

**ALASKA STATE LEGISLATURE  
HOUSE STATE AFFAIRS STANDING COMMITTEE**

May 15, 2003

8:07 a.m.

**MEMBERS PRESENT**

Representative Bruce Weyhrauch, Chair  
Representative Nancy Dahlstrom  
Representative Bob Lynn  
Representative Paul Seaton  
Representative Harry Crawford  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Jim Holm, Vice Chair

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 27

Relating to support for a federal appropriation for expansion of the Anchorage Jail.

- MOVED CSHJR 27(STA) OUT OF COMMITTEE

HOUSE BILL NO. 272

"An Act relating to motor vehicle dealers."

- RESCINDED ACTION OF 5/14/03; HEARD AND HELD

HOUSE BILL NO. 40

"An Act relating to issuance of a driver's license."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 158

"An Act eliminating the longevity bonus program and making related conforming changes; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: HJR 27

SHORT TITLE:FEDERAL \$ FOR ANCHORAGE JAIL EXPANSION

SPONSOR(S) : REPRESENTATIVE(S) MEYER

Jrn-Date	Jrn-Page		Action
04/29/03	1180	(H)	READ THE FIRST TIME - REFERRALS
04/29/03	1180	(H)	STA
04/30/03	1217	(H)	COSPONSOR(S): STOLTZE
05/13/03		(H)	STA AT 8:00 AM CAPITOL 102
05/13/03		(H)	Scheduled But Not Heard
05/14/03		(H)	STA AT 8:00 AM CAPITOL 102
05/14/03		(H)	Scheduled But Not Heard
05/15/03	1677	(H)	STA RPT CS(STA) 5DP
05/15/03	1677	(H)	DP: SEATON, GRUENBERG, LYNN, CRAWFORD,
05/15/03	1677	(H)	WEYHRAUCH
05/15/03	1677	(H)	FN1: ZERO(COR)
05/15/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 272

SHORT TITLE: MOTOR VEHICLE DEALERS

SPONSOR(S) : REPRESENTATIVE(S) WEYHRAUCH

Jrn-Date	Jrn-Page		Action
04/16/03	1009	(H)	READ THE FIRST TIME - REFERRALS
04/16/03	1009	(H)	L&C, STA
04/28/03		(H)	L&C AT 3:15 PM CAPITOL 17
04/28/03		(H)	Scheduled But Not Heard
04/30/03		(H)	L&C AT 3:15 PM CAPITOL 17
04/30/03		(H)	Scheduled But Not Heard
05/01/03		(H)	STA AT 8:00 AM CAPITOL 102 (pending referral)
05/01/03		(H)	Scheduled But Not Heard
05/05/03		(H)	L&C AT 3:15 PM CAPITOL 17
05/05/03		(H)	Heard & Held MINUTE(L&C)
05/07/03		(H)	L&C AT 3:15 PM CAPITOL 17
05/07/03		(H)	<Bill Hearing Postponed to Fri. 5/9/3>
05/09/03		(H)	L&C AT 3:15 PM CAPITOL 17
05/09/03		(H)	Moved CSHB 272(L&C) Out of Committee MINUTE(L&C)
05/12/03	1560	(H)	L&C RPT CS(L&C) 6DP 1AM
05/12/03	1560	(H)	DP: LYNN, GATTO, CRAWFORD, DAHLSTROM,
05/12/03	1560	(H)	ROKEBERG, ANDERSON; AM:

			GUTTENBERG
05/12/03	1560	(H)	FN1: ZERO(LAW)
05/13/03		(H)	STA AT 8:00 AM CAPITOL 102
05/13/03		(H)	Heard & Held MINUTE(STA)
05/14/03		(H)	STA AT 8:00 AM CAPITOL 102
05/14/03		(H)	Moved CSHB 272(L&C) Out of Committee MINUTE(STA)
05/15/03		(H)	STA AT 8:00 AM CAPITOL 102

**WITNESS REGISTER**

LORALI CARTER, Staff  
to Representative Kevin Meyer  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of Representative Meyer, sponsor of HJR 27.

TED POPELY, Majority Counsel  
Majority Legal Office  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Provided comments during the hearing on HB 272.

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General  
Fair Business Practices Section  
Civil Division (Anchorage)  
Department Of Law  
Anchorage, Alaska

POSITION STATEMENT: Testified to answer questions during the hearing on HB 272.

LINDA SYLVESTER, Staff  
to Representative Bruce Weyhrauch  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented information during the hearing on HB 272, on behalf of Representative Weyhrauch, sponsor.

STEVE ALWINE  
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of the Alaska Auto Dealers Association during the hearing on HB 272.

JOHN LYBERGER

Lyberger's Car & Truck Sales, LLC  
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns about HB 272.

SPENCER ALEXANDER, General Sales Manager  
Budget Car and Truck Sales, Fairbanks  
Fairbanks, Alaska

POSITION STATEMENT: Testified regarding the need to make a decision whether to focus on protecting consumers or franchised dealers, during the hearing on HB 272.

PHIL HAWES, Owner  
Phil Hawes Auto Outlet  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 272.

DIANA PFEIFFER, President  
Alaska Automobile Dealers Association;  
President, Alaska Sales & Service in Anchorage and Wasilla  
Anchorage, Alaska

POSITION STATEMENT: Offered comments regarding Section 1, during the hearing on HB 272.

MS. KOSONEN

Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of herself regarding Section 1 of HB 272, to support a consumer's ability to buy new or used cars at will.

MEL BOWEN

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to Section 1 of HB 272.

CHRIS JOHNSON

Anchorage, Alaska

POSITION STATEMENT: Offered reasons why he disagrees with Section 1 of HB 272.

DOREEN McADAMS

Anchorage, Alaska

POSITION STATEMENT: As a sales manager for Lyberger's Car & Truck Sales, LLC, discussed the differences between used-car dealers and franchised new-car dealers and answered questions by the committee, during the hearing on HB 272.

JAMES MOORE, Owner  
Jim's Muffler & Auto Repair  
Anchorage, Alaska

POSITION STATEMENT: Testified to describe HB 272 as an unfair bill.

RICHARD HYATT, Service Manager  
Alaska Sales & Service  
Anchorage, Alaska

POSITION STATEMENT: Described the process of selling new cars and described the distinction between a new and used cars, during the hearing on HB 272.

DAN COFFEY, Lobbyist  
for Lyberger's Car & Truck Sales, LLC  
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of Lyberger's Car & Truck Sales, LLC, in opposition to HB 272, and described the process by which registered importers bring cars into the U.S.

DONALD WALKER, Salesperson  
Lyberger's Car & Truck Sales, LLC  
Anchorage, Alaska

POSITION STATEMENT: Testified that Section 1 of HB 272 would not protect the public and would eliminate competition.

CHRIS HESTER  
Lyberger's Car & Truck Sales, LLC  
Anchorage, Alaska

POSITION STATEMENT: Told the committee that HB 272 is a simple interest bill that does not help the consumer.

CAROL LYBERGER  
Lyberger's Car & Truck Sales, LLC  
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of Lyberger's Car & Truck Sales, LLC during the hearing on HB 272.

LORRI URBAN, Manager  
Member Services  
North American Automobile Trade Association (NAATA)  
Richmond Hill, Ontario  
Canada

POSITION STATEMENT: Testified on behalf of the association to address myths and half-truths and to describe the regulations surrounding registered importers of Canadian vehicles, during the hearing on HB 272.

GEORGE CLARK, Salesperson  
Lyberger's Car & Truck Sales, LLC  
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 272.

DARRELL FRIESS  
Anchorage, Alaska

POSITION STATEMENT: Testifying on behalf of Budget Car & Truck Sales and Budget Rental Car of Alaska, related concerns regarding Section 1, during the hearing on HB 272.

RICK MORRISON, Owner  
Morrison Auto Group  
Anchorage, Alaska

POSITION STATEMENT: Described the commitments and investments of a new-car dealer during the hearing on HB 272.

MIKE McCABE, Fleet Manager  
Kodiak Auto Auction in Anchorage  
Anchorage, Alaska

POSITION STATEMENT: Recommended specific changes to HB 272.

#### **ACTION NARRATIVE**

#### **TAPE 03-64, SIDE A**

Number 0001

**CHAIR BRUCE WEYHRAUCH** called the House State Affairs Standing Committee meeting to order at 8:07 a.m. Representatives Weyhrauch, Seaton, Lynn, and Crawford were present at the call to order. Representatives Dahlstrom and Gruenberg arrived as the meeting was in progress.

The committee took a brief at-ease.

#### HJR 27-FEDERAL \$ FOR ANCHORAGE JAIL EXPANSION

CHAIR WEYHRAUCH announced that the first order of business was HOUSE JOINT RESOLUTION NO. 27, Relating to support for a federal appropriation for expansion of the Anchorage Jail.

CHAIR WEHRAUCH offered a brief history of HJR 27 for the benefit of Representative Crawford, [who was newly appointed to the committee].

Number 0183

LORALI CARTER, Staff to Representative Kevin Meyer, Alaska State Legislature, noted that HJR 27 encourages the federal government to appropriate \$30 million for a 200-bed expansion to the Anchorage jail.

CHAIR WEYHRAUCH noted that the proposed committee substitute (CS) does incorporate Representative Gruenberg's suggested amendment.

REPRESENTATIVE GRUENBERG specified that his amendment appears on page 2, lines 13-16, and on page 2, lines 24-28.

REPRESENTATIVE CRAWFORD asked if a certain amount of the 200-bed expansion will be dedicated to federal prisoners.

MS. CARTER answered, "All 200."

REPRESENTATIVE CRAWFORD asked if only federal prisoners would be able to use those beds, even when those beds aren't in use.

MS. CARTER explained that the state's contract with the federal government has been exceeded for years, with regard to the amount of prison beds available for federal prisoners and the amount of prisoners that are actually housed in Alaska. Therefore, the federal government doesn't foresee a time when these 200 beds won't be used. In further response to Representative Crawford, Ms. Carter explained that the expansion of the federal capacity will free up beds that are currently allocated to the Department of Corrections, but are being used by federal prisoners. Therefore, it effectively frees up some space for state prisoners.

Number 0564

REPRESENTATIVE CRAWFORD asked if the federal government normally gives federal funds to house federal prisoners in state and city jails.

MS. CARTER replied that she didn't know.

REPRESENTATIVE GRUENBERG moved to adopt CSHJR 27, Version 23-LS1048\D, Luckhaupt, 5/14/03, as the working document. There being no objection, Version D was before the committee.

Number 0675

REPRESENTATIVE LYNN moved to report CSHJR 27, Version 23-LS1048\D, Luckhaupt, 5/14/03, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 27(STA) was reported from the House State Affairs Standing Committee.

HB 272-MOTOR VEHICLE DEALERS

Number 0685

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 272, "An Act relating to motor vehicle dealers."

Number 0699

CHAIR WEYHRAUCH asked if there was any objection to rescinding the motion made [during the 5/14/03 House State Affairs Standing Committee] to report CSHB 272(L&C) out of committee. There being none, HB 272 was once again before the committee.

CHAIR WEYHRAUCH mentioned that there would be a committee substitute and an amendment forthcoming.

Number 1011

The committee took an at-ease from 8:20 a.m. to 8:30 a.m.

Number 1018

REPRESENTATIVE SEATON moved to adopt the proposed committee substitute (CS) for HB 272, Version 23-LS0975\H, Bannister, 5/14/03, as a work draft.

Number 1027

CHAIR WEYHRAUCH asked Representative Crawford if he would object for the purpose of discussion.

Number 1048

REPRESENTATIVE CRAWFORD said, "Yes."

Number 1153

The committee took an at-ease from 8:33 a.m. to 8:35 a.m.

[Back on record, there was some discussion between the chair and a forthcoming testifier regarding transmission of Version H by facsimile.]

The committee took a brief at-ease.

Number 1188

TED POPELY, Majority Counsel, Majority Legal Office, Alaska State Legislature, told the committee that he has been asked about this legislation throughout "its course through the House." He mentioned seeing "two amendments that have been offered." He stated that his concern, from a legal perspective, is whether Section 1 is a good idea for the legislature to pursue. He said that he would be interested in continuing to hear from the attorney general's office about whether or not it is 100 percent comfortable with the position the state would be in if it adopted "this language."

MR. POPELY explained that, as he has studied the topic, he has become increasingly aware of a substantial number of lawsuits that are currently pending against a variety of defendants - including the large automobile manufacturers - for doing the exact thing that the sponsor is now asking the legislature to do, which is: to cease honoring warranties from the manufacturers; to allegedly conspire together to prevent competition from selling current-model used cars; and "a whole host of other claims that I continue to read about, that give me cause for concern."

MR. POPELY mentioned a forthcoming amendment that would address Section 1 and a concern for consumer protection. That amendment would permit the sale of current-model used vehicles by any licensed auto dealer, but "it would require a host of precautionary prophylactic measures that would require people to disclose - prior to purchase and sale - that it is a Canadian vehicle, that it's been bought at auction, [and] that it is not a new vehicle ...[but] ... a used vehicle ..., [for example]."

MR. POPELY stated the following:

The alternative to make it ... permanently illegal in this state to sell current-model used vehicles - at least from my brief perspective - has some potential legal pitfalls that I'm not sure the attorney general's office has clearly satisfied itself that it's prepared to advocate in light of that.

