Authorized dealer warranty representations.** An authorized  
26 dealer may not make a representation about the warranty that is not made by the  
27 manufacturer in the written warranty. An authorized dealer shall deliver the manuals  
28 on the operation and maintenance of a product to an ultimate purchaser and make the  
29 manufacturer's warranty known to the ultimate purchaser, including all disclaimers  
30 and limitations.

31 **Sec. 45.27.130. Warranty service and claims.** (a) An authorized dealer shall

1 provide warranty service in accordance with the manufacturer's applicable warranty on  
2 all of the manufacturer's products sold by the authorized dealer.

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

5 **Sec. 45.27.140. Warranty restrictions.** A manufacturer may not, by  
6 dealership agreement, by restrictions on reimbursement, or by another method, restrict  
7 the nature or extent of product parts provided or labor performed by an authorized  
8 dealer if the restriction impairs the authorized dealer's ability to satisfy a warranty  
9 created by the manufacturer in accordance with generally accepted standards.

10 **Sec. 45.27.150. Basis for reimbursements.** (a) A manufacturer shall use the  
11 criteria established in this section to reimburse an authorized dealer for all approved  
12 warranty service work performed by the authorized dealer.

13 (b) A manufacturer shall pay to a servicing authorized dealer warranty work  
14 labor rates that

15 (1) are not less than the highest of the following:

16 (A) the rate the authorized dealer customarily charges to a  
17 customer for nonwarranty service work;

18 (B) the manufacturer's printed flat rate; or

19 (C) the rate established by a flat rate manual for dealers, if the  
20 manual is produced for dealers by a nationally respected industry consultant;  
21 and

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

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

28 (d) A manufacturer shall reimburse the authorized dealer for product parts at  
29 the current manufacturer's full suggested retail price and shall ship each part to the  
30 authorized dealer without cost for freight or handling.

31 **Sec. 45.27.160. Timely reimbursement for claims.** A manufacturer shall pay

1 a properly submitted warranty claim within 30 days after receiving the claim from an  
2 authorized dealer. Unless a manufacturer issues a written notice of disapproval under  
3 AS 45.27.170 within the 30 days, if a manufacturer fails to pay a claim within 30 days  
4 after receipt, the failure is considered an acceptance of the claim as submitted, and the  
5 manufacturer shall pay the authorized dealer interest at the rate of 1.5 percent a month  
6 on the claim.

7 **Sec. 45.27.170. Warranty claim disapproval.** If a manufacturer does not  
8 approve a claim, the manufacturer shall issue a written notice of disapproval to the  
9 authorized dealer within 30 days after the manufacturer receives the claim. The notice  
10 must contain the specific reasons for the disapproval.

11 **Article 3. Miscellaneous Business Practices.**

12 **Sec. 45.27.200. Required posting.** (a) An authorized dealer shall post a notice  
13 of the authorized dealer's retail labor rate in a place conspicuous to service customers.  
14 If the authorized dealer uses a factory-certified or factory-trained technician to  
15 perform warranty service work, the notice must also contain a statement that warranty  
16 service work completed by the authorized dealer is performed by a factory-certified or  
17 factory-trained technician.

18 (b) If an authorized dealer's service operations employees receive a  
19 commission for the amount of work they perform, the authorized dealer shall post a  
20 conspicuous sign that is visible to service customers that the authorized dealer's  
21 service operations employees work on commission.

22 **Sec. 45.27.210. Written estimates for repairs not covered by warranty.** (a)  
23 Before beginning repair work on a product for a customer, an authorized dealer shall  
24 provide to the customer a written estimate listing the specific parts, labor, and cost of  
25 the repairs.

26 (b) If additional repairs are determined to be necessary after the service  
27 employees begin repairing the product, the authorized dealer shall contact the  
28 customer and receive permission to do additional repairs not covered in the written  
29 estimate.

