ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
March 18, 2002
3:20 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 BILL NO. 355
"An Act relating to the taxation of mobile telecommunications services by municipalities; and providing for an effective date."

- MOVED CSHB 355(CRA) OUT OF COMMITTEE

HOUSE BILL NO. 182
"An Act relating to motor vehicles; and providing for an effective date."

- MOVED CSHB 182(L&C) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 355
SHORT TITLE:MOBILE TELECOMMUNICATIONS TAX
SPONSOR(S): LABOR & COMMERCE BY REQUEST

Jrn-Date	Jrn-Page		Action
01/23/02	2045	(H)	READ THE FIRST TIME - REFERRALS
01/23/02	2045	(H)	CRA, L&C
02/28/02		(H)	CRA AT 8:00 AM CAPITOL 124
02/28/02		(H)	Heard & Held
02/28/02		(H)	MINUTE(CRA)

03/06/02		(H)	L&C AT 3:15 PM CAPITOL 17
03/06/02		(H)	<Bill Canceled>
03/14/02		(H)	CRA AT 8:00 AM CAPITOL 124
03/14/02		(H)	Moved CSHB 355(CRA) Out of Committee
03/14/02		(H)	MINUTE(CRA)
03/15/02	2544	(H)	CRA RPT CS(CRA) 5DP 1NR
03/15/02	2544	(H)	DP: SCALZI, HALCRO, MURKOWSKI, MEYER,
03/15/02	2544	(H)	MORGAN; NR: GUESS
03/15/02	2544	(H)	FN1: ZERO(REV)
03/18/02		(H)	L&C AT 3:15 PM CAPITOL 17

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
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)
04/11/01	0970	(H)	COSPONSOR(S): HALCRO
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
01/16/02		(H)	Heard & Held
01/16/02		(H)	MINUTE(L&C)
03/06/02		(H)	L&C AT 3:15 PM CAPITOL 17
03/06/02		(H)	<Bill Postponed>
03/18/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

AMY ERICKSON, Staff
to Representative Murkowski
House Labor and Commerce Standing Committee
Alaska State Legislature
Capitol Building, Room 408
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of the sponsor of HB 355, the House Labor and Commerce Standing Committee.

CHUCK HARLAMERT, Juneau Section Chief

Tax Division
Department of Revenue
PO Box 110420
Juneau, Alaska 99811-0420
POSITION STATEMENT: Testified on CSHB 355(CRA).

DARRELL BELL, Director of Taxes
AT&T Wireless
(No address provided)
POSITION STATEMENT: Testified to the simplicity that would be achieved with [CSSB 355(CRA)].

ED SNIFFEN, Assistant Attorney General
Fair Business Practices Section
Civil Division (Anchorage)
Department of Law
1031 W 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
POSITION STATEMENT: Reviewed the changes encompassed in CSHB 182, Version S.

STEVEN ALLWINE
Alaska Auto Dealers Association
8725 Mallard Street
Juneau, Alaska 99801
POSITION STATEMENT: Expressed concerns with CSHB 182, Version S.

MARY MARSHBURN, Director
Division of Motor Vehicles
Department of Administration
3300B Fairbanks Street
Anchorage, Alaska 99503
POSITION STATEMENT: Related the division's view of Section 13 in Version S.

ELIZABETH DANNENBERG
The Alliance of Automobile Manufacturers
(No address provided)
POSITION STATEMENT: Expressed concerns with CSHB 182, Version S.

JOHN MECKE, Legislative Director
Franchise Affairs
Ford Motor Company
16800 Executive Plaza Drive
Dearborn, Michigan 48126

POSITION STATEMENT: Expressed concerns with CSHB 182, Version S.

WILLIAM HURST, Director
State Franchise Legislation and Strategy
Daimler Chrysler
1000 Chrysler Drive
Auburn Hills, Michigan 48326
POSITION STATEMENT: Expressed concerns with CSHB 182, Version S.

MARK MUELLER, Manager
Retail Relationship
Daimler Motors
100 Renaissance Center
Detroit, Michigan 48265
POSITION STATEMENT: Indicated that the committee could review his proposed changes.

STEVE CONN, Executive Director
Alaska Public Interest Research Group
PO Box 101093
Anchorage, Alaska 99503
POSITION STATEMENT: Reviewed some of the consumer-friendly aspects of Version S of CSHB 182 and expressed the need to leave Section 45.25.470 [in tact].

TERRY BANNISTER, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Terry Miller Building, Room 329
Juneau, Alaska 99801
POSITION STATEMENT: Spoke as the drafter of HB 182 and responded to questions.

ACTION NARRATIVE

TAPE 02-37, SIDE A
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Representatives Murkowski, Kott, Crawford, and Hayes were present at the call to order. Representatives Halcro, Meyer, and Rokeberg arrived as the meeting was in progress.

HB 355-MOBILE TELECOMMUNICATIONS TAX

CHAIR MURKOWSKI announced that the first order of business would be HOUSE BILL NO. 355, "An Act relating to the taxation of mobile telecommunications services by municipalities; and providing for an effective date."

