



Monday, October 20
9:00 am-10:30 am

002 Distribution Agreements

Lynne M. Durbin

Vice President, General Counsel, and Secretary
Adhesives Research, Inc.

John J. Herbst

General Counsel, Americas
Fiberweb, Inc.

Meredith B. Stone

Vice President General Counsel, Americas
NACCO Materials Handling Group, Inc.

Faculty Biographies

Lynne M. Durbin

Lynne M. Durbin is vice president, general counsel, and secretary for Adhesives Research, Inc., a privately held global manufacturer of specialty adhesives and films. She is responsible for the global legal affairs of the corporation, with primary focus on corporate, intellectual property and regulatory issues.

Ms. Durbin previously managed the human resources department. Prior to joining Adhesives Research, Inc., Ms. Durbin served as division counsel and director of environment, health and safety for the Grace Davison unit of W.R. Grace & Co.-Conn., an inorganic chemical manufacturer. She provided counsel on general corporate and commercial matters, environmental, health and safety issues, intellectual property matters, antitrust matters, and acquisitions. Prior to working in-house, Ms. Durbin was in private practice in the Baltimore area.

Ms. Durbin has been a frequent panel speaker at ACC Annual Meetings and at other professional seminars. She also counsels two affiliated corporations, which are involved in label printing and the manufacture of conductive membranes.

Ms. Durbin received a BA from Yale University and a JD from the Boston University School of Law.

John J. Herbst

John J. Herbst joined Fiberweb, a global nonwoven materials manufacturer, as its general counsel, Americas just prior to its debut as a newly independent public company. Mr. Herbst is based at Fiberweb's US headquarters outside of Nashville, Tennessee. His responsibilities include providing strategic legal advice for Fiberweb's Americas operations, overseeing Fiberweb's global patent portfolio, and working with his legal team to manage all legal matters involving Fiberweb's Americas region.

Before joining Fiberweb, Mr. Herbst spent two years as the general counsel for Pentax of America, Inc. where he established the Japanese camera and medical device manufacturer's in-house legal function. Mr. Herbst also worked in private practice with Clifford Chance (formerly Rogers & Wells) in New York and London and with Lowenstein Sandler, in New York and New Jersey, primarily advising clients on complex securities offerings, mergers and acquisitions transactions, and general corporate matters.

Mr. Herbst received his BA from James Madison University and his JD from Albany Law School.

Meredith B. Stone

Meredith B. Stone, vice president, general counsel Americas for NACCO Materials Handling Group, Inc. is responsible for the legal compliance of NMHG's Americas division activities in North, South and Central America, including providing advice on and representing the company on corporate transactions, litigation, import/export and government sales compliance, negotiating, drafting and approving contractual commitments, advising and counseling the corporation on employment law issues, and providing preventative legal training to employees.

Prior to joining NACCO Materials Handling Group, Inc., Ms. Stone was the vice president, general counsel, and secretary of Konica Business Technologies, Inc., a general attorney for the Long Island Railroad Company in Jamaica, New York, an associate attorney with Levine & Robinson, P.C. in Mitchel Field, New York, and an assistant corporation counsel for the Law Department of the City of New York.

Ms. Stone is a member of the ABA (business law, employment law, international law, and antitrust sections), the New York State Bar Association, and the North Carolina Bar Association, where she is a council member of the corporate counsel section and prior chairperson of its membership committee; she previously served as the chairperson of the small law department committee of ACC and as president of ACC's Connecticut chapter.

She earned her BA from the University of Vermont and JD, cum laude, from St. John's University School of Law in Jamaica, New York.

ACC Association of Corporate Counsel

Agenda

- Distribution Agreements Overview
- Important Distribution Agreement Clauses
- International Law Impact – U.S. Perspective
- Termination of Distribution Agreement

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22
Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Distribution Agreement – Overview

- Distribution Agreements typically include many aspects of direct sales/supply agreement
 - Appointment - know your distribution partner
 - Exclusivity / Distribution Territory
 - Products – current and future
 - Pricing – initial price, rebate and increase mechanism
 - Forecasting requirements
 - Order process and payment mechanics
 - Shipping / title transfer / risk of loss
 - Minimum purchase/inventory requirements
 - Term / termination tied to distribution goals
 - Heightened importance of indemnification and insurance due to close relationship

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22
Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Distribution Agreement – Overview

- Who is a distributor?
 - Non-employee, non-agent engaged by manufacturer to market and sell its products
 - Independent 3rd party that sells to end users
 - can specify requirements but cannot fully control activities
 - be careful of the inadvertent franchise
- Reasons for establishing distribution arrangements
 - One of several routes to market for manufacturer
 - Gives distributor access to additional products for sale, without cost of internal development
 - Lower initial investment for manufacturer than direct sales force
 - Flexible marketing channel
 - Enable more rapid growth than organic

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22
Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Distribution Agreement – Overview

- Supply agreement terms supplemented by additional provisions governing how distributor is to pursue the manufacturer's principal objective of market penetration
 - Seller Obligations may include– training, provision of marketing materials, guarantee of supply, technical support, inform about changes in applicable law, etc.
 - Distributor Obligations may include – “best efforts” to promote sales, maintenance of minimum personnel, conduct, compliance with law/policy, complaint handling, record retention, quality workmanship, provision of sales reports etc.
 - Product return, warranty and service set out
 - Patent / trademark use/ licensing
 - Ownership of newly created IP defined
 - Marketing programs, and required adherence

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22
Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Distribution Agreement – Overview

- Typical Agreement Structure – Significant boilerplate terms
 - Confidentiality
 - Independent contractor clause
 - Force Majeure
 - Governing law/venue/arbitration – especially in international agreements

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22
Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Important Clauses – Exclusivity / Territory

- Exclusivity generally
 - geographic, market segment, other
 - carve-outs from exclusivity
- Expansion of exclusivity/territory
 - targets / mechanics / location
- Remedy for sale by distributor in another's exclusive territory

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22
Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Distribution Agreement - Overview

Life Cycle of Distribution Program

- Work with internal sales, finance and legal teams to structure business and legal aspects of distribution program and draft form documentation
- Negotiation / execution of distribution contract
- Initiation of sales
- Ongoing legal/regulatory compliance
- Annual/periodic business planning with distributors
- Termination of relationship
- Post-termination issues

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22
Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Important Clauses – Pricing

- Initial price setting
 - List price, % discount from list, ad hoc
- Price adjustment mechanisms
 - Fixed period; escalator/de-escalator; on notice
 - Consider pricing protection for in process orders
 - Tiered pricing and rebate programs
- Minimum purchase requirements
 - Tied to pricing, exclusivity or other favorable treatment

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22
Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Important Clauses – Marketing

- Advertising / Promotions
 - Determine whether these need to be built into Distribution Agreement
 - Mandatory or Optional Participation
 - Who provides marketing materials?
- Restrictions on Distributor
 - Form of marketing; use of trademarks; territory

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Important Clauses – Intellectual Property and Patents

- Confidential Information
 - Trade secrets or business confidential?
 - May distributor share with end customer?
- The more important the confidential information, the more detailed the protection clause should be.
 - Insure continuity following termination of agreement & require return of appropriate materials

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Important Clauses – Product Quality

- Product Warranty
 - Who provides warranty to end user?
 - Base warranty vs. heightened protections
 - Product Return, claim management and payment mechanics
- Product Service
 - Who services/fixes the products?
 - Qualification, training and payment for service technicians
 - Spare parts, replacement product and payment mechanics


ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Distribution of Software

- Standard software has benefit of shrink wrap license that will be passed along to customer
- If distributor modifies software you need detailed license terms
 - To whom may they license?
 - Are sublicenses permitted?
 - Will royalties be payable? By distributor? By customer?