Number 1424

CHAIR WEYHRAUCH asked Mr. Popely if he was looking at [Version H], and if there is any language in it that gives him pause.

MR. POPELY said that his interpretation of the exceptions in Section 1, Version H, amending AS 08.66.015, is that they would not allow for independent auto dealers in Alaska to resell Canadian-acquired vehicles in a current-model year. He stated, "That's what the bill stands for." He continued:

Conceptually, the idea being, in Section 1, "Will the bill permit or prohibit the sale of current-model-year used vehicles?" I think that's the crux of the issue that this committee is here to discuss.

MR. POPELY, in response to a question by Chair Weyhrauch, offered his understanding of the definition of "current-model-year" as follows:

As we sit here in 2003, a 2003 vehicle is a current-model-year used car. That's my lay understanding. I'm not in the auto business, but the way I understand it, the auto dealers would like to see legislation that prohibits people from selling vehicles ... [where] the model year is the same as the calendar year - the very latest model used car you could have.

Number 1580

MR. POPELY, in response to questions by Representative Lynn, said he thinks that, according to the language [in Version H] a person could sell a vehicle back to a dealer, either as a trade-in or a lease buy-back, through the normal course of business.

REPRESENTATIVE LYNN asked what the used-car dealer would do with a vehicle that is a current-model used vehicle if he/she wants to sell it.

MR. POPELY stated that he thinks this bill would permit that. He pointed to [paragraph] (3) in Section 1 to illustrate that. He reiterated that what the bill specifically precludes is the acquisition of vehicles through the Canadian market, through auction - a legal acquisition by itself - to then be resold in Alaska by a dealer.

Number 1703

REPRESENTATIVE SEATON suggested that Mr. Popely's concern with [Section 1] as written is that "our action might be in restraint of trade."

MR. POPELY responded that there are two kinds of conspiracies: one is ideological, regarding whether or not the legislature wants to inhibit this kind of competition in the market place; two is legal, regarding whether or not there is a legal impediment to pursuing these kinds of "prohibitions on sale." The latter, he said, is a question for the attorney general's office.

Number 1785

REPRESENTATIVE CRAWFORD stated that he would like to be fair to both sides in this issue. He stated his understanding that the bill would limit the sale of cars "manufactured for sale outside the United States." He asked Mr. Popely to share what he thinks about the franchised dealers' contention that many of them don't have the same access to "these cars, due to their deal with the manufacturer," and are thereby being undersold in the marketplace, and that it's unfair competition for them that the used-car dealers are able to "go over and acquire these cars" at a much lower price.

Number 1866

MR. POPELY replied that he has heard and understood that argument. He confirmed that there's a private franchise agreement between the manufacturers and each of their franchises that limits certain activity. Conversely, he noted that there's also the notion of free competition, which has been globalized. Many of the manufacturers are manufacturing the vehicles in Canada - taking advantage of the difference in economies of scale and the market place and using less expensive labor and parts, for example - for sale both in the U.S. and Canada. He added, "The same cars you and I are buying at the dealerships are being built in Canada, but then ... they're attempting to preclude the same consumers from taking advantage of those market differentials when it comes time to purchase the vehicle."

MR. POPELY said that there certainly are some problems ideologically with manipulating the markets for purposes of manufacture, [while] at the same time, weighing the law to

prohibit the same manipulation of the marketplace for purposes of purchase. He said that it is a concern that he has heard and raised; however, he stated that he is not certain that his opinion is really relevant to that discussion. He added, "It's something that [U.S.] Congress has not seen fit to preclude; there's no federal law that prohibits what's going on."

MR. POPELY noted that the only illicit acquisition of these vehicles that he's heard about through committee hearings is illicit from the viewpoint and standpoint of the manufacturer, because they don't want the competition. They would like to produce vehicles for sale in certain markets in the northern hemisphere that stay in those market places and are purchased by a particular group of people, because they can maximize profits if those same people buy them here, he said. He added, "If we put cars in this marketplace and those people buy them here and these people buy them here, it's very good for the manufacturers' bottom line - it's very bad for the free-market competition." He said, "It's a legal activity that these people are participating in." He revealed that he has received enough phone calls over the last two weeks to know that there are a lot of people who are scared about their businesses in Alaska. He indicated that those people sell a lot of these Canadian vehicles, and he said there [would be] a "ripple effect," [because] they employ a lot of people.

CHAIR WEYHRAUCH expressed a concern as follows: "If you're coming to us as a majority counsel, who have you talked with and do you have any conflict in doing all this?"

MR. POPELY listed the names of those who have contacted him by phone as follows:

Mr. Lyberger that I met yesterday; the woman from Canada - Lori [Urban] - from the auto dealers has called me several times; people from Budget Rental Car have phoned me from Anchorage; a couple of auto dealerships in Fairbanks have called me; all independents ...

CHAIR WEYHRAUCH asked Mr. Popely if he is representing those people here in his testimony.

MR. POPELY answered no.

CHAIR WEYHRAUCH asked who else Mr. Popely spoke with.

MR. POPELY said he would have to go to his office to look up the names.

CHAIR WEYHRAUCH stated his concern that when someone from the majority counsel comes to testify that they have at least talked to "the other side," for example.

MR. POPELY responded that no one from the "dealers association" spoke with him. He added, "And my door is open to everybody who wants to come and yak at me. It always has been."

Number 2060

REPRESENTATIVE GRUENBERG stated for the record that he had asked Mr. Popely to come forward to discuss this issue. Representative Gruenberg noted that he himself is not a member of the (indisc.).

Number 2079

REPRESENTATIVE CRAWFORD stated that it is not his intention to put anybody in a competitive advantage, nor does he want to disadvantage independents. Furthermore, he doesn't want to disadvantage "our own franchised dealers here, because they certainly serve a place in the marketplace here, as well." He said his aim is to find a balance that both can live with. He said he was not happy yesterday [when HB 272 passed out of committee] because he thought it was unbalanced, and he is not happy [with the legislation] yet. He said he thinks the committee needs to address whether franchised dealers can acquire "these vehicles" if they are going to be able to compete in the marketplace.

Number 2127

REPRESENTATIVE GRUENBERG referred to "the Holm Amendment," labeled 23-LS0975\D.2, Bannister, 5/14/03, which read as follows:

Page 2, lines 2 - 3:

Delete "received as a trade-in"

Insert "manufactured for sale in the United States and acquired by the dealer"

Page 2, line 6:

Delete "i"

Insert "i or"

Page 2, lines 7 - 10:

Delete all material and insert:

"(3) the vehicle is a current model used vehicle not manufactured for sale in the United States, the dealer acquired the vehicle in the normal course of business, and the dealer complies with AS 45.25.470."

Page 5, following line 19:

Insert a new bill section to read:

"\* Sec. 5. AS 45.25.470 is amended to read:

Sec. 45.25.470. Sales of vehicles manufactured for sale in a foreign country. Before sale of of [,] a motor vehicle not manufactured for sale in the United States, a motor vehicle dealer shall disclose to the consumer in writing, in addition to any other disclosures required for the sale of a used [WHETHER A MOTOR] vehicle, [WAS ORIGINALLY MANUFACTURED FOR SALE IN CANADA OR ANOTHER FOREIGN COUNTRY]

(1) that the vehicle was originally manufactured for sale in Canada or another specified foreign country;

(2) if applicable, that the vehicle was originally sold new in the specified foreign country identified under (1) of this section and imported into the United States;

(3) that the vehicle's odometer was converted from kilometers to miles, and shall provide the consumer with a legal vehicle title, an odometer verification certificate, or another document that verifies the mileage reading after the conversion;

(4) if applicable, that the vehicle does not have a manufacturer's warranty; and

(5) any other information required by regulations adopted by the attorney general."

Re-number the following bill sections accordingly.

REPRESENTATIVE GRUENBERG said that "the Holm Amendment" uses a slightly different approach, which is one of disclosure. "The Holm Amendment," he explained, would divide "these vehicles into two categories." He noted that the amendment says that it's okay to sell "these vehicles" if they're manufactured in the United States for sale. He continued outlining the amendment as follows:

And it would eliminate these various sources, because of the theory, "as long as it's manufactured in the U.S., we don't care whether it was directly from a consumer acquired, or from a rental fleet, or repossessed, or in any other manner [acquired]. The key thing is it has met the federal requirements.

And then, what it does in the rest of the amendment ... is to say that if it was not manufactured for sale in the United States, ... the dealer must comply with AS 45.25.470 .... And the rest of the amendment amends that statute to simply require that the used-car dealer or the new-car dealer - whoever is the dealer - must completely disclose that it was imported, that the odometer was converted from kilometers to miles, and a legal vehicle title, et cetera ....

So, it's a disclosure-type of thing, but it's a little bit different approach than we have in the bill, even if we were then to engraft "the Holm Amendment" onto the current language in Section 1 of the bill. And I think, if we took "the Holm Amendment" and put it into the bill, that might simplify things."

REPRESENTATIVE GRUENBERG asked Mr. Popely if he had any comments on that suggestion.

Number 2314

MR. POPELY responded that the way he reads the amendment is the same way Representative Gruenberg just related it to him. He stated that it would effectively permit the sale of "those vehicles" by auto dealers, provided they meet the disclosure requirements as the sponsor has laid them out.

CHAIR WEYHRAUCH commented that he doesn't know if that really deals with Representative Crawford's issue.

REPRESENTATIVE CRAWFORD said no.

Number 2332

REPRESENTATIVE SEATON proffered that it would deal with Representative Crawford's issue in that the state would be allowing either a new-car dealer or a used-car dealer to buy these Canadian vehicles at auction, "or any other country," for

sale as used cars "as long as they had full disclosure on that." He added that if those dealers have a private agreement with a manufacturer that prevents them from doing that, "that's kind of outside our realm." He stated his belief, based on hearing previous testimony, that Ford [Motor Company] has already done away with the requirement that "their dealers cannot buy those vehicles," which would allow those dealers to purchase [Canadian cars] at the same competitive rate and auctions as the used-car dealers.

Number 2394

REPRESENTATIVE CRAWFORD responded that Representative Seaton is absolutely right; however, those dealers who are [restricted by] their deals with their manufacturers are still in a noncompetitive position. He stated that he doesn't know what to do about that. Representative Crawford continued as follows:

I was never a proponent of [North American Free Trade Agreement] (NAFTA); I thought it was a bad deal in the first place. I think it's a bad deal that they can make cars for the American market in Canada at 30 percent or 40 percent less, because of the exchange rate. But, be that as it may, we have our homegrown automobile dealers here in Alaska that we have to -- I mean, if we don't keep them in business, then we're going to lose the benefits of the shops that they have ... that a lot of the independents don't have.

REPRESENTATIVE CRAWFORD reiterated his desire to see a level playing field in the market.

Number 2485

CHAIR WEYHRAUCH announced that "the Holm Amendment" would be called Amendment 1. [This Amendment 1 was never adopted and another amendment in the ensuing hearing on HB 272 was named Amendment 1, ultimately.]

Number 2520

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department Of Law, first addressed "some comments that were made about lawsuits in other parts of the country." Although he is not familiar with all of those lawsuits, he noted that he has reviewed some of the information sent to his office by the North

American Auto Trade Association, by way of Ms. [Lori] Urban. He stated that he doesn't think those lawsuits have any relevance to this legislation, for the fact that they involve claims against private car manufacturers and dealers for conspiring with each other to violate anti-trust laws. He continued as follows:

What we're dealing with here is proposed legislation that the State of Alaska would like to advance to address issues that have a competitive impact. But, there is nothing in any of these lawsuits that I can see that would implicate the [Alaska] State Legislature in any way, shape, or form. And whatever this committee decides to do, I think it should do so without considering any of those ramifications. The legislature does have immunity for its actions. If you do something that turns out later to implicate some illegal anti-trust behavior, then the legislation will simply be unenforceable. So, I just wanted to make it clear that it is the Department of Law's position that those issues really shouldn't drive the considerations by this committee or this legislature.

Number 2585

MR. SNIFFEN referred to Amendment 1 - "the Holm Amendment" - and stated that he thinks Representative Crawford "really hit the nail on the head" when he said there is a conflict here. Mr. Sniffen opined that there are two ways to approach this conflict: proceed with the approach that's been recommended by the franchised auto dealers, Mr. Alwine, and the Alaska Auto Dealers Association, to effectively stop the importation and sale of current-model used Canadian vehicles, unless those vehicles are required in the ordinary course of business in the exceptions in [Section 1] of Version H; or [use] the other approach recommended by Representative Gruenberg, to not stop the sale, but to let it go forward, while warning the consumers about the possible (indisc.) of the sale, thereby letting the consumers take the risk and decide for themselves if they want to do this. The theory there, he added, is that if there is full disclosure, another option is placed into the marketplace for the consumers.

MR. SNIFFEN stated that the department really doesn't have a "big stake in how this committee decides which way to proceed on that." He continued as follows:

Our concern is at many levels. Initially, it is for the consumer. And we have seen a few problems. And I want to emphasize "few," because this is not a really ... huge problem in Anchorage as far as we know. But, we do see a couple of issues that come up regarding the sale of these current-model Canadian vehicles.