Number 0069

AMY ERICKSON, Staff to Representative Murkowski, House Labor and Commerce Standing Committee, Alaska State Legislature, provided the following testimony:

> State and local governments tax mobile telecommunications services in a variety of different ways. And because of the mobility of wireless equipment, determining which state and local taxes apply to a wireless call is complicated. The process of determining where a transaction is taxable is commonly referred to as "sourcing." In order to create a more uniform system for taxing wireless calls, Congress passed the Mobile Telecommunications Sourcing Act the crafting of which was a joint effort between industry, state and local [government], and tax officials. States have until August 1st of this year to conform to the federal act. And if Alaska fails to conform, the state will be pre-empted from imposing taxes on most calls made outside of where the customer's primary use occurs, that is "roaming" charges.
>
> This bill conforms Alaska Statutes to the federal Mobile Telecommunications [Sourcing] Act to allow for the appropriate taxes and fees on wireless services. The bill does not impact the rates of taxes or fees that states and localities impose on the wireless calls. Each jurisdiction with taxing authority will continue to determine whether the calls are taxed and at what rate. House Bill 355 creates the concept that the customer has a place of primary use, that is the residential or business street address where the customer's use of the mobile service primarily occurs. That determines which jurisdiction has the right to tax the call. Implementation of [HB] 355 prevents multiple taxation, achieves administrative simplicity and cost savings, and avoids expensive audit litigation when multiple states claim jurisdiction to

tax the same call. The bill is a win-win for industry and for government. There is no known controversy surrounding the bill.

CHAIR MURKOWSKI informed the committee that HB 355 was a much lengthier bill when introduced, but the Department of Revenue suggested that the bill simply reference the federal act. Therefore, [CSHB 355(CRA)] allows for compliance with the federal act within the time period requested.

Number 0295

CHUCK HARLAMERT, Juneau Section Chief, Tax Division, Department of Revenue, said that in Alaska this is a local tax issue. He echoed earlier testimony that the bill merely conforms to the federal act, which controls what telecommunications can and cannot be taxed.

DARRELL BELL, Director of Taxes, AT&T Wireless, testified via teleconference. Mr. Bell informed the committee that the National Governors Association, the National Conference of State Legislators, the Federation of Tax Administrators, the Multi-State Tax Commission, and the National League of Cities came together with the industry to develop [the federal act]. [The federal act], for example, allows Seward to tax all the revenue of a customer with a place of primary use in Seward no matter where that customer uses the phone throughout the United States. However, [the federal act] doesn't allow Seward to tax customers who are roaming in Seward. This should be fairly simple and revenue neutral.

CHAIR MURKOWSKI turned to the concept of the primary place of use and stressed that [CSHB 255(CRA)] makes it very clear who will assess the tax.

Number 0573

REPRESENTATIVE HALCRO moved to report CSHB 355(CRA) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 355(CRA) was reported from the House Labor and Commerce Standing Committee.

The committee took a brief at-ease from 3:29 p.m. to 3:34 p.m.

<u>HB 182-MOTOR VEHICLE SALES AND DEALERS</u>

CHAIR MURKOWSKI announced that the next order of business would be HOUSE BILL NO. 182, "An Act relating to motor vehicles; and providing for an effective date."

CHAIR MURKOWSKI reminded the committee that at the last hearing, January 16, 2002, Version 22-LS0239\P, Bannister, 12/28/01, was adopted and discussed. Afterwards, folks sent written comments to the committee and each was reviewed with regard to whether the [suggestions/concerns] could be accommodated and incorporated in a new committee substitute (CS) [Version 22-LS0239\S, Bannister, 3/15/02]. Therefore, the proposed CS is an effort to consolidate as many of the comments as possible while recognizing that some of the issues are policy calls for the committee.

CHAIR MURKOWSKI briefly walked the committee through some of the major areas of the legislation. She began with the termination provisions within franchise agreements. In that section, certain accommodations were made. She directed attention to page 8 regarding required compensation. There had been discussion regarding what happens when there is a termination and the dealer is to be compensated for facilities. The dealers argued that they should be allowed rent for the unexpired term or 24 months, while the manufacturers recommended compensation for 12 months. Chair Murkowski decided to go with 18 months. She pointed out that the most significant changes are located in Article 4, Dealer Practices, on page 13 of [Version S]. The dealers didn't want this section incorporated in this measure. However, Chair Murkowski [related her belief] that it's a place for these types of consumer protection provisions to be and thus it makes sense to include it in the legislation. She noted that [this section] has been tightened a great deal.

Number 0941

ED SNIFFEN, Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, testified via teleconference. He related his belief that [Version S] looks good and turned to the consumer protection issues. One of the consumer protection issues raised at the last hearing focused on some superfluous language with regard to the prohibited use of advertising terms. Another consumer protection issue raised was with regard to the sales of used motor vehicles. In a prior CS there was language that required a motor vehicle dealer to perform a significant inspection and inquiry and this information would be reported to the purchaser. That section was tightened up such that it [refers to the dealer

doing] a reasonable inquiry and informing the consumer of that information. Furthermore, the inspection was limited to material defects, which means defects that can't be discovered through a reasonable inspection by an ordinary consumer or defects that would impair the safe operation of the vehicle.

CHAIR MURKOWSKI turned to the advertising and selling practices of used cars. She questioned how much of an obligation a dealer would have when the person bringing the car to be sold doesn't disclose problems to the dealer.

MR. SNIFFEN explained that the intent is to not allow the dealer to turn a blind eye to potential defects. The desire is to have the dealers at least make the inquiry. If the seller of the vehicle isn't honest, the inquiry stops. The burden on the dealer isn't onerous.

Number 1189

CHAIR MURKOWSKI related her understanding that in a situation in which the seller informs the dealer of a defect, the defect has to be disclosed in writing to the potential buyer.

MR. SNIFFEN agreed that to be the proposal. Whatever the dealer knows should be disclosed to the consumer.

CHAIR MURKOWSKI posed a situation in which the seller tells the dealer there are no problems to report, but perhaps the frame of the door doesn't look straight. Would such a situation result in the dealer needing to inspect the body of the vehicle or would the seller's word be the end [of the inquiry], she asked.

MR. SNIFFEN answered that it would be a "reasonableness" call on behalf of the dealer. He said he didn't believe specific language in this type bill could address the gray areas. He pointed out the language on page 18, lines 5-8, which specifies, "if the dealer has information that reasonably should lead the dealer to know of the potential for a material defect in a used motor vehicle, conduct a further inspection of the vehicle ...." He stressed that this is a "reasonableness test."