30 (c) An authorized dealer shall post in a conspicuous place for service  
31 customers to view all charges for diagnostics, storage, and other incidentals not

1 associated with the actual repair of a product.

2 **Sec. 45.27.220. Content of factory recall notices.** A manufacturer shall  
3 include in a written factory recall notice to ultimate purchasers and authorized dealers  
4 the date by which the manufacturer expects that necessary parts and equipment will be  
5 available to the authorized dealer for the correction of the defect that is the subject of  
6 the recall.

7 **Sec. 45.27.230. Replacement of product.** The manufacturer of a product that  
8 is sold to an ultimate purchaser in the state, that is not more than a year old, and that is  
9 still under warranty shall replace the product without charge or refund the full  
10 purchase price, minus a reasonable amount for mileage, if

11 (1) the authorized dealer is unable to fix a serious defect after  
12 attempting to fix the defect four times; or

13 (2) the product has a defect that prevents the ultimate purchaser from  
14 using the product for 30 or more consecutive or inconsecutive days.

#### 15 **Article 4. Miscellaneous Provisions.**

16 **Sec. 45.27.250. Unenforceable provisions.** If a provision in a dealership  
17 agreement violates this chapter, the provision is not enforceable.

18 **Sec. 45.27.260. Cumulative provisions.** The remedies under this chapter are  
19 in addition to any other legal or equitable remedy available under law or under a  
20 dealership agreement between an authorized dealer and a manufacturer.

#### 21 **Article 6. General Provisions.**

22 **Sec. 45.27.390. Definitions.** In this chapter, unless the context indicates  
23 otherwise,

24 (1) "authorized dealer" means a person who has entered into a  
25 dealership agreement with a manufacturer of products;

26 (2) "boat" means a marine product that is not equipped with a motor;

27 (3) "dealership agreement" means an agreement between a person and  
28 a manufacturer of products for the person to sell or service the manufacturer's  
29 products;

30 (4) "landed cost" means the total cost of a product delivered at a given  
31 location, including the initial authorized dealer invoice price and any freight,



1 transportation, flooring expense, interest expense, authorized dealer preparation cost,  
2 assembly cost, and reasonable handling cost;

3 (5) "manufacturer" means a person who

4 (A) fabricates, manufactures, or assembles products;  
5 "manufacturer" includes a manufacturer branch and a manufacturer sales  
6 representative, but does not include a person who converts, modifies, or  
7 otherwise alters a product fabricated, manufactured, or assembled by another  
8 person; or

9 (B) is a distribution entity that is

10 (i) owned or controlled by a person described under (A)  
11 of this paragraph; and

12 (ii) separate from a person described under (A) of this  
13 paragraph;

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

18 (7) "motorized recreational product" means an all-terrain vehicle, a  
19 marine motor, a boat, a boat package, a marine product, and a snow machine; in this  
20 paragraph,

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

24 (B) "boat package" means a boat that is equipped and sold with  
25 a motor or another form of motorized propulsion;

26 (C) "snow machine" means a motorized vehicle with a gross  
27 vehicle weight under 1,300 pounds propelled by a track system designed to  
28 move a person over snow or ice, and includes a snowmobile;

29 (8) "part" includes an accessory;

30 (9) "product" means a marine product or a motorized recreational  
31 product;

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

4 **Sec. 45.27.395. Short title.** This chapter may be cited as the Alaska Marine  
 5 Product and Motorized Recreational Product Act.

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

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

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

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

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

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

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

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

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

27 (8) a manufacturer with 50 or fewer employees; **or**

28 **(9) a marine product or motorized recreational product agreement**  
 29 **under AS 45.27.**

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

31 (56) violating AS 45.27 (marine products and motorized recreational

1 products).

2 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 APPLICABILITY. This Act does not apply to a dealership agreement that is entered  
5 into before the effective date of this Act. In this section, "dealership agreement" has the  
6 meaning given in AS 45.27.390, enacted by sec. 2 of this Act.

7 \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).