And, for the record too, I'd like to clarify a little bit about when we use this terminology, we mean: there are new cars and there are used cars. And everyone knows what a new car is; it's a car that has not been titled, and it's come from the manufacturer with a manufacturer's statement of origin.

A used car is a car that has been titled to someone and has lost the manufacturer's statement of origin, which is usually given out the first time the vehicle is titled into someone's name. Now, you can have used cars that are still in the current-model year. It could be one you buy today - a 2003 - that you drive off a lot and bring back tomorrow. It's still a used car, even though it's the current-model year. And I think everyone understands that, but I didn't want there to be any confusion. When we say, "Current-model used vehicle," we mean a used car, it's just a used car that's still within the current-model year of production, so the next-model year has not been delivered yet by the manufacturers.

MR. SNIFFEN noted that the issues revolving around current-model used vehicles in Anchorage that have come from Canada are: warranty issues, odometer-swap issues, and lemon law issues. He continued as follows:

We've had consumers complain to us that they have purchased these current-model used vehicles, tried to make lemon law claims, and were unable to do so, and we had to tell them, "That's correct, our lemon law does not apply to these now-used vehicles; our law only applies to new cars."

The second issues involves odometer swaps, and we haven't investigated extensively how these swaps occur [or] whether they're done in accordance with federal regulations, but we have heard that sometimes they are not. And the consumer will sometimes not know whether or not the mileage indicated on the odometer is, in

fact, correct. And I'm not aware of any positive way to verify that.

And then, the last issue deals with manufacturer warranties. We've had some consumers complain that they thought they were getting a manufacturer's warranty, when in fact some of the manufacturers are now declining to honor those warranties. And we've heard testimony from Mr. Lyberger, who ... does a good job in Anchorage with his business, and we know that he sells what he calls a "warranty" with his new vehicles - these Canadian vehicles. It's probably better characterized as a service contract, but ... the terminology isn't too important. And those warranties do come with the vehicle.

[On] some [occasions], I think, consumers think when they get those warranties that they can take this vehicle back to the local Chevy, ... Dodge, or Chrysler dealer and have them do the work on it, when in fact these franchised dealers are not required to honor those types of warranties, and the consumer has to go to an independent mechanic and have work done. And that mechanic may or may not have the tools, ... equipment, and training to do the same kind of work that the franchised and authorized dealer would be able to do. So those, from the consumer perspective, are the issues that we are faced with when selling these current-model used Canadian vehicles.

Now, will those issues be taken care of through an amendment like number one here, by informing the consumer that: "Here are the risks, you need to know these things, if you're willing to take those risks - hey, buy this car?" ... They might. Who knows? Consumers sometimes understand these things, sometimes they don't. The law actually focuses on what we call, "the least sophisticated consumer test." Whenever we review a potential consumer protection Act violation, you have to imagine the least sophisticated consumer on the planet going into the transaction, and then ask yourself, "Well, does this protect that level of consumer?" And these disclosure laws, I think, certainly will protect the average consumer [and] the consumer who's really on the ball and has done their research. The less sophisticated consumers who are

even told these things, may or may not understand their implications.

So, with that we would leave it to the committee to decide which way they'd like to proceed. I do understand the concerns of the franchised car dealers, and I agree with Representative Crawford: there is a competitive disadvantage here when a segment of the car-selling community - these independent used-car dealers - can obtain vehicles in a manner that the franchised car dealers simply cannot, without risking loss of their franchise agreements.

And we've also heard testimony that, "Well, the franchised dealers have all kinds of other incentives that they can use to compete with these independent dealers." This is a relatively new market and new competitive structure we're seeing here. Twenty years ago we had used-car dealers selling used cars. And everyone knew what a used car was, it was your neighbor's '56 Chevy that he wanted to get rid of [and] ... took down [to] the used-car lot.

Well, now used car dealers are becoming ... more sophisticated and they have access to more products, and this new market for low-mileage, imported Canadian vehicles is a market that they've tapped into. And it's an issue that we just haven't had to really deal with in recent years, that's now come to light. So there are some competitive concerns there.

I don't know that whatever this committee does, it's going to be an illegal action. I think if you take either approach, there are going to be good arguments to support your decision. But, bear in mind that we already have - and I know this has been repeated several times - ... a statute that's been in place since 1993; a statute that was in place when Mr. Lyberger opened up his lot [and] when Budget started selling their cars. And at that time, they knew they were unable to sell these vehicles ...

**TAPE 03-64, SIDE B**

Number 3002

MR. SNIFFEN stated that it's not a real genuine argument to say, "Well, HB 272 is going to do something that we haven't been

faced with in the past," because, for the last ten years, [car dealers] should already have been aware that the law already prohibits these kinds of sales. From a legal perspective, he said, there is not really much that can be changed, other than to repeal the law. However, Mr. Sniffen opined that if the legislature wants to make amendments to the law, or "do other things to it," it will certainly be no worse than it is currently.

Number 2953

REPRESENTATIVE LYNN commented that the committee has been addressing HB 272 for two days and many members of the committee have had trouble understanding the bill. He remarked, "It seems to me that we must be less than the least sophisticated potential buyer, because we're having trouble with it, and we ... aren't even in the heat of trying to buy that car that we just really have to have ...." He questioned how much trouble someone just coming in off the street would have.

Number 2907

REPRESENTATIVE CRAWFORD asked Mr. Sniffen where in statute is the language that presently prohibits "the sale."

MR. SNIFFEN answered that it is in Title 8, and is the statute that Section 1 of HB 272 proposes to amend: AS 08.66.015.

Number 2873

REPRESENTATIVE GRUENBERG said it strikes him that the lemon law in Title 45 doesn't apply to the purchase of any used car.

MR. SNIFFEN said that is correct.

REPRESENTATIVE GRUENBERG noted that there is nothing currently in [HB 272] that requires a disclosure of that fact. He asked Mr. Sniffen if he would support an amendment to HB 272 that would require that disclosure.

MR. SNIFFEN responded that [the department] is in favor of more disclosures to consumers; however, he explained that there comes a point where it is necessary to assume that the reasonable consumers understand the law, or the list of disclosures would become so numerous that they would become meaningless. Notwithstanding that, he posited that disclosure that a current-model used vehicle may not have lemon law protections is a good

idea. He indicated that he would not limit it to "current-model" used car, but to any used car.

REPRESENTATIVE GRUENBERG referred to Mr. Sniffen's previous testimony that some vehicles - whether they're manufactured in Canada or not - may not have coverage by a manufacturer's warranty. He referred to [Amendment 1] and said that it would require "that to be disclosed for a foreign vehicle." He stated that he doesn't see in HB 272 "anything that would require that to be disclosed for a domestically manufactured car," which he said he thinks would be an important disclosure, if applicable. He asked Mr. Sniffen if he agrees.

MR. SNIFFEN replied that he doesn't know that there is really a problem with the warranty issues on vehicles manufactured for destination in the United States. Regarding all manufacturers' warranties that come with the vehicles for sale in the U.S., he stated that he thinks all of the franchised dealers in the U.S. are obligated by contract to provide service for those vehicles. He added, "It's only the vehicles that were manufactured for sale in Canada or a foreign country." As soon as those vehicles are no longer registered in that country, he explained, then the U.S. dealers are not obligated to honor those warranties.

REPRESENTATIVE GRUENBERG commented that he thought previous testimony had revealed that "some of these dealers in the U.S. are not honoring warranties when the used vehicle was purchased not from them, but from an independent [used-car] dealer, even though the vehicle was manufactured in the United States." He said he assumed that to be the case, and he asked Mr. Sniffen if he agrees that that should also be disclosed.

Number 2610

MR. SNIFFEN replied that if it's a disclosure that would correct an otherwise common misperception, he thinks it would help. He offered an example where a current-model new vehicle might leave a consumer with the impression that he/she is buying a new car that the manufacturer is going to stand behind, and if that is not the case, then that type of disclosure would be helpful.

Number 2518

LINDA SYLVESTER, Staff, to Representative Bruce Weyhrauch, Alaska State Legislature, indicated that she would discuss two sources of information for the committee to consider when deciding "whether ... full disclosure ... would be an adequate

remedy to this problem." She added, "I'm speaking to the consumer protection issue of the impediments Canadian market vehicles have."

MS. SYLVESTER referred to the first source of information: a letter from the office of the attorney general [to Lori Urban, included in the committee packet], in response to a letter of complaint by Jesse B. Waldrop [included on the fourth page of the same handout]. The complaint was filed after [Mr. Waldrop] had purchased a "Canadian-market vehicle" and took it to the Jeep dealer to have some work done. He expected that the Jeep dealership would honor his "replacement" Heritage warranty, but the dealership is not allowed to honor that type of warranty, because of its franchise agreement. Ms. Sylvester read a portion of the letter, which described Mr. Waldrop's disappointment in his dealings. She related how Mr. Waldrop went back to Lyberger's [Auto & Truck Sales, LLC], where an employee called the Jeep dealership to offer to write a check for the cost of any repairs for the vehicle; however, the warranty was not accepted for that particular year/model Jeep at that Jeep dealership.

MS. SYLVESTER noted that Mr. Sniffen [addressed Mr. Waldrop's] consumer complaint [in his letter to Ms. Urban]. She paraphrased a portion of [the third paragraph of that letter], which read as follows:

The State of Alaska has been monitoring this issue for a couple years. Alaska statute 09.66.015 was passed in 1993 to stop this practice. ... We have declined to enforce this statue, however, because it unnecessarily prohibits the sale of any [current-model] vehicle by anyone, including franchised dealers.

Number 2366

MS. SYLVESTER turned to the second source of information she had distributed: a [three-page handout beginning with a newspaper article and followed by a] press release by Senator Robin Taylor. She told the committee that this is in regard to the 1993 statute [previously referred to by Mr. Sniffen]. The press release, Ms. Sylvester noted, [announces] Senator Taylor's [proposal] of [Senate Bill 105 in 1993], which she explained was a consumer protection bill. She added, "And that is what this was about."

MS. SYLVESTER indicated that she is sure that Mr. Lyberger and other people who sell Canadian-market vehicles are very honest and considerate; however, she suggested that it is possible that not all people are as ethical and helpful as Mr. Lyberger.

MS. SYLVESTER, regarding disclosure, listed the following to consider: What would happen [to the consumer] if Mr. Lyberger and his business "goes away"; what happens if Mr. Lyberger "doesn't have someone who is going to be willing to step up and assist him and pay cash when the manufacturer's franchise cannot honor the substitute warranty"; and what happens "when they go out of state"? She noted that it's a serious consumer protection issue. She added, "It's not a small-ticket item; it's a \$40,000 vehicle."

MS. SYLVESTER indicated that the sponsor initially thought that proposing a full-disclosure amendment might be a good idea, but then considered, "When you're doing a car deal ..., (indisc.) amount of forms that you're signing - that you're processing." She said the question arose as to how the consumer would be aware of a full disclosure about all of the impediments that a Canadian-market vehicle might have, noting that Mr. Sniffen, "in his testimony and his experience, ... is doubtful that that would happen." She added, "And Mr. Alwine, who's experienced in ... processing the paperwork, ... also feels that it's doubtful." Even with a cash sale, Ms. Sylvester explained, the amount of paperwork that a person signs is daunting, including financing paperwork. She added, "How important is one extra piece of paper when you're talking about 20 or 30 pages of paperwork when a person is signing to close the deal?"

Number 2240

MS. SYLVESTER, in response to a question by Chair Weyhrauch, said that she believes the article in the handout was most likely released in 1992, because it [is in regard to] the event that triggered [SB 105]. She said that there was a legitimate consumer protection issue; unfortunately, [SB 105] was poorly drafted and had "the unintended consequence of making it illegal for anyone to sell current-model vehicles." The [intent of SB 105] had been to control who was selling the vehicles and to "prevent the fraud that occurs."

Number 2200

MS. SYLVESTER, in response to questions by Representative Gruenberg, noted that an example of a Heritage warranty is

included in the back [of the handout that includes the letter from the AG's office]. Certain manufacturers, she said, will not warranty the Canadian-market vehicles that are being sold in the U.S. To compensate, there are replacement warranties [such as the one from Heritage]. She compared [the Heritage replacement warranty] to an insurance card. Ms. Sylvester confirmed that although Lyberger's offers the warranty, the Heritage [Administration Services, Inc.] is the company [that offers the warranty].

Number 2054

MR. SNIFFEN, in response to a request for clarification by Representative Gruenberg and Chair Weyhrauch, explained [regarding the previously mentioned case of Mr. Waldrop] that that consumer purchased a vehicle from Mr. Lyberger, which came with a "Heritage after-market service contract" that was purchased by Mr. Lyberger and was included in the price of the car. The local Jeep dealership in Anchorage, he continued, "declined on that warranty." He explained that it was not a factory warranty and there is no law that requires a dealer to honor after-market service contracts. He added, "And I think that was the situation that went on in that case."

Number 2007

REPRESENTATIVE GRUENBERG asked if either Ms. Sylvester or Mr. Sniffen knows the reason that the Jeep dealership involved did not honor [the Heritage] warranty. He asked whether there perhaps should be a law requiring [dealers] to accept [a warranty such as the one from Heritage]. He remarked that this seems to be a different issue than the one addressed in the proposed legislation.