CHAIR MURKOWSKI turned to Section 13, the repealors [of Version S]. She announced that it has been brought to her attention that these sections shouldn't be repealed because these relate to dealings with brokers rather than just Title 45.

MR. SNIFFEN said that Section 13 primarily deals with Title 8, which addresses the licensing requirements for motor vehicle dealers. With respect to AS 45.50.471(b)(34), he related his belief that it deals with brokers. There are provisions in [Version S] that address that very narrow provision of Title 45.

CHAIR MURKOWSKI surmised then that AS 45.50.471(b)(34) should be repealed.

MR. SNIFFEN agreed.

Number 1480

REPRESENTATIVE MEYER moved to adopt CSHB 182, Version 22-LS0239\S, Bannister, 3/15/02, as the working document. There being no objection, Version S was before the committee.

Number 1502

STEVEN ALLWINE, Alaska Auto Dealers Association, informed the committee that the association has two areas of concern with Version S, which Mr. Sniffen already addressed. Mr. Allwine referred to page 17, AS 45.25.470, the used car inspections. He informed the committee that the association had hoped that the section would be eliminated [until such time as] the association and the Department of Law could work on adjusting the [language]. Paragraph (1) of AS 45.25.470 requires an inquiry of the seller. However, there is no certainty as to the reliability of the information from the seller. It isn't in the seller's best interest to disclose information that would potentially diminish the trade value of their vehicle. Furthermore, subsection (c) of AS 45.25.470 defines "material defect" in a vague manner, which he believes to be inappropriate. Although well-intentioned, this section is a bit onerous to the dealers and may even create more consumer [protection] issues than it eliminates.

MR. ALLWINE turned to page 25, Section 13 and announced the association's recommendation to remove Section 13 in its entirety. He pointed out that AS 08.66.015 protects consumers from auto brokers and persons [portraying themselves] as new vehicle dealers when, in fact, there is no substantive relationship between those persons and vehicle manufacturers. The remainder of Section 13 regulates persons acting on behalf of the buyer in negotiating a transaction for the purchase of a vehicle. Mr. Allwine explained that remaining statutes referenced in Section 13 came into being under the auspices of

Senator Taylor in 1993 due to the collapse of a Seattle area auto broker. This particular [Seattle auto broker] defrauded consumers in Alaska for several million dollars. The intent of the legislation [that created these statutes being repealed] was to eliminate the unregulated opportunities for public harm that automobile brokering provided, especially in the areas of sales and warranty repair. Simultaneously, the legislation was intended to permit, in a regulated environment, the establishment of a means for a consumer to contract with an individual or a company for the negotiation of a vehicle purchase on that consumer's behalf. Mr. Allwine informed the committee that the automobile manufacturers are also in support of retaining the statutes being repealed in Section 13. In conclusion, Mr. Allwine recommended that the committee make the two changes specified and vote to move the legislation from committee.

CHAIR MURKOWSKI commented that there seems to be some disagreement with regard to what Title 8 actually refers.

Number 1750

MARY MARSHBURN, Director, Division of Motor Vehicles (DMV), Department of Administration, testified via teleconference. Mr. Marshburn said that she has double-checked the repealor in Section 13 and determined it to be correct with no need for amendment. She informed the committee that with the new language, "solicits the sale or lease of five or more new or used vehicles", [the department] believes that the definition of dealer includes people who broker sales. She further explained that Title 8 actually had two sections, one which dealt with dealers and the other with buyer's agents. In the history of the division, no buyer's agent has ever been registered with the division. With [Version S] the definition of dealer is broad enough to include someone who acts as a buyer's agent. In the division's opinion, someone engaged in the business [as a buyer's agent] would have to be registered as a dealer in order to be covered by the dealer's statute. Therefore, the repealor that refers to Title 8 [Section 13 of Version S] is correct.

Number 1877

ELIZABETH DANNENBERG, The Alliance of Automobile Manufacturers (Alliance), testified via teleconference. Although the Alliance acknowledged that there have been many improvements made with Version S, there are still concerns with it. She expressed concern that on pages 4 and 24, the definition of dealer doesn't

exclude joint ventures between manufacturers and dealers. Since some joint ventures might not fit in the current category for exemption, the Alliance believes that there should be further clarification with regard to the [fact] that joint ventures aren't prohibited or required to obtain a license. Furthermore, Section 45.25.030 should include a statement that corporate affiliates aren't precluded from engaging in reasonable and appropriate business practices consistent with existing trade practices. The aforementioned statement was included in the last version, but was omitted in Version S.

MS. DANNENBERG pointed out that Section 45.25.140(a)(3) would require that a manufacturer repurchase, from a terminated dealer, the signs, equipment, and furnishings bearing the trademark or trade name that the dealer purchased within the last five years. Five years is an unreasonably long period for such a repurchase obligation. The three years specified in the prior version is more appropriate. Also, Section 45.25.150(a)(1) requires compensation for rent for an unexpired lease for up to 18 months. Again, the Alliance believes that 18 months is too long and a 12-month period for compensation would be more appropriate. Ms. Dannenberg specified that the Alliance objects to the definition of "relevant market area" (RMA) on pages 11-12 because using a large single radius for all markets in the state is inappropriate. The two-tiered RMA is favored. She explained that the [two-tiered relevant market area] would cover six miles where the population is greater than 25,000 and 14 miles where the population is less than 25,000.

