

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

January 16, 2002

3:15 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Andrew Halcro, Vice Chair
Representative Kevin Meyer
Representative Pete Kott
Representative Harry Crawford
Representative Joe Hayes
- HEARD AND HELD

MEMBERS ABSENT

Representative Norman Rokeberg

COMMITTEE CALENDAR

HOUSE BILL NO. 182

"An Act relating to motor vehicles; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 182

SHORT TITLE: MOTOR VEHICLE SALES AND DEALERS

SPONSOR(S): REPRESENTATIVE(S)MURKOWSKI

Jrn-Date	Jrn-Page		Action
03/14/01	0586	(H)	READ THE FIRST TIME - REFERRALS
03/14/01	0586	(H)	L&C, FIN
03/14/01	0586	(H)	REFERRED TO LABOR & COMMERCE
04/11/01	0970	(H)	COSPONSOR(S): HALCRO
04/11/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/11/01		(H)	Heard & Held - Assigned to Subcommittee
04/11/01		(H)	MINUTE(L&C)
11/08/01		(H)	L&C AT 1:30 PM Anch LIO Conf Rm
01/16/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

RICK MORRISON, Owner
Eero Volkswagon; and
Member, Alaska Auto Dealers Association
935 Gambell Street
Anchorage, Alaska 99501
POSITION STATEMENT: Testified on HB 182.

RALPH SEEKINS, President
Seekins-Ford-Lincoln-Mercury, Inc. and
Seekins-Ford-Peninsula; and
President, Alaska Auto Dealers Association
1625 Old Steese Highway
Fairbanks, Alaska 99701
POSITION STATEMENT: Testified on HB 182.

JOHN WHATLEY, Spokesperson
The Alliance of Automobile Manufacturers
1401 H Street, N.W., Suite 900
Washington, D.C. 20005
POSITION STATEMENT: Testified on HB 182.

JIM MOORS, (Legal Counsel)
National Automobile Dealer Association
8400 Westpark Drive
McLeon, Virginia 99518
POSITION STATEMENT: Testified on HB 182.

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General
Fair Business Practices Section Civil Division (Anchorage)
Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
POSITION STATEMENT: Testified on HB 182.

BOB FAVRETTO, Owner
Kenai Chrysler Center, Inc. and
Capital Chevrolet
P.O. Box 7672
Nikiski, Alaska 99635
POSITION STATEMENT: Testified on HB 182.

STEPHEN CONN, Executive Director
Alaska Public Interest Research Group
P.O. Box 101093
Anchorage, Alaska 99501

POSITION STATEMENT: Testified on HB 182.

DUANE BANNOCK

Kenai Chrysler Center, Inc.

10288 Kenai Spur Highway

Kenai, Alaska 99611

POSITION STATEMENT: Testified on HB 182.

ACTION NARRATIVE

TAPE 02-1, SIDE A

Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:15 p.m. Representatives Murkowski, Halcro, Meyer, Kott, Crawford, and Hayes were present at the call to order.

HB 182 - MOTOR VEHICLE SALES AND DEALERS

Number 0110

CHAIR MURKOWSKI announced that the committee would hear HOUSE BILL NO. 182, "An Act relating to motor vehicles; and providing for an effective date." [Adopted at the 04/11/01 meeting was HB 182, 22-LS0239\F, Bannister, 4/6/01; Version F was then assigned to a subcommittee.]

Number 0167

REPRESENTATIVE HALCRO, speaking as chair of the subcommittee assigned to work on HB 182, moved to adopt the proposed committee substitute (CS) for HB 182, version 22-LS0239\P, Bannister, 12/28/01, as the working document. There being no objection, Version P was before the committee.

REPRESENTATIVE HALCRO went on to say that when this was originally introduced it was a 46-page bill, with a fiscal note of half a million dollars. Throughout the last eight months the committee has worked to reduce the bill to 23 pages with 4 pages of definitions. The fiscal note has been eliminated.

REPRESENTATIVE HALCRO reviewed the brief history of the bill. The bill contains increased bonding requirements for automotive dealers and motorcycle [dealers]. The previous bond limits were not enough to cover the cost of a new vehicle. This was done at

the recommendation of the director of the Division of Motor Vehicles (DMV).

REPRESENTATIVE HALCRO explained that the [subcommittee] had addressed the subject of termination. They addressed issues such as the point at which the automotive manufacturer can terminate a local automotive dealership, the requirements for this process, and what criteria have to be in place. The [subcommittee] feels that it has defined these issues clearly; included now are an appeals process and an arbitration process that the automotive dealership can go through if there is any disagreement.

Number 0312

REPRESENTATIVE HALCRO spoke about the issue of succession. For example, if the owner of an automotive dealership were to die, the bill addresses the [franchise-holder's rights], such as having the business go to a relative or to a manager. This bill includes criteria that address this scenario.

Number 0348

REPRESENTATIVE HALCRO also addressed the subject of new dealerships and market entry. This deals with protection for franchise holders. For instance, if General Motors (GM) wanted to come in and put in a dealership and there was already an existing (GM) dealership, [it outlines] what would have to take place to allow that to happen.

Number 0382

REPRESENTATIVE HALCRO discussed a key issue regarding new dealership and market entry, known as "relevant market area", which is the dealer's existing market. He indicated the Connecticut version was used as a model. It says "that the manufacturer will honor the franchise agreement"; a local car dealer would [have a franchise agreement] with its local community and would have the right to sell a product in a given area. That is often defined in the franchise agreement. What Version P covers is that the dealership will not only honor what is in the manufacturer's franchise, but will also extend a 14-mile buffer. It gives the dealer, if there is no geographic protection, 14-miles of protection.

REPRESENTATIVE HALCRO continued to say that [the subcommittee] had to be careful with [the franchise agreement] because there

is a very strong argument that limiting or putting conditions upon the manufacturer's right to expand its operations might "bump up" against federal anti-trust laws; it would put up barriers that tell somebody that he or she cannot compete. The [subcommittee] was very careful about [this subject] and spent a lot of time [working] with Terry Bannister, Attorney, Legislative Legal and Research Services, [reviewing the content of HB 182] to make sure that it is okay.

Number 0482

REPRESENTATIVE HALCRO also addressed some smaller sections of the bill that deal with some repurchase obligations from the manufacturer. When [a manufacturer] terminates a dealership, it specifies what [the manufacturer] has to do to compensate [the dealership] for equipment that has been purchased within the last three to five years. It also covers [the dealership's] new inventory and what [the manufacturer] has to pay [the dealership] for compensation. In addition to this, it addresses how soon [the manufacturer] has to compensate [the dealership]. The committee has set forth those requirements.

Number 0512

REPRESENTATIVE HALCRO addressed one of the most important parts of the bill, consumer protection. He said the subcommittee has spent a good deal of time with Clyde (Ed) Sniffen, Jr., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law. He had asked [Mr. Sniffen] about the type of issues that consumers complain about. Although a great number of issues arise, there is nothing in [Alaska] state law that protects consumers in certain situations. He asked [Mr. Sniffen] to come up with some language with regard to consumer rights. Representative Halcro also requested that [Mr. Sniffen] review [existing laws] as well as what was already covered under federal laws, because there are existing federal "lemon laws" in place.

Number 0575

REPRESENTATIVE HALCRO explained that if a dealership advertises a vehicle for a specific sales price, then the dealership should have more than one vehicle available. If it only has one vehicle available, it would be required to disclose it to the public. He said there is concern that the dealerships are advertising vehicles to attract consumers to the dealership. Once the consumer is at the dealership, the dealer discloses

that it only had one of the vehicle advertised, which the dealer since sold. As a result, the dealership might try to "move" the consumer into a different vehicle. The subcommittee is concerned about [dealerships] misrepresenting the product and the [number of vehicles] available to the consumer.

Number 0652

REPRESENTATIVE HALCRO mentioned that there is some support for a two- or three-day "cooling off" period. He said that it is unworkable for a car dealer to have a two- or three-day "cooling off" period for a new car. When a new car is purchased and the paperwork is completed, it starts a process that informs DMV that [the person] owns the car. This makes the car used, and it cannot be sold again as a new car. He stated concern over this issue and suggested that another state's process be reviewed. Regarding "balance," he said that the consumer needs to have some protections, but the consumer also needs to be responsible, and the responsibility should be shared.

REPRESENTATIVE HALCRO mentioned that the subcommittee had removed the DMV oversight. He said that the original bill had plans that would have caused additional work for DMV, which the director of DMV feels the division cannot presently handle. He also said that DMV should not be responsible for the [oversight]. He added that it is questionable as to whether or not it should be in legislation.

Number 0821

REPRESENTATIVE HALCRO said the subcommittee had eliminated all of the issues regarding warranty work and the issues relating to manufacturer's subsidiaries. He said that these are the two issues that the dealers and manufacturers could not "get together" on. He indicated that the subcommittee reviewed the [process] of what other states had done previously, and the "trend" of similar legislation. The subcommittee found that it would not be realistic for these problems to be solved in legislation. He said that the State of Alaska should not be [regulating] items such as rental vehicle [compensation], warranty work [obligations], and coverage. These are items that are left to a franchise agreements; if all of these items were covered in state law, then there would be no need for a franchise agreement.

REPRESENTATIVE HALCRO suggested that there should be some protection for Alaskan businesses that have made substantial

investments in their dealerships and their communities. If there were any termination, succession, or new market entry, there should be a groundwork in [place].

Number 0874

REPRESENTATIVE HALCRO indicated that Version P is less involved than the original version. He said this was based on previous conversations regarding [Version F], held with opposing sides regarding the bill; he felt that neither side was happy [because both sides must compromise].

REPRESENTATIVE HALCRO addressed concerns that this bill was not the right "vehicle" for consumer protection. He disagreed, citing that if the bill [outlines] the responsibilities of the dealers and manufacturers, the bill should also address consumer [protection].

Number 0949

REPRESENTATIVE HALCRO explained that he had studied other states and their laws relating to auto dealers. During his research he discovered that dealers tend to be local and to have a better connection with their state legislators, which is the reason that these [issues] have gained so much ground in states. He found that it had become a trend to put these protections in place. He said that he has a problem with it; there is a strong argument that this "bumps" up against anti-choice and anti-consumer issues. The [legislation] is limiting competition and the options available to consumers. The argument is that [legislation] needs to be careful with "what they put forward"; it limits the consumer in the choices they have when it comes to buying an auto or where they get it serviced.

REPRESENTATIVE HALCRO added that he feels this is a good bill and a "balanced" bill. He thinks if both sides do not like the bill, then the subcommittee has done its job.

Number 1006

CHAIR MURKOWSKI publicly thanked Representative Halcro for all of his work on this bill. She mentioned the amount of research that he has conducted involving individual states' agreements and how they have treated [similar issues] in the various jurisdictions. She said that the drafts have not been concise. She also said that she appreciates the time that he has spent

with both sides in an effort to fairly treat both sides, as well as giving consumers the opportunity to weigh in on the issue.

Number 1158

RICK MORRISON, Owner, Eero Volkswagon; and Member, Alaska Auto Dealers Association (AADA), testified via teleconference from Anchorage. He informed the committee that he had several concerns regarding the bill. One of his concerns was the difference between [Version P] and the original bill. He said the original bill addressed dealer franchise protection. He went on to say that because of some needs of some very large business corporations with "a whole battery" of lawyers. Working against smaller-business people in the local community, some abuses have happened in the past THAT have hardened local business people. Mr. Morrison maintained that Version P has turned into a consumer protection bill; he does not agree or disagree on all the issues addressing consumer protection. He said he thinks there need to be more studies in that area. He also indicated that the bill is "weighted" much more toward consumer protection than toward being a franchise bill.

MR. MORRISON addressed the comment made by Representative Halcro about the local dealers' knowing their legislators. He pointed out that this is the situation because the [dealers] are active in their communities; they have invested a lot of money in their facilities, franchises, and employees, in order to provide the best service to their customers. He said the [dealers] are a group of people who have put in a tremendous amount of time, energy, and expense into the local community and into developing the local community.

Number 1370

MR. MORRISON said that he is uncomfortable when a legislator says, "Wait a minute: we don't want to listen to these people and work with these people, because it limits consumers." He said that it does not limit consumers; the [automotive] industry is probably the most scrutinized industry in the nation right now in the way they do their self-evaluations. He said the [dealership] would rather be taking care of customers than not taking care of customers. He said that he doesn't mean that there aren't things that happen. He indicated that [dealerships] would be interested in seeing that certain protections are put out for consumers.

Number 1398

MR. MORRISON expressed concerns about issues in the bill that he feels need more attention. He commented on the warranty issue and the way it was written to be a contractual agreement on a franchise agreement. He indicated that the warranty protection directly affects the consumer: the dealership is not protected in warranty coverage, and the vehicles are not protected in certain [aspects] that are being promised to consumers. He said that consumers will ultimately lose in the process.

MR. MORRISON went on to address termination issues and the changes that had been made regarding those issues. He indicated that the [dealers'] request for a 24-month period had been reduced to 12 months, without negotiations.

MR. MORRISON mentioned that he was concerned about some of the advertising aspects. He also expressed concern regarding some of the issues surrounding inspections of vehicles. He said that there are some tough [requirements] in the bill that are not being done in other states. He indicated that more review was needed in regard to these issues.

MR. MORRISON expressed concern about the differences between Version P and the previous versions. He said that this [version] is considerably different from the suggestions that have been made at three different "suggestive rewrites." He said he feels that the [dealerships'] "voice isn't being heard."

Number 1489

REPRESENTATIVE HALCRO clarified what he said regarding dealer protection laws. He said that the dealer protection laws have become popular in the various states because of the relationships [between local dealers and their legislators]. He suggested that there is nothing wrong with those types of relationships, but those need to be considered when "balancing" this bill. He reflected on the hearing held on November 8, 2001, in which he commented on the content of the bill. He'd indicated at that hearing that there was content in the bill that he was going to rewrite, he said since he didn't think that some of the [issues] needed to be included in the legislation.

Number 1556

REPRESENTATIVE HALCRO apologized for the timeline of the bill. He indicated that he had not had much time to review Version P, which was published on December 28, 2001.

REPRESENTATIVE HALCRO reflected on Mr. Morrison's testimony regarding termination. He indicated that the concerns that Mr. Morrison expressed over the requested termination period are issues that can be addressed.

REPRESENTATIVE HALCRO explained that after each of the previous hearings on the bill he would receive a revised version from the dealers. He indicated that he would receive a revised 43-page version from the dealers, and a revised version from the manufacturers, not the suggestions he had asked for. He noted that this made it difficult to move forward.

Number 1605

RALPH SEEKINS, President, Seekins-Ford-Lincoln-Mercury, Inc. and Seekins-Ford-Peninsula; and President, Alaska Auto Dealers Association (AADA), testified via teleconference from Fairbanks. He informed the committee that he disagreed regarding some of the issues that Representative Halcro discussed. He acknowledged there were areas of the bill that manufacturers and dealers could not agree on. He noted that a great deal of time had been spent on reviewing the content of the bill. Mr. Seekins disagreed with Representative Halcro's comment about returning a 43-page revised bill, which he described as much smaller. He commented that the bill had "a lot of mechanics in there that didn't really have any substance."

MR. SEEKINS explained that the [AADA] had approached Mr. Sniffen regarding consumer concerns, which Mr. Seekins suggested should be put in separate legislation. He indicated that separate legislation would add clarity and allow for attention to be focused directly on the issues. He said that he thought that the [AADA] had reached an agreement with the Office of the Attorney General, but apparently had not.

Number 1710

MR. SEEKINS said he was not aware of any federal "lemon laws"; he thought there were state [lemon laws]. He referred to a conversation in which he was told that the reason for the large number of pages in the bill was because Alaska was the last state in the nation to address the issue. He explained that if there had been previous legislation in place, the changes may have been few.

Number 1765

MR. SEEKINS said that there were [issues] in the bill that the [AADA] had deliberately tried to address, however those had been left out [of Version P], which instead adopted provisions from the model provided by The Alliance of Automobile Manufacturers ("Alliance"). He offered an example on page 7, [lines 30-31, and page 8, line 1], which read in part, "the manufacturer or distributor shall supply the new motor vehicle dealer with instructions on the method by which the new motor vehicle dealer is to return the property to the manufacturer or distributor." He indicated that this was directly from the Alliance's wording. He interpreted this to mean that if the [manufacturer] terminates the [dealership], then the [manufacturer] could request that parts be sent to "Florida," for example, at the [dealer's expense]; he said that the [dealer] would have to comply with that because it is state law. He explained that the [AADA's] version, however, would provide that if the [manufacturer] terminates a [dealer's franchise], the [manufacturer] would take possession [and repurchase the inventory at the dealership site]. He indicated that this made more sense for a dealership located in Alaska when compared to a dealership located in the continental United States.

MR. SEEKINS acknowledged that the [AADA] had some differences in how the national model might look in other states. He explained that almost all of the provisions the [AADA] requested the legislature look at came from other states that already had the [provisions] in statute. He agreed with Mr. Morrison's statement regarding similar laws in other states. He maintained that the reason they were there is probably not because the dealers were friendly with their legislators, but because it was something that made it difficult for dealers to take care of their customers.

Number 1845

MR. SEEKINS explained that it can be difficult for a small company to deal with a large corporation. He said that the AADA was not trying to be onerous in what it did as an association; and AADA adopted many of the suggestions from the Alliance. He explained that he found the bill modeled the Alliance's suggestions more closely than the suggestions of the AADA. He said he thinks that the bill still needs a lot of work. He also suggested that the bill provide more clarity in regard to the [type] of business cases that have forced the automobile dealers in Alaska to address these [issues].

MR. SEEKINS commented that the [AADA] was being very reasonable and consumer-friendly, especially in the area of warranty. He explained that the [dealer] has an adhesion contract with the manufacturers that allows the [manufacturer] to change the terms in which the [dealer] provides warranty to the people of Alaska. He said there is no way for the [dealer] to handle those requirements unless they are in statute.

MR. SEEKINS indicated that the AADA wanted a [provision] in the bill that would require the manufacturer, not the dealer, to provide transportation for a customer in the event that the customer was without transportation due to an error on the part of the manufacturer. Mr. Seekins suggested that some business cases be reviewed on an item-by-item basis to [become familiar with the history].

Number 1997

JOHN WHATLEY, Spokesperson, The Alliance of Automobile Manufacturers (Alliance), testified via teleconference from Washington D.C. He told the committee that he agreed with Representative Halcro's statement that "neither side likes what we see." He referenced the relevant-market-area provisions, which "we" do not like. He noted that studies indicate that [relevant market area provisions] are anti-competitive. He pointed out that the relevant-market-area provision of 14 miles poses the [manufacturer] some problems when dealing with [small] towns in the state. He indicated that the [manufacturer] had proposed a relevant-market-area, which was required, of six and ten miles. He said that the [manufacturer] prefer that there be some recognition of the difference between a metropolitan area and other areas of the state.

MR. WHATLEY indicated the Alliance needed clarification on some areas of the bill and that he wanted to review [members'] concerns.

Number 2062

MR. WHATLEY brought attention to page 5, the section covering applicability. He said the [Alliance] had a number of ancillary contracts that a manufacturer may have with its dealers over real estate or other areas that probably don't need to be covered by the statute. He commented that he would be concerned if it were included in the bill.

MR. WHATLEY referred to page 5, AS 45.25.030, subsection (b). He indicated that the exception was confusing because of the wording, which he thought was unclear. He suggested that as it is currently written, it gives the subsidiaries the right to engage in their usual scope of business, but [he wondered] if it was not prohibited by the statute. He suggested using the wording "but otherwise prohibited by the statute".

Number 2139

MR. WHATLEY addressed concerns on page 6, AS.45.25.120, the termination provision. One concern is the shortened termination provision for certain convictions of certain crimes. He pointed out that federal law is not included. Therefore, he suggested that federal law should be included there. He turned to more general concerns regarding the three exceptions found on page 6, lines 18-25. He felt that all three of those things are "incurable" in a sense. He remarked, "Once you're insolvent, you're always insolvent. Once you're been convicted of crime, short of a pardon, you're probably still ...; there's no way to get out of that." Therefore, he expressed the need to exempt those from the longer notice provision on the preceding page.

Number 2139

MR. WHATLEY drew attention to page 7, the so-called threat of termination language in AS 45.25.130. That language doesn't seem to allow for settlements of legitimate disputes between manufacturers and dealers when there may be a right to terminate, he said, and "we" don't want to do so. "We could be in trouble for threatening to terminate if we try to develop a settlement that allows (indisc.) to work their way out of a problem," he explained.

MR. WHATLEY turned to page 11, lines 3-9, and remarked that it's confusing in regard to what this had to do with replacing a dealership. He then directed attention to page 12, the arbitration section. That section raises two concerns because it references oral franchise agreements, and that language also appears in the definition section. To his knowledge, he said, there are no oral agreements in franchise agreements; they generally have an integration clause that says no other agreements shall exist. Mr. Whatley expressed concern that "we'd end up in a (indisc.) evidence fight with the dealer." He feels that litigation should be limited to just written agreements, he told members, which he believes is the standard in most places.

MR. WHATLEY addressed the arbitration requirement law. He acknowledged the advantages of arbitration, but also expressed concern regarding small claims. He wondered if it is worth the while of the dealer and the manufacturer to have to pick three arbitrators and go through that process, or whether there's a better way to resolve those kind of issues. He was concerned with the cost in that situation.

Number 2183

MR. WHATLEY said his remaining concerns are in the definitions. He referred to a definition on page 24 regarding the administrator. He said didn't understand how that fit into the bill, given that some of the provisions were removed from the earlier version that had reference to the administrator-of-service contract. He believes that gives it more of a technical concern. His next two concerns had to do with the definition of broker. He explained there are certain Internet joint ventures that manufacturers have with their dealers; those may get swept into that definition that requires some kind of a license, or they could be otherwise put out of business. Mr. Whatley indicated that there are two different definitions of "motor vehicle dealer" that are not exactly the same in the two places. He noted that the definition of new motor vehicle dealer doesn't require the new motor vehicle to have a franchise [license]. He said, "Normally, you don't want anybody holding the (indisc.) out of a new motor dealer unless they have the franchise from one of the manufacturers or distributors."

Number 2277

MR. WHATLEY discussed an enforceability concern. He said, "The provisions of this bill would be an unfair trade practice under the Alaska Statute, as I understand it, though that may provide for it... multiple damages in some cases." He disagreed with the suggested arbitration process. He said he felt it would be appropriate if a manufacturer could be sued by the dealer but not in a situation in which it would result in treble or multiple damages. He said that in a business dispute he was concerned that there shouldn't be multiple damages allowed.

Number 2320

CHAIR MURKOWSKI commented that she did not see where the bill allowed for damages.

Number 2332

MR. WHATLEY explained that one of the provisions, Section 11, page 26, references "violating this section is a violation" of AS 45.25, which "references back to the unfair trade practices Act." He continued to say that "we" are not absolutely sure this is the way it applies, but the cross-reference, AS 45.54.71, would make it a violation of the unfair trade practices and consumer protection Act.

MR. WHATLEY addressed damages, which he explained are three times actual damages or a \$500 penalty. He continued to say that in all cases involving a dispute with a dealer, it is the greater of the two; in this situation it would probably be three times actual damages available. He said that he's unsure whether they always have to be imposed by a court. He said, "That would concern us. This is a business-to-business relationship, and there are almost no states, or [only] a couple of states, that have multiple damages allowed for these kinds of disputes."

Number 2406

JIM MOORS, Legal Counsel, National Automobile Dealer Association, testified via teleconference. He said his reference point is how this compares to what is done in other states. He commented that he has only had a short period of time to review Version P. He said what is missing from the bill, which exists in most other states, is found in Section 5 of the prior draft [Version F], particular practices by the manufacturer. He noted that this section has been removed from Version P. He indicated that this is the section that gets into changes in executive management. He remarked that there are a "lot of issues in there that I don't think are controversial but have been addressed in other states and they are just (indisc.) from the bill."

Number 2436

CHAIR MURKOWSKI asked him to be more specific. She told him the committee did not have the prior draft to review and that there was confusion over what the prior draft is.

Number 2447

MR. MOORS offered some examples. He mentioned a change in executive ownership; that a manufacturer can't unreasonably

withhold consent (indisc.); exclusivity; and interference with the (indisc.) requirements that the dealership is required to maintain. He suggested using other states as a model and discussed putting in protections for dealers. He said this is a one-sided contract and the manufacturers have a lot of flexibility to modify the agreement. He also reviewed the franchise agreement. He indicated that the franchise agreement is being overshadowed by a lot of other agreements, which he said include some subsidiaries. He suggested that [subsidiaries] be looked at again, and questioned whether to just limit this to the franchise agreement.

MR. MOORS turned attention to the brokerage provision. He said he thought the objective was to make sure new car sales were not through franchise-regulated dealers. He noted that he might be incorrect. He discussed the brokerage section and remarked that the only thing in the brokerage section now is a definition of broker. He mentioned that "something" was taken out.

TAPE 02-1, SIDE B
Number 2500

MR. MOORS expressed some concerns with the arbitration issue. He said this is supposed to be a bill to provide some protection for the franchise dealers in Alaska. His understanding of the arbitration provision is that if a manufacturer chooses to go to arbitration, any dispute the dealer has covered under the bill could move it from the courts to arbitration. He went on to say, "I have to caveat that because there's a reference to the Alaska arbitration Act, with which I am not familiar." He explained that because of the way it was written, it may have the result of requiring the dealers to go to arbitration on all the disputes, rather than being able to go through the courts. He suggested more clarification.

Number 2453

CHAIR MURKOWSKI urged those with specific recommendations or suggestions to fax or send them to the committee. She asked that the suggestions be based on of Version P.
Number 2415

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, testified via teleconference from Anchorage. He started out by commending Representative Halcro on his effort to bring together some very "conflicting views on what this bill

should look like." He acknowledged that the bill is substantially different from the bill that was originally introduced. He said he thinks it is necessary because there are so many conflicts between the practices that dealers and manufacturers want to see. He said there are going to be some issues that arise that not everyone will agree on. He noted that this bill addressed a significant number of consumer protection issues. He said he thinks these are very necessary, and he doesn't think there is a better place to put these kinds of consumer protection issues in.

Number 2381

MR. SNIFFEN went on to say [consumer protection] is important in Alaska, based on some of the complaints reviewed at the Department of Law. He noted that all of the provisions come from one of two places: other state law or court decisions in Alaska. He reflected on issues in prior cases, one involving a former Anchorage Nissan dealership. He explained that there is superior court precedent to support some of the other practices that have been included in this legislation.

Number 2338

MR. SNIFFEN offered to answer questions about any of the sections beginning on page 12. He noted that one section needs modification. He suggested removing some sections that create some ambiguity in regard to a used-car dealer's obligation to disclose material defects in an automobile. He said he would submit [changes] in writing.

Number 2300

CHAIR MURKOWSKI turned attention to page 18. She commented that she found the whole section a little difficult. She said the burden is on the motor vehicle dealer to make the diligent inquiries as to the condition of the vehicle. She remarked that there are all kinds of issues about what's going to constitute diligent inquiry. She discussed the obligation of the motor vehicle dealer to investigate the history of the vehicle. She indicated she was troubled by the question of how to implement and enforce those provisions.

Number 2217

MR. SNIFFEN explained that this language came almost verbatim from a superior court order that was issued in the Anchorage

Nissan case, which imposed some conditions on that car dealer to remedy some unfair practices. He offered to explain the intent of this section and suggested redrafting it if "that's necessary to more clearly evidence that." He explained that the obligation is placed upon the used motor vehicle dealer to conduct reasonable inquiries into prior accidents and the repair history of the vehicle from the person from whom it is purchased. He continued to say the requirement is for the dealer to make a reasonable and diligent inquiry from the seller. He explained that the dealer would be required to ask whomever they are purchasing the [vehicle] from if the [vehicle] has been in an accident or if it has a lengthy repair history. He said if the answer is "no," then that's it.

MR. SNIFFEN continued to say that based upon the inquiry, if there is some reason to believe that there are material defects, then there is an additional obligation to conduct a reasonable inspection of the vehicle, test drive it, look at it, put it up on a rack to see if there is any frame damage, and then record what is found. He indicated the language focuses on only material defects, which are things that could potentially affect the safety and operation of the vehicle for its intended purpose. He explained that if there is information that could be reasonably interpreted to mean that the car might have such a defect, then the third requirement would be to disclose that information to the consumer purchasing the vehicle. He said from that point it is up to the consumer to decide whether further inspection is necessary, so there is some obligation on the consumer to do more. He said that "we" don't think those three elements really impose a incredible burden on the dealer.

Number 2143

CHAIR MURKOWSKI suggested the [section] needs to be "tightened up." She expressed concern about the reference to material defect. She pointed out that the subsection that refers to disclosure simply states "any known defects of the motor vehicle." She wants to ensure it is limited to material defects. She said, "There's a difference between reasonable inquiry and diligent inquiry, or at least I make that distinction in my mind." She also noted that she is not comfortable with the language in this section as it [appears]. She pointed out that it would be extremely difficult to implement.

Number 2094

MR. SNIFFEN agreed with Chair Murkowski's suggestion to provide more clarity.

MR. SNIFFEN addressed Mr. Whatley's comment on the "multiple damages" issue. He said that "we" would have inserted a section at the end of this bill that makes a violation of this chapter, AS 45.25, an unfair trade practice. He went on to say that under the unfair trade practice law, a prevailing plaintiff could recover treble damages, reasonable attorney fees, and so forth. He said the intent wasn't to allow for double recovery. He commented that he didn't think the courts would allow that. He suggested a remedy by editing that section to say that a violation of AS 45.25, just the specific section dealing with the consumer protection issues, would be an unfair trade practice. He suggested leaving the issues relating to the franchise agreement out of that.

Number 2025

BOB FAVRETTO, Owner, Kenai Chrysler Center and Capital Chevrolet, testified before the committee. He addressed the issue of disclosure. He explained that the federal sticker, which appears in the window of the used cars he sells, discloses whether or not the car is sold in "as is" condition or in "warranty" condition. He said on the reverse of that form there are several line items that outline some of the concerns in the bill. He went on to say that the [dealership] is required to have the consumer review and sign the [form] before he/she takes delivery of that automobile.

Number 1941

CHAIR MURKOWSKI asked if this is for used vehicles.

Number 1938

MR. FAVRETTO answered "yes" to Chair Murkowski's question. He suggested that the form be required, rather than adding additional language. He indicates that Ralph Seekins and Rick Morrison may be able to identify the form and the source of the form.

Number 1930

MR. SEEKINS explained that he uses a mandatory Federal Trade Commission form that informs the customer on a used vehicle

whether there's any warranty on the vehicle or whether it's sold "as is." He offered to provide a copy of the requirements.

Number 1927

MR. SNIFFEN indicated that he is very familiar with that form. He suggested that some of the "duplicated language" be removed from the bill.

Number 1923

STEPHEN CONN, Executive Director, Alaska Public Interest Research Group (AkPIRG), testified via teleconference. He thanked Representative Halcro and his staff for their hard work, and he also thanked Rick Morrison and Ed Sniffen for their collaboration over the many months. He explained that those at AkPIRG, the state's largest and oldest consumer protection group, were pleased a bill that spoke to the needs of the much beleaguered used and new car buyers, had finally come to the attention of the legislature. He explained that he also had a limited time to review [Version P].

MR. CONN spoke about taking out prior provisions related to the consumers that he said were redundant regarding state law and federal law. He commented that "we" didn't get everything "we" wanted. He continued to speak about dealer practices, which he said "lead to protracted and unnecessary conflict and litigation in the realm of new cars and in the realm of used cars." He suggested that there is a new level of clear and valuable information being provided to the consumer, which he concluded "will find themselves a happier buyer." He predicted that the consumer will return to a dealer and will keep the money circulating within the Alaskan economy.

Number 1823

MR. CONN urged the committee not to do a "great deal of damage or watering down at this juncture." He suggested that the bill is "compromised legislation." He turned attention to Article 4, AS 45.25.460, and AS 45.25.470, which he indicated would provide the consumer with an understanding of the frequently used terminology. He said this would allow for the consumer to know what "as is" is and what the "is" means to the extent that the dealer and sales person knows what "is" is. He also said this provides disclosure to the new-car buyer when there has been substantial damage to the vehicle. He went on to say that [AkPIRG] has stayed out of the debate/dispute between

manufacturers and dealers, assuming that they would work it out so the bill would pass muster with the legislature and be found constitutional by the court.

MR. CONN said that [AkPIRG] is respectful of the small-business people who are the car dealers of Alaska and has had a great and positive experience working with them. He noted that [AkPIRG personnel] will be very happy to sit down with them again and continue to work with them. He went on to say, "On the other hand, we are not in favor of a kind of feudal entrenchment, whether it be in the political community or in the business community."

MR. CONN urged those consumers interested in the "business of buying and selling cars" to get a hold of this bill before it changes. He suggested taking a look at the work that has been done and urged them to join "us." He suggested this would allow all three of the groups to put something together that will come out of the legislative session and advance everyone's interests in this process.

Number 1660

DUANE BANNOCK, Kenai Chrysler Center, Inc., testified via teleconference from Kenai. He referred to the comment Mr. Conn made about "the much beleaguered new or used car buyer." Mr. Bannock commented, "Right now, it might be the new or used car dealer that is being beleaguered."

Number 1619

CHAIR MURKOWSKI commented that she thinks Version P is a great work product. She indicated that the subcommittee had a good foundation from which to work. She asked that those interested parties who would like to submit suggestions to the committee fax them to the committee aide. She said she would like to get to a point where "everybody's disliking it a little less." She indicated that the subcommittee will produce the proposed committee substitute, which will then be presented to the committee for consideration. [HB 182 was held over.]

ADJOURNMENT

Number 1517

There being no further business before the committee, the House Labor & Commerce Standing Committee meeting was adjourned at 4:35 p.m.