Number 1995

MR. SNIFFEN replied that he is not entirely sure why the [Jeep] dealership declined to honor the warranty. He suggested that it could have been a directive from the manufacturer that the dealership would no longer honor these kinds of warranties, or it [may have been] a local dealer decision. In any event, he opined, it would be a fundamental violation of contract law to require a dealership to accept, essentially, any after-market warranty that came to its shop for work on one of its vehicles. He added that that would be a difficult thing to do.

REPRESENTATIVE GRUENBERG said that this issue would mean getting into the relationship between a garage or service dealership and a third party - in this case - the Heritage company.

MR. SNIFFEN answered, "That is exactly correct." He clarified that the issues that arose regarding [Mr. Waldrop] and these warranty issues are far removed from the questions that are before the committee in HB 272, other than the fact that it serves to highlight one of the problems that can arise in the sale of these current-model used vehicles. He stated that the AG's office responded to that consumer complaint on the basis of the warranty claim, and it really isn't an issue before the committee.

Number 1905

STEVE ALWINE, testifying on behalf of the Alaska Auto Dealers Association, explained that he, as a vendor, has established credit policies. He opined that it would not be right for the legislature to dictate who he opens an account with. He said that that is the underlying philosophy regarding many service contracts.

MR. ALWINE noted that Mr. Sniffen had commented that this issue [of the Jeep dealer not honoring the Heritage warranty, for example] is far removed from HB 272. He stated, "It is, but it does demonstrate the pitfalls and the issues we've talked about having to do with manufacturer's warranty, or the absence of that warranty." He remarked that this [example] demonstrates that the big losers [in this issue] are the consumer and the dealer.

MR. ALWINE offered his interpretation of Representative Gruenberg's understanding of previous testimony, that if a vehicle was manufactured for sale in the U.S., and was perhaps a current-model vehicle, a dealer did not have an obligation to honor that manufacturer's warranty. He said, "That is incorrect." He continued, "We have an obligation with our manufacturers ... to honor that manufacturer's warranty. He offered an example.

REPRESENTATIVE GRUENBERG asked, "Even if it was purchased from [Lyberger's Car & Truck Sales, LLC] or somebody else?"

MR. ALWINE answered, "Absolutely." He revealed that he and his wife have a Subaru dealership in town. He noted that his market place includes Skagway and Haines, yet occasionally, people from

those areas will go to Whitehorse and buy a used Subaru. That used Subaru still has the manufacturer's warranty, he stated. He added, "And I still take care of that Subaru as I would anything else."

REPRESENTATIVE GRUENBERG commented that [Mr. Alwine's answer] was helpful.

Number 1730

REPRESENTATIVE SEATON asked if the same would hold true [for other makes of cars.] For example, if someone were to buy a Toyota in Whitehorse, would the Toyota warranty be honored in the U.S. as well as in Canada?

MR. ALWINE responded as follows: "I'm not clear on that, but I'll say it this way: some manufacturers still have manufacturers' warranties. I do not believe Honda or Toyota do, but I could be wrong on that. I can only speak with my experience in my franchises and some of the other domestic franchises."

REPRESENTATIVE SEATON asked Mr. Alwine to confirm that Subaru does have a manufacturer's warranty, and "it doesn't matter where you are, they honor the warranty."

MR. ALWINE replied, "That is absolutely correct."

Number 1686

REPRESENTATIVE SEATON surmised that, regarding "this warranty problem," the situation exists where different companies decide to do different things. Some may offer warranties on vehicles no matter where those vehicles are, and others may decide to honor warranties only in certain places. Representative Seaton stated that he is having a difficult time "following this argument." He said that it is only current-model used cars that are being restricted [in the proposed legislation], yet "the same thing applies to something that's two-years old, as far as a warranty goes."

MR. ALWINE explained that the majority of the new-vehicle manufacturers that do business in the U.S. "eliminate warranties when vehicles move in this manner from one country to another." He clarified as follows:

The vehicles we're talking about are not used vehicles in the normal course of business. These are manufactured used vehicles. They go out, they acquire these things through a fraudulent means. They use a surrogate buyer. They don't -- the importers aren't buying these things direct from these dealers. They're hiring people or they're paying people and using that person's name. And that's fraud. And the whole transaction starts as fraud. These vehicles, when they hit Mr. Lyberger's lot, have 7 miles on them or 20 miles on them; you have a document that proves that.

... I'm hard-pressed to get a vehicle on the ground from the manufacturer that has seven miles on it. These are not used vehicles. These come under the guise of a used vehicle; these are a "manufactured used vehicle." That's how that transaction starts.

Number 1525

REPRESENTATIVE GRUENBERG asked Mr. Alwine to clarify "what's going on in Canada." He asked Mr. Alwine if he was saying that, for example, a vehicle is manufactured at a Ford [Company] plant in Canada not as a new vehicle, but as a used vehicle.

MR. ALWINE answered as follows:

I misspeak, but I've now coined a phrase that I seem to be very comfortable using. These vehicles are manufactured by the manufacturers for sale in another country. They are distributed to the dealers in that country, and that's where the legitimacy in this transaction stops.

What happens then is: someone, who is on the payroll of an importer, makes a purchase from that dealer, and then turns around and gives the car to the importer. The importer imports the car to the United States and may sell it through an auction - and in a lot of cases that happens. By the way, auctions do disclose that. They sell them through the auctions. And when Mr. Lyberger buys that vehicle, it already has a fictitious name as the owner from Canada.

And in my research with our vehicles, when I have encountered Canadian vehicles, they have run all the

way to Toronto. This is a rampant thing. These cars -- I cannot believe that there's this many people in the world, but right now I think the statistic that was in testimony was there's a quarter of a million of these cars out there, where a quarter of a million Canadians went out and bought these cars and one day later decided they just didn't like them.

REPRESENTATIVE GRUENBERG asked, "What's wrong with that?" He said that he realizes that, technically, "this may not have belonged to 'Joe Canadian'; and it may be, essentially, a new vehicle that's been auctioned in the United States." But, from the consumer's point of view, he asked, "So what?"

MR. ALWINE asked, "How do you justify a transaction when it begins with fraud?"

REPRESENTATIVE GRUENBERG explained that he is "going to the meat of this thing." He said that, in fact, the consumer is getting what is being sold through a used-car dealer, but is getting, essentially, a new car.

MR. ALWINE responded that the problem is that the consumer's perception is that he/she is getting a new car. Furthermore, that consumer is expecting all of the benefits that go with that new car, and ultimately, he/she is not receiving those benefits.

REPRESENTATIVE GRUENBERG said that the consumer is maybe not getting a warranty, but is getting a car that may only have a couple of miles on it and paying less for it than he/she would pay a new-car dealer in the U.S. He posited that that sounds like a good deal.

MR. ALWINE commented that that consumer might be paying less, but noted that if the selling price in Anchorage of a Ford vehicle, for example, is a certain price, than his "colleague in Anchorage" is [not pricing much lower than that].

Number 1290

CHAIR WEYHRAUCH asked, "If they're buying the car in Canada, then ... they'll have titled it, and they'll have a manufacturer's statement of origin. Is that correct?"

MR. ALWINE answered, "That is correct. It will not have a manufacturer's statement of origin; it will have a title." In response to a follow-up question by Chair Weyhrauch, he

clarified, "It will have a title that will be titled to that original owner."

MR. ALWINE, in response to a request for clarification by Chair Weyhrauch, stated the following:

The means by which it's accomplished is: it is a retail purchase at an automobile dealership in Canada. At that point, that vehicle would be titled to the "surrogate" ... purchaser. So there's your title, and at that point, the manufacturer's statement of origin has gone away.

Then that would be turned to the importer, and the importer would bring it to the United States market, and they would ultimately convert that title to a U.S. title, in some form.

CHAIR WEYHRAUCH brought the focus back to Section 1 of HB 272.

Number 1166

MR. SNIFFEN said that he thinks Mr. Alwine adequately described some of the problems that the franchised car dealers are faced with. He added, "And those are consistent with our observations that ... consumers are in a situation where sometimes they may not understand that the purchase of these vehicles don't necessarily come with all the accoutrements that a typical new-vehicle purchase would have." He said he understands the comment previously made by Representative Gruenberg [regarding looking at the issue of Canadian vehicles from the eyes of the consumer]. He said it's a powerful statement to the extent that the consumer has another choice and another option. He offered the following response as follows: "But for the things that we have already described, the problems that come along with some of these new-vehicle purchases - and some of them may be cured through disclosure - those are the consumer fall-backs."

MR. SNIFFEN stated that the other question that needs to be resolved is in regard to the competitive disadvantage that "this might place some of the new-vehicle dealers in." He reiterated that the AG's office has not taken a position on whether or not that is occurring, but it is an issue for the committee to consider.

CHAIR WEYHRAUCH apologized for the record for not being able to hear Mr. Lyberger's testimony yesterday, and invited him to speak.

Number 1060

JOHN LYBERGER, Lyberger's Car & Truck Sales, LLC, told members he'd presumed that people who come before the legislature [to testify] would tell the truth. Indicating that hadn't happened, he suggested the need for a sworn oath and asked how legislators can make a proper judgment if they aren't told the truth. Referring to testimony by [Mr. Alwine], he noted that more than 31 new-car dealers are registered this year in Alaska, and said there are hundreds of used-car dealers. He asserted that only a few dealers came up with this bill, and questioned the number of dealers actually being represented by [Mr. Alwine as president of the Alaska Auto Dealers Association]. He suggested that this bill [would] make the wealthy people even wealthier, to the detriment of others, and proposed that this isn't something that members or others want for the United States.

MR. LYBERGER mentioned a warranty and Jeep dealer discussed earlier, saying he knew that gentleman. He explained:

We knew that the Jeep place would not honor that warranty. The customer knew that. The customer knows the gentleman there. He does not care, most of it. He was bled. He took the vehicle down there, and they got the head man out there and really ... put the law down. You see, this Heritage warranty, they can call on the telephone and they can receive a credit card. Say they're short on money or something and need the money to pay, or doubt they'll ever get the money. They can get their money immediately - immediately - by credit card ... on it. So we know there's no problem there. But ... why he was there was because of bad things with them ... previously. I could see it's gone, and I see it was sent to the attorney general; I see the ... statements that he made that was the wrong thing of me to do, to ask him or permit him to ... go ahead with that. But my goodness ...

Number 0701

MR. LYBERGER brought attention to "lemons" and recalls, noting that this isn't his field with regard to importing and "transferring." He told of reading that the time period for

response is 10 years if there is a recall. He mentioned shipping in [automobiles] from the Lower 48 because people could buy for less there than in Anchorage. He indicated owners [of dealerships] don't like that, however. He also indicated it may be weeks or months before a vehicle is taken care of [if there is a problem]. He pointed out that repair shops are repairing new vehicles, which he said the factories honor and pay for.

Number 0449

MR. LYBERGER stated that he is familiar with the terms "used cars," and "new cars," but not with the use of the word "current," as it [applies to cars]. He mentioned the factories' bringing cars across the line, and emphasized that the factories do this themselves and sell them at auctions. He continued as follows:

Even his company ..., his warranty said they would bring it here - it would not be good at his place, right? But still, you go to this auction sale and buy that that the factories brought that vehicle over there - and I'm not saying always or at all of them - but possibly, at that sale, at that time, on that group of vehicles they have, they will honor warranty on those vehicles that the factory has sold that they've brought across.

MR. LYBERGER said that he was not talking about any one particular company or factory. He continued as follows:

In fact, the new car dealers up here go over there and purchase these vehicles also. I can also prove that they have been sold as new vehicles, which they cannot be sold as new. Any time that the vehicle comes out of Canada and has an MSO [manufacturer statement of origin], like [they] mentioned here about a title in Canada, that's impossible. Why? Because they don't even have a title in the state - it's a non-titled state. So, don't tell me they have a title over there. You follow me? They don't even have one in the state, how can they have one?

Number 0312

CHAIR WEYHRAUCH acknowledged that this issue is a passionate concern of Mr. Lyberger's. He told Mr. Lyberger that the committee is considering the issue as a policy matter and trying

to strike a balance between protecting the used- and current-auto dealers. He asked Mr. Sniffen to distinguish between the terms current and new for Mr. Lyberger's benefit.

Number 0262

MR. SNIFFEN defined a new vehicle as one that has been delivered by the manufacturer to a franchised car dealer that has a relationship with the manufacturer. He continued as follows:

And once that vehicle is sold - it is either titled or, perhaps if it's in a state that's a non-titled state, as Mr. Lyberger suggests - the first transaction involving that vehicle ... changes its character from a new vehicle to a used vehicle. So you can have used vehicles of all model years. You can have ... current-model-year used vehicles, you can have next-model-year used vehicles, we have ten-year-old-model used vehicles, but they are all used. The problem with the current-model used vehicle is that's the particular niche of the franchised car dealer.

MR. SNIFFEN noted that the franchised car dealers have agreements with the manufacturers that, within their territory, they will be the only ones authorized to sell "these new cars." Therefore, he pointed out, a current-model used-car salesperson is competing directly with the franchised car dealer who has that promise with the manufacturer. He offered his understanding from what he's heard from the new-car dealers that once the car is no longer of the current-model year, they are not as concerned, because they are not competing with last year's-model new cars. He added, "And then you can still have a new car that's last-year's model; that's not a current-model new car, but it's still a new car, because it hasn't been titled."