MS. DANNENBERG turned to the page 12, Section 45.25.320, which raises several concerns for manufacturers. The period of 18 months for auditing and charge back claims doesn't allow for the differences between warranty claims and sales incentive claims. She explained that although 18 months may be sufficient for warranty claims, manufacturers typically need 24 months for auditing sales incentive claims. Furthermore, in situations where fraudulent claims are suspected there should be no time limit on the manufacturers ability to audit those claims. Also, the term "related expenses" in the definition of claim under Section 45.25.320 should be deleted due to its vagueness. She informed the committee that on page 23 the definition of "franchise" should clarify that a franchise agreement allows a franchise dealer to use the manufacturer's trade name, service mark, or related characteristics. Finally, on page 23 the definition of "administrator" should be deleted because it doesn't seem to be applicable to Version S.

CHAIR MURKOWSKI noted that some of the Alliance's concerns are with regard to compromises. For example, the 18 months on page 8 was a compromise between the 12 months the manufacturers wanted and the 24 months that the dealers wanted.

Number 2148

JOHN MECKE, Legislative Director, Franchise Affairs, Ford Motor Company, testified via teleconference. Mr. Mecke turned to the issue raised with regard to joint ventures and informed the committee that the Ford Motor Company already has a joint venture with its dealers. In this joint venture, the Ford Motor Company will have a minority interest. He noted that the Ford Motor Company is also involved in a joint venture in which it is already a minority interest. Therefore, he expressed the need for there to be a slight adjustment to the [joint venture] exemption. Mr. Mecke echoed Ms. Dannenberg's comments with regard to the lack of the corporate affiliates language, which was included in a previous draft. He then directed attention to page 8 and pointed out that the rental assistance for the facilities should be reflected consistently in paragraphs (1) and (2) under Section 45.25.160(a). With regard to the relevant market area, he said that [the Ford Motor Company] has been able to work with the dealers. Obviously, the density of populations in any state is such that it would make sense to have a large expansive area. Conversely, in a metropolitan area it's important to maintain a balance between the dealers and the competition. Therefore, Mr. Mecke requested that the committee consider the two-tiered system. Mr. Mecke turned to incentive programs and said that it would be reasonable to treat warranties and sales incentives slightly different [in the context of] Section 45.25.320.

Number 2350

WILLIAM HURST, Director, State Franchise Legislation and Strategy, Daimler Chrysler, testified via teleconference. Mr. Hurst directed attention to page 4 and the definition of "dealer." He noted that joint ventures always sell the vehicle through a [licensed] dealer.

TAPE 02-37, SIDE B

MR. HURST indicated the need to have [joint ventures] exempted. With regard to the claim audits and charge backs, Mr. Hurst pointed out that the sales incentives could go for six months to a year, and therefore only six months would be left to file a

claim that was filed at the beginning of the program. As an alternative, the sales incentive claim could be made [within] 24 months or 18 months after the end of the program rather than 18 months after the filing of the claim. Furthermore, there needs to be an exception for fraud because the very nature of fraud is to conceal it.

Number 2290

MARK MUELLER, Manager, Retail Relationship, Daimler Motors, testified via teleconference. He indicated that the committee could review his proposed changes.

Number 2269

STEVE CONN, Executive Director, Alaska Public Interest Research Group (AkPIRG), testified via teleconference. Mr. Conn commended the committee on its work on this bill. He highlighted the clear language in the sales and service contract provision on page 20, which he characterized as consumer friendly. Additionally, there is very good language related to advertising. With regard to the issues the dealer's association finds with Section 45.25.470, Mr. Conn found it hard to believe that professional dealers wouldn't like to distinguish themselves from "sidewalk sellers" in some form, which is what this section offers. He expressed surprise that dealers who seek to protect their franchise, and thereby limit competition and the entrance of new dealers, would suggest this section be eliminated. Consumers view this section as a modest bit of progress in their relationship with automobile dealers. Therefore, Mr. Conn expressed his hope that this section would be left [in tact] and the bill pass out of the committee.

CHAIR MURKOWSKI referred to the definition of "dealer" on page 4 of Version S, which is a slightly different definition of "dealer" than that specified at the end of the bill. She asked if the two should [have the same definition].

Number 2142

TERRY BANNISTER, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, answered that such would probably be a good idea. The two were different because the terms [are referred to] in two different chapters. She said that she had not received any information with regard to why the two chapters defined "dealer" differently. After hearing Ms. Marshburn's comments, Ms.

Bannister said that the one definition should be used and referenced in the other chapter.

REPRESENTATIVE HALCRO explained that originally there were two different definitions because one addresses the relationship between the manufacturer and the dealership, which no one wanted to apply to recreational vehicles and such dealerships. However, the desire was to apply consumer protection articles to those type of [dealerships].

MS. BANNISTER pointed out that AS 45.25 now includes a new definition of motor vehicle, which would probably "handle it for those sections." Perhaps the two definitions could be unified, she said, although she highlighted that one of the definitions refers to manufacturers and the other does not.

CHAIR MURKOWSKI related her belief that a dealer would refer to anyone other than a manufacturer.

REPRESENTATIVE HALCRO recalled that there was a reason that language was excluded.

MS. MARSHBURN explained that the definition of "dealer" in [Title] 8 refers to those who are required to register as dealers, including recreational vehicle sellers and motorcycle sellers. However, the definition of "dealer" [on page 22] of Version S applies only to those for which the relationship and consumer provisions apply. The relationship and consumer provisions are quite different for recreational vehicle sellers and motorcycle dealers. Ms. Marshburn noted that the desire was to cover everyone for the purposes of dealer registration or licensing. However, not everyone could be uniformly covered in the same way as the manufacturers. Therefore, the definitions for licensing are good in the view of the DMV.

CHAIR MURKOWSKI asked whether it would be appropriate to specify on page 4 of Version S that a dealer is other than a manufacturer who sells leases or solicits in the definition of "dealer".

MS. MARSHBURN answered that she didn't believe such would be problematic, however she deferred to Mr. Sniffen or the Chair.