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center



Distribution of Software continued

- Determine who will own modifications
 - Assignment of all rights in modifications
 - Obtain rights to source and object code from distributor upon termination
 - Issue if manufacturer only has rights outside territory, may need to negotiate royalty
- Agreement from distributor not to decompile or reverse engineer code
- Agreement from distributor not to register or claim adverse ownership


ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center



Patents continued

- Distributor agrees not to obliterate any patent markings on your products
- Automatic termination of rights on termination of agreement or non-renewal
- Delineate limits of your patent indemnity
- Warrant your rights in IP
- If agreement has ADR provisions, make sure they do not apply to IP issues
 - This may differ in different countries – need to review legal system in the countries where your distributors are located


ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center



Patents

- Will distributor need to use your patents to manufacture or sell your goods?
 - Include limited patent license rights for purpose
 - Determine who will own modifications if distributor is manufacturing or developing
 - Obtain assignment of all rights to modifications
 - Distributor must report any known infringement
 - Distributor agrees not to register any rights adverse to your own

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center



Important Clauses – Trademarks

- Frequently valuable to allow distributor to use your trademarks
 - Identification of your branded goods, goodwill
 - However, could cause issues with respect to creating a franchise and subject your agreement to state or other country franchise laws
- When granting trademark rights
 - Provide specific license rights
 - May they use in their business name or only on goods?
 - Relinquish rights on termination
 - Delineate rights on recovery for infringement

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Trademarks continued

- Do you allow internet sales? Will they be able to use in domain name or in metatags?
 - Consider whole issue of how you will regulate internet sales (outside of trademark perspective), including crossing into territories of other distributors
- Require quality control on use
 - Follow your style guide
 - Approve all uses in advance
- Require distributor to
 - Protect mark
 - Not use mark generically
 - Not remove marks from products
 - Not seek conflicting rights

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Important Clauses – Indemnification

- Distributor's indemnity to manufacturer
 - May be for damages to manufacturer from any of breach, additional warranty claims, product modification, gross negligence/willful misconduct...
- Manufacturer's indemnity to distributor
 - May be for damages to distributor stemming from product liability matters (with carve outs) and intellectual property infringement
- Remedies available
- Limitations on indemnity

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Trademarks continued

- Potential benefits outside of strict trademark context
- If license to use was limited to territory and distributor sells outside territory, then have trademark infringement as well as breach of contract action.


ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Important Clauses – Insurance


- Type of policy/coverage
 - For manufacturer - best practice to maintain general liability policy including product liability, even if not obligated in distribution agreement
 - For distributor - required coverage should be specified but may depend on whether or not distributor modifies the product
 - Don't forget to specify that insurer must be highly rated
- Amount of coverage – what amount is enough?
- Term of coverage – maintenance of policy during and after termination of distribution agreement.
- What does it mean to be as an “additional insured” to distributor's (or anyone else's) policy?

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center



International Law Impact from the United States Perspective


ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22, Washington State Convention & Trade Center



Anti-boycott Provisions

- Although not solely related to Middle East, most issues arise there
 - Train staff to recognize boycott requests from distributors and/or end customers
 - Notify distributor that you will not participate in prohibited boycott activity
 - Obtain distributor's agreement not to participate in prohibited boycott activity
 - Note requirements to report to Commerce and to Treasury (different schedules and requirements—Export Admin. Regs—15 C.F.R. 760; Tax Reform Act—26 U.S.C.A. 999)


ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22, Washington State Convention & Trade Center



Foreign Corrupt Practices Act (FCPA)

- Generally, you may not have a distributor do what you may not
- Have distributor agree to comply with FCPA
 - No payments to foreign officials or candidates for public office with intention to obtain, direct or preserve business
 - Facilitating (grease) payments are permitted to expedite granting visas, work permits, mail, telephone services

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22, Washington State Convention & Trade Center



Export Compliance

- **Dangerous myths about U.S. export controls**
 - My company only exports to a few distributors abroad. To whom the distributors sell is not my concern.
 - Once our company's products are outside the U.S., we have no responsibility and no concerns.
- **You may not use distributors to do what you may not do or close your eyes to their activities**

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22, Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Export Controls

- Defense Controls (license)
 - Dept. of State, Directorate of Defense Trade Controls (DTC)
 - International Traffic in Arms Regulations (ITAR)
 - 22 CFR 120-130 and 22 USC 2778-2780
- Dual-use Controls (license)
 - Department of Commerce, Bureau of Industry and Security (BIS)
 - Export Administration Regulations (EAR)
 - 15 CFR Chapter VII
- Embargoes and Sanctions
 - Department of Treasury, Office of Foreign Asset Controls (OFAC)
 - Foreign Asset Control Regulations (FACR)
 - 31 CFR Chapter V

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Export Controls continued

- Controls are customer/end-user based, destination based and part based
- Need to screen distributor/end customer on denied persons list, entity list, debarred parties list, specially designated nationals list, unverified list
- Look out for prohibited end uses (nuclear, missile, chemical/biological weapons, terrorist activities)
- Know about embargoed and sanctioned countries —prohibit distributor from reselling as necessary

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Exports

- Exports are any shipment or transfer of goods, software or technology that leaves the U.S., including re-exports of U.S. origin goods wherever located (including through distributor)
- If original export requires a license, then re-export will require one

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Export Controls continued

- If you sell defense related items, you will be subject to ITAR
 - Need special approval from DDTC before entering into agreement for warehousing and distribution of certain defense articles outside the U.S.
 - Once approved, documents must contain certain specific clauses found in 22 C.F.R. 124

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Export Compliance continued

- Look out for “Red Flags”—see list in additional materials
- Penalties are significant
- Debarment a possibility
- Time line for obtaining licenses/permissions may be lengthy

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

South America – An Example

- Prenda (pledge)
 - Usually by asset
 - Publicly filed
 - May need plate or other registration
- Blanket Liens
 - Rarely available (can obtain in Mexico, Argentina, Colombia) – difficult to enforce
- Monetary Restrictions (getting money out)
 - Stay on top of changes
 - Argentina, Venezuela – examples
 - Currency Risk

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Selling Outside the U.S. – Getting Paid:

- Outside the U.S. and Canada – security process is very different
- No “UCC” filing process
- Need to understand credit and payment options
- Security – very expensive to obtain
- Difficult to enforce

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

What if You Need to Enforce?

- Dispute Resolution
 - Arbitration
 - NY Convention
- FCPA Considerations Due to Local Counsel Actions
- Pre-Trial Attachments over Assets
- Enforcement of Judgment Outside the U.S.

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

U.S. State Law Considerations:

- Review Applicable Law
 - State Statutes – General Applicability
 - State Statutes – Franchise Acts
 - State Statutes – Industry Specific
 - State Statutes – Warranty, Parts, Inventory Repurchase, etc.

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Preliminary Investigation/Review:

- Gather and Review all Relevant Documents
 - Search E-mail and other Electronic Files
- Meet with knowledgeable Employees
 - Review Facts
 - Don't Discuss with other Dealers
- Confirm Reason for Termination
 - Why?
 - What is the Support?
 - Is this Fair?
 - Other Issues/Evidence?
 - Equitable Treatment of Different Dealers

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Termination of a Distribution Agreement

- Review State Law
 - "Change in Competitive Circumstances"
- Review Agreement
- Review Correspondence
- Review Performance

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Also Consider:

Other Alternatives:

- "Probation" Period
- Additional Cure Period
- Adding Another Dealer
- Negotiated Exit
 - Signed Release
- Sale to Incoming Dealer

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22 Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Potential Claims by Dealer:

- Wrongful termination
- Antitrust
 - Tying and Bundling
 - Resale Price Maintenance
 - Territorial Exclusivity Issues—More Restrictive in E.U.
- Breach of Contract
 - Covenants of Good Faith and Fair Dealing
- Unfair Competition
- Inventory Repurchase
- Inequitable Treatment
- State Law Claims!

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Outside the U.S.

- Involve Local Counsel
- Dealer Protection Legislation
- Seat for Dispute Resolution
 - Arbitration Clause in Agreement?
- Potential for Injunctive Relief
 - May Need Bond in Order to Continue to Ship Product in the Event of a Dispute

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

State Franchise Laws (These apply in more situations than you realize)

- What May Create a Franchise?
 - Use of Trademark
 - Assistance or Control
 - Marketing Plan or Community of Interest
 - Franchise Fee
- What can happen if you are an inadvertent franchisee:
 - Rescission
 - Damages
 - Costs and Attorneys fees
 - Criminal Penalties
 - INJUNCTIVE RELIEF

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center

ACC Association of Corporate Counsel

Notice Of Termination:

- Timing
- Reasons for Termination
- Rights to Cure
 - Contractual
 - Statutory
- Delivery of Notice
- Management of Relationship after Notice but Before Termination

ACC's 2008 Annual Meeting: October 19-22
 Informed. In-house. Indispensable. Washington State Convention & Trade Center



Distribution Contract – Post-Termination Issues

- Remaining Stock - Permit Sale / Repurchase / Destroy
- Marketing Materials and Trademark Usage
- Transfer of Regulatory Permits / Approvals / Registrations to Manufacturer or New Distributor
- Distributor to Maintain any Required “Tail” Insurance
- Post-termination Non-compete, Customer or Employee Non-solicitation or other Restrictive Covenants

ACC's 2008 Annual Meeting: Informed. In-house. Indispensable. October 19-22
Washington State Convention & Trade Center

SAMPLE CLAUSES

SAMPLE CLAUSES RELATING TO TRADEMARKS

Example 1

1.1 Trademarks. Company hereby licenses to the Distributor the right to use, and hereby requires solely in association with the independent sale by the Distributor of the Products the use of the Trademarks in the Territory during the term of this Agreement. The Distributor agrees that any and all goodwill developed in the Trademarks used by Distributor hereunder shall inure to and be owned by Company. The Distributor warrants that it shall not use any of the Trademarks at any time outside the Territory or use any of the Trademarks for any products other than the Products within the Territory. The Distributor shall not use a trademark or other mark (other than a Trademark) in connection with its distribution of the Products unless and until it has been agreed upon in writing by each of the parties and become a Trademark as defined herein. Company shall prosecute, maintain and defend the Trademarks throughout the Term of this Agreement in the Territory. The parties shall execute a short form Trademark assignment agreement to the extent that it is necessary to record the Trademark license under this Section 1.1.

1.2 Termination of Right to Use Trademarks. Upon termination of this Agreement, the license to use the Trademarks in the Territory shall terminate, and the Distributor unconditionally agrees promptly to take all necessary action and execute and deliver to Company all necessary documents and instruments to remove the Distributor as a registered user and/or a recorded licensee of the Trademarks and to confirm that the goodwill in the Trademarks shall inure to the benefit of Company. In the event that the Distributor fails promptly upon written request by Company to comply with any of its agreements in the preceding sentence of this Section 1.2, the Distributor hereby irrevocably consents to Company's taking any action necessary to give effect to such agreements.

1.3 Notice. Each party hereto agrees promptly to notify the other in writing of any infringements or imitations of the Trademarks by third parties which may come to its attention.

Example 2

Trademark License.

(a) Company hereby grants DISTRIBUTOR a fully paid up, royalty-free, sub-licensable license to use the Trademarks solely in connection with the marketing, distribution, import, export, use, offer to sell and sale of the Products in the Territory during the term of this Agreement. Company shall take such actions as are reasonably required to maintain the Trademarks in effect, and shall inform DISTRIBUTOR of any changes in or additions to the Trademarks. DISTRIBUTOR

acknowledges that Company is the owner of the Trademarks and agrees that DISTRIBUTOR shall not at any time do, cause to be done, or permit any act or thing inconsistent with, contesting or in any way impairing or tending to impair such ownership. DISTRIBUTOR agrees that all use of the Trademarks by DISTRIBUTOR shall inure to the benefit of and be on behalf of Company and that nothing in this Agreement shall give DISTRIBUTOR any right, title or interest in the Trademarks other than the right to use the Trademarks in accordance with this Agreement. DISTRIBUTOR agrees that it will not challenge the title or ownership of Company to the Trademarks or attack or contest the validity of the Trademarks.

(b) DISTRIBUTOR shall not be obligated to use the Trademarks in connection with the marketing, distribution, import, export, use, offer to sell and sale of any Product; provided, however, that if DISTRIBUTOR does not use a Trademark, then Company shall have the right to approve the product name and trademark(s) to be used with respect to the Products, which approval shall not be unreasonably withheld or delayed. Without limiting the foregoing, DISTRIBUTOR shall be entitled to use its own trademarks in connection with the marketing, distribution, import, export, use, offer to sell and sale of Products. DISTRIBUTOR shall provide to Company for review and comment copies of its promotional and marketing materials prior to their public release and shall reasonably consider all comments made by Company regarding the use of the Trademarks or the DISTRIBUTOR product name and trademark(s) to be used with respect to the Products.

(c) In the event that DISTRIBUTOR requests Company to use any marks (not including the name "_____") or any marks related to such names or other marks used by DISTRIBUTOR with respect to other products and/or services offered by DISTRIBUTOR) solely and exclusively in connection with the promotion, marketing, sale or distribution of the Products (the "Product Marks"), Company shall comply with such request, and such Product Marks shall be owned by Company and included in the grant of license under Section (a) and (b).

Example 3

USE OF TRADEMARKS AND PROPRIETARY NOTICES. During the term of this Agreement, Distributor may use the trademarks, trade names, logos and designations used by Company for Products solely in connection with Distributor's advertisement and promotion of Products, in accordance with Company's then-current trademark usage policies. Distributor shall not remove or destroy any copyright notices, trademarks or other proprietary markings on the Products, software, documentation or other materials related to the Products.

Example 4 (with Internet provisions)

Use of Trademarks; Trade Dress. During the Term of this Agreement, and subject to the terms and conditions of this Agreement:

(a) Distributor shall use the Trademarks, on an exclusive royalty-free basis, to promote, market, sell and distribute the Products within the Territory. Distributor shall not identify the Products by any designation other than the Trademarks for the Products. Distributor shall be identified as the distributor of such Products on the Products' label as the same may be required and specified under Applicable Law, or if Applicable Law does not specify how the Distributor shall be indicated on a Products' label, then as determined (including without limitation as to size and placement) jointly by COMPANY and Distributor. The use of the Trademarks by Distributor shall be expressly subject to subparagraph (c) below.

(b) Distributor undertakes to use the Trademarks only in respect of the Products purchased from COMPANY or its designee pursuant hereto, only in accordance with the standards of quality established or approved by COMPANY or its designee, and only in the Territory. Distributor shall permit duly authorized representatives of COMPANY to inspect, on the premises of Distributor or its subcontractors and agents, at reasonable times during normal business hours and upon not less than ten (10) Business Days prior written notice, inventory of the Products, Distributor's quality control records, and Distributor's facilities used in or relating to the storage, distribution or sale of the Products to ensure compliance with quality control standards and with applicable terms of this Agreement pertaining to the use of the Trademarks.

(c) Whenever Distributor uses the Trademarks in advertising or in any other manner in connection with the Products, Distributor shall clearly indicate that the Trademarks are owned by COMPANY. When using the Trademarks under this Agreement, Distributor shall comply with all Applicable Laws pertaining to the Trademarks in force at any time in the Territory. During the Term of this Agreement, Distributor shall provide COMPANY with copies of such foregoing material on a periodic basis, as requested by COMPANY, for approval of the use of the Trademarks by Distributor. Distributor shall promptly take any and all actions directed by COMPANY with respect to Distributor's use of the Trademarks that are reasonably designed to ensure compliance with the provisions of this Section.

(d) Distributor acknowledges and agrees that COMPANY and/or its Affiliates, is, and will remain the owner of the Trademarks. Distributor shall not at any time do, cause to be done, or permit any of its employees, agents, contractors and subcontractors to commit any act inconsistent with, contesting or in any way impairing, or tending to impair, such ownership. Distributor agrees that all use of the Trademarks by Distributor shall inure to the benefit of and be on behalf of COMPANY

or its Affiliates. Distributor acknowledges that nothing in this Agreement shall give Distributor any right, title or interest in the Trademarks other than the right to use the Trademarks within the Territory in accordance with this Agreement. Distributor agrees that it will not challenge COMPANY's or its Affiliates' title to, or ownership of, the Trademarks, or attack or contest the validity of the Trademarks. All goodwill accruing to the Trademarks as a result of the use of the Trademarks in the performance of this Agreement shall belong solely to COMPANY or its Affiliates. In the event that Distributor acquires any rights in the Trademarks in connection with Distributor's activities pursuant to this Agreement, Distributor shall assign, and hereby does assign, to COMPANY or its Affiliates all such rights, including any related goodwill.

(e) Distributor is limited to using the Trademarks in connection with the Internet as follows:

- (i) the use must be in compliance with local rules regarding advertising of pharmaceuticals on the Internet;
- (ii) the use of any Trademarks as a domain name is limited to the relevant country code domain within the Territory. No license is granted to use the ".com generic code domain" or any other such top-level domain. All domain names containing the Trademark shall be registered and maintained by and in the name of COMPANY or its designee;
- (iii) the use of any Trademarks as a domain name is limited to use on websites with universal resource locaters using the relevant country code domain within the Territory and aimed at audiences in those countries in the Territory;
- (iv) appropriate disclaimers must be included in any website to the effect that it is intended for residents in that country within the Territory only;
- (v) in using any of the Trademarks as a domain name or on the Internet, Distributor will not have and shall not represent in any way that it has any title or right to the ownership or registration or their use, except as provided in this Agreement. Distributor will at all times indicate that each of the Trademarks is a trademark of COMPANY used under license.

Trademark Infringement by Third Parties. If either Party becomes aware that a Third Party is infringing any Trademark used in connection with the Products, such Party shall give written notice to the other Party describing in detail the nature of such infringement. COMPANY and its Affiliates shall have the sole right, but not the obligation, to enforce any such Trademarks against such Third Party infringer to the extent deemed necessary or appropriate by COMPANY or

its Affiliates, in their reasonable discretion, and to settle or compromise any such possible infringement by taking such action as COMPANY or its Affiliates may determine in their sole and absolute discretion; provided, however, that COMPANY shall not settle any such potential infringement in a manner that materially adversely affects the rights granted to Distributor hereunder, except with Distributor's prior written consent (which consent shall not be unreasonably withheld). Distributor shall provide COMPANY all reasonable assistance (including, without limitation, making documents and records available for review and copying, and making persons within its control available for pertinent testimony), at COMPANY's expense, in such enforcement.

Example 5

Trademarks, Trade Names And Copyrights

1.1 During the term of this Agreement, Distributor is authorized by Company to use the trademarks Company uses for the Products solely in connection with Distributor's advertisement, promotion and distribution of the Products. Distributor's use of such trademarks and logos will be in accordance with Company's written policies in effect from time to time, including but not limited to trademark usage Guidelines at www.Company.com.

1.2 As both a covenant by Distributor and a condition of Company's authorization of Distributor's distribution, Distributor will include on each copy of any materials that it creates regarding or referring to the Products all trademark, copyright and other notices of proprietary rights included by Company on the Products or requested to be so included by Company from time to time. Distributor agrees not to alter, erase, deface or obscure any such notice on anything provided by Company.

1.3 Distributor has paid no consideration for the use of Company's trademarks, logos, copyrights, trade secrets, trade names or designations, and nothing contained in this Agreement will give Distributor any interest in any of them. Distributor acknowledges that Company owns and retains all copyrights and other proprietary rights in all the Products, and agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity or enforceability of any trademark, trade name, trade secret, copyright or logo belonging to or licensed to Company (including, without limitation, any act, or assistance to any act, which may infringe or lead to the infringement of any copyright in the Products) or attempt to grant any right therein. Distributor agrees not to attach any additional trademarks, logos, trade designations or other legends to any Product without the prior written consent of Company. Distributor further agrees not to affix any Company trademark, logo or trade name to any non-Company product.

1.4 Except to the extent permitted elsewhere herein, upon termination of this Agreement, Distributor will forthwith cease all display, advertising and use of all Company names, marks, logos and designations and will not thereafter use, advertise or

display any name, make or logo which is, or any part of which is, similar to or confusing with any such designation associated with any Product.

1.5 Distributor agrees to cooperate at Company's expense in Company's efforts to protect its proprietary rights. Distributor agrees to notify Company of any known or suspected breach of Company's proprietary rights that comes to Distributor's attention.

Example 6

USE OF TRADEMARKS/TRADE NAMES:

(a) Trademarks. During the Licensed Term of this Agreement, Distributor shall have the right to indicate to the public that it is an authorized distributor of Supplier's Product and to advertise such Product under the trademarks, marks, and trade names of Supplier and in the promotion and distribution of the Product; provided, however, that upon thirty (30) days prior written notice to Distributor, Supplier may substitute alternative marks for any or all of such Supplier's trademarks used by Distributor. All representations of Supplier's trademarks that Distributor intends to use shall first be submitted to Supplier for approval (which shall not be unreasonably withheld) of design, color and other details or shall be exact copies of those used by Supplier. In addition, Distributor shall fully comply with all reasonable guidelines, if any, communicated by Supplier concerning the use of Supplier's trademarks.

(b) Use. Distributor shall not alter or remove any of Supplier's trademarks affixed to the Product by Supplier. Except as set forth in this Section, nothing contained in this Agreement shall grant or shall be deemed to grant to Distributor any right, title or interest in or to Supplier's trademarks. All uses of Supplier's trademarks shall inure solely to the benefit of Supplier and Distributor shall obtain no rights with respect to any of Supplier's trademarks, other than the right to distribute Product as set forth herein, and Distributor irrevocably assigns to Supplier all such right, title and interest, if any, in any of Supplier's trademarks. At no time during or after the term of this Agreement shall Distributor challenge or assist others to challenge Supplier's trademarks or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to those of Supplier. Upon termination of this Agreement, Distributor shall immediately cease to use all of Supplier's trademarks.

SAMPLE CLAUSES RELATING TO COMPLIANCE WITH LAWS

Example 1

COMPLIANCE WITH LAWS:

(a) Export Control. Distributor understands and acknowledges that Supplier is subject to regulation by agencies of the United States Government, including, but not limited to, the U.S. Department of Commerce, which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of Supplier to provide the Product, as well as any other technical information or assistance shall be subject in all respects to such United States laws and regulations as shall from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations issued by the Department of Commerce. Distributor agrees to cooperate with Supplier including, without limitation, providing required documentation, in order to obtain export licenses or exemptions therefrom. Distributor warrants that it shall comply with the Export Administration Regulations and other United States laws and regulations governing exports in effect from time to time. Distributor further agrees not to resell Product to any organization, public or private, which engages in the research or production of military devices, armaments, or any instrument of warfare, including biological, chemical and nuclear warfare.

(b) Governmental Approvals. Distributor represents and warrants that it has obtained all required approvals of the government within the Territory in connection with this Agreement and that the provisions of this Agreement and the rights and obligations of the parties hereunder, are enforceable under the laws within the Territory. Supplier represents and warrants that it has obtained all required approvals of the United States government in connection with this Agreement and that the provisions of this Agreement and the rights and obligations of the parties hereunder, are enforceable under the laws of the United States of America.

Example 2

Ethical Business Practices

You acknowledge and agree that you and your owners, directors, officers, employees or agents have not, and will not, make or promise payments of money or anything of value, directly or indirectly, to any government or public international organization officials, political parties, or candidates for political office, for the purpose of obtaining or retaining business or securing any improper advantage, or to any other person or entity if such payment would violate the laws of the country in which made or the laws of the United States. You agree that any violation of this section constitutes just cause for the immediate termination by Company of this agreement without any liability to you. You will also indemnify and hold Company and its parent company harmless from any claims, losses and liabilities resulting from any breach of any of your obligations under this section. You agree to comply with the terms of the Company Code of Conduct and Business Ethics, which is attached. The obligations under this section shall survive the termination or expiration of this agreement.

Export

Export laws and regulations of the United States and other relevant local export laws and regulations apply to the programs. You agree that such export control laws govern your use and distribution of the programs (including technical data) and any services deliverables provided under this agreement, and you agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export regulations"). You agree that no data, information, programs, and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

Example 3**Compliance with Export Control Regulations**

The Parties undertake to comply with all export control regulations of the national authorities, the authorities in the Federal Republic of Germany, in the European Community and in the United States of America. In order to conduct export control checks the Distributor, upon request by Company, shall provide Company with all information pertaining to the ultimate customer and the end use of the Contractual Products, as well as any existing export control restrictions regarding the Contractual Products.

If the possibility cannot be excluded that the Contractual Products may be used in combination with arms-related goods or for the production of such goods, the Distributor shall not pursue such business.

Company will not perform deliveries, orders and other obligations under this Agreement if that performance is hindered by the applicable export laws and regulations of the national authorities, the authorities of the Federal Republic of Germany, the European Union, the United States of America or of other countries.

Example 4**COMPLIANCE WITH LAW**

The Distributor will comply with all applicable governmental laws, rules, regulations and orders concerning activities contemplated by this Agreement (including, but not limited to, all applicable laws and regulations of the United States of America relating to export controls, boycotts and corrupt practices and the law and regulations of the Territory). The Distributor warrants that neither it nor any of its employees is an employee, officer or representative of any government or instrumentality of government or of a political

party and neither the Distributor nor any of its employees is a candidate for political office.

SAMPLE CLAUSE RELATING TO INTELLECTUAL PROPERTY AND IMPROVEMENTS

1.1 **Intellectual Property.** Distributor shall use the Intellectual Property embodied in the Products (and the advertising, promotional and informational materials associated therewith) as provided by Seller solely in its role as a distributor of the Products pursuant to the Master Agreement, and shall not modify the same without the prior written permission of Seller. Any and all goodwill arising out of Distributor's use of Intellectual Property shall be and remain the exclusive property of Seller. Other than the right granted herein to distribute the Intellectual Property embodied in the Products and related materials, Distributor shall have no rights in or to the Intellectual Property.

1.2 **Title to Inventions, Discoveries and Improvements.** The parties agree that if any inventions, discoveries or improvements are conceived, first reduced to practice, made or developed by Seller in connection with the design, specifications or other characteristics of the Products, Seller shall own all right, title and interest in such inventions, discoveries or improvements and any patents that may be granted thereon in any country in the world. In the event that any such inventions, discoveries or improvements are conceived, first reduced to practice, made or developed jointly by both Distributor and Seller during the course of their performance under the Master Agreement or any Exhibit hereto, Seller shall hold all right, title and interest in and to any such inventions jointly developed by Seller and Distributor; provided, however, that Seller hereby grants to Distributor a perpetual, royalty-free, worldwide, nonexclusive, fully transferable right and license to make, use, sell, lease, license, reproduce, distribute and modify, and create derivative works based upon, such inventions, discoveries or improvements, without obligation to share revenues derived therefrom with Seller or any third party.

1.3 **Infringement Allegations.** Distributor agrees to advise Seller promptly of all knowledge Distributor obtains after the Effective Date with respect to (i) any allegations that any aspect of any Product or Intellectual Property infringes upon any patent, mark, copyright or other intellectual property of any person or entity, (ii) any demand, suit or action brought by any person or entity in any forum that contains or asserts any such allegations, or (iii) any material infringement of Intellectual Property by any person or entity. Distributor agrees that if it is a named party in any such demand, suit or action, it will not object to the intervention or other participation by Seller in such demand, suit or action, at Seller's election and expense. Seller retains the exclusive right to protect or defend the Intellectual Property but shall not be obligated to do so and does not warrant the validity of the Intellectual Property.

Commerce Department Red Flag List

- The customer or its address is similar to one of the parties found on the Commerce Department's [BIS's] list of denied persons.
- The customer or purchasing agent is reluctant to offer information about the end-use of the item.
- The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer has little or no business background.
- The customer is unfamiliar with the product's performance characteristics but still wants the product.
- Routine installation, training, or maintenance services are declined by the customer.
- Delivery dates are vague, or deliveries are planned for out of the way destinations.
- A freight forwarding firm is listed as the product's final destination.
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for reexport.

Distribution Agreement Overview

Your sales team is under pressure to increase sales by growing its network of distributors. It is your role as corporate counsel to help them think through the issues associated with this growth – a distribution arrangement is a much more complicated relationship than a simple supply obligation. The following list, while non-exhaustive, highlights issues specific to distribution arrangements to be considered as you and your sales team develop your company's distribution program.

Products Covered by Distribution Agreement

- Define which of your company's products are to be included in Distribution Agreement, and which are to be excluded.
- Consider whether products developed in the future are also to be included under the Distribution Agreement.

Territory

- Define distributor's sales Territory – is it geographic (worldwide, the United States, Tennessee?) and/or market-based (sale only to filtration media manufacturers).
- Is the Territory exclusive or nonexclusive (will your company have other distributors covering the area)?
- Consider whether an exclusive territory should convert to non-exclusive if minimum sales targets are not met.
- Are any customers / potential customers excluded from distributor's Territory, such as national accounts or accounts established directly between your company and a customer?
- Review whether Territory may be expanded in the future, the location any expansion Territory and criteria that distributor must meet to qualify for such expansion.
- Consider the impact of a sale by distributor outside of its Territory and any required compensation of another distributor "owning" the territory where the sale took place.

Limitations on Competitive Products

- Is distributor permitted to also distribute/sell competitor products?
- If distributor may distribute/sell competitor products, consider requiring Distributor to restrict competitor products to a certain portion of product inventory and/or to give your company's product some form of favored treatment.

Pricing

- Specify method for setting product prices to distributor - catalogue price, percentage discount from list, ad-hoc pricing, etc.
- Specify whether there will be any notice period prior to implementing price increases, and whether in-process orders at time of a price increase will be protected.
- Consider whether distributor's ability to set prices to its customers is to be limited.

Minimum Purchase Requirements

- Consider whether products are subject to minimum purchase quantities (e.g. pallets, full containers, etc.).
- Consider whether periodic minimum purchase requirements (quarterly, annual) are important for your company and, if so, how quotas grow/shrink over time.
- Will distributor be required to maintain any minimum inventory?

Use of Trademarks / Trade Names

- Confirm which (if any) of your company's trademarks and/or trade names can be used by the distributor.
- Should the Agreement include future trademarks and/or trade names that may be developed by your company?
- What use of your company's trademarks or trade names is permitted or prohibited?
- Is use of your company's "brand book" (adherence to corporate trademark/trade name / trade dress rules) required?
- Does right to use trademarks or trade names terminate at termination of Distribution Agreement?
- Who has right to register trademarks in foreign jurisdictions – distributor or your company?

Distributor Obligations

- Consider requirements for distributor's facilities – size, refrigeration, footprint, access to road/rail, signage, etc.
- Consider whether you will require distributor to provide your company with annual or multi-year sales plans.

- Consider whether there is a need for distributor to make representations as to being adequately capitalized and/or to maintain adequate capitalization on an ongoing basis.
- Consider whether distributor will be required to provide financial information about the distributor and/or distributor's sales on an ongoing basis
- Consider whether your company (or its accountants) should be permitted to review the distributor's books and records generally or specifically those items pertaining to sales of the products manufactured by your company.

Your Company's Obligations

- Consider whether your company will undertake to continually supply:
 - the Products specified under the Distribution Agreement;
 - spare parts for the Products; or
 - Product servicing.
- Consider whether your company will undertake to provide certain quantities of marketing materials, MSDS sheets, manuals, etc.
- Will your Company offer any training to distributor / what training is distributor obligated to obtain (either from your company or from a third-party)?

Sales Promotion Funding

- Consider whether the terms of any sales promotion programs need to be built into the distribution agreement.
- If your company provides sales promotion funding, coop funds, advertising allowances, etc., is the distributor required to participate in such programs?

Term of Agreement / Termination

- Is Distribution Agreement for a fixed term or is it evergreen?
- Consider usual/unusual termination provisions:
 - breach of Distribution Agreement by distributor;
 - distributor's financial health;
 - criminal convictions of distributor/senior employees of distributors;
 - distributor change of control;
 - failure of distributor to meet/exceed minimum purchase obligations;
 - failure of distributor to pay invoices; and/or
 - termination not for cause on notice.
- Consider what is to become of distributor's stock upon termination;

- repurchase by your company; or
 - distributor to have “tail” right to sell out of existing stock
- Consider whether right to terminate the Distribution Agreement s limited by local law (protected industry, franchise laws, requirements to terminate for good cause, etc.).
- Consider whether you want to require post-termination non-compete or other restrictive covenant on the part of distributor.

Damaged and Defective Products

- Consider including notice requirements for claims received by distributor for damaged or defective products for which your company will ultimately be responsible.
- Consider including inspection obligations on distributor on receipt of the products, which can cut off your company’s liability for damage or defects that should have been discovered.

Warranty

- Consider which entity (your company or distributor) provides the product warranty to the end-user, or if there is to be tiered warranties (your company provides base warranty and distributor responsible for warranty over and above the base).

Warranty and Maintenance Service

- Consider whether any warranty or maintenance service work on the products should be performed by the distributor.
- If distributor will be servicing the products consider:
- how payment for providing warranty service (if any) will be allocated between your company and distributor;
 - whether your company will provide training to distributor’s service technicians;
 - required technical qualifications of distributor service technicians; or
 - whether replacement/spare parts will be provided for a fee or for a fee;

Technical Support

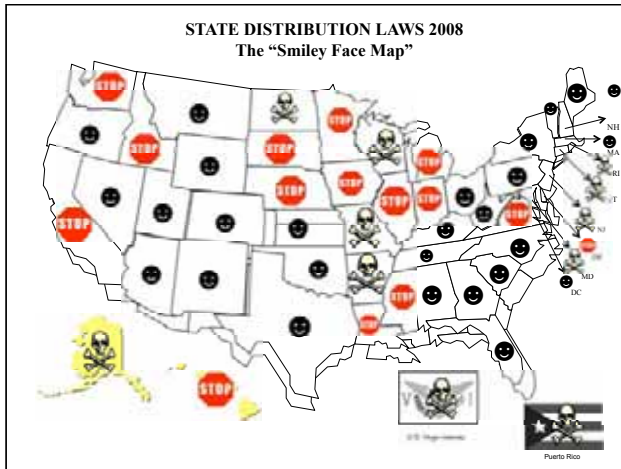
- Consider whether your company will need to provide technical support and whether a fee can be charged for such services.

Standard Contract Terms

- In addition to the foregoing, review your company’s terms of sale (ordering, delivery, forecasting, invoicing, acceptance, payment terms, etc.) and boilerplate terms (general

warranty, IP warranty, insurance requirements, confidentiality provisions, indemnity, etc.) and determine if they need to be modified for purposes of dealing with the distributor.

Prepared by John J. Herbst, General Counsel – Americas, Fiberweb Inc. for ACC Annual Meeting 2008 – Distribution Agreements Course.



Summary of State Laws With Broad/General Applicability

(rev. 8/2008)

STATE	STATUTORY RELIANCE	COVERAGE	RESTRICTS TERMINATION	NOTICE REQUIREMENT	BUY BACK REQUIREMENT	OTHER
Alaska	Alaska Statutes, Title 45, Ch. 45, §§ 45.45.700 through 45.45.790	Broad applicability: Distributors; does not apply to motor vehicle or alcohol distributors or manufacturers with 50 or fewer employees; also does not apply to petroleum franchises or distribution of cigarettes, food and drink	No	No	Yes	Prohibits requiring dealer to waive right to a jury, arbitrate any disputes under the dealer agreement, pay the attorneys' fees of the manufacturer or agree to a choice of law provision that applies the law of a state other than Alaska; also prohibits a distributor from coercing a dealer to perform acts by using duress or threatening to terminate the distribution agreement; substantial payment obligations for distributor upon termination of agreement or substantial change of competitive situation of dealer
Arkansas	Arkansas Franchise Practices Act, Ark. Code of 1987, Title 4, Ch. 72, §§ 4-72-201 through 4-72-210	Broad applicability	Yes, requires good cause	Yes, 90 days notice 30 days to cure	Yes, if termination is not for good cause	
California	Franchise Relations Act, California Business and Professions Code, Division 8, Chapter 5.5, Section 20000 through 20043	Franchises (Fee required)	Yes, requires good cause	Yes, 30 days to cure	Yes, if termination is in violation of the statute	
	Fair Dealership Law, California Civil Code, Division 1, Part 2.9, Sections 80-86	Dealerships	No	No	No	Prohibits discrimination in termination, granting, renewing, etc.; "dealership" (broadly defined) based on race, color, religion, national origin, ancestry or sex

STATE	STATUTORY RELIANCE	COVERAGE	RESTRICTS TERMINATION	NOTICE REQUIREMENT	BUY BACK REQUIREMENT	OTHER
Connecticut	Connecticut Gen. Statutes, Title 42, Chapter 739, Sections 42-133e through 42-133h	Franchises (No fee)	Yes, requires good cause	Yes, 60 days	Yes, upon termination even if for good cause	
Delaware	Delaware Franchise Security Law, Delaware Code Annotated, Title 6, Chapter 25, Sections 2551 through 2556	Franchises (Fee over \$100)	Yes, prohibits "unjust" terminations—lack of good cause or bad faith	Yes, 90 days	No	
Hawaii	Hawaii Franchise Investment Law, Hawaii Revised Statutes, Title 26, Chapter 482E, Section 482E1-6	Franchises (Fee)	Yes, requires good cause	Yes, with opportunity to cure within reasonable time	Yes	
Idaho	Idaho Code, Title 29, Ch. 1, § 29-110	Franchises (Fee over \$1,000)	No	No	No	Prohibits a franchisor from requiring a franchisee to sign an agreement waiving the venue or jurisdiction of the Idaho court system or shortening the statute of limitations.
Illinois	Illinois Franchise Disclosure Act, 815 ILCS 705/1 – 705/44	Franchises (Fee over \$500)	Yes, good cause required for terminations prior to expiration of term	30 days to cure	Yes, when there is a failure to renew absent 6 months notice	
Indiana	Indiana Deceptive Franchises Practices Act, Indiana Code, Title 23, Article 2, Chapter 2.7, Sections 1-7	Franchises (Fee)	Yes, requires good cause	90 days	No	See also Title 23, Article 2, Chapter 2.5, Section 1-51
Iowa	Iowa Code, Title XIII, Sections 523 H.1 through 523H.17 (if prior to 07/01/00); Iowa Code, Title XIII, Section 537A.10 (if after 07/01/00)	Franchises (Fee) (Limits types of "indirect" franchise fees)	Yes, requires good cause	30-90 days to cure	Limits enforceability of non-compete agreements unless franchisor offers "to purchase the assets of the franchised business for its fair market value as a going concern" (if prior to 07/01/00)	Imposes a duty of "good faith," i.e. honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade; if agreement was signed after 07/01/00, this good faith requirement specifically applies where franchisor opens a new outlet that has an adverse impact on the franchisee.

STATE	STATUTORY RELIANCE	COVERAGE	RESTRICTS TERMINATION	NOTICE REQUIREMENT	BUY BACK REQUIREMENT	OTHER
Louisiana	Louisiana Revised Statutes of 1950, Title 23, Chapter 9, Section 921	Franchise as defined in 16 C.F.R. § 436.2(e)	No	No	No	A franchise agreement may require that franchisee/franchisor are restricted from competing with one another during the term of the agreement. Statute provides for a non-compete period by the franchisee, not to exceed two years after termination.
Maryland	Maryland Fair Distributorship Act, Annotated Code of Maryland, Title 11 Sections 11301-11307	Broad Applicability: Distributors	Yes, requires notice	60 days	Yes	
Michigan	Michigan Franchise Investment Law, Chapter 445, Section 445.1527	Franchises (Fee required)	Yes, requires good cause prior to expiration of term	Yes, 30 days to cure	Yes, in certain circumstances	
Minnesota	Minnesota Stats. §§ 80C.01 to 80C.22	Franchises (Fee required)	Yes, good cause required	Yes, 90 days notice 60 days to cure	No	
Mississippi	Mississippi Code Annotated, §§ 75-24-51 to 75-24-63	Franchises (Consideration required)	Yes, requires notice	90 days	Certain types of franchises (See Mississippi Code 1972 Annotated, Title 75, Chapter 77, Sections 75-77-1 through 75-77-19)	
Missouri	Missouri Revised Statutes § 407.400 through 407.410, 407.413 and 407.420	Broad Applicability: Franchises (No fee)	Yes, requires notice	90 days	No	Franchisor must collect sales tax from franchisee
Nebraska	Franchise Practices Act, Nebraska Revised Statutes §§ 87-401 to 87-410	Franchises (Fee required)	Yes, requires good cause	60 days	No	

STATE	STATUTORY RELIANCE	COVERAGE	RESTRICTS TERMINATION	NOTICE REQUIREMENT	BUY BACK REQUIREMENT	OTHER
New Jersey	New Jersey Franchise Practices Act, N.J. Stat. Ann., §§ 56:10-1 through 56:10-29	Broad Applicability: Franchises: must have a place of business in New Jersey; gross sales exceed \$35,000 and 20% of sales are from franchise	Yes, requires good cause	Yes, 60 days	No	
North Dakota	North Dakota Century Code Annotated, Title 51, Chapter 51-20.2, Sections 51-20.2-01 through 51-20.2-03	Broad applicability	No	No	Yes	
Rhode Island	Rhode Island Fair Dealership Act, §§ 6-50-1 – 6-50-9	Broad Applicability	Currently defines the term "good cause", but does not restrict termination to "good cause" situations	Yes, 60 days with 30 days to cure	Yes	Does not apply to liquor, motor vehicle, insurance dealers, fuel distribution, or door to door sales dealerships
South Dakota	South Dakota Codified Laws, §§ 37-5B-1 37-5B-53	Franchises (consideration required)	Statute prohibits any false, fraudulent or deceptive practices in connection with offer and sale of a franchise	No	No	
Virginia	Virginia Retail Franchising Act, Virginia Code. Ann., §§ 13.1-557, 13.1-574 and 13.1-574	Franchises (Fee if over \$500 required)	Yes, requires reasonable cause	No	No	Prohibits use of undue influence to induce a franchise to surrender any right given to him by any provision contained in the franchise.
Washington	Washington Franchise Investment Protection Act, Wash. Rev. Code., §§ 19.100.180 and 19.100.190	Franchises (Fee required)	Yes, good cause required prior to expiration of term	Yes, 30 days to cure	Yes, upon failure to renew	Imposes obligation to deal in "good faith"
Wisconsin	Wisconsin Fair Dealership Law, Wis. Stat. §§ 135.01 through 135.07	Broad applicability	Yes, requires good cause	Yes, 90 days with 60 days to cure	Yes	
Puerto Rico	Laws of Puerto	Broad	Yes, requires just	No	Yes, if termination	

STATE	STATUTORY RELIANCE	COVERAGE	RESTRICTS TERMINATION	NOTICE REQUIREMENT	BUY BACK REQUIREMENT	OTHER
	Rico, Title 10, Chapter 14, Sections 278-278d	Applicability: Dealers	cause		not for just cause	
Virgin Islands	Virgin Islands Code, Title 12A, Chapter 2, Subchapter III, Sections 130 through 139	Broad Applicability: Franchises	Yes, requires good cause	Yes, 120 days	No	

States With Statutes Governing Specific Industries

(rev. 8/2008)

STATE	MOTOR VEHICLES	LIQUOR/BEER/ WINE	FARM/INDUSTRIAL EQUIPMENT	GASOLINE/MOTOR OIL/PETROLEUM	OTHER
Alabama	Yes §§ 32-17-1 – 32-17-2	Yes §§ 28-8-1 – 28-8-8 and §§ 28-9-1 – 28-9-11	Yes §§ 8-21A-1 – 8-21A-13	Yes §§ 8-22-1 – 8-22-18	“Liquid Goods” (applies to Mobile and Baldwin Cos. only) 2008 Acts 461, 462
Alaska	Yes § 45.25.110 § 08.66.350	No	No	Yes §§ 45.50.800 – 45.50.850	
Arizona	Yes §§ 28-4451 – 28-4460, § 28-4363	Yes §§ 44-1565 – 44-1567	Yes § 44-6701 – 44-6709	Yes §§ 44-1551 – 44-1560	
Arkansas	Yes § 23-112-403 §§ 23-112-701 – 23-112- 707	Yes §§ 3-5-1101 – 3-5-1111 § 3-2-401 – 3-5-412	Yes §§ 4-72-301 – 4-72-309	Yes §§ 4-72-401 – 4-72-403 and § 4-72-501 – 4-72- 503	Restaurants § 4-72-601 – 4-72-603
California	Yes Vehicle Code §§ 3060 – 3069.1	Yes Bus & Professions Code §§ 25000 – 25010 and § 25000.9	Yes Bus & Professions §§ 22900 - 22927	Yes Bus & Professions §§ 20999 – 21150.1	Mobile Homes Health & Safety Code §§ 18062.5 – 18062.8; Recreational Vehicles, Veh. Code §§ 3070 – 3079; All-Terrain Vehicles, Bus. & Prof. Code §§ 22900-22927
Colorado	Yes §§ 12-6-101 and 12-6-102, §§ 12-6-118(1) – 12-6-122 and §§ 12-6-301 – 12-6-303	Yes § 12-46-104 § 12-47-406	Yes §§ 35-38-101 – 35-38- 110	No	Power Sports Vehicles § 12-6-501 – 12-6-533
Connecticut	Yes Title 42, Ch. 739, §§ 42- 133r – 42-133ee and 42- 133mm; Ch. 743b, § 42- 179 and 42-133mm	Yes Title 30, Ch. 545, § 30- 17 and § 30-94	Yes Title 42, Chapter 743r	Yes Title 42, Ch. 739, §§ 42- 133j – 42-133n	
Delaware	Yes Title 6, Ch. 49 §§ 4901 - 4918	No	Yes Title 6, Ch. 27, § 2720- 2727	Yes Title 6, Ch. 29 §§ 2901 - 2911	
District of Columbia	No	No	No	Yes §§ 36-302.03, 36- 302.05, 36-303.01 - 303.07	

STATE	MOTOR VEHICLES	LIQUOR/BEER/ WINE	FARM/INDUSTRIAL EQUIPMENT	GASOLINE/MOTOR OIL/PETROLEUM	OTHER
Florida	Yes §§ 320.60 and 320.701	Yes § 564.045(5), § 565.095(5), § 563.022	Yes §§ 686.201 – 686.418	Yes §§ 526.301 – 526.313	Outdoor Power Equipment §§ 686.60 – 686.614; Motor vehicle and truck parts § 686.30; recreational vehicles § 320.3205 (effective Oct. 1, 2007)
Georgia*	Yes §§ 10-1-620 – 10-1-663 §§ 10-1-780 – 10-1-794	Yes §§ 3-5-29 – 3-5-34, § 3-6-22	Yes §§ 13-8-11 – 13-8-25, §§ 13-8-31 – 13-8-45	Yes §§ 10-1-230 – 10-1-241	Heavy Equipment §§ 10-1-730 – 10-1- 740; Marine Products §§ 10-1-675 – 10-1- 678; Recreational Vehicles §§ 10-1-679 – 10-1-679.15
Hawaii	Yes §§ 437-1.1, 437- 28(a)(22), and 437-33	No	No	Yes §§ 486H-1 – 486H-9, §§ 486H-10 – 486H-12	Office Machines § 8 481G-1 – 481G-8
Idaho	Yes §§ 49-1601 <i>et seq</i>	Yes § 23-1033A, § 23- 1328A	Yes §§ 28-23-101 – 28-23- 111 §§ 28-24-101 – 28-24- 107	No	All Terrain Vehicles and Outdoor Power Equipment § 28-23-101 – 111
Illinois	Yes Ch. 815, §§ 710/1 – 710/14	Yes Ch. 815, § 720/1 – 720/10	Yes Ch 815 § 715/1 – 715/11	No	Motorcycles Ch. 815, § 710/10.1
Indiana	Yes §§ 9-23-3 – 9-23-6-9	Yes § 7.1-5-9	Yes §§ 15-7-7-1 – 15-7-7-18	Yes §§ 23-2-2.7 – 23-2-2.7-7	
Iowa	Yes §§ 322A.1 – 322A.17, § 551.12	Yes §§ 123A.1 – 123A.12	Yes §§ 322D.1 – 322D.7, §§ 322F.1 – 322F.9	Yes §§ 323A.1 – 323A.3 323.1 – 323.14	Motorcycles, Snowmobiles and All Terrain Vehicles §§ 322D.1 – 322D.8
Kansas	Yes §§ 8-2411 – 8-2423	Yes § 41-410	Yes §§ 16-1001 – 16-1006, §§ 16-1201 – 16-1208	No	Outdoor Power Equipment §§ 16-1301 – 16-1312 Lawn and Garden Equipment §§ 16-1401 – 16-1412
Kentucky	Yes §§ 190.010 – 190.080	Yes § 244.585	Yes §§ 365.800 – 365.840	No	

* In a series of cases, significant portions of the various Georgia Statutes were held to be unconstitutional. The Georgia state constitution has since been amended to allow for such legislation and, in addition, the Georgia Legislature has redrafted certain provisions to avoid any constitutional infirmity.

STATE	MOTOR VEHICLES	LIQUOR/BEER/ WINE	FARM/INDUSTRIAL EQUIPMENT	GASOLINE/MOTOR OIL/PETROLEUM	OTHER
Louisiana	Yes Title 32, §§ 1251 – 1269; Tit. 9, Ch. 2, § 2961	Yes Title 26, Ch. 6, §§ 801- 812	Yes Title 51, Ch. 2, §§ 481- 488	Yes Title 51 Ch. 14, §§ 1451 - 1454	Lawn and Garden Equipment; All- Terrain Vehicles, Motorcycles and Marine Products and Dealers, Title 32, §§ 781 – 822; Real Estate Agencies, Title 37, Ch. 17, § 1465, Sales Representatives
Maine	Yes Title 10 §§ 204-1171 – 204-1186	Yes Title 28-A, §§ 1451 - 1465	Yes Title 10, §§ 1285-1298 Title 10, §§ 1361 - 1370;	Yes Title 10, Ch. 215, §§ 1451-1456	Recreational Vehicles, title 10, §§ 1431 – 1450-A; Personal Sports Mobiles, Title 10, §§ 1241 – 1250-J; Convenience Stores, Title 17, § 3321; Watercrafts, Title 10, §§ 1196 and 1197
Maryland	Yes Transp. §§ 15-201 – 15- 214 and § 15-305	Yes Art. 2B §§ 17-101 – 17- 107 and 9-301(5); Art. 2B § 21-103	Yes Commercial §§ 19-101 – 19-505	Yes Business Regulation §§ 10-301 – 10-324	
Massachusetts	Yes Ch. 90, §7N ½ Ch. 93B	Yes Ch. 138, § 25E	Yes Ch. 93G, §§ 1 - 11	Yes Ch. 93E, §§ 1-9	Lawn and Garden Equipment (within equipment statute)
Michigan	Yes §§ 445.1561 – 445.1583	Yes §§ 436.1201 – 1413	Yes § 445.1451 – 445.1460	Yes §§ 445.1801 – 445.1808	Water Craft and Outboard Motors, §§ 445.541 – 445.547;
Minnesota	Yes §§ 80E.01 – 80E.18 and § 80C.14	Yes §§ 325B.01 – 325B.17	Yes § 325E.05 – 325E.065	Yes Ch. 80F and § 80C.144 – § 80C.147	Heavy Equipment, §§ 325E.068 – 325E.0684
Mississippi	Yes §§ 63-17-51 – 63-17-141	Yes §§ 67-7-1 – 67-7-23	Yes §§ 75-77-1 – 75-77-19	No	Outdoor Power Equipment, Consumer Products, Repair Parts, Motor Homes §§ 75- 77-1 – 75-77-19
Missouri	Yes §§ 407.810 – 407.835	Yes §§ 407.400, 407.413	Yes §§ 407.838 – 407.898 § 407.307	Yes §§ 416.600 – 416.640	Outdoor Power Equipment, §§ 407.830 – 407.898; Campgrounds, §§436.100 – 436.105; Motorcycles and All Terrain-Vehicles, §§ 407.1025 – 407.1049; Boat, Marine, Vessel and Personal Watercraft Dealers, §§ 407.1360 – 407.1370 Recreational Vehicles § 407.1320 – 1355

STATE	MOTOR VEHICLES	LIQUOR/BEER/ WINE	FARM/INDUSTRIAL EQUIPMENT	GASOLINE/MOTOR OIL/PETROLEUM	OTHER
Montana	Yes §§ 61-4-131 – 61-4-150 and 61-4-201 – 61-4-210	Yes §§ 16-3-221 – 16-3-226, § 16-3-217, §§ 16-3-415 – 16-3-421, § 16-2-101	Yes §§ 30-11-701 – 30-11- 713, §§ 30-11-801 – 30- 11-811	Yes §§ 30-14-801 – 30-14- 806	Real Estate Brokers, § 37-51-321; Motorcycle, Recreational Vehicles, Watercraft, Snowmobile, Off Highway Vehicles, §§ 6 1-4-131 – 150, §§ 30-11-701, 30-11- 713; Construction §§ 30-11-901 – 30-11- 909; Motorsports Vehicles §§ 30-14- 2501 – 2503
Nebraska	Yes §§ 60-1401.01 – 60-1440	Yes §§ 53-201 – 53-223	Yes §§ 69-1501 – 69-1504, §§ 87-701 – 87-711	Yes §§ 87-411 – 87-414	
Nevada	Yes §§ 482.36311 – 482.3665	Yes §§ 597.120 – 597.180	Yes §§ 597.112 – 597.118	Yes (service stations) §§ 597.270 – 597.470	
New Hampshire	Yes §§ 357-C:1 – 357-C:15	Yes §§ 180:1 – 180:12	Yes §§ 347-A:1 – 347-A:11	Yes §§ 339-C:1 – 339-C:23	Snowmobiles (within Motor Vehicle statutes)
New Jersey	Yes § 56:10-1 – 56:10-29	Yes §§ 33:1-89 – 33:1-93.20	No	Yes §§ 56:6-1 – 56:6-32	
New Mexico	Yes §§ 57-16-1 – 57-16-16	Yes § 60-8A-2, §§ 60-8A-7 – 60-8A-11	Yes §§ 57-23-1 – 57-23-8	Yes §§ 12-12-10 – 12-12-16	Motorcycles, § 57-16-6.1 and 57-16- 9.1
New York	Yes Veh. & Traffic, §§ 460 – 473	Yes Alco. Bev. § 55-c	Yes Gen. Bus., §§ 696a-696i	Yes Gen. Bus. §§ 199a- 199n	Vessels, Gen. Bus. §§ 810-816
North Carolina	Yes § 20-285 – 20-308.2	Yes § 18B-1200 – 18B-1308	Yes §§ 66-180 – 66-188	Yes §§ 75-80 – 75-89	
North Dakota	Yes §§ 51-07-01 – 51-07-03 § 51-07-26	Yes §§ 5-04-01 – 5-04-17	Yes §§ 51-07-01 – 51-07-03 § 51-07-26	No § 51-07-25	Heavy Construction Equipment, § 51-20.1- 03; All Terrain and Recreational Vehicles, §§ 51-20-01 – 51-20- 02; Semi-Trailers (within Motor Veh. statutes)
Ohio	Yes §§ 4517.01 – 4517.65	Yes §§ 1333.82 – 1333.87	Yes §§ 1353.01 – 1353.05	Yes § 3741.13	Outdoor power equipment, recreational vehs., manufactured homes (within motor veh. statutes)

STATE	MOTOR VEHICLES	LIQUOR/BEER/ WINE	FARM/INDUSTRIAL EQUIPMENT	GASOLINE/MOTOR OIL/PETROLEUM	OTHER
Oklahoma	Yes Title 47, Ch. 62 §§ 561-579	Yes Title 37, Ch. 2 §§ 163.18A – 163.18H	Yes Title 15, Ch. 5 §§ 245 - 251	No	Aircraft, Title 3, § 3-254.4; All Terrain Vehicles, Lawn and Garden, Outdoor Power Equipment, (within equipment statutes)
Oregon	Yes §§ 650.120 – 650.170	Yes §§ 474.005 – 474.115	Yes §§ 646.415 – 646.455	Yes §§ 650.200 – 650.250	Recreational Vehicles, §§ 650.300 – 650.480; Construction equipment (included within motor vehicle statutes)
Pennsylvania	Yes 63 P.S. 818.1 – 818.37	Yes 47 P.S. 4-401 – 4-499	Yes 73 P.S. 205-1 – 205-10	Yes 73 P.S. 202-1 – 202-8	
Rhode Island	Yes §§ 31-5.1-1 – 31-5.1-21	Yes §§ 3-13-1 – 3-13-12 § 3-5-11.1	Yes §§ 6-46-1 – 6-46-12	Yes §§ 5-55-1 – 5-55-9	
South Carolina	Yes §§ 56-15-10 – 56-15-140; § 56-32-10 – 56-32-20	Yes §§ 61-4-1100 – 61-4-1320, § 61-4-735	Yes §§ 39-59-10 – 39-59-130	No	Motorcycles, §§ 56-16-10 – 56-16-210; Outdoor Power Equipment, §§ 39-6-10 – 39-6-180
South Dakota	Yes §§ 32-6B-1 – 32-6B-84	Yes §§ 35-8A-1 – 35-8A-20	Yes §§ 37-5-1 – 37-5-9; § 32-39-1 -32-39-4	Yes § 37-2-34 -37-2-38	Snowmobiles §§ 32-6E-1 – 32-6E-14; Office furniture and supplies, boat, personal watercraft, all-terrain vehicles, outdoor power equipment, temperature control units and auxiliary idle reduction (all within industrial equipment statutes)
Tennessee	Yes § 55-13-103, § 55-17-114 -55-17-126	Yes § 57-3-301(e) and (f) and § 57-6-104 and §§ 47-25-1501 – 47-25-1511, §§ 57-5-501 – 57-5-512	Yes §§ 47-25-1301 – 47-25-1314; § 47-25-1801 -47-25-1808	Yes §§ 47-25-601 – 47-25-607 and §§ 47-25-621 – 47-25-624	Motorcycles, §§ 47-25-1901 – 47-25-1914
Texas	Yes Occup. Code § 2301.001 – 2301.853; 43 Tex. Admin. Code § 8.104-8.108	Yes Alco. Bev. §§ 102.71 – 102.81, 102.51 – 102.53	Yes Bus. & Com. §§ 19.01 – 19.47	No	Boat Dealers, Occup. Code Ch. 2352; Off-road construction and forestry harvesting equipment (included within equipment statutes)

STATE	MOTOR VEHICLES	LIQUOR/BEER/ WINE	FARM/INDUSTRIAL EQUIPMENT	GASOLINE/MOTOR OIL/PETROLEUM	OTHER
Utah	Yes §§ 13-14-101 – 13-14-309	Yes §§ 32A-11a-101 – 32A-11a-111	Yes §§ 13-14A-1 – 13-14A-9; §§ 13-14b-101 -13-14b-105	Yes §§ 13-12-1 – 13-12-8, §§ 13-16-1 – 13-16-13	Powersport Vehicles, §§ 13-35-101 – 13-35-307
Vermont	Yes Title 9, Ch. 108, §§ 4083 - 4100	Yes Title 7, Ch. 23, §§ 701 - 710	Yes Title 9, Ch. 107, §§ 4071 - 4082	Yes Title 9, Ch. 109, §§ 4101 – 4110a	
Virginia	Yes §§ 46.2-1500 – 46.2-1582	Yes 4.1-400 – 4.1-418 4.1-500 – 4.1-517	Yes §§ 59.1-352.1 – 59.1-352.10	Yes §§ 59.1-21.8 – 59.1-21.18:1, §§ 59.1-21.18:2 – 59.1-21.18:4	Recreational Vehicles, §§ 46.2-1900 – 46.2-1991; Motorcycles, §§ 46.2-1993.64 – 46.2-1993.74; Trailers, §§ 46.2-1992- 1992.85; Heavy Equipment, §§ 59.1-353 – 59.1-363; Watercraft, §§ 29.1-828 – 29.1-829
Washington	Yes §§ 46.70.180 -46.70.190; §§ 46.96.010- 46.96.900	Yes §§ 19.126.010 – 19.126.901	Yes §§ 19.98.010 – 19.98.910	Yes §§ 19.120.010 – 19.120.905	Motorsport Vehicles, §§ 46.93.010 – 46.93.901
West Virginia	Yes §§ 17A-6A-1 – 17A-6A-18	Yes §§ 11-16-18, 11-16-25; §§ 60-8-1 -60-8-35	Yes §§ 47-11F-2 – 47-11F-8	Yes §§ 47-11C-1 – 47-11C-8	
Wisconsin	Yes §§ 218.0101 – 218.0172	Yes §§ 135.02 and 135.066, §§ 125.33 –125.34, § 125.69	No	Yes §§ 100.51 and 100.30	
Wyoming	Yes §§ 31-16-101 – 31-16-124	Yes §§ 12-9-101 – 12-9-119	Yes §§ 40-20-101 – 40-20-123	No	