Number 0091

REPRESENTATIVE SEATON noted that the 2004 [cars] will come out in August or September. He asked what the current-model car will be in September 2003.

MR. SNIFFEN answered that in August 2003, when the 2004-model year [cars] come out, then all of the 2003-model-year cars will not be current-model year anymore, even though it is still 2003.

**TAPE 03-65, SIDE A**

Number 0001

MR. SNIFFEN clarified that, in August, when the 2004 [cars] come out and become the current-model-year vehicles, the 2003 [cars] will still be new vehicles, but they won't be current-model-year new vehicles.

MR. SNIFFEN announced that he had to leave to testify at another meeting, but would be available to the committee later for questions.

Number 0129

MR. LYBERGER remarked that there are actually 2004 vehicles out already that have been out for a while. He referred to previous discussion regarding dealers' savings and the Canadian [exchange rate]. He mentioned [an article] in what he believed was the Automotive News in the past 1-2 months, which showed a number of vehicles from different manufacturers, that were identically equipped. He continued as follows:

And like our colleague here, Mr. [Alwine], you know, his vehicle that has the largest on it of any of them. The vehicles that are not selling. That's why that they took these rebates on in (indisc.). ... The Caravan is very high - rebates - yes. However, the Durango, it will be the highest at this moment. Now last year they went to \$7,000, and then it went to \$10,000 on that Lincoln, see, for the dealer here in the U.S. Now like whenever they receive these dollars here in the U.S., that rebate's subject to the public, and/or even the dealer. This is something that's very misleading to all public. You know they think of rebate, and the rebate's on and the rebate's off. Well, it may be, and that's what ... they're printing at the time; however, possibly they're showing no rebate, or showing, say, maybe \$1,000 ... [for example].

Say, like you take one of these vehicles - a Durango - ... [with a \$4,500 rebate], and then they have another \$1,000 on top of that for loyalty, see. Or possibly for receiving another customer over from another company, to get them on their line. Plus they still have their holdback, you know, that the factory gives them ... at the end of the year - February, usually. You know what, they owned the vehicle ... way, way, way back. At the same time -- that's the extreme of

them now, this year. Like I say, Lincoln was the high one last year, but this Durango at this moment anyway, as far as I know, ... [is] the highest this year up ... [to] this point - on the rebates and the dealer participation.

But most of the vehicles, as I noticed, will be very few dollars difference in Canada and here. ... I mean, considerably less than \$1,000 - maybe \$400, \$300, \$200, or \$57, or something that way. So that they're just about the same there as here. ... I wish I had those figures with me to show you accurately on each of them. ... See, they have the rebates and things going on here in the U.S. and in Canada. It may be here that they have so much rebate on, and/or dealer participation - ... whichever way the factory's going at that given moment - and there [may] not be any in Canada, or there might be just a little bit. However, it is always [that] the U.S. has more than they do in Canada.

MR. LYBERGER admitted he just made a broad statement, but told the committee that he feels his statement is "pretty" accurate, or he wouldn't have made it.

Number 0614

MR. LYBERGER referred to Representative Lynn's mention yesterday of a young man, and he said, "You see, I'm not perfect either, but still again, as I said earlier, I wish to be different than all other dealers - not different, but as close to the exact opposite." He noted that he has managers and salesmen that have been with him for years. He commented that he has very low turnover. He said he hires more people because he does more business. He emphasized that he does not seek out professionals to hire, but, for example, he hired an engineer who is now one of his managers. He met the man when he sold a vehicle to him, he added. He gave another example of an employee who started out as a customer. He indicated this may or may not have been the man to whom Representative Lynn had referred in his previous testimony. He pointed out that [no one gets where they are overnight].

Number 0849

MR. LYBERGER continued as follows:

As I mentioned the other day, I do not want any customer at any time taking one dollar out of their pocket. If they have taken a dollar out of their pocket, or it's necessary, like it would have been for this gentleman here, which he offered to pay, would not receive, and come back down there and Bubba - Bubba's one of my sons - he offered to pay, he would not except the money either. Which is the customer knows. He would prefer taking it to one of these other places and have them to fix it anyway. Why? Because he says is they have better equipment, they're more knowledgeable than they are there. But he was just "jackin'" with him, whenever he took the vehicle there to him, and figured that it would be something this way, that's why.

MR. LYBERGER referred to "that dollar thing there between those vehicles" and said he should bring that information to the committee. He continued as follows:

Like anything that we redid, it would be 'x' amount of dollars, it'd be [\$1,000] on this particular vehicle. However, we will never see - here I'm sticking my neck out again, right? - we will never see there be three or four of them - different makes or kinds, or what - with that great big difference between there and here. It'll be just a little bit ....

MR. LYBERGER solicited questions from the committee.

Number 0970

REPRESENTATIVE GRUENBERG referred to the Heritage [warranty]. He asked if he is correct in his understanding that a dealer could simply have called Heritage, which would have ascertained what the work was going to be and then would have given "them" a Heritage credit card, and they could have done the work and it would have been "done by that credit card."

MR. LYBERGER responded, "Immediately, right there, not later."

REPRESENTATIVE GRUENBERG commented that it is too bad that Mr. Sniffen is not present. Notwithstanding that he stated that he thinks it is illegal not to accept payment in that manner. He clarified that that has nothing to do with the vehicle laws that are elsewhere in the statutes.

MR. LYBERGER stated that he concurred with Representative Gruenberg. He added that although he could impose a limit on the credit card, he must accept it.

Number 1075

REPRESENTATIVE SEATON said he thinks this subject is not to the point of the legislation being discussed.

CHAIR WEYHRAUCH agreed and said he would like to try [to focus on] the bill. He thanked Mr. Lyberger for his comments. He asked the committee if they had any more comments on Section 1.

Number 1173

REPRESENTATIVE LYNN asked Mr. Alwine if "all these things" wouldn't violate franchise law, if there is such a thing.

MR. ALWINE answered that there is franchise law, there are franchise agreements, and "we are required in our agreements with the manufacturers to honor those agreements." He mentioned a bill that had been sponsored last year by now-Senator Lisa Murkowski, which dealt with manufacturer and dealer relations and the obligations [between them].

Number 1253

REPRESENTATIVE LYNN asked if the "Canadian situation" would be coming in from the outside and interrupting established franchise law. He added, "Is the franchise law only between the franchiser and the franchisee, or does that effect people who are totally outside the franchise?"

MR. ALWINE answered that the franchiser and the franchisee are the people directly impacted by that contract, not the people outside of that distribution chain.

REPRESENTATIVE LYNN asked if that meant that a dealer such as Mr. Lyberger would not be liable in any way to the franchise law itself.

MR. ALWINE replied that [Mr. Lyberger] has no obligation or responsibility whatsoever, save the sale of that current-model used vehicle.

Number 1336

MS. SYLVESTER, regarding the bill that passed last year, noted that the state regulates by statute how close a manufacturer can establish a second franchise. She stated that that's clearly protecting the interest and the relationship between the manufacturer and the franchisee. She noted that there is a loophole by which secondhand car dealers are able to get new stocks and come in under that law and put themselves right next to another franchised dealer, which she stated is a concern to the state [and the reason for HB 272].

REPRESENTATIVE LYNN commented that that is very illuminating. He compared the situation to McDonald's franchises.

MS. SYLVESTER said that one important distinction is that the state does not, by law, regulate where McDonald's franchises can come in, while it does regulate where these motor vehicle dealer franchises can be.

Number 1446

MR. LYBERGER referred to large, multi-million dollar lawsuits against factories and dealers. He noted that recently in Europe, Chrysler Corporation and General Motors were fined over \$73 million [for] "doing what we're trying to do now between Canada and the U.S./Alaska." He told the committee that there is a new Dodge "place" to the side of his own business. He said that his business was there prior to that. He mentioned "the other Dodge place" that was there years ago, which was there just over 10 years. Regarding the rules of proximity, he said, "That store there had the area for a whole bunch of miles around, I mean, more than 100 miles. But regardless, they built that new one right there." He said he thinks they cannot do that. He continued as follows:

But see, it's factory, factory, factory; ... it isn't people. What I think it is: we need to take care of John Doe consumer. John Doe consumer's the one that all of us [need] to be thinking about. Gee whiz...

CHAIR WEYHRAUCH asked Mr. Lyberger if he feels like he's had enough time to talk about his feelings and views about the issue. He added, "I don't want you to feel like you've been shut down."

MR. LYBERGER complimented Chair Weyhrauch and all his colleagues as "the greatest in the world," and thanked them.

Number 1586

SPENCER ALEXANDER, General Sales Manager, Budget Car and Truck Sales, Fairbanks, opined that a decision must be made whether the focus is to protect consumers or franchised dealers. He said it seems to him that the issue of the "Canadian thing" is something between the manufacturers and their franchised dealers, and he said he doesn't see why the legislature needs to get involved in helping those dealers fight that battle if the manufacturer is unwilling to.

MR. ALEXANDER, in regard to current-model vehicles, stated that as the [proposed legislation] is written, it would prevent him from buying same-model-year bank repossessions, for example. Regarding the broader issue of Canadian vehicles, he asked, "Are we protecting the consumer from paying less for vehicles?" He said that is really what is being talked about here.

MR. ALEXANDER referred to the issue of franchise agreements and what they will and won't allow their dealers to do. He revealed that 18 months ago he worked for the Jeep dealer in Anchorage as a sales manager, and unless that dealer's agreement has changed, the dealer can take any warranty it wants and work on any vehicle it wants, and the manufacturer doesn't prevent them from doing so. He added that that's a decision that's made on site by the general manager. He continued as follows:

When we're talking about these franchise agreements and what they are or are not allowed to do by the manufacturer, I think we need some real clarity on that, because all the new car dealerships that I've worked for didn't prevent us from doing anything. So, you know, we sold Canadian vehicles off the Jeep lot in Anchorage and, unless something's changed, they're probably still doing it.

If I'm a ... franchised janitor service and ... my competition ... is going to Canada and buying his brooms and soaps and buckets and coming over here and beating my prices, as a business owner I have a choice to make whether I want to continue to be a franchised cleaning business, or whether I want to go independent.

So, if we're after consumer protection, I think maybe some disclosure would solve it. ... If we're after protecting the dealers - I don't [know] if that's

necessarily the right thing to do. I mean, I've heard the word loophole for the used-car dealers mentioned, ... that they have a loophole that they can sell current-model-year vehicles. I don't call that a loophole, I call that a free market, and I think that's a ... good thing, because ultimately the consumers end up winning.

Number 1814

REPRESENTATIVE SEATON said that, unfortunately, the committee has had to deal quite a lot with warranty issues.

MR. ALEXANDER, in response to questions by Representative Seaton, confirmed his previous testimony that he was a sales manager at the Chrysler dealerships Jeep store in Anchorage, and the manufacturer allowed him to honor whatever warranties that that local dealership decided upon.

Number 1869

The meeting was recessed at 10:22 a.m. to a call of the chair.

[A new tape was inserted at this point.]

**TAPE 03-66, SIDE A**

Number 0001

CHAIR WEYHRAUCH called the meeting back to order at 9:48 p.m. Present at the call back to order were Representatives Dahlstrom, Lynn, Crawford, Gruenberg, and Weyhrauch. Representative Seaton rejoined the meeting as it was in progress.

The committee took an at-ease from 9:49 p.m. to 9:50 p.m.

Number 0245

PHIL HAWES, Phil Hawes Auto Outlet, testified that he has been listening to much of the previous testimony regarding Canadian vehicles, and he told the committee that he sells quite a few of them himself. He stated that he goes to the auctions and stands side by side with [new-car] dealers, who are buying "them" all the time. He indicated he doesn't understand why when [used-car dealers] buy those cars, the customers are punished. [Regarding the new-car dealers], Mr. Hawes said, "Don't let them kid you, they're [placing warranties on] Canadian cars; they buy them

right here at the auction." Mr. Hawes said that he's seen them do it, and he added that they can warranty any vehicle.

MR. HAWES said that maybe half of the 60-70 cars that he sold last month were Canadian vehicles that are all under warranty, and they are "2002s." He continued:

If they want to warranty them, they can. And they get paid for that. But they're (indisc.) the public and telling you guys that that's not happening? They can warranty any of those cars. They're franchised -- what they're doing is punishing the customer. I've had some of them I've had to call over there, and hassle them a little bit, and they go ahead and finally do it, but they were just real rude to the customers. And I'm a little fed up with that.

... There's a couple of dealers here in town that are trying to run the little dealers out of town, and you know, I put my whole life in this thing. All my money that I've saved for years and years.

And let me tell you this: I worked for Cal Worthington for 17 years as general sales manager, and I ... did all the buying for the store for years, and I bought a lot of Canadian vehicles - all under warranty. Just lately, just this last year or so, ... there's a lot of hassling, and I don't understand what the big deal is. I mean, they got dealers from out of state - Dave Smith Auto Sales - that are taking a lot of business, selling brand new cars advertised in our newspaper, our [television], ... [for example] here in Anchorage, and stealing all the new-car customers from them.