CHAIR MURKOWSKI pointed out that the two definitions of "dealer" are almost identical, except for the phrase "other than a manufacturer".

MS. MARSHBURN surmised then that Chair Murkowski was proposing the insertion of the language "other than a manufacturer" in Section 8(1). She reiterated that she didn't believe it would be a problem.

MR. SNIFFEN agreed that inclusion of the aforementioned language wouldn't be a problem. He pointed out that on page 24 there is a subsection (f) that isn't included in the definition on page 4. However, that language seems to be incorporated in subsection (b) on page 4.

Number 1853

REPRESENTATIVE ROKEBERG requested clarification on the concerns expressed with regard to prohibiting joint ventures.

REPRESENTATIVE HALCRO recalled that there have been attempts by some manufacturers to enter into some side businesses. The dealers are concerned that "undercutting" could occur with the joint ventures. Therefore, the language offers protection for the dealers.

REPRESENTATIVE ROKEBERG said he thought that the [manufacturer's] referred to joint ventures between manufacturers.

MS. DANNENBERG specified that the concern with joint ventures is in regard to the definition "dealer" on page 4 and 24. She related her understanding that the concern is with the joint ventures between manufacturers and dealers. There is the desire to ensure that there is no prohibition of joint ventures between manufacturers and dealers reviewing new ways to distribute cars to consumers. With joint ventures there is also the desire not to create a separate licensing requirement. The issue with corporate affiliates is actually separate from the joint venture issue. The concern with corporate affiliates relates to financial subsidiaries of manufacturers. Ms. Dannenberg said that [the Alliance] believes that manufacturers shouldn't use financial affiliates to do what can't be directly accomplished in HB 182. However, those affiliates would be at a competitive disadvantage to other financial businesses that aren't captive to [automobile] manufacturers [unless there is] clarification that the financial affiliates can perform typical and usual business practices in the finance industry.

CHAIR MURKOWSKI related her understanding then that under Section 8 the [Alliance] would recommend an exclusion specifying

that the dealer doesn't include a joint venture between manufacturers and dealers.

MS. DANNENBERG answered that such was her understanding. Furthermore, there are some ventures between manufacturers and dealers that [the Alliance] would want to exclude as well.

REPRESENTATIVE ROKEBERG commented that [this language] should be under Title 8 and 45. Perhaps, [the Alliance] could suggest some language, he remarked.

REPRESENTATIVE HALCRO related his assumption that [Ms. Dannenberg's] concern with the financing arms was related to the affiliates and subsidiaries. He recalled subcommittee discussions in which the dealers said they wouldn't do anything that would place their financial arm at a market disadvantage.

Number 1530

MR. ALLWINE explained that in certain circumstances [the manufacturer] will provide the capital and place an operator [in a location] for a buy-sell agreement, a joint venture. Although that individual will be the dealer, the manufacturer still provides the capital investment. Over a period of time, that individual buys out the manufacturer. There is no intent to preclude such an arrangement. However, he said he didn't understand why there would be the need for an exemption for such joint ventures because the dealer should be licensed. With regard to the financial [affiliates], Mr. Allwine said that none of this is intended to hinder the competitiveness of the captive financial groups.

CHAIR MURKOWSKI related her understanding that [the manufacturers] didn't want to have to register this joint venture.

REPRESENTATIVE ROKEBERG interjected that in the joint venture whoever is the "dealer" would have to be licensed.

CHAIR MURKOWSKI pointed out that such is Mr. Allwine's testimony.

MS. DANNENBERG clarified that the intent isn't to exempt the dealer from licensing requirements in a joint venture. The concern is that a combined joint venture wouldn't require a separate license in addition to the license that already exists for the dealer in that relationship.

CHAIR MURKOWSKI said that she didn't see how it could ever be implied that the entity setting up this dealer would also have to register.

MS. DANNENBERG said that the aforementioned is the desired outcome. Perhaps, that could be stated in a separate exemption or made clear that a separate second license wouldn't be required.

CHAIR MURKOWSKI pointed out that everyone around the table has this understanding, and therefore she questioned whether additional language would make it any clearer. However, she agreed to entertain any suggested language.

Number 1321

CHAIR MURKOWSKI highlighted that some of the manufacturers' testimony had expressed concerns with the corporate affiliates section on page 5. There was concern that subparagraph (B) had been removed. That subparagraph said, "This section does not limit the right of a person included within the scope of this section to engage in reasonable and appropriate business practices consistent with an existing trade practice that is not otherwise prohibited by this chapter."

CHAIR MURKOWSKI informed the committee that some people said the aforementioned language in subparagraph (B) sounded confusing and thus she eliminated it. Therefore, it seems that it may be appropriate to insert it, she commented.

MR. ALLWINE, in regard to the manufacturers' comments, noted that the manufacturers discovered what appears to be a typo for the 18 months versus the 12 months for rentals. In response to Chair Murkowski, Mr. Allwine said that for claim audits and charge backs 18 months is reasonable. Mr. Allwine said he understood that the manufacturers have programs that last for a year and thus the manufacturers question whether the 18 months meant that they have 6 months to do what they need to do. However, the manufacturer audits [claim audits and charge backs] on a continual basis, without regard to the dealer. He reiterated that the 18 months is reasonable for most of these whether it's warranties or sales incentives. With regard to fraud, Mr. Allwine agreed with the manufacturers that there should be recourse if someone is stealing. He said that he didn't think it's the intent of the bill to preclude recourse in the event of fraud.

CHAIR MURKOWSKI recalled the suggestion that it would be helpful to have the 18 months for charge backs to start at the end of the program rather than when the claim was submitted. She asked Mr. Allwine's opinion.

MR. ALLWINE opined that he didn't believe it made a difference because the sales claims are audited on a continual basis. Of everything that is done in relation to incentives and warranties, the sales claims are probably the least confusing. Therefore, the 18 months is reasonable.

MR. ALLWINE turned to Section 13. He pointed out that the reason there has never been a registered buyers' agent is because of the [the statutes in Section 13], which are specific with regard to what and who brokers are and who can sell new automobiles and represent them as such. Therefore, Mr. Allwine suggested eliminating Section 13 and leaving those statutes [specified in Section 13] in tact unless there would be any harm in doing so.

CHAIR MURKOWSKI recalled that AS 45.50.471(b)(34) was different than the other Title 8 statutes listed in Section 13. In response to whether there would be any harm in leaving the aforementioned statutes in tact, Chair Murkowski surmised that there may be some extraneous overlap.

MR. SNIFFEN agreed and pointed out that there would be duplication and who would decide which law to follow under a given circumstance. He wasn't sure that these statutes are the reason that Alaska doesn't have any buyers' agents.

CHAIR MURKOWSKI expressed the need to be cautious when repealing. She suggested that perhaps the repealors could be left in, while making certain that it's clear in Title 45 that these [statutes] aren't completely gone.

Number 0805

REPRESENTATIVE CRAWFORD recalled that Mr. Allwine didn't like the material defect section of the bill and asked if there is a reasonable way in which to deal with that section.

MR. ALLWINE responded that there is no easy answer. He explained that a vehicle with frame damage that has been repaired properly shouldn't be an issue, however, there are implications to the dealer down the road. There seems to be a

liability issue that needs to be cleared up. Mr. Allwine specified that he supported the concept of the section, although it needs to be clearer.

REPRESENTATIVE CRAWFORD related that in December he purchased a used vehicle and ten miles later the brakes failed completely due to bad brake cylinders. Representative Crawford said that he would've liked an inspection to have taken place. Therefore, he didn't want to merely delete this section, although he expressed the need to accommodate the [dealers].

MR. ALLWINE said that there are certain circumstances in which a vehicle will look perfect from underneath, but will fall apart ten miles later. Mr. Allwine suggested, "If you eliminated the first section and identified it as the second section, unsafe to drive, then you have something I think everyone would be hard-pressed to argue with." Mr. Allwine, speaking on his own behalf, said that he didn't believe that it's unreasonable to have to look at a vehicle and identify potential problems, which is what most dealers do already. If the vehicle is unsafe to operate, then it's repaired or disclosed to the consumer.

Number 0523

REPRESENTATIVE HALCRO agreed that it would be best to be as clear as possible [with regard to liability].

MR. SNIFFEN, in response to Chair Murkowski, informed the committee that when he drafted AS 45.25.470(c)(1)-(2) he discussed this with other assistant attorneys general in states that have similar [statutes]. The problem with deleting AS 45.25.470(c)(1) and leaving only AS 45.25.470(c)(2) is that it leaves out a lot of information that the dealer may know but doesn't disclose to the consumer because it might not impact the safe operation of the vehicle. There may be things that a consumer may want to know about a vehicle that don't impair the safe operation of the vehicle. Therefore, [AS 45.25.470(c)(1)] attempts to inform the consumer.

CHAIR MURKOWSKI said she couldn't think of an example of something that the consumer wouldn't be able to see upon a reasonable inspection and wouldn't impact the safe operation of the vehicle. Chair Murkowski related her belief that the language joining AS 45.25.470(c)(1) and (2) should be "and" or "which" rather than "or". She indicated that having AS 45.25.470(c)(1) as the sole reason for the material defect seemed problematic.

MR. SNIFFEN highlighted that currently the bill only requires the dealer to make a "reasonable inquiry" and thus if there are things that the dealer doesn't know and those things don't impair the safe operation of the vehicle, there is no obligation to find those things. The obligation is only in place if the dealer has information that should reasonably lead the dealer to know of a potential for a material defect. Mr. Sniffen noted the difficulty in developing a definition of "material defect" that includes everything, but isn't too overbearing.

CHAIR MURKOWSKI directed attention to AS 45.25.470(3) on page 18.

TAPE 02-38, SIDE A

CHAIR MURKOWSKI pointed out that if a dealer knew that a vehicle had been in a rolled in an accident, then the dealer would have an obligation to disclose that information regardless of whether it impairs the safe operation of the vehicle.

MR. SNIFFEN agreed. The issue is whether consumers should be told such things if the dealer doesn't believe that [the roll over or other incident] impacts the safe operation of the vehicle. He posed a situation in which a vehicle had been repaired to factory specifications. He ventured to guess that consumers would still want such information.

Number 0130

CHAIR MURKOWSKI inquired as to why AS 45.25.470(c)(1) has to be included. She related her belief that the dealer would have an obligation to disclose what the dealer knows about the vehicle, whether it impairs the safe operation of the vehicle or not.

MR. SNIFFEN explained that if "material defect" isn't defined to include information that couldn't be discovered by a reasonable inspection by an ordinary consumer, then the dealer will have to make the call. He said he didn't know that the dealer would have an obligation to inform the consumer of a defect that the dealer didn't believe would impact the safe operation of the car. In such a case, disclosure wouldn't be required.

Number 0276

REPRESENTATIVE ROKEBERG related his understanding that dealers will be prohibited from advertising the sale of specific vehicles. Won't that be problematic, he asked.

MR. ALLWINE replied no and explained that the language doesn't preclude advertising specific vehicles. However, it does require a means to identify that vehicle. This isn't an unreasonable or unusual request.

REPRESENTATIVE ROKEBERG asked how advertising would work when a new model comes in with a base price. He asked if the new model could be advertised without specifying the options.

MR. ALLWINE answered that in those situations, compliance would be achieved by advertising for people to come and see the new model, specifying the base price. He noted that [dealers] choosing to advertise vehicles that were coming to them would have the serial number or identifying number for the vehicle. In further response to Representative Rokeberg, Mr. Allwine said that [a dealer] would be able to advertise that there are "50 Chevys" without specifying prices and the advertisement could specify, without specifying the serial numbers, that the [Chevys] are priced from $15,000 to $20,000. However, most dealers wouldn't advertise in the aforementioned manner. Mr. Allwine said that Mr. Sniffen has clarified some things that needed to be clarified.

CHAIR MURKOWSKI directed the committee to the definition of "dealer" on page 4. She recalled the discussion regarding the need to "marry" the definitions of "dealer" found in Section 8 and Title 45. The language "other than a manufacturer" would need to be inserted in order to make the definition of "dealer" consistent with that found in Title 45. And Section 8(3) would still allow for the distinction that motor vehicle registrations wouldn't include motor homes, recreational vehicles, or motorcycles.

Number 0654

CHAIR MURKOWSKI moved that the committee adopt the following conceptual amendment [Amendment 1] that would [on page 4, line 8, after "person", insert "other than a manufacturer"] in order to make the definition in Section 8 consistent with that found in Title 45. There being no objection, the conceptual amendment [Amendment 1] was adopted.

Number 0716

REPRESENTATIVE HALCRO moved that the committee adopt the following amendment, [Amendment 2]:

Page 5, line 2,
Delete "45.25.310"
Insert "45.25.320"

There being no objection, [Amendment 2] was treated as adopted.

Number 0716

CHAIR MURKOWSKI recalled the discussion regarding Section 45.25.030 subparagraph (b) that was eliminated, perhaps hastily. Therefore, she expressed the need to incorporate that language back into the bill. That language would read, "This section does not limit the right of a person included within the scope of this section to engage in reasonable and appropriate business practices consistent with an existing trade practice that is not otherwise prohibited by this chapter. She labeled the aforementioned as conceptual Amendment 3. There being no objection, conceptual Amendment 3 was adopted.

Number 0795

CHAIR MURKOWSKI then turned to page 8, Section 45.25.150, and recalled the discussion regarding the 18-month compensation to the dealers. She moved that the committee adopt the following conceptual amendment [conceptual Amendment 4]:

Page 8, line 19,
Delete "12"
Insert "18"

There being no objection, conceptual Amendment 4 was adopted.

Number 0843

CHAIR MURKOWSKI announced that she would like to make a conceptual amendment that relates to the chargebacks. She recalled discussion that there shouldn't be any limitation on fraudulent claims. Although she had no language to offer, she said that the drafters could develop language to accomplish the aforementioned.

REPRESENTATIVE ROKEBERG asked whether under common law fraud or statutory fraud there is a statute of limitations.

MR. BANNISTER answered that she didn't know.

CHAIR MURKOWSKI requested that the drafters determine the answer to Representative Rokeberg's question.

REPRESENTATIVE ROKEBERG pointed out that under fraud causes of action civil and criminal [causes] already exist. He asked if additional language was necessary.

REPRESENTATIVE HALCRO said that he didn't know why one would insert additional language. He pointed out that fraud is a justifiable reason to terminate franchise agreements. Therefore, he didn't believe [additional language is] necessary.

CHAIR MURKOWSKI commented that it might not be necessary to state it.

CHAIR MURKOWSKI then turned to the "material defect" section of Version S and inquired as to how the committee would deal with the concern expressed by Mr. Allwine.

REPRESENTATIVE ROKEBERG remarked that using the standard of an ordinary consumer is fairly low.

Number 1090

REPRESENTATIVE HALCRO agreed that there is a fine line. There are sufficient Federal Trade Commission (FTC) protections in place. For example, all used vehicles sold in the nation must have an FTC buyer sticker, which outlines some of the areas that consumers are encouraged to review. Additionally, many dealers and used car lots allow customers to take the car to a mechanic of their choice before the purchase. Although there will always be situations in which one should've seen something, most dealers don't want to find themselves in a liability situation. Therefore, Representative Halcro said he wasn't too worried with this [section].

REPRESENTATIVE ROKEBERG asked if there is an ordinary consumer standard in law.

MS. BANNISTER clarified that there is a "reasonable person" standard in law but she didn't know what an "ordinary consumer" is.

REPRESENTATIVE ROKEBERG said if there is going to be a reasonable inspection, then the question is in regard to the caliber of knowledge used to make the inspection. He related his belief that an ordinary consumer [without knowledge of automobiles] isn't qualified to make an inspection.

CHAIR MURKOWSKI announced that she wasn't satisfied with the definition of "material defect". She said that her initial reaction is that AS 45.25.470(c)(1) could be eliminated and [the bill] could be moved to the House Finance Committee while some thought is given with regard to how to deal with it.

Number 1393

REPRESENTATIVE ROKEBERG asked if the FTC has any other standards.

REPRESENTATIVE HALCRO reiterated that the FTC sheet is provided to the consumer. He noted the possibility of having the dealers who take trade-ins from private parties to obtain a signed sheet specifying that the vehicle hasn't been in any accidents.

REPRESENTATIVE ROKEBERG pointed out that there have been lemon laws around the country for years, and therefore there should be significant case law on this matter.

REPRESENTATIVE HALCRO interjected, "But not with used cars." He pointed out that dealers have the ability to sell a car with or without a warranty. Therefore, buyer beware.

REPRESENTATIVE ROKEBERG asked if that would be the case under this legislation.

REPRESENTATIVE HALCRO related his belief that the FTC's sticker provides protection to the dealer.

MR. ALLWINE agreed that is the case. Furthermore, the FTC sticker specifies that [a potential buyer] can take the vehicle off the lot and have it inspected by the technician or mechanic of the consumer's choice. The FTC sheet also specifies the areas in which there could be potential problems. This sheet has been around for about 30 years and is quite extensive. He assured everyone that they have seen this sheet because it must be placed on every new and used vehicle or the dealer faces a $10,000 fine.

Number 1573

REPRESENTATIVE CRAWFORD asked if Section 45.25.470(c)(1) was deleted, would the consumer still be able to obtain the information the dealer obtained from the owner.

MR. ALLWINE answered that he believed that would be the case due to the language [found in Section 45.25.470].

REPRESENTATIVE CRAWFORD expressed the need to ensure that the dealer passes along knowledge that he/she has.

CHAIR MURKOWSKI related her understanding by paraphrasing Section 45.25.470 (b), which reads: "A motor vehicle dealer shall make available to all sales staff and provide in writing to a prospective buyer of the vehicle before sale all information obtained by a motor vehicle dealer under this section, along with all information relating to repairs made to the vehicle by the dealer." She posed a situation in which a seller didn't inform the dealer that the vehicle rolled over in an accident, but the dealer had previous knowledge regarding the roll over and thus made the dealer perform an inspection. If the inspection reveals that the roll over doesn't impair the safe operation of the vehicle, is the dealer required to report that to the potential buyer, she pondered. She said she understood that keeping Section 45.25.470(c)(1) would require the dealer to provide information even when the dealer determines that there would be no impairment to the safe operation of the vehicle.

REPRESENTATIVE HALCRO pointed out that even without Section 45.25.470(c)(1), [the consumer] would be protected because of the specifications Section 45.25.470 requires when a dealer obtains a used vehicle. Furthermore, Section 45.25.470(b) requires that this information be passed on to the potential buyer.

CHAIR MURKOWSKI surmised that if a dealer, after an inspection, determines that a rollover wouldn't impair the safe operation of a vehicle, then the dealer wouldn't have to disclose that in writing.

MR. SNIFFEN responded that Chair Murkowski's assessment was correct. Mr. Sniffen said that if eliminating Section 45.25.470(c)(1) would satisfy the dealers, then "that gets us 90 percent of the way home." The focus is in regard to the safe operation of these vehicles, he pointed out.

Number 1873

REPRESENTATIVE HALCRO related his interpretation that the language in Section 45.25.470(b) says that if a dealer is informed that a trade-in has been in an accident, [the dealer] is required to provide that information to the next person interested in purchasing the vehicle. It doesn't seem to be an option.

MR. SNIFFEN agreed with Representative Halcro's interpretation and noted that a parenthetical clause could be added to make it clearer. Perhaps a new section stating, "Regardless of whether the information results in a determination that the safe operation of the motor vehicle has been impaired." could be added, he suggested.

REPRESENTATIVE HALCRO and CHAIR MURKOWSKI indicated agreement with Mr. Sniffen's suggestion.

REPRESENTATIVE ROKEBERG asked whether it's already a state or federal law to disclose that a vehicle has been in an accident.

MR. SNIFFEN said that he believes such information has to be disclosed to the DMV if the vehicle has be salvaged. However, he said he wasn't aware that the private seller had any obligation to inform the dealer that the vehicle had been in [an accident].

REPRESENTATIVE ROKEBERG related that he believes that the DMV should have a [records] of the damage done to a vehicle.

MR. ALLWINE specified that Representative Rokeberg's thinking isn't exactly the case. Only in the past few years, under the auspices of the dealers' association, was the Department of Administration forced to stamp the title when a vehicle is totaled. There is no federal regulation with regard to totaled vehicles, which is one of the reasons for the concern with this particular section. Mr. Allwine said that this section is complicated, and therefore he suggested eliminating it and allowing [the interested parties] to work on it with Mr. Sniffen.

Number 2040

CHAIR MURKOWSKI commented that she believes that [the committee] can fix the problems with [the definition of] "material defect." Therefore, she suggested eliminating Section 45.25.470(c)(1) on

page 18 and in Section 45.25.470(b) on page 18, line 9, insert language specifying that the written information provided to the prospective buyer include all the information obtained by the dealer even if it was determined that it wouldn't be a material defect that impaired the safe operation of the vehicle.

REPRESENTATIVE HALCRO related that the same could be accomplished by on page 18, line 10, after "sale", delete "the", and insert "all". Representative Halcro moved that the committee adopt the aforementioned as conceptual Amendment 5. There being no objection, conceptual Amendment 5 was adopted.

Number 2173

REPRESENTATIVE HALCRO moved that the committee adopt Amendment 6, which reads as follows:

Page 18, lines 14-15,
Delete "(1) cannot be discovered by a reasonable inspection by an ordinary consumer; or"

Renumber accordingly.

There being no objection, Amendment 6 was adopted.

CHAIR MURKOWSKI turned to page 23 and recalled that the manufacturers had discussed some concern with the definition of "administrator". There was comment that "administrator" was a term left over from one of the drafts that included warranty provisions. [The manufacturers] expressed that "administrator" is extraneous.

MR. ALLWINE agreed that it seemed to be left over from one of the many drafts and had no impact.

Number 2236

CHAIR MURKOWSKI moved that the committee adopt Amendment 7, which reads as follows:

Page 23
Delete lines 25-29

There being no objection, Amendment 7 was adopted.

CHAIR MURKOWSKI directed attention to page 25, Section 13 and related her belief that the section needs to be reviewed.

TAPE 02-38, SIDE B

CHAIR MURKOWSKI announced her inclination to leave Section 13 in the draft and if it needs to be eliminated, then such a recommendation could be made to the House Finance Committee.

Number 2222

REPRESENTATIVE ROKEBERG moved to report CSHB 182, Version 22-LS0239\S, Bannister, 3/15/02, as amended out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 182(L&C) was reported 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 5:50 p.m.