ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
May 5, 2001
4:07 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Andrew Halcro, Vice Chair
Representative Kevin Meyer
Representative Pete Kott
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE CONCURRENT RESOLUTION NO. 9
Encouraging the Matanuska Electric Association to reverse its plan to pursue deregulation.

- HEARD AND HELD

CS FOR SENATE BILL NO. 176(L&C) am
"An Act prohibiting certain coercive activity by distributors; relating to certain required distributor payments and purchases; prohibiting distributors from requiring certain contract terms as a condition for certain acts related to distributorship and ancillary agreements; allowing dealers to bring certain court actions against distributors for certain relief; and exempting from the provisions of the Act franchises regulated by the federal Petroleum Marketing Practices Act, situations regulated by the Alaska gasoline products leasing act, and distributorship agreements relating to motor vehicles required to be registered under AS 28.10."

- MOVED HCS CSSB 176(L&C) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HCR 9
SHORT TITLE:MATANUSKA ELECTRIC ASSN DEREGULATION
SPONSOR(S): REPRESENTATIVE(S)KOTT

Jrn-Date	Jrn-Page		Action
03/20/01	0662	(H)	READ THE FIRST TIME - REFERRALS
03/20/01	0662	(H)	L&C
03/20/01	0662	(H)	REFERRED TO LABOR & COMMERCE
05/05/01		(H)	L&C AT 12:00 PM CAPITOL 17

BILL: SB 176
SHORT TITLE:DISTRIBUTORSHIPS
SPONSOR(S): LABOR & COMMERCE BY REQUEST

Jrn-Date	Jrn-Page		Action
04/05/01	0956	(S)	READ THE FIRST TIME - REFERRALS
04/05/01	0957	(S)	L&C, JUD, FIN
04/19/01		(S)	L&C AT 1:30 PM BELTZ 211
04/19/01		(S)	Heard & Held MINUTE(L&C)
04/24/01		(S)	L&C AT 1:30 PM BELTZ 211
04/24/01		(S)	Moved CSSB 176(L&C) Out of Committee MINUTE(L&C)
04/25/01	1259	(S)	L&C RPT CS 5DP SAME TITLE
04/25/01	1259	(S)	DP: PHILLIPS, DAVIS, AUSTERMAN, LEMAN,
04/25/01	1259	(S)	TORGERSON
04/25/01	1259	(S)	FN1: ZERO(CED)
04/25/01		(S)	JUD AT 1:30 PM BELTZ 211
04/25/01		(S)	Moved CS(L&C) Out of Committee MINUTE(JUD)
04/26/01	1277	(S)	JUD RPT CS(L&C) 4DP
04/26/01	1277	(S)	DP: TAYLOR, THERRIAULT, COWDERY, ELLIS
04/26/01	1277	(S)	FN1: ZERO(CED)
04/28/01	1338	(S)	FIN REFERRAL WAIVED REFERRED TO RULES
05/01/01	1400	(S)	RULES TO CALENDAR 5/1/01
05/01/01	1405	(S)	READ THE SECOND TIME
05/01/01	1405	(S)	L&C CS ADOPTED UNAN CONSENT
05/01/01	1405	(S)	AM NO 1(TITLE AM) ADOPTED UNAN CONSENT
05/01/01	1406	(S)	ADVANCED TO THIRD READING UNAN CONSENT
05/01/01	1406	(S)	READ THIRD TIME CSSB 176(L&C)(TITLE AM)

05/01/01	1407	(S)	PASSED Y19 N1
05/01/01	1407	(S)	TAYLOR NOTICE OF RECONSIDERATION
05/01/01		(S)	RLS AT 12:15 PM FAHRENKAMP 203
05/01/01		(S)	-- Time Change --
05/01/01		(S)	MINUTE(RLS)
05/02/01	1447	(S)	RECON TAKEN UP - IN THIRD READING
05/02/01	1447	(S)	RETURN TO SECOND FOR AM 2 UNAN CONSENT
05/02/01	1448	(S)	AM NO 2 ADOPTED UNAN CONSENT
05/02/01	1448	(S)	AUTOMATICALLY IN THIRD READING
05/02/01	1448	(S)	PASSED ON RECONSIDERATION Y18 N1 A1
05/02/01	1450	(S)	TRANSMITTED TO (H)
05/02/01	1450	(S)	VERSION: CSSB 176(L&C) AM
05/03/01	1501	(H)	READ THE FIRST TIME - REFERRALS
05/03/01	1501	(H)	L&C, JUD
05/05/01		(H)	JUD AT 1:00 PM CAPITOL 120
05/05/01		(H)	<Bill Postponed>
05/05/01		(H)	L&C AT 12:00 PM CAPITOL 17

WITNESS REGISTER

TUCKERMAN BABCOCK, Manager
Government and Strategic Affairs
Matanuska Electric Association
163 East Industrial Way
Palmer, Alaska 99645
POSITION STATEMENT: Testified on HCR 9.

JOHN HAXBY, General Manager
Waukesha Alaska Corporation
1301 Huffman Road
Anchorage, Alaska 99515
POSITION STATEMENT: Testified and answered question on SB 176.

ROGER HAXBY, Founder and President
Waukesha Alaska Corporation
1301 Huffman Road
Anchorage, Alaska 99516
POSITION STATEMENT: Testified in support of SB 176.

CHARLES VAN ORMER

3801 Barbara Drive
Anchorage, Alaska 99517
POSITION STATEMENT: Testified in support of SB 176.

HOWARD YAGER, Sales and Marketing Director
AlasCal, Inc.
4706 Harding Drive
Anchorage, Alaska 99517
POSITION STATEMENT: Testified in support of SB 176.

JANEECE HIGGINS, General Manager
Alaska Rubber & Supply, Inc.
5811 Old Seward
Anchorage, Alaska 99518
POSITION STATEMENT: Testified in support of SB 176.

DEBORAH LUPER
PO Box 771757
Eagle River, Alaska 99577
POSITION STATEMENT: Testified in support of SB 176.

CLYDE "ED" SNIFFEN, JR., Assistant Attorney General
Fair Business Practices Section
Civil Division (Anchorage)
Department of Law
1031 West 4th Avenue
Anchorage, Alaska 99501
POSITION STATEMENT: Testified on SB 176.

GEOFFREY LARSON, Co-Founder
Alaskan Brewing and Bottling Company
5429 Shaune Drive
Juneau, Alaska 99801
POSITION STATEMENT: Testified on SB 176.

ACTION NARRATIVE

TAPE 01-71, SIDE A
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 4:07 p.m. Those present at the call to order included Representatives Murkowski, Halcro, Meyer, Kott, Rokeberg, Crawford, and Hayes.

HCR 9-MATANUSKA ELECTRIC ASSN DEREGULATION

CHAIR MURKOWSKI announced that the committee would consider HOUSE CONCURRENT RESOLUTION NO. 9, Encouraging the Matanuska Electric Association to reverse its plan to pursue deregulation.

REPRESENTATIVE PETE KOTT, sponsor of HCR 9, presented the resolution. [Opening statements were inaudible due to tape failure. However, a written sponsor statement was provided in committee packets.]

CHAIR MURKOWSKI asked Representative Kott if it is his intention to enforce the [Matanuska Electric Association] board's intent to lay this aside.

REPRESENTATIVE KOTT responded that she was correct. He stated that he wants to reinforce the position that the board is currently taking, and he believes it should be put aside indefinitely. He added that this is not supported by the RCA (Regulatory Commission of Alaska).

Number 0108

CHAIR MURKOWSKI stated that in the "resolved" clause on page 2, [the Alaska State Legislature] is encouraging MEA (Matanuska Electric Association) to reverse its deregulation plan. In view of the actions of the board, she asked Representative Kott if he feels this language is still appropriate. She remarked that it doesn't seem that [MEA] has a deregulation plan at this point.

REPRESENTATIVE KOTT stated that it is questionable whether that plan currently exists. He said he suspects there was a formal plan that [MEA] was working from, but it has been put [aside] at the present time.

Number 0190

REPRESENTATIVE ROKEBERG asked if, under the circumstances, Representative Kott thinks it is wise to go ahead, since [MEA] has set this issue aside. He stated that he finds a significant amount of the resolution objectionable in terms of its factual accuracy, and thinks it might "poison the well" of any future restructuring efforts the state might want to undertake.

REPRESENTATIVE KOTT responded that he has given that a lot of thought, and he does not think there is anything that is not factual.

REPRESENTATIVE ROKEBERG remarked that with issues of deregulation, it should say "restructuring," since the conclusions of the commission are premature. He stated that the fact that there was massive damage to certain economies due to deregulation is arguable. For example, California's [situation] was not caused by deregulation; he believes it was caused by legislative meddling in the market system.

REPRESENTATIVE KOTT responded that he does not think [the blackouts that occurred in California] were entirely due to meddling by the California assembly, but that deregulation was not well thought out.

REPRESENTATIVE ROKEBERG stated that he would suggest that California didn't have the restructuring or deregulation in the more traditional sense. It may have been labeled that way, but it was with price caps, and some very improper economic assumptions were made; as a result, California's system of alleged deregulation was doomed to failure from the "get-go." He stated that he doesn't think it is accurate to use that as an example, whereas the cases in Pennsylvania and the mid-Atlantic states have been quite positive. He asked Representative Kott what the form of deregulation was and if [MEA] was considering some kind of acquisition or merger.

REPRESENTATIVE KOTT responded that he believes [MEA] was trying to get out from under control of the RCA.

REPRESENTATIVE ROKEBERG remarked that it is a statutory provision that the legislature has provided for.

Number 0449

TUCKERMAN BABCOCK, Manager, Government and Strategic Affairs, Matanuska Electric Association, testified via teleconference. He stated that it sounds as if there is some misunderstanding of what MEA has offered to its membership as a choice. He explained that it was already provided for in state statute, which is a deregulation with respect to setting rates and setting service rules. He stated that even if the membership had voted to approve this form of deregulation, the service territory and the certificate that allows [MEA] to serve a particular area would still be regulated by the RCA. He remarked that had [MEA] pursued it, [MEA] would be doing nothing different from 65 percent of all the electric utilities in Alaska, which are already deregulated. These sorts of elections have been successfully held by Copper Valley, Cordova, and

Kotzebue, all in the last few years. On the other hand, he said, the MEA board of directors, particularly with the confusion around the word "deregulation," and with the news about California back in January, voted unanimously not to initiate the deregulation election. He stated that if the legislature has considered the state statute that gives cooperatives this option and wishes to recommend to the co-ops not to pursue this option, then it makes no more sense to direct it at MEA than it would at Chugach, Golden Valley, or Homer at this point.

Number 0637

CHAIR MURKOWSKI stated that she had asked the sponsor about the wording in the "resolved" section encouraging MEA to reverse its deregulation plan, and asked Mr. Babcock if, in his opinion, that has been accomplished by the recent actions.

MR. BABCOCK responded that in January, MEA's board voted unanimously not to initiate the election. He stated that there are no plans to pursue this option or present it to the members. Even if the board wanted to pursue this limited kind of deregulation, a majority of the members would have to vote in favor of it before it would be implemented.

REPRESENTATIVE ROKEBERG asked if the sponsor is going to redraft this.

REPRESENTATIVE KOTT stated that he would.

[HCR 9 was held over.]

SB 176-DISTRIBUTORSHIPS

CHAIR MURKOWSKI announced that the committee would consider CS FOR SENATE BILL NO. 176(L&C) am, "An Act prohibiting certain coercive activity by distributors; relating to certain required distributor payments and purchases; prohibiting distributors from requiring certain contract terms as a condition for certain acts related to distributorship and ancillary agreements; allowing dealers to bring certain court actions against distributors for certain relief; and exempting from the provisions of the Act franchises regulated by the federal Petroleum Marketing Practices Act, situations regulated by the Alaska gasoline products leasing act, and distributorship agreements relating to motor vehicles required to be registered under AS 28.10."

Number 0827

JOHN HAXBY, General Manager, Waukesha Alaska Corporation, came forth and stated that [Waukesha Alaska Corporation] will be 30 years old next year; it was started in 1972 by Mr. Haxby's father. Mr. Haxby said he has been operating the business since approximately 1984. There are 13 employees, and the main business involves the sale and distribution of machinery, as well as services throughout Alaska. He stated:

> Over the last 30 years we've been in relationships with many different manufacturers. ... Relationships change over ... time, and there are occasions where distributor agreements are "yanked" or terminated without warning. In many cases, this can cause irreparable financial damage to Alaskan businesses, and the immediate loss of jobs created by the lack of product to sell. In our specific case, in addition to loss of business revenues, it has also resulted in some $300,000 in unusable inventory, which remains on our shelf even today. Senate Bill 176 is good because it doubles the playing field in Alaska.
>
> Legal challenges are extraordinarily expensive, and in most cases, the outside manufacturers have very, very deep pockets, and have the ability to simply run Alaskan businesses out of money in the courts. Cases like this can easily run into the hundreds of thousands of dollars. ... In one notable instance, from one company, ... legal bills are in excess of one million and continue to climb with ongoing legal challenges. This type of legal expense is simply not an option for most small businesses in Alaska, certainly not ours.
>
> This bill also keeps manufacturers from forcing unwanted or unordered inventory on Alaskan businesses. It is not uncommon for manufacturers to make us part of some imaginary quota and just say that [we're] going to take part in it. When there's resistance on the part of a local distributor to do so, the manufacturers typically threaten or say ... "You need to do this because it's part of our quota, and either do [it] or we're going to have problems." This bill also allows that in the event of a death of a

> distributor, ... an orderly and equitable return of inventory can be accomplished quickly.
>
> In many cases when business owners do die, the IRS [Internal Revenue Service] comes in and values [the] businesses according to past results and past history. If distributor agreements are yanked because the manufacturers believe that ... the person [whom] they originally struck [the] deal [with] are not the heirs of that person, the value of the business can go to zero. ... Even though the IRS would value the business according to past results and assets [and] a tax based on past [results], if the distributorship agreements were yanked, the value of the business could theoretically go to zero while the tax liability remains with the estate.

Number 1038

REPRESENTATIVE MEYER stated that he had introduced a House bill similar to this, and when he first talked about this [with Mr. Haxby], Mr. Haxby had given him a few examples. He asked Mr. Haxby if there are other businesses in which this has happened and has caused some great financial distress.

MR. HAXBY responded that he could; however, he thinks some people will be testifying to that.

REPRESENTATIVE ROKEBERG asked Mr. Haxby if his business would benefit from the enactment of this legislation.

MR. HAXBY answered that his business has the potential to be treated equitably in the future.

REPRESENTATIVE ROKEBERG asked Mr. Haxby if he is "hustling" the legislature because he sees the "handwriting on the wall" from his main supply.

MR. HAXBY responded no.

REPRESENTATIVE HALCRO noted that on page 2, line 2, it states that "[a distributor may not coerce or] attempt to coerce a dealer to perform certain acts by using duress or by threatening to terminate the distributorship agreement". He stated that some franchise or distributor agreements call for the franchisee to spend money on marketing or to buy tools. He said this is a broad description of a certain act. If part of a franchise

agreement calls for a [business] to invest in certain products, this theoretically can be used to say, "The law says you can't make me do that." He asked Mr. Haxby why that is written the way it is.

Number 1192

MR. HAXBY responded that typically these types of behaviors occur after the contract is signed.

REPRESENTATIVE HALCRO asked Mr. Haxby, when he enters into an agreement under which [the manufacturers] could periodically say they are going to change the terms and conditions, if he would have to sign it in order to continue being a supplier, or if he operates off one original document.

MR. HAXBY answered that it is typical for a manufacturer to come back and say, "Here's the new document; sign it." And if there is any term that [the supplier] does not like and attempts to cross out, the [manufacturer] could say, "Sign it, or you're terminated."

REPRESENTATIVE HALCRO asked if the [manufacturers] can come [to the supplier at any time], or if they wait till the end of the contract period.

MR. HAXBY responded that in some cases there has been some notice, typically without the benefit of any input from the [supplier]. There are occasions when there is literally no notice, and other occasions when distributorship agreements are yanked with 30 days' notice.

Number 1320

REPRESENTATIVE HALCRO, in reference to the section "Death of distributor" on page 3, stated that if the agreement is signed with him, and he passes away but his wife and kids want to keep the distributorship, it seems that this only addresses the liquidation of the assets and that the dealer would repurchase all of the inventory. He stated that if the family wants to continue on, it seems to him that there ought to be a section that addresses what the logical next step would be to protect both parties. He asked if there has been any discussion with regard to that.

MR. HAXBY replied that the first sentence of that section, [AS 45.45.730, page 3, lines 4-5] states, "Unless the

distributorship agreement is continued by the personal [representative]". He said in his understanding, in the event that [the manufacturers] say, they want to continue the agreement, then they are further bound by the rest of the law. Therefore, if the manufacturers wanted to terminate, they would be bound by the other conditions in the bill.

REPRESENTATIVE HALCRO asked, "Even though their agreement was with you and not necessarily the family member?" He stated that he thinks there needs to be some kind of a process to come up with a new agreement that is going to protect both sides.

MR. HAXBY remarked that he thinks, under this particular section, it would allow [the supplier] to say, "Yes, we want to continue." He added that there is another section that says there is the ability to go to court. He stated that he would think that under subsection (b)(2), on page 4, [the supplier] may be able to get an injunction.

REPRESENTATIVE HALCRO, in reference to "Required purchase, reimbursement, and supplies", on page 3, asked Mr. Haxby if he could explain when a distributor terminates a distributorship agreement or changes the competitive situation of the distributors dealer with regard to distribution. For example, if someone has a signed contract representing a specific toolmaker and [a representative] asks [someone else] to sell the same tools, that would affect the competitive balance in the workplace.

MR. HAXBY responded that that may be one case, but a more suitable case would be when there are certain discounts from a list-price that are afforded and all of a sudden the manufacturer changes the discount.

Number 1564

CHAIR MURKOWSKI stated that she has some concern with this area. She stated that "changes the competitive situation" is a very broad terminology. It does not include making a price change; however, the distributor could make an agreement with one company to sell the exact same product regarding which another company has an agreement.

MR. HAXBY stated that typically in the businesses he has been involved in, when these agreements are signed, many of the manufacturers do not have markets in Alaska. However, he said, he supposes Chair Murkowski is right.

REPRESENTATIVE HALCRO stated that the broadness concerns him because certainly the agreement would vary. For instance, some dealer-distributorships have specific [geographic] areas, but if there is an agreement that does not have a geographic area defined, this leaves the door open to someone to say, "The competitive situation's changed; I'd like to take advantage of some of the provisions that are outlined here and make the dealer buy back my inventory." He stated that he thinks that is one area that needs to be "tightened down."

Number 1737

ROGER HAXBY, Founder and President, Waukesha Alaska Corporation, testified via teleconference. He stated:

> Until the mid 1980s, our business and that of our competitors [were] relatively stable. However, since that time, we and our employees have suffered extra costs and losses due to the specious nature of manufacturers from Outside, who typically do the following: They'll come to Alaska looking for an introduction to their product; ... join us for the first early years; ... demand training of our service personnel as well as customer personnel; insist on the substantial inventory of parts and machines; do warranty work immediately, and then decide whether or not to reimburse us; and continue to expand and provide modern facilities for appearances as well as the ability to do additional business.
>
> Then, when the machine volume and population reaches the threshold, it is not [atypical] to use the distributor agreement as a threat or as a pawn in negotiating with outside companies who wish to enter the Alaska arena. It's happened more than once where an Outside company is enticed to handle their product on the basis that they get the contract for Alaska also.
>
> When cancellation for a simple nonrenewal of a distributor or contract occurs, we get stuck with the inventory of parts, machines, (indisc.) units, and trained servicemen. ... One of the worst [parts] about being in business is ... [laying] off employees who have lost their use. The cost runs into hundreds of thousands, if not millions of dollars. The serious

problem with this is that our local industries will never grow to the size of their potential, because the conditions simply do not match with long-term amortization cost for facilities and personnel training.

Number 1897

CHARLES VAN ORMER testified via teleconference. He stated:

At this time, I would like to request your support on this bill. As an employee and a manager with quite a few companies here in Alaska in the last 27 years, I have been forced through the change of the lines, handled by distributorships that I have worked for, to have to devalue. And [I] have seen the owner's company I work for pay taxes based on inventory tax of dead stock before it to be totally devalued as distributorships have changed. And [I have] also watched good employees get laid off, ... had to terminate the people because we didn't have the work, and see these people leave Alaska with their families.

The question that came up earlier as to change in market are -- one of things that's happening in Alaska is we're seeing a large influx of large corporations from outside the state of Alaska bringing products to Alaska. While most (indisc.), the corporations coming into town now bring in the lower end - the consumer end. These products are able to buy and sell at a price sometimes lower than Alaska distributors would buy at.

... I worked last year for a company; we were asked by one of our major suppliers to handle a product. By the time I cost it out with freight to Alaska, I could go to Costco and buy it for $7 cheaper than my landing cost in Seattle, not including the Seattle-to-Alaska Freight. Costco had it there ready to sell. Costco's price was driven by their national buying price and also reduced shipping rates. ... They're a very good company, don't get me wrong, but Alaskan distributors have been forced to either jettison a line, cancel a line, or readjust their marketing because of wholesale marketing.

I personally, last year due to reduced sales caused by this, laid off a young man whose father had opened a business in Alaska that was driven out because the major qualities from lines he handled were now being held by a major wholesaler in town on the lower end. They had to buy him; he could not compete.

Number 2009

MR. VAN OMER continued, stating:

[There's] another major issue ... I think affects Alaskan businesses - Mr. Haxby's alluded [to] this - as the Alaskan distributor would be appointed, develop a market area, and then in which a corporation would set up another distributor [and] bring someone to town or come to town themselves. This happened during the trans-Alaska oil pipeline construction - major corporations who've had national agreements with the pipeline men. [The] pipeline proceeded to bypass local Alaskan distributorships, [and] bring their own company's store to town. The people were not Alaskan residents; they worked up here in and out of the state at the time after the pipeline, then they closed their company store and left town.

I see, potentially, the same thing happening with the opening of ANWR [Arctic National Wildlife Refuge], hopefully, and the gas line. ... Major corporations will say, "We're coming to town, we'll open our own store to support the pipeline, support ANWR, the gas line," and the local distributors will be left out again. This type of thing does happen; we're seeing it in the equipment business, which I am in. A company came to town last year; this forced the cancellation of three lines of equipment they have because of national agreements, because a national firm [was] handled by other Alaskan small businesses that now have dropped. Either due to lack of market or cancellation, [they] have dropped that line and have [been] forced to find something to fill that market hole.

Number 2114

HOWARD YAGER, Sales and Marketing Director, AlasCal, Inc., testified via teleconference. He stated that [AlasCal, Inc.] is

a petrology laboratory that deals with low-cost to very expensive instruments used to calibrate the measurements of things that deal mainly with the pipeline, aviation, and military. He stated:

> Our range of equipment is from a few hundred dollars to many thousands [of] dollars. Should we lose our distributorship from our manufacturers, we could be left with some very "high-tech" inventory that would be like computers: every year it sits on the shelf, it becomes less and less valuable and would be out of date. The inventory dollars would dissipate very quickly on that. We would urge [that SB 176] be passed to protect us from this. When we're appointed by our manufacturers, we assume that we're going to sell everything that they suggest we carry, and should that not happen, that's going to stick us with a lot of inventory that would be worthless and depreciating very quickly.

CHAIR MURKOWSKI asked Mr. Yager, if he had a product that essentially becomes technologically obsolete under how things operate currently, whether the distributor would buy back those products.

MR. YAGER responded no, that he would be stuck with them in inventory.

Number 2268

JANEECE HIGGINS, General Manager, Alaska Rubber & Supply, Inc., testified via teleconference. She stated:

> In 1995 one of our manufacturers terminated a distributor agreement that we had. We decided to fight the case. They went after our customers, told them we were no longer the factory-authorized distributor, and we were not allowed to return any inventory. We had close to a million [dollars] in inventory at that point. We could then no longer sell it to our main customers, because they were told by the manufacturer that we would not give them the technical support that [was] needed. We have gone through litigations. ... We have prevailed in every court case. They have appealed it all the way to the Ninth Circuit, and they have still appealed; we are

still in the appeals process. Our legal fees have reached over $1.2 million and we're not done yet.

We have moved some of the inventory. ... We still [have] close to $100,000 worth of inventory that is very specific to a customer who no longer will purchase it from us. At $20 a foot, not too many people want to water their gardens with hoses that cost that kind of money. Had something like this been in effect ... we might have been able to withstand ... [it with] much fewer losses. We could have possibly returned the inventory, worked out some sort of agreement, and come out a much better deal. Hindsight tells us we probably shouldn't have fought, we should have tried to work something out, but the loss to us was very significant. One customer that we lost was a $600,000-per-year customer.

... I would really urge you to pass this into law. Most small companies could not withstand the expense that we have. ... When they terminated the agreement, [the owner] decided that he was going to stick with it and fight it out, that he had done nothing wrong, that we had been a good distributor; we had been a top 12 distributor in the nation for over 15 years. [The manufacturers] were promised oil slope revenue by another company, and that was one of the reasons the distributorship was terminated. In one of the counter suits they have now, [they] even implicated that it is our fault that they terminated us and had to go with an inferior distributor, because the sales did not materialize. ... There needs to be some protection for the small businesses.

Number 2389

DEBORAH LUPER testified via teleconference. She stated that essentially the bill prevents coercion of small Alaskan businesses - Alaskan dealers who are providing the market for the "big guys" Back East. She said she knows that in one case a tire manufacturer required the dealers to purchase tire inventory that they did not want and had not ordered. That was something that eventually forced that dealers to seek another line. She said this would require the big businesses Outside to buy back inventory, should they try to make the agreement. This also [addresses] a dealer who is deceased, and whose heirs have inherited the business. In cases where the dealership is yanked

because the dealer has died and the [manufacturer] doesn't want to deal with the heirs, the inventory will be purchased back.

TAPE 01-71, SIDE B

MS. LUPER continued, stating that typically these "big guys" come in and want [the dealer] to develop the market. They sign a distributorship agreement that is fair to both parties, but as the years go on, these agreements become more and more restrictive. Eventually, [the dealer] becomes so dependent on one particularly line that if they decide to yank the distributorship agreement, [that dealer] has an entire business that could go under. She pointed out that this bill is not retroactive; it does not take into account previous activities. However, from the day it is signed, it would go into effect. She added that most businesses cannot afford the legal hassles and the legal expenses that are associated with these situations. Small businesses in Alaska have "shallow" pockets, whereas the manufacturers in the Lower 48 have "deep" pockets.

Number 2372

CLYDE "ED" SNIFFEN, JR., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, testified via teleconference. He stated that the Department of Law generally supports the bill and has proposed a couple of minor amendments. One [later adopted as Amendment 1] involves the amount of money that would have to be paid to the distributor in the event that a distributorship agreement was canceled. In the original version of the bill, that amount was 100 percent of the net value of the inventory; this amendment would change that amount to a fair market value. He explained that the reason for this is that requiring payment of 100 percent of the amount paid for the inventory was an inventory guarantee that perhaps wasn't a sharing of the risk that was contemplated under the agreement. The other suggested change [later adopted as Amendment 2] is to include the word "franchise" in the language that exempts motor vehicle dealers.

CHAIR MURKOWSKI stated that a question was raised earlier by Representative Halcro concerning the section on "Required purchase, reimbursement, and supplies" on page 3. She said there is language on line 16 that allows for the reimbursement or the purchase if there's a termination of the distributorship or changes to the competitive situation of the distributor's dealer. She remarked that her concern is, for example, when someone has been selling tires in Anchorage for a period of

years and has a nonexclusive agreement, but the community has grown and there is a need to expand. If somebody else then comes in and starts selling the same product, that is clearly a change in the competitive situation. She asked whether the distributor is then required to repurchase all of the [inventory], including the good will and assets of the company.

MR. SNIFFEN stated that that is an interesting question. A couple of issues arise. One might be an antitrust implication. If the competitive relationship has changed because of the entry of a new competitor into the market, those things are encouraged in order to lower prices and provide benefits to consumers. Under a situation like that, the way the bill is written now, a repurchase of inventory might be required; however, he said that might be a factual question for the court to consider. He noted that under the proposed amendment, if inventory is repurchased at fair market value, the distributors are protected because they can resell the merchandise to someone else, and the dealers are protected because they are receiving something for the inventory and not left high and dry.

Number 2199

REPRESENTATIVE HALCRO asked whether it would help if [it read] "substantial changes" [in the competitive relationship], thereby creating a higher threshold.

MR. SNIFFEN responded that he thinks it would. He added that one thing that might help would be if the distributor was responsible for creating other competition.

REPRESENTATIVE ROKEBERG suggested that inserting the words "makes substantial" after "or" on page 3, line 16, implies that it is the distributor making the substantial change.

CHAIR MURKOWSKI stated that the Alaska Gasoline Products Leasing Act addresses what happens on a termination and required purchase or reimbursement, but good will under that consideration is only allowed if it's the dealer who doesn't renew because he or she can't agree to other terms. She said if there appear to be situations in which good will would be allowed, but it is an act of the dealer that causes the termination, then good will should not be allowed as part of the compensation package. He asked Mr. Sniffen if he would comment on that.

MR. SNIFFEN responded that he would agree with that completely. He stated that good will is another one of those nebulous things that is difficult to put a value on.

Number 2033

REPRESENTATIVE HALCRO added that he thinks the use of assets is equally as broad. He said assets could be a revenue stream or loss in the customer's account.

REPRESENTATIVE ROKEBERG suggested using a different word than "covered" on page 3, line 19. He asked Chair Murkowski if she was suggesting deleting "good will".

CHAIR MURKOWSKI answered no, that in looking at how similar statutes have addressed it, it seems to make sense to mirror that. She stated that in certain instances in which the termination has not been through the fault of the dealer, good cause should be allowed. However, she said, there may be instances in which good will shouldn't be allowed for the compensation package, if the dealer had somehow acted against the agreement or there had been some bad faith.

REPRESENTATIVE ROKEBERG remarked the she would have to be clear on that, because basically there would have to be some type of appraisal or evaluation made.

CHAIR MURKOWSKI added that anytime there is evaluation of goods, the courts are involved.

REPRESENTATIVE ROKEBERG stated that that should be avoided.

Number 1938

CHAIR MURKOWSKI remarked, in reference to page 3, subsection (a)(2), that if the dealer has substantially changed the competitive situation, the distributorship should reimburse the dealer for the expenses that were incurred by the dealer during the 18 months before the termination or the change. She asked Mr. Sniffen if "expenses" means that the distributor will have to reimburse the dealer for rent, overhead, and everything that is associated with the operation of the business.

MR. SNIFFEN responded that he didn’t see that "expenses" was defined in the bill in any specific way. He stated that he thinks that could be a possibility.

CHAIR MURKOWSKI remarked that "expenses" needs to be defined more clearly. She asked if this draft [of the bill] is seeking to reimburse the dealer for those things that the dealer had to buy from the distributor 18 months prior to the termination or the change.

MR. SNIFFEN answered that he thinks that is correct. He added that he would think the main items that a dealer would have are inventory, equipment, and supplies, as well as transportation expenses associated with getting those things back to the distributor.

CHAIR MURKOWSKI stated that in looking at the petroleum Act in state statutes, it doesn't define "expenses" but it does put a limitation that the distributor should not have to pay for personalized materials that don't have a value to the refiner or distributor.

MR. SNIFFEN commented that he thinks that is a good approach.

Number 1806

REPRESENTATIVE ROKEBERG directed Mr. Sniffen to page 6, lines 2 and 3, which read, "'distributorship agreement' means an agreement, whether express, implied, oral, or written". He said he is concerned about having an implied or oral contract raised to the level of statutory protection.

MR. SNIFFEN responded that he thinks that is a good concern. If a distributor denied that there was such a relationship and then refused to comply with the statute, it would be up to the dealer to prove that there was a relationship. He added that that would be a question for the courts.

REPRESENTATIVE ROKEBERG asked Mr. Sniffen if he thinks leaving "implied" and "oral" would be OK under those circumstances.

MR. SNIFFEN stated that it is going to raise some questions down the road, and he doesn't know if there is an easy way to get around that. He added that he does think those situations exist, and this would provide some protection.

REPRESENTATIVE ROKEBERG remarked that those are his concerns. If [the bill] were to stipulate only a written agreement, then most of these arrangements would be made more or less as a handshake deal in order to avoid the enforcement of the statute.

MR. SNIFFEN said that is a good point.

Number 1704

REPRESENTATIVE HALCRO stated that in the inverse of that, handshake deals might become a norm in order for somebody to take advantage of the statute. He stated that part of his concern is with subparagraph (2)(B) on page 3, which reads, "(2) reimburse the dealer for the expenses that were incurred by the dealer (B) during the 18 months before the termination or change"; it is so broad, it gets way beyond "stationery and pens and pencils." He remarked that if he built a showroom 12 months earlier to highlight the product line, and he lost the product line, it might be argued that the distributorship would have to pay for the showroom.

MR. SNIFFEN responded that that is a good point. He suggested that one way to limit that is to include language such as "expenses necessarily incurred to sell the product" or to tie it to only those expenses that the distributor requires for the sale of the product, and not expenses the dealer might incur on his or her own.

REPRESENTATIVE HALCRO suggested tightening the language so it only relates to inventory or related expenses.

MR. SNIFFEN stated that he thinks that's a good idea.

Number 1602

CHAIR MURKOWSKI, in reference to the section on page 2 concerning disposition of merchandise remaining upon the contract termination, stated that she understands, the way this is drafted now, that this applies regardless of whether there is cause for termination. She asked Mr. Sniffen if that is his understanding.

MR. SNIFFEN answered yes.

CHAIR MURKOWSKI stated that she understands the language on page 2, subsection (c), as relating only to repair parts. She asked how obsolete technology would be dealt with. For example, she asked if she were an Apple computer dealer and had repair parts in her inventory for several years that are now obsolete, whether she could receive the original purchase price, because that would be the highest price. She stated that she is concerned with technological obsolescence and the fact that in

this day and age things change literally overnight. She asked Mr. Sniffen if she is too concerned about this.

MR. SNIFFEN responded that he does not think she is [too concerned]. He stated that he does not understand a whole lot about dealer-distributor relationships, but assumes that in some situations there is a requirement that repair parts be available. Therefore, dealers might be more reluctant to buy a computer than repair parts, because they may not realize the value from the repair-part inventory that they would from the computer itself. He said there has to be a sharing of the risk here; the dealers are making profits selling these things. On the repair-part issue alone, he said it would seem that the distributor is requiring the dealer to carry that inventory at a certain level, and [the distributor] should bear more of that risk than the dealer.

Number 1359

REPRESENTATIVE HALCRO remarked that Mr. Sniffen hit on a good possible solution of tying in the repurchase of the repair parts to fair market value.

REPRESENTATIVE ROKEBERG said he is concerned about that because if [the committee] adopts the fair market value suggestion, that won't necessarily include repair parts. He stated that he is less concerned about this [than the other members] because there is going to be a net price list.

CHAIR MURKOWSKI remarked that it will be the higher of the original purchase price or the latest price published.

REPRESENTATIVE ROKEBERG responded that it is still a wholesale price, rather than a fair market value price if there is a listing. He suggested that it be the higher of the fair market value or the latest price published.

CHAIR MURKOWSKI remarked that that would take care of it.

REPRESENTATIVE ROKEBERG asked Mr. Sniffen if he has looked at any other states or what has been done elsewhere.

MR. SNIFFEN responded that he hasn't specifically with distributor bills like this one. He said he has looked at other states when it comes to automobile franchise relationships.

Number 1184

MS. LUPER stated that in regard to page 2, subsection (c), in cases where the parts are small and there is a risk of their going obsolete, the trend seems to be that [a single] request is faxed in so the dealer is not left with a lot of obsolete products. In cases where the parts are very heavy and cost a lot in freight, those tend to be the sort of repair parts for Caterpillar tractors, for example, and don't become obsolete as a general rule. She stated that the concern is valid, but she thinks that in the long term it probably will not be a formidable situation.

MS. LUPER stated that she believes page 3, paragraph (2) refers to the special training and infrastructure specific to the product. For example, Roger Haxby related to her earlier that to sell a specific product, his company worked out an arrangement whereby many of Alaskan Natives living in the villages were brought into town, trained, and sent back to the villages to earn a living. When that dealership agreement was gone, not only did all those people lose their jobs, but all the training, travel, and everything that was specific to the product was gone as well.

Number 1040

GEOFFREY LARSON, Co-Founder, Alaskan Brewing and Bottling Company, testified via teleconference. He stated that he thinks SB 176 is good for protecting small, in-state dealers from larger, more powerful outside entities. He remarked that the definition "distributor" also includes manufacturers, and his company is a manufacturer. He stated that in this particular interpretation of SB 176, it would not be very good for [the Alaskan Brewing and Bottling Company]. He explained that his company sells its beer through a wholesaler that is a fairly large entity. In this instance, [the Alaskan Brewing and Bottling company] is the small entity, being a manufacturer, which creates a paradox.

MR. LARSON stated that he thinks this is good for the protection of people who build a brand in an environment where they are smaller by definition, because generally the larger manufacturers have much of the control over what merchandise is being sent to the "light." In his case, the rolls are reversed. [The Alaskan Brewing and Bottling Company] actually gives its wholesaler exclusive rights for distribution, but in that instance the company ends up relinquishing a lot of its own ability to help guide and prosper in that relationship. He

added that the awkward thing for his company, being manufacturers in Alaska, is that if they had to go through another market to get their product to market, they would first have to succeed in [Alaska's] market.

MR. LARSON stated that in the proposed amendment there is reference to wholesalers under Title 4, which he does not think would be as appropriate. He stated that even his wholesaler has larger suppliers from out-of-state.

Number 0827

CHAIR MURKOWSKI stated that [the committee] had received a proposed amendment from Senator Leman's office that would specifically exempt breweries, brewpubs, wineries, and wholesalers under Title 4. She asked if it is Mr. Larson's recommendation to expand it to those that are manufacturers in a more general sense.

MR. LARSON responded that the awkwardness is that he understands his business and the channels of trade for breweries, and is provincially unaware of what would be a good generalization. He stated that from his perspective, that amendment would protect the breweries. He remarked that in his case, his company needs to wholesale through other entities. In doing that, they will form a relationship and sign distribution rights whereby they give their wholesaler total rights to their product; however, in that exclusivity a lot of power is lost. He added that he would tend to say that with the amendment as it is proposed, the manufacturers and the wholesaler should probably be left out.

REPRESENTATIVE HALCRO asked Mr. Larson if he had addressed this in Senate Labor and Commerce Standing Committee.

MR. LARSON responded that he just became aware of the bill. He added that the intent of the law in other states is to protect the in-state distributor from larger outside interests. In the last 15 years, for his industry, these laws sometimes have been problematic for the tiny entities.

Number 0470

MR. VAN ORMER stated that as a manufacturer and/or dealer in Alaska, he handles products that are subdistributed to people throughout the state. He said he would see [his company] as being subject to the manufacturer-dealer side of this law. He added that the importance of keeping the oral agreements piece

in this law is that they become a part of the distributor-dealership agreement.

CHAIR MURKOWSKI called for an at-ease at 5:40 p.m. The meeting was called back to order 5:44 p.m.

TAPE 01-72, SIDE A

REPRESENTATIVE HALCRO made a motion to adopt Amendment 1 [language provided by Mr. Sniffen], which would change AS 45.45.710(a)(1), page 2, lines 16 to 22, to read [original punctuation provided]:

> (1) the fair market value for merchandise that is unused and for which the retailer has paid the distributor, plus 100 percent of the transportation charges paid by the dealer to return the merchandise to the distributor. "Fair market value" as used herein means the amount the distributor would realize from the sale of the merchandise to another retailer using reasonable good faith efforts. "Unused" means unopened merchandise still in the original factory packaging or container; ....
>
> This will protect distributors from becoming "insurers" of old inventory, and from having to pay for merchandise that cannot be resold.

There being no objection, Amendment 1 was adopted.

Number 0054

REPRESENTATIVE HALCRO made a motion to adopt Amendment 2 [language provided by Mr. Sniffen], which would replace paragraph (3) on page 5, line 17, to read [original punctuation provided]:

> (3) a distributorship or franchise agreement for the sale, repair, or servicing of motor vehicles that are required to be registered under AS 28.10, including any person required to be licensed under AS 45.45.200.

There being no objection, Amendment 2 was adopted.

REPRESENTATIVE ROKEBERG made a motion to adopt conceptual Amendment 3, on page 2, lines 27 and 28, to delete "original

purchase price" and add "fair market value". There being no objection, conceptual Amendment 3 was adopted.

Number 0164

REPRESENTATIVE ROKEBERG made a motion to adopt conceptual Amendment 4, on page 2, line 8, to add "not contracted for expenditure for money" after "the".

CHAIR MURKOWSKI objected for purposes of discussion.

REPRESENTATIVE HALCRO explained that this is in reference to when something is called for in a franchise agreement, such as tools or training.

CHAIR MURKOWSKI suggested changing the wording to "the expenditure of money not contracted for".

REPRESENTATIVE ROKEBERG agreed with Chair Murkowski.

CHAIR MURKOWSKI announced that there being no further objection, conceptual Amendment 4 was adopted.

Number 0269

REPRESENTATIVE ROKEBERG made a motion to adopt conceptual Amendment 5, on page 3, line 16, to insert the words "makes substantial" after the word "or".

CHAIR MURKOWSKI asked if the distributor would be making the substantial changes.

REPRESENTATIVE ROKEBERG stated that she was correct.

REPRESENTATIVE HALCRO suggested that the wording should be "makes substantial changes in the competitive situation".

CHAIR MURKOWSKI announced that there being no objection, conceptual Amendment 5 [as worded by Representative Halcro] was adopted.

Number 0336

REPRESENTATIVE ROKEBERG asked if [the committee] has to adopt the termination for cause.

CHAIR MURKOWSKI responded that Mr. Sniffen didn't seem to think that the termination for cause issue was significant until talking about good will.

REPRESENTATIVE ROKEBERG stated that he doesn't think a person should buy back the business he or she terminates for cause.

CHAIR MURKOWSKI responded that that was what she was saying.

REPRESENTATIVE ROKEBERG remarked that [the bill] doesn't say that.

CHAIR MURKOWSKI stated that [the committee] can incorporate language similar to what is contained in the [Petroleum Marketing Practices Act]. She stated that if the termination is without cause, then good will could be worked into the evaluation of the assets. She said she agrees with Representative Rokeberg in not wanting to eliminate good will.

REPRESENTATIVE ROKEBERG stated that he doesn't mind making it as tough as possible if the whole idea of "purchasing the business" is if there is any cause.

CHAIR MURKOWSKI stated that nowhere in [the Petroleum Marketing Practices Act] does the termination have to be for cause.

REPRESENTATIVE ROKEBERG asked what would happen if the person is a bad operator.

Number 0584

MR. HAXBY responded that if the person is a bad operator, good-will assets of his or her business would go downhill dramatically. He added, in reference to Chair Murkowski's comment on termination for cause or if there is no good cause, that after discussing this with Legislative Legal and Research Services there was a question as to how to define "cause." He said it ended up that there were so many terms that had to be defined; therefore, Legislative Legal and Research Services suggested leaving it the way it is.

CHAIR MURKOWSKI stated that the good-will aspect is this intangible concept, and if there has been good cause to terminate a contract, she said she questions whether or not the individual should be entitled to any good will.

MR. HAXBY responded that when giving evaluations of businesses, if there is a growth curve that is negative, the value of that business is going to be modest compared to the growth of a company that may have a highly positive, year-after-year growth. Good will would be taken into account at that time by a business analyst or an evaluation expert who says the company is growing at 25 percent year-over-year, and therefore will give them an "X"-times-earnings multiplier, which includes good will.

Number 0740

REPRESENTATIVE ROKEBERG stated that unless there is the discretion of causation and contract obligation, he thinks that should be inserted into this clause.

REPRESENTATIVE HALCRO stated that good will to him reads like "blue sky." He suggested taking out "good will."

REPRESENTATIVE HALCRO made a motion to adopt conceptual Amendment 6, on page 3, line 19, to replace "covered" with "directly affected". There being no objection, conceptual Amendment 6 was adopted.

REPRESENTATIVE HALCRO made a motion to adopt conceptual Amendment 7, on page 3, line 20, to delete "good will".

CHAIR MURKOWSKI objected for the purpose of discussion. She stated that she knows deleting "good will" makes the bill cleaner, but she said she supposes there is some merit to keeping it. She stated that she does not like that it is as broad as it is.

REPRESENTATIVE HALCRO stated that "assets" is a very broad term, but there are some sideboards that imply commercially reasonable business evaluations. He added that assets could potentially cover good will.

CHAIR MURKOWSKI removed her objection. She announced that there being no further objection, conceptual Amendment 7 was adopted.

Number 0986

REPRESENTATIVE HALCRO made a motion to adopt conceptual Amendment 8, on page 3, line 26, to insert "those costs directly related to inventory" after (B).

CHAIR MURKOWSKI asked Representative Halcro if he is referring to the expenses.

REPRESENTATIVE HALCRO answered yes.

CHAIR MURKOWSKI suggested putting a definition of expenses in (B).

REPRESENTATIVE HALCRO withdrew his conceptual Amendment 8.

Number 1057

CHAIR MURKOWSKI suggested the wording, "necessarily incurred with the sale of the inventory".

REPRESENTATIVE ROKEBERG suggested "the records incurred as a result of the agreement".

CHAIR MURKOWSKI remarked that that is good.

REPRESENTATIVE HALCRO stated that as (B) defines it, not only is a dealer's business covered by the distributor agreement, but it's 18 months prior to the termination or change.

REPRESENTATIVE ROKEBERG stated that he thinks that is too long.

Number 1188

CHAIR MURKOWSKI made a motion to adopt conceptual Amendment 8, on page 3, line 22, to insert "reimburse the dealer for the expenses that were necessarily incurred by the dealer for that portion of the business covered by distributorship agreement".

REPRESENTATIVE HALCRO restated that 18 months seems a little long.

CHAIR MURKOWSKI asked Mr. Haxby what the reasoning was for the 18 months.

MR. HAXBY responded that typically it has to do with advertising contracted for six months prior to its publication in the Yellow Pages. Therefore, the company would incur the expense six months after it's contracted for.

REPRESENTATIVE HALCRO remarked that that would already be covered regardless of the timeframe, because that would be necessarily incurred.

Number 1270

CHAIR MURKOWSKI asked if subparagraph (B) is even necessary.

REPRESENTATIVE HALCRO responded that he doesn't believe so, unless there's some compelling reason other than the Yellow Pages.

REPRESENTATIVE ROKEBERG stated that there needs to be a defined time period where there will be expenses.

REPRESENTATIVE HALCRO stated that he agrees. He suggested [that the time period be] 12 months.

CHAIR MURKOWSKI announced that there being no objection, conceptual Amendment 8 was adopted.

Number 1351

CHAIR MURKOWSKI made a motion to adopt conceptual Amendment 9, on page 3, line 26, to delete "18" and insert "12".

REPRESENTATIVE ROKEBERG stated that he is not comfortable with that. He said he is not going to reward a bad businessperson.

REPRESENTATIVE HALCRO stated that he still has some concerns on page 6 with "implied, or oral". He said he thinks if there is going to be a distributorship agreement, it certainly should be in writing; if [the committee] is putting these terms and conditions in statute, he thinks [the committee] should make this apply to a written document because otherwise it will be impossible for the court to enforce and decipher.

REPRESENTATIVE ROKEBERG stated that it happens all the time.

Number 1477

REPRESENTATIVE MEYER asked Mr. Haxby what he thinks about taking out "oral" and ”implied".

MR. HAXBY stated that he has seen many instances in which people do not have the money to get an agreement; many times there are handshake deals that will take place over many years. He said "oral" does allow some method to review a contract that is not in writing.

REPRESENTATIVE MEYER remarked that he does not know how an oral agreement could be proven.

REPRESENTATIVE HALCRO stated that it seems to him if he were a small distributorship and couldn't afford a lawyer to craft a distributorship agreement, he would be "looking for trouble."

MR. HAXBY stated that he understands Representative Halcro; however, this does in fact occur. If all of a sudden a distributor says, "I want a written contract now," and the guy says, "I'm sorry, have a nice day," then the business is gone. If it is taken out, there is no way to have some type of review.

Number 1591

CHAIR MURKOWSKI stated that recognizing that distributors now will have a distributor protection Act in Alaska, she thinks with that protection comes an obligation for the businesses to protect themselves. She remarked that she recognizes that in the past people have operated in a trusting "hand shake world"; however, [times] are changing and people are suing at the drop of a hat. Therefore, for [the businesses'] protection, she said she thinks it ought to be in writing.

MR. HAXBY stated that he would agree with Chair Murkowski wholeheartedly. However, as the business market in Alaska matures, there are still people who will be covered by oral agreements.

CHAIR MURKOWSKI stated that this applies to a distributorship agreement that is entered into on or after the effective date of this Act. She said if she has an oral agreement that she entered into last year and she wants it covered under this, she could allege that she entered into this oral agreement after the effective date in order to get the coverage. She added that she thinks a written agreement gives [businesses] protection.

MR. HAXBY stated that he agrees with Chair Murkowski, and that most smart businesspeople who have the time and the money to do that will do so. Everybody who typically is distributing a product wants some type of a formal written agreement in order to go to the banks to borrow money; however, that is not the case all the time. He remarked that he thinks there needs to be some method to review the contract, which may be an oral contract.

Number 1728

REPRESENTATIVE HALCRO stated that maybe a businessperson has had an oral agreement with a particular supplier for years, and once this bill passes, he or she calls the supplier and [confirms the agreements], then if anything happens different from the original oral agreement, he or she could legitimately forward a claim saying he or she has reinforced the oral agreement. He remarked that it gets into a "he said she said," and he doesn't see how anybody comes out ahead with that.

REPRESENTATIVE CRAWFORD suggested adding "verifiable oral agreement".

MR. HAXBY remarked that that's typically the way these things happen; there is usually a history that has gone on.

CHAIR MURKOWSKI stated that [the committee] is now talking prospectively; if someone wants to come under the franchise protection Act, he or she needs a written agreement.

REPRESENTATIVE CRAWFORD stated that he knows there needs to be a written contract; however, in the business that he is in, more often than not, things are done "on the handshake."

Number 1049

REPRESENTATIVE HALCRO restated Chair Murkowski's motion to adopt conceptual Amendment 9, on page 3, line 26, to delete "18" and insert "12". There being no objection, conceptual Amendment 9 was adopted.

CHAIR MURKOWSKI made a motion to adopt conceptual Amendment 10, on page 6, line 3, to delete "implied" and "oral".

REPRESENTATIVE HALCRO suggested deleting on page 6, line 2, "whether express" as well.

CHAIR MURKOWSKI clarified that conceptual Amendment 10 would be, "means a written agreement between two or more persons".

Number 1901

REPRESENTATIVE HAYES objected. He stated that he believes implied and oral contracts are done all the time and are adjudicated in the courts. Taking that out would hinder some of the flexibility that some businesses have.

REPRESENTATIVE MEYER indicated he thinks it is a good business practice, regardless of the size of the business to have it written, to protect both sides.

REPRESENTATIVE HALCRO stated that he would concur with Representative Meyer.

REPRESENTATIVE ROKEBERG stated that he is going to vote against the amendment because he believes that customary practice does take place.

Number 1995

A roll call vote was taken. Representatives Meyer, Kott, Halcro, and Murkowski voted for conceptual Amendment 10. Representatives Hayes, Rokeberg, and Crawford voted against it. Therefore, conceptual Amendment 10 was adopted by a vote of 4-3.

CHAIR MURKOWSKI referred to page 4, line 2, which states, "a requirement that the distributor waive a trial by jury". She asked whether it should say "dealer" instead of "distributor".

MR. HAXBY replied yes.

Number 2050

CHAIR MURKOWSKI made a motion to adopt conceptual Amendment 11, on page 4, line 2, to change "distributor" to "dealer". There being no objection, conceptual Amendment 11 was adopted.

REPRESENTATIVE HALCRO made a motion to adopt conceptual Amendment 12, which read [original punctuation and capitalization included]:

TITLE WILL HAVE TO BE AMENDED TO INCLUDE THESE EXCEPTIONS.

Page 5, line [19]:
Following "to be registered under AS 28.10"

Insert

"(4) a person licensed as a
(A) brewer under AS 04.11.130;
(B) brewpub under AS 04.11.135;
(C) winery under AS 04.11.140; or
(D) wholesaler under AS 04.11.160

CHAIR MURKOWSKI objected for the purpose of discussion. She stated that Mr. Larson thought that this should not be limited to brewers, but should also deal with manufacturers.

REPRESENTATIVE ROKEBERG stated that he was going to offer another amendment whereby small manufactures of 100 employees or less would be exempt. He remarked that he thinks that would address Mr. Larson's concern. He made a motion to amend conceptual Amendment 12 by deleting subparagraph (D).

CHAIR MURKOWSKI announced that there was no objection to the amendment to conceptual Amendment 12; therefore, conceptual Amendment 12, as amended, would provide an exemption for a brewery, brewpub, and a winery.

Number 2187

REPRESENTATIVE HALCRO remarked to Mr. Haxby that the wholesale [aspect], under Title 4 only deals with those involved in the liquor industry.

MR. HAXBY responded that he was only concerned if it excluded one area such as an Alaskan [company] versus an Outside [company].

REPRESENTATIVE ROKEBERG stated that these would be Alaskan breweries.

MR. HAXBY stated that he doesn't think so, that Representative Halcro suggested it was excluding all.

REPRESENTATIVE ROKEBERG replied that he has another amendment; therefore, Mr. Haxby shouldn't worry about it.

CHAIR MURKOWSKI stated that breweries and brewpubs under Title 4 are Alaskan by definition. She announced that there being no objection, conceptual Amendment 12, as amended, was adopted.

Number 2228

REPRESENTATIVE ROKEBERG made a motion to adopt conceptual Amendment 13, on page 5, which would be paragraph (5) after the previously adopted amendment, to exempt small manufacturers of 100 employees or less. He added that it could be in-state, but there would probably be equal-protection problems.

CHAIR MURKOWSKI objected for discussion purposes. She asked if this would put [the bill] in conflict with the meaning of "distributor," which includes a manufacturer with no definition.

REPRESENTATIVE ROKEBERG responded that that is why it is a conceptual amendment. He said this would exempt only the small manufacturers. At 100 employees, it would almost be a "micro manufacturer."

MR. HAXBY pointed out one of the issues that may arise: if there is subdistribution of five or ten sales agents from the major manufacturer, this would exclude them.

Number 2296

CHAIR MURKOWSKI asked how "manufacturer" is defined.

REPRESENTATIVE MEYER asked if an oil company would be a manufacturer.

MR. HAXBY stated that he is at a total loss and is concerned about that question.

REPRESENTATIVE HALCRO suggested that [the committee] wait to see a draft.

CHAIR MURKOWSKI asked Representative Rokeberg if he wanted to withdraw conceptual Amendment 13.

REPRESENTATIVE ROKEBERG answered, no.

REPRESENTATIVE HALCRO objected to the amendment because he did not know how it would impact the bill.

REPRESENTATIVE ROKEBERG stated that all it would do is exempt small businesses.

TAPE 01-72, SIDE B
Number 2334

REPRESENTATIVE HAYES stated that he opposes the amendment, and thinks this would be a great amendment to debate in the House Judiciary Standing Committee, with an opinion from Legislative Legal and Research Services.

REPRESENTATIVE ROKEBERG remarked that it is a business decision, not a legal decision.

REPRESENTATIVE HALCRO commented that he is concerned that there may be a small manufacturer in the states with 100 or few employees that produces a tremendous product that might be a distributor's more profitable line, and it might be the cause of some "heartburn."

REPRESENTATIVE ROKEBERG asked Mr. Haxby if he represents any manufacturers that have less than 100 employees.

MR. HAXBY replied that he couldn't think of any.

REPRESENTATIVE HALCRO stated that Mr. Haxby also testified that this bill was not designed to help his company.

MR. HAXBY added that in the past he has done business with manufacturers that have less than 100 employees, but not at this moment.

Number 2275

CHAIR MURKOWSKI stated that she has a friend who owns an Alaskan-known pipe-manufacturing company that is a "mom and pop" business. She said she wondered what the ramifications would be for a company like that.

CHAIR MURKOWSKI made a motion to amend conceptual Amendment 13 from 100 to 50 [employees]. There being no objection, the amendment to conceptual Amendment 13 was adopted. She announced that there being no further objection, conceptual Amendment 13, as amended, was adopted.

REPRESENTATIVE CRAWFORD asked if, on page 3, line 4, where it states "Death of the distributor", it should be "Death of the dealer".

CHAIR MURKOWSKI responded that it should be "Death of the dealer".

Number 2160

REPRESENTATIVE CRAWFORD made a motion to adopt conceptual Amendment 14, on page 3, line 4, to delete "distributor" and insert "dealer". There being no objection, conceptual Amendment 14 was adopted.

REPRESENTATIVE HAYES made a motion to adopt conceptual Amendment 15, on page 5, line 8, to delete "merchandise".

CHAIR MURKOWSKI objected for discussion purposes.

REPRESENTATIVE HAYES explained that AS 45.45.740(a)(1) is not for merchandise, it is only for business value.

CHAIR MURKOWSKI stated that she would agree that it shouldn't read "repurchase", because the distributor is purchasing a portion of the business that the dealer has never purchased from the distributor; therefore, it is just a purchase. She clarified that conceptual Amendment 15 would state, "(6) failing to purchase as required by AS 45.45.740(a)(1);". There being no objection, conceptual Amendment 15 was adopted.

Number 2013

CHAIR MURKOWSKI stated that Representative Halcro had made a point under the "Death of dealer" section that it is not just the purchase of the inventory, but that there should be an opportunity to continue the distributorship agreement. She asked if that was addressed.

REPRESENTATIVE ROKEBERG stated that unless the agreement is continued, that would occur.

CHAIR MURKOWSKI responded that he was correct, but oftentimes there will be a right of first refusal to the spouse.

REPRESENTATIVE HALCRO remarked that Mr. Haxby had brought up the concern that if the primary person passes away, the business is valued and the distributor says, "We're going to cancel your agreement"; then [the dealer] is left with a huge tax bill.

MR. HAXBY commented that he thinks that since it states in this particular section, "Unless the distributorship agreement is continued by the personal representative, heirs, [or devisees of the individual]", there would be the ability for the [dealers] to say they are going to continue on.

Number 1895

REPRESENTATIVE HALCRO made a motion to move CSSB 176(L&C) am, as amended, out of committee with individual recommendations and the attached zero fiscal note. There being no objection, HCS

CSSB 127(L&C) moved from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 6:45 p.m.