MR. HAWES noted that many of his customers are frustrated new-car buyers who do not want to go through five hours of hassle at the new-car [dealership]. He indicated that he has a loyal following; many of his customers followed him over from Cal Worthington's when he started his business. He added, "And the same with Lyberger."

MR. HAWES concluded by reemphasizing that [new-car] dealers can warranty Canadian vehicles, and stating, "This bill needs to go away."

Number 0600

DIANA PFEIFFER, President, Alaska Automobile Dealers Association; President, Alaska Sales & Service in Anchorage and Wasilla, noted that the changes proposed in the language [of HB 272] pertain to better consumer protection, as well as enforcement. She told the committee that she is also a dealer who has invested a great deal for the right to sell new General Motors automobiles in an area designated by the manufacturers.

MS. PFEIFFER indicated that there are a lot of used-car dealers who are selling used automobiles [that are] current-model-year vehicles that "smell, look, and have mileage like a new automobile." Ms. Pfeiffer described the process as follows:

The vehicles are coming through a pipeline of individuals, where they're working with a broker or an importer. They start out with an illicit transaction - a "straw" purchase of a new vehicle from a manufacturer in Canada. They sell them to a broker or an importer who makes modifications to the odometer and speedometer, and then they resell them through an auction, or directly to the dealers here in Alaska and to other states.

These vehicles are current-model-year vehicles, which our current statute, [AS] 08.66.015, says can only be sold by a dealer with a manufacturer's statement of origin.

MS. PFEIFFER told the committee that new-franchised-automobile dealers like her invest a lot of money to buy the exclusive rights to sell automobiles within an area assigned by a manufacturer. She noted that [AS] 45.25.180 says that the manufacturers cannot establish a new-motor vehicle dealer within the relevant market area where the same line is represented. She explained that relative market area is that which is within a 14-mile radius of any existing vehicle dealer.

MS. PFEIFFER noted that, in the last four to five years, thousands of "these automobiles," primarily from Canada, have been brought into Alaska for resale under the guise of being used automobiles. She pointed out that those vehicles are often marketed with very few miles on them and with a warranty, which implies to the consumers that they are new vehicles with a manufacturer's warranty. She said that, essentially, the used-car dealers have tried to set themselves up as a new-car dealer, but they only have a showroom. What they don't have, she noted,

is: the rest of the investment in the facility; personnel training; and tools and equipment to service the automobile. She opined, "It's more or less an illicit way of selling current-model-year vehicles." She added, "A lot of times they can acquire new-model vehicles before the dealers in Alaska get them."

Number 0824

MS. PFEIFFER noted that in Anchorage, a pawnbroker and a used-car dealer with a display lot have to have a merchant license, which used to be known as a "second-hand" merchant license. Used merchandise, including automobiles, she said, has obvious signs of wear and tear, as well as "distinct characteristics." Ms. Pfeiffer noted that franchised automobile dealers are not required to have a merchant license.

MS. PFEIFFER told the committee that when a person buys a new automobile, he/she has a lot of expectations of the benefits of that new automobile. [When a consumer buys a current-model-year used vehicle, for example], Ms. Pfeiffer listed all the things he/she does not get as follows: a manufacturer's warranty on many of the vehicles; the protection of the state's lemon law; notification by the manufacturer of recall notices or, more importantly, "stop-driving" or "return to the dealer" [notices]; notifications to the dealers to stop delivery of a new vehicle that has a severe safety defect; operational training on the automobile by a factory-trained sales representative or service technician; and no assurance that the vehicle does not have a Canadian lien, because Canadian titles apparently don't note the liens on the title.

MS. PFEIFFER said she is aware that [on Canadian automobiles] the lights may have been disconnected, because the illumination is greater than is allowed in the U.S. In addition to that, she noted, there have been a lot of documented cases of odometer fraud with excessive mileage rollback, [resulting in] numerous lawsuits in the last couple of years.

MS. PFEIFFER concluded her testimony by stating that the injured parties are the consumers and the franchised automobile dealers. She thanked the committee for "the additional consideration providing that provision for the rental cars." She noted that she also has a large rental fleet in Anchorage, with over 1,000 automobiles that will be running this summer. She added that with the short tourist season, there will be a need for the outlet of some of those automobiles.

Number 0996

REPRESENTATIVE LYNN offered his understanding that a previous testifier alleged that Chevrolet dealers, for example, do in fact buy Canadian vehicles. Representative Lynn said that he assumed "that's for the used-car lot." He asked Ms. Pfeiffer if he may have misunderstood.

MS. PFEIFFER replied that she believes there [may be] some franchised automobile dealers that are "buying their products when they cannot get them through the manufacturer at that time." She added, "I wouldn't know that." In response to follow-up questions by Representative Lynn, she said that Alaska Sales & Service does not do that.

The committee took a brief at-ease.

Number 1087

REPRESENTATIVE GRUENBERG asked Ms. Pfeiffer if she is aware of any employees at service centers who work on a sales commission and therefore would earn more depending on how many "repairs" they sell.

MS. PFEIFFER affirmed that that is a practice in the industry.

Number 1128

JEANNE KOSONEN, testifying on behalf of herself, told the committee that she is a consumer who is addressing Section 1 of HB 272. She told the committee that she bought a vehicle from a used-car salesperson who told her that the car was used. She said she had comparison shopped and had gotten prices from various car dealers. She said, "The price that we were quoted by the gentleman that we purchased our car from was considerably higher. They did not have the make that we wanted, ... with the equipment that we wanted, but we bought the car."

MS. KOSONEN said that she has another car that she purchased from a local new-car dealer. She noted that she is a repeat customer of that dealer. She pointed out that she has bought both new and used, and she remarked, "I guess I don't see the difference." She said she thinks [HB 272] is bad for the economy and bad for the consumer. She opined that consumers should be able to buy vehicles from any dealer they choose. She posited, "It shouldn't have to be a [new-car] dealer or a [used-

car] dealer; if they sell new and used cars, and we find one we like, and they quote the price that we like, we should be able to purchase that car."

Number 1255

MEL BOWEN, testifying in opposition to Section 1 of HB 272, told the committee that he is a long-time teacher in the Anchorage School District, who also sells cars part-time at Lyberger's Car & Truck Sales, LLC. He opined that consumers should have a choice of where to buy automobiles, and that choice should never be legislated. He said, "Mandating this by law is only favoring special-interest groups, and not the public or the consumer." He added that laws should be passed to make [Alaska] a better place, not to limit consumer choices. He said he hopes that HB 272 fails, because the legislature should be voting for the public and not special-interest groups.

Number 1322

REPRESENTATIVE LYNN commented that his special-interest group is called "the constituents of District 31," as well as the rest of the state.

Number 1364

CHRIS JOHNSON, Finance Manager, Lyberger's Car & Truck Sales, LLC, stated that he disagrees with [Section] 1 of HB 272 for the primary reason that "people are going to buy cars and want to save money, no matter what." He clarified that if those people are not going to [get good deals on vehicles] in Alaska, then they will go to a dealer in another state. Mr. Johnson noted that he as worked in the car business for approximately 14 years - 7 years as a salesman and 7 years as a finance manager. People don't want to pay \$10,000 more for a car that they could buy, for example, out of state, or from Lyberger's or Phil Hawes, he said. He referred to Dave Smith [previously referred to by Mr. Hawes' as an out of state dealer]. He asked, "You know what you get from him when you get the car? Nothing. You get an owner's manual, keys, and less than one quarter tank of gas." Lyberger's, he noted, has devised checklists to check the vehicle, and has employees who have "been to every car lot on the planet" and understand how the cars operate. He indicated that people are "getting gouged left and right" by "all the big car dealerships," whereas Lyberger's gives a "personal touch in customer service."

MR. JOHNSON turned to the issue of a competitive market. He noted that there are dealerships in other states that are located directly across the street from each other, where a customer can cross the street for a better deal. He compared that to [Alaska's] "silly law" regarding 14 miles to the next dealership.

Number 1513

REPRESENTATIVE LYNN asked Mr. Johnson if the \$10,000 differential he previously mentioned applied to vehicles of similar year and make that are also similarly equipped.

MR. JOHNSON responded, "Almost exactly equipped. If not, you could probably put them side by side [and] not tell the difference ...." In response to a follow-up question by Representative Lynn, he said that this usually applies to the more expensive cars. For example, he said that a \$44,000 car at Cal Worthington may be \$34,800 at Lyberger's.

Number 1591

DOREEN McADAMS (ph) told the committee that she is one of the sales managers at Lyberger's Car & Truck Sales, LLC. She noted that, as Mr. Lyberger had previously testified, the franchised dealers could sell their vehicles to "very close to what we can," but they don't want to work on a small profit margin like Lyberger's does. She noted that Lyberger's doesn't have a big showroom, and she said, "We keep it simple." Furthermore, Ms. McAdams revealed that [the franchised dealers] mark their vehicles up over and above the manufacturer's suggested retail price. She asked, "Who are they to say they can charge more than what the manufacturer asks?"

MS. McADAMS mentioned that [Lyberger's] has disclosure statements that she said she knows the committee members have seen. She stated that when she asks her customers to sign them, most of them are thrilled, because they don't have to go to the [franchised] dealers, but instead can go to "somebody that they feel comfortable with."

MS. McADAMS opined that HB 272 would be bad for the economy and the customer, [because] more and more people would go Outside to buy a vehicle. She stated that people will buy vehicles from people that they like and trust. She added, "And that's what we're doing here; it's people liking us and trusting us." Ms.

McAdams concluded by saying that there are only two kinds of vehicles: new or used.

Number 1688

REPRESENTATIVE GRUENBERG referred to Ms. McAdams' previous mention of having customers sign disclosure statements. He asked if those are statements that are easily readable by the customer and are clear, or if they are buried in other paperwork. He surmised that a number of the committee members strongly favor disclosure statements, but want to be sure that [consumers] can read them.

Number 1739

MS. McADAMS explained that, before customers sign [disclosure statements], a salesperson would have already told them that they were buying a Canadian vehicle and that there would be a replacement warranty on it. After the credit applications were filled out, she said, the paper that the customer would sign would be the only piece of paper at her desk, and she would have spoken to them about it. In response to a follow-up question by Representative Gruenberg, she described the [disclosure] as "one paragraph on an 8 1/2 x 11 sheet of paper."

Number 1826

REPRESENTATIVE LYNN asked Ms. McAdams to clarify when the customer is actually told that the vehicle is Canadian.

MS. McADAMS replied that the customer is told in the beginning by the salesperson, then [sees that information again when] signing the form with the sales manager.

REPRESENTATIVE GRUENBERG mentioned that a copy of the disclosure was available for Representative Lynn to view.

REPRESENTATIVE LYNN noted that he has been involved in real estate, and disclosure forms are not done after going through "14 inches of other paper."

MS. McADAMS reiterated that [Lyberger's disclosure form] is the only form the consumer signs at the sales manager's desk; therefore, it is not shuffled around with a bunch of other signatures.

Number 1900

CHAIR WEYHRAUCH asked Ms. McAdams to clarify at what point the consumer is told if he/she is being shown a Canadian vehicle.

MS. McADAMS answered that the salespeople tell the consumer on the lot.

CHAIR WEYHRAUCH asked if that was part of [Lyberger's] policy manual.

MS. McADAMS responded, "Well, it's just common knowledge, so they tell everybody." She noted that not all of Lyberger's vehicles are from Canada. In response to a follow-up question by Chair Weyhrauch, she said that the salespeople tell the consumer about the replacement warranty up front.

Number 1933

REPRESENTATIVE CRAWFORD asked what the difference is between Canadian cars sold at Cal Worthington [or] Alaska Sales & Service [and those sold at Lyberger's], for example.

MS. McADAMS said [a Canadian vehicle] from Lyberger's would be used. In response to a follow-up question by Representative Crawford, indicated that the car could have a few too many miles on it.

REPRESENTATIVE CRAWFORD asked, "And how many miles would an Alaskan Sales & Service new vehicle have?"

MS. McADAMS answered that it depends on how many test drives it's been on.

REPRESENTATIVE CRAWFORD said, "So, they might have 10, 20, or 100 miles, right?"

MS. McADAMS said, "Right, [or it] could have 200."

REPRESENTATIVE CRAWFORD said, "So, it's virtually the same car."

MS. McADAMS concurred.

Number 2000

REPRESENTATIVE CRAWFORD said, "So, you know that here in this state, for a number of years, we've had a franchise law that

says that ... another dealer can't sell new cars within a 14-mile radius of that franchise holder, right?"

MS. McADAMS responded, "We're not selling new cars."

REPRESENTATIVE CRAWFORD said, "But it's virtually new in every respect, other than it doesn't have a ... manufacturer's place of origin."

MS. McADAMS explained that they're used vehicles that have been titled before.

REPRESENTATIVE CRAWFORD asked, "That's the only ... loophole that you have going for you, right?"

MS. McADAMS answered as follows:

It's not a loophole; it's the facts. The fact is they're used vehicles. Now, I could buy a car today down at Alaska Sales [& Service] and decide that I don't like it, and sell it tomorrow. What would make that any different? I buy a vehicle and, God forbid, my husband drops dead. I don't need a truck. I have to go sell it. What would make that different?

REPRESENTATIVE CRAWFORD said, "You're a consumer, and then that's selling it from a consumer. What we're talking about are dealerships here." He clarified that what he is talking about is [the difference between] the spirit of the law or the letter of law. He said, "You may not be violating the letter of the law, but it's certainly the spirit of the law if you're selling a car that's virtually identical to the ... new-car dealer's car. Nobody can tell the difference looking at it [or] driving it. They're all exactly the same, aren't they?"

MS. McADAMS said, "Except ours are used."

REPRESENTATIVE CRAWFORD said that's what he calls a loophole.

MS. McADAMS reiterated that it's the difference between a new and used car.

REPRESENTATIVE CRAWFORD suggested that maybe the law is fouled up.

MS. McADAMS said, "This is a very simple bill. You either have a new car or a used car. Our vehicles are used."

REPRESENTATIVE CRAWFORD responded, "That's my contention: it is a very simple bill."

Number 2177

REPRESENTATIVE GRUENBERG asked, "Lyberger's isn't violating that franchise law, is it?"

MS. McADAMS said, "Of course not."

REPRESENTATIVE GRUENBERG asked Ms. McAdams to confirm that that franchise law only applies to holders of franchises.

MS. McADAMS answered that [it applies to] franchised people and people that are selling new cars; however, she added that the only people who can sell the new cars are franchised [dealers].

REPRESENTATIVE GRUENBERG said that's right. He asked her to confirm that [the law] doesn't prohibit used-car dealers from selling used cars.

MS. McADAMS answered, "Right."

Number 2190

REPRESENTATIVE GRUENBERG suggested to Representative Crawford that if he has a problem with that law, then the remedy may be to [change the law] to prohibit used cars from being sold, because it doesn't do that now.

Number 2200

REPRESENTATIVE CRAWFORD said, "That's what the law that Representative Weyhrauch has here does." He mentioned current-model years.

Number 2240

JAMES MOORE, Owner, Jim's Muffler & Auto Repair, Anchorage, Alaska, told the committee that he doesn't think [HB 272] is a fair bill, and he said that he thinks things should be left as is. He opined that [HB 272] is bad for business, economy, and the consumer. He commented that everybody's picking on Mr. Lyberger. He noted that when Mr. Lyberger moved [to his present location] there was no Dodge Dealer or Tony Chevrolet.

MR. MOORE noted that he has been in the automotive business in Anchorage for 35 years and has repaired every car that's made. He said, "What I don't understand is, Alaska Sales [& Service] is probably losing a lot of business to Tony Chevrolet, because they sell Chevrolets and Buicks, and they sell Cadillacs." He said he owns two Cadillacs, one of which he bought from Alaska Sales & Service. He noted the number of miles that was on each of the cars when he bought them.

MR. MOORE said he fixes cars for Alaska Sales & Service, Chrysler, and Cal Worthington Ford. He noted some of the places he has worked, including Alaska Sales & Service and Lyberger's Car & Truck Sales, LLC. He vouched for Mr. Lyberger as being the most honest businessman he's ever seen in his life. He also noted that he started the I/M program [inspection and maintenance program for automobile emissions] with former Governor Tony Knowles.

MR. MOORE returned to the subject of his Cadillacs and told the committee that one was made in Texas and one was made in Mexico, and they both came through Canada through an auction sale. He said, "So, somebody down in some other part of the country sold these vehicles and then they went into Canada, and then they got out of Canada into Alaska."

REPRESENTATIVE LYNN recalled that it was fairly recently that he started noticing Lyberger cars and Mr. Lyberger's dealership.

MR. MOORE said, "No, ... I've been doing business with him for over, probably, three or four years, and he worked at Anchorage Chrysler as a car dealer."

Number 2465

RICHARD HYATT, Service Manager, Alaska Sales & Service in Anchorage, said that the difference between new and used cars is the issue. He said, "The only way that they're trying to call this a used car is by finding a fictitious owner in Canada to put on the title as the first owner, so he can sign off and then sell it as a used car."

MR. HYATT opined that there should be a distinction between a car that has never been used by anybody and has 20 or 30 miles on it, and a used car that has actually been out in service.

MR. HYATT noted that there is a new Cadillac Roadster coming out in the fall, which is called the "XLR" Cadillac. He revealed

that all Cadillac dealers don't automatically get to sell that car. Before [Alaska Sales & Service] can get the vehicle, it will send its sales staff Outside to train so that it will learn how to sell the car. Then it will send its service staff out to train and learn how to diagnose and repair the vehicle. He noted that the essential tools have already been ordered at a cost of approximately \$4,000. The company has signed an agreement to stock the parts that may be necessary to repair it, he said. All of this, he explained, is in preparation before these vehicles are even delivered. He estimated that if things go as they have in the past with other vehicles, he expects to see this vehicle in a local lot "long before we ever get the vehicle."

MR. HYATT turned to the subject of customer satisfaction and taking care of the customer. He continued as follows:

It's simple: If you're going to sell a new car, especially one ... that costs as much as these do, you need to have the facility and the equipment and the training to take care of the customer. It's a simple deal to take his money and toss him his keys, and then tell him to go over to his dealer so they can explain how to use all of the features on your car. And frankly, that's what has been going on.

There's a service that comes from the dealer when you buy a car that isn't reimbursed by the factory or anybody else. It's the service after the sale, where you take the customer out and show them how to use their [antilock braking system] (ABS) brakes, or you help them hook up their OnStar. You show them how to use the memory seats and the memory mirrors. You show them all the options on the car and how they're properly used.

And this is what we have been doing as a courtesy to Mr. Lyberger and the customers, because they're not being told. They buy a car with 20 miles [on it]. They don't know how these things work, or they're not capable of programming them, or using them. So I meet them in the service aisle. And it's a courtesy to them and Mr. Lyberger and the other used-car dealers, as we're calling them. We provide that service for the customers and properly instruct them and show them how they work.

The matter of fact is that a car with 20 miles on it is not a used car. Nobody has used that car. They used somebody's name so they could turn in the [manufacturer's statement of origin] (MSO) and get a title to it; but everybody knows it hasn't ever been used.

Number 2632

Right now the law says you cannot sell the cars without the manufacturer's certificate of origin. They're already is a law in the books. What is trying to be done with this amendment is make it possible for them to sell legitimate used cars that are actually taken in the due coarse of business: somebody trades them in; they buy them from a rental agency that turns them in; or, like somebody said just a minute ago, you buy it one day and don't like it the next, and you sell it. That's all allowed in the amendments to this bill.

It's just a matter of somebody has gone to the well a few too many times. This thing started out very slowly. They saw how they could make enormous amounts of money by selling the cars and not providing any of the service or facilities. And now businesses have built up just to sell these particular kinds of vehicles.

Number 2683

DAN COFFEY, Lobbyist for Lyberger's Car & Truck Sales, LLC, referred to a [three-page] letter sent to Chair Weyhrauch [dated May 15, 2003 and included in the committee packet], and he said that it outlines what he will talk about. He informed the committee that the methodologies by which "these cars" come into the country is established by treaty with Canada and Mexico, and then subsequently controlled by the code of federal regulations. He noted that it's a legal and lawful practice associated with NAFTA, and the methodologies used are prescribed by regulations to protect the customer and to ensure the vehicles meet U.S. standards, for example.

MR. COFFEY referred to [Mr. Hyatt's] previous description regarding the practice of acquiring these cars and stated, "That's simply not what happens." He continued as follows:

These cars are brought into the country by what are known as "RIs" - registered importers, which have to meet a certain level of standards and criteria in order to bring these cars in. And the mileage on these cars varies from very low to, sometimes, substantial miles, but needless to say, they are these Canadian cars that are brought in.

Once they get here, they've got to be certified. Bonds are posted, [and] the cars can't be sold until after all the documentation is done and the bond is released. Then the cars are available for sale in all 50 states. ... So, what this bill really does is it creates two classes of persons; it says, basically, that you will not be able to sell these kinds of cars here in Alaska, unless you're a franchised dealer. And that doesn't apply to anyone else, and ... - although we haven't done the legal research ... to the "Nth" degree - ... it appears to be [in violation] of the federal law which allows the cars to be imported and sold in every state in the union. And now we're going to prohibit a certain class of our business people here in Alaska from doing that.

MR. COFFEY opined that the proposed legislation is not designed so much to protect the consumer as it is [to protect] "one particular aspect of business." He noted that his letter recommends that if the committee wants to make [HB 272] a consumer protection bill, it should include the language found in the previously mentioned Holm Amendment [Amendment 1]. He said that [similar amendments] have been adopted in many jurisdictions, including Utah, which mandates disclosure of the original origin of the vehicle. Then, he said, there would be no question but that the consumer is informed and can make the choice if he/she wants to take the alternative warranty, or buy the car that's used, for example. He emphasized that then it would be the consumer's choice, not "one that's hoisted on us by the government."

MR. COFFEY told the committee that Mr. Lyberger and "the other dealers" would support a consumer protection bill, but not one they view primarily as anti-competitive in nature.

Number 2831

REPRESENTATIVE LYNN asked Mr. Coffey what steps he would have to take to become a registered importer.

Number 2846

MR. COFFEY answered that Representative Lynn would have to be qualified through a federal agency that he said he could not recall the name of at the moment. He also said Representative Lynn would have to put up a \$20,000 bond per vehicle, and meet other criteria, as well. He noted that neither Mr. Lyberger nor any of "these 300-and-some dealers in Alaska are importers"; they buy from a registered importer. In response to a follow-up question by Representative Lynn, Mr. Coffey said he believes that the registered importers are just independent business people and they do not work for the non-franchised dealers.

Number 2922

DONALD WALKER, Salesperson, Lyberger's Car & Truck Sales, LLC, told the committee that it seems that Section 1 of HB 272 would not protect the public, but would allow the franchised dealers to "monopolize on their brand of vehicle," thereby eliminating competition.

**TAPE 03-66, SIDE B**

Number 2953

REPRESENTATIVE GRUENBERG asked Mr. Coffey if HB 272, as currently written, passes, would Mr. Lyberger and "people like him" be able to continue their current business?

MR. COFFEY answered that they would not be able to sell current-model-year cars. He stated his understanding that the intent of the bill is to stop them from doing that. He added, "Absent the few exceptions."

REPRESENTATIVE GRUENBERG asked if they would have a course of action and be entitled to just compensation from the state.

MR. COFFEY said he hadn't thought about that [happening as a result of] "the taking of their business." He said that they certainly would have a cause of action to have the law declared illegal, because of the commerce clause, the supremacy clause, the fact that "selling automobiles is a legal a product," and because "they're creating two classes of dealers, and they're saying that one can sell them and another one can't." He explained that there's no rational basis for the discrimination between the two classes. He said he thinks there would be a lot of legal problems associated with it.

Number 2882

REPRESENTATIVE GRUENBERG said this is a serious legal issue that should be looked into.

Number 2870

CHAIR WEYHRAUCH responded that there is no time to look into that [issue]. He added that there is a difference between a court order and advocacy. He remarked, "... We all know that lawyers are paid to raise issues, too." He said Mr. Coffey is doing a good job and he appreciates that.

REPRESENTATIVE GRUENBERG said that the question is whether the issue is a valid issue and one that has not been raised yet. He asked Mr. Coffey, "If Mr. Lyberger did have a cause of action against the state for taking this ... portion of his business, do you have any idea what his damages in this one company alone would be?"

MR. COFFEY said no, but he added that he thinks they would be fairly substantial.

Number 2803

REPRESENTATIVE CRAWFORD asked Mr. Coffey if he was aware that if the legislature doesn't "pass some law here, that all these folks would be breaking the law, under the current law."

MR. COFFEY said that he disagrees with that inaccurate statement.

REPRESENTATIVE CRAWFORD offered his belief that current-model-year vehicles, under the law, have been illegal since 1993, but the law has just not been enforced.

MR. COFFEY said he has had discussions with Mr. Sniffen of the AG's office, and the problem that existed in the past, as it was presented to him, was one of advertising the vehicles as "new" or "like-new." He explained as follows:

A vehicle is used, by state law definition, when there's no longer a certificate of origin, when that vehicle's been titled. They don't go by the number of miles; they go by the status of the vehicle relative to its condition of title.

So, if you say you cannot ... advertise for sale or sell as current-model-year, in a way that's saying you can't sell a blue car. I mean, it either is a current-model-year or it isn't. And it's either new or it's used - one or the other. So, under current law, you can't sell as new a car that's ... used - that ... has been titled ....

So, that's what we've got here is -- and certainly they're ... low mileage - there's no question of that. But what you'd need to do if you wanted to do that is you'd need to change the definition of new and used, because these are clearly used vehicles.

Number 2721

REPRESENTATIVE LYNN mentioned sovereign immunity and asked Mr. Coffey if he was saying that the state could be sued.

MR. COFFEY said that sovereign immunity applies, but it also has to "fall to the idea of a man's property." He explained that if the government takes a man's property, it has to compensate him for it. He surmised that Representative Gruenberg's theory is that preventing this kind of business for Mr. Lyberger is tantamount to taking away a business right. He said he doesn't know if that's a valid legal theory or not, because he has not looked at that idea. Regarding sovereign immunity [as it may relate to Mr. Lyberger's business], he added, "Now whether or not it's property, I don't know."

Number 2650

REPRESENTATIVE CRAWFORD referred to [AS] 08.66.015, which read as follows:

Sec. 08.66.015. Sale of motor vehicle.

(a) A person who does business as a dealer in the state may not offer to sell or sell a motor vehicle as a new or current model motor vehicle unless the motor vehicle retains the manufacturer's certificate of origin.

(b) A person who does business as a dealer in the state may not offer to sell or sell a motor vehicle as a new or current model motor vehicle having a manufacturer's warranty unless

(1) the dealer has a current sales and service agreement with the manufacturer and the agreement requires the dealer, upon demand of the motor vehicle buyer, to perform or arrange for, within a reasonable distance of the dealer's place of business in the state, the repair and replacement work required of the manufacturer under the warranty; or

(2) the dealer offers to give the buyer a rebate to cover the repair and replacement work that the dealer cannot perform or arrange for within a reasonable distance of the dealer's place of business.

REPRESENTATIVE CRAWFORD turned to a sentence in the fiscal note analysis for [CSHB 272(L&C)], which read: "Currently, the law prohibits the sale of any current-model-used vehicles." He said he doesn't know how to make it plainer that unless the present law is changed, then "all these folks are breaking the law."

MR. COFFEY offered his understanding that "they meet the qualification relative to the current-model year with the warranty programs that are available." He stated his understanding that the proposed legislation would absolutely prohibit that, "unless you're a franchised dealer," which he said is a substantial change.

REPRESENTATIVE CRAWFORD responded that that's not exactly how it's been explained to him. He noted that the reason the committee brought the bill back after moving it out of committee is that "we're all doing our best to try to understand this."

MR. COFFEY stated his belief that there are very strong consumer protection concerns associated with this [issue]. He continued as follows:

And I think that if that's ... our focus ..., and we put a bill out that makes sure there's disclosure, and if you're going to sell these things there's a certain type of vehicle - like a current-model year - and make them sound like they're ... something different than just a used car, then you've probably got to provide these warranties and these other things that are in the current law. And ... we don't have any problem with that.

It's the question of whether or not a person is ... going to be precluded in any circumstances, no matter what they do, from being able to sell these cars that

come in from Canada, which is really what the source of the automobile is. And I think the problem I have with it is: when you're on the consumer protection side, with disclosures and required warranties, and all that, then you're on the ... appropriate side; when you're on the anti-competitive side that says, "Wait a minute, this class of 320-some dealers, you can't sell these things at all, period, no matter what you do" - ... I think that's the thing that runs afoul of NAFTA.

Because we clearly allow these things to be imported into the country. That means somebody's going to have to sell them. And every state does allow them to be sold. As far as we can find, only Alaska's considering prohibiting them. So, I think that's going to cause some problems with the federal law. I think you've got the commerce clause and the supremacy clause, and all that stuff. And so I think that's a legal problem. And then ... just the basic anti-competitive nature is problematic to me.

So I think we ought to say, "Look, disclose that it's a Canadian vehicle ...." And then, if you're going to sell it in the way you're going to sell it - ... as a current-model year - you've got to offer this warranty that's in existing law. And then you've accomplished your purpose, I think.

Number 2489

REPRESENTATIVE LYNN stated his understanding that it is not a warranty, but a service contract.

MR. COFFEY said he thinks that's semantics more than anything else, although he added that he doesn't know the particulars of each warranty. In response to a follow-up question by Representative Lynn, he said, "If it breaks and somebody else fixes it for you, I don't care whether you call it a service contract or a warranty. If you don't have to pay for the repairs, then ... I think that's probably okay."

Number 2390

REPRESENTATIVE SEATON referred to the two kinds of warranties: a manufacturer's warranty and [a service contract such as] the Heritage warranty. He noted that they are both covered under

current law; however, the second kind of warranty would be eliminated by the language on page 2, beginning line 3 of the proposed committee substitute (CS) for HB 272, Version 23-LS0975\H, Bannister, 5/14/03, which read as follows:

[DEALER OFFERS TO GIVE THE BUYER A REBATE TO COVER THE REPAIR AND REPLACEMENT WORK THAT THE DEALER CANNOT PERFORM OR ARRANGE FOR WITHIN A REASONABLE DISTANCE OF THE DEALER'S PLACE]

MR. COFFEY responded that that's also his understanding.

Number 2310

CHRIS HESTER, Lyberger's Car & Truck Sales, LLC, testified that last year alone Lyberger's averaged 1,800 vehicles [sold]. He said that it surprises him that the issue of odometer rollbacks keeps being brought up, and that [people say] that consumers will be hurt by these Canadian vehicles because there are no warranties. Out of those 1,800-plus vehicles sold last year, he noted, the AG only received one complaint.

MR. HESTER turned to the subject of price difference. He explained that the reason there is such a price difference on Lyberger's vehicles is because they are used cars. He stated that a person pays less for a used car. He said that franchised dealers have made Alaskans pay marked-up prices for the last 20 years and people are sick of paying those higher prices. He posited that if consumers wanted to pay those prices they would, but instead "they come and purchase used vehicles from our lot." Mr. Hester added that if there was such a problem with these Canadian vehicles he thinks the AG would be getting more than one complaint out of all the cars Lyberger's sold last year. He stated that HB 272 is a simple interest bill that is "for the franchised dealer" and does not help the consumer.

Number 2217

CAROL LYBERGER, testifying on behalf of Lyberger's Car & Truck Sales, LLC, stated that there is a difference between new and used [vehicles]. She surmised that Lori Urban has been waiting to testify and probably wishes to talk about "something that we here in Alaska know nothing about," which is importing vehicles. Without further ado, she deferred to Ms. Urban.

LORRI URBAN, Manager, Member Services, North American Automobile Trade Association (NAATA), told the committee that NAATA [serves] independent importers and exporters of motor vehicles.

Furthermore, she noted that 75 percent of its membership is comprised of registered importers who import Canadian vehicles into the United States.

MS. URBAN said she would address what she called the "myths" and "half-truths" that the committee has been hearing. First, she recalled that Mr. Aline previously testified that within his franchised dealer agreement there is a clause that indicates that he is prohibited from selling Canadian motor vehicles. She remarked that she wonders if the committee has [seen] a copy of that [agreement]. The very nature of that restriction, she noted, would be contrary to federal trade laws.

MS. URBAN turned to the next myth regarding "the procurement of Canadian motor vehicles from Canada into the United States by college students." She noted that 210,000 Canadian vehicles were legally imported into the United States last year through the Registered Importer program, which is regulated by the National Highway Traffic Safety Administration (NHTSA), [within] the [U.S.] Department of Transportation. The federal laws and regulations are in place for consumer protection. A registered importer is licensed by that department, she said, and no person may import a motor vehicle into the U.S. for the purpose of sale, unless he/she is contracted with a registered importer. She said, "210,000 motor vehicles is a lot of cars; to have individuals going to dealerships [to] purchase this [many vehicles] is neither practical [nor] economical."

MS. URBAN noted that for many years, automobile manufacturers have used certain sales and marketing practices, both in the U.S. and Canada, which are designed to stimulate car sales. She said two of those practices are the use of fleet subsidies and consumer rebates. Ms. Urban explained that fleet subsidies are subsidies offered to purchasers of large quantities of cars, such as rental car companies and large corporations. She said these discounts can be larger than the discounts offered to the franchised dealer, and for many years the franchised dealers have been totally against this. She said that fleet purchasers often resell fleet vehicles directly to the public or to non-franchised dealers who in turn sell them to the public.

MS. URBAN referred the committee to United States v. National Automobile Dealers Association for that information. She said the [U.S.] Department of Justice found that the agreement by a trade association or its members not to do business with other competitors or customers for the purpose of (indisc.) is (indisc.) violation of the Sherman Act.

Number 1945

MS. URBAN turned to the issue of odometer fraud. She stated that it's not unique to Canadian cars, but is a North American problem that "we're all concerned with." However, she offered her understanding that "there is an amendment on the table that would allow daily rental companies to sell vehicles after six months, including Canadian vehicles." She added, "I'm not seeing the relevance of the age difference in the motor vehicle. I assume that at one time that vehicle was a nearly-new Canadian vehicle, so I'm not understanding the difference of six months for nearly-new for odometer fraud situations, which addresses the public concern."

MS. URBAN reiterated that the federal laws regulate a registered importer. She said, "They take on all the liability and the responsibility of a manufacturer, once that motor vehicle is imported into the United States." She noted that the registered importer "has certain duties that he has to apply to." Ms. Urban said that this is in regard to safety recall, and she continued as follows:

For the next ten years that that motor vehicle is in the United States, the registered importer is responsible for notifying the titled owner of that vehicle. There is a \$20,000 bond on that vehicle, and it will remain on there for the next 10 years.

... Also, it should be ... noted that even though manufacturers are currently denying warranty on Canadian motor vehicles, they cannot refuse safety recall work on the same vehicle.

MS. URBAN indicated that, regarding noncompliance and safety - related defects, there is a safety net of a quarterly report. She also mentioned a duty to provide and retain copies of odometer disclosure. When a registered importer imports a motor vehicle into the U.S., she said, he/she must first obtain a service record from a Canadian franchised dealer that indicates that Canadian motor vehicle does not have a Canadian recall on it. The reason for this, she explained, is that some of the data bases from the manufacturer do not correspond from Canada to the U.S.; therefore, in order to ensure that there is no safety recall solely in Canada, that registered importer must submit a document and printout to [NHTSA] with a compliance package to ensure that either there has been no recall, or that

the work has already been done. She added, "With that work order, you would find that the dealership would indicate the miles and kilometers at that particular instance."

Number 1741

MS. URBAN noted that when the vehicle is moved into the U.S. and the odometer is changed by the registered importer, that importer must take a photograph of that odometer "in miles," submit an odometer statement, and certify that the odometer "is true."

MS. URBAN revealed that registered importers face imprisonment for up to 20 years if they're found guilty of noncompliance of any of these regulations. She indicated that there are many other safety nets. She said, "It's pretty much covered by federal law that would ensure that the consumer is protected as the motor vehicle is moving into the United States; ... therefore, the Alaska law is not necessary." She noted some additional requirements, including that a vehicle must be brought into compliance within 120 days, otherwise it must be exported back out of the U.S.

Number 1662

CHAIR WEYHRAUCH asked Ms. Urban to clarify how broad her statement was meant to be regarding Alaska law not being necessary.

MS. URBAN stated her understanding that the ultimate concern is for the consumer, regarding odometer fraud, for example. Full disclosure laws, she said, are currently in place. Other states, she noted, have other laws in place to keep other foreign vehicles out that don't meet the U.S. safety and emissions standards. However, she pointed out that Canadian vehicles are almost identical to U.S. versions, "save for the odometer," and those particular vehicles are allowed into the state. She concluded, "State laws are changing to ensure that ... full disclosure on Canadian motor vehicles is one of the laws."

Number 1582

REPRESENTATIVE GRUENBERG asked Ms. Urban to confirm that the odometer law is the result of the [Magnuson-Moss Warranty - Federal Trade Commission Improvement Act].

MS. URBAN said yes.

REPRESENTATIVE GRUENBERG noted that that has been law since approximately 1972.

Number 1566

GEORGE CLARK, Salesperson, Lyberger's Car & Truck Sales, LLC, told the committee that the primary effect Section 1 of HB 272 will have is to hurt customers who would like to buy "late-model-year" cars. He said he thinks that it's important to have competition and HB 272 doesn't support that.

Number 1500

DARRELL FRIESS, testifying on behalf of Budget Car & Truck Sales and Budget Rental Car of Alaska, told the committee that he is concerned about Section 1. He offered his interpretation that the effect of the bill would be to only allow someone with a manufacturer's okay or a new-car dealership to sell a current-model vehicle.

MR. FRIESS turned to the issue of Canadian vehicles. He noted that Budget purchases vehicles for its car and truck division through local auctions, as well as auctions in Oregon and Washington states. One of the vehicles that may be available at the auctions are current-model-year U.S. vehicles with anywhere between 100 to 39,000 miles and higher. Mr. Friess admitted that he does not specialize in buying those vehicles; however, he currently has three 2003 Chevrolets on his lot with mileages on each ranging from 6,000 to approximately 20,000. He said, "So, the current law - the way it's in place right now - would eliminate me from selling those vehicles, but it wouldn't eliminate the other 49 states that are able to do that."

MR. FRIESS said that the distinguishing factor is in regard to "new" and "used," which he acknowledged has been previously discussed. He related that when he worked in the car business in California back in 1990, he learned in training that if he took a demonstration ride in a vehicle and did not have the dealer plate in the window and he was subsequently pulled over and cited for not having that current dealer plate, then that dealership could not sell that vehicle as a new car, but had to sell it as a used vehicle. What that meant, he explained, is that that dealership actually had to register the vehicle and sell it as used. He said he believes that law is still in effect in California.

MR. FRIESS, in response to a request by the chair to conclude his testimony, remarked that he has had a short time to converse with [those involved with this legislation] and he invited the legislators to call him for more details. He added that he agrees with "everybody else [who] called in tonight."

Number 1212

RICK MORRISON, Owner, Morrison Auto Group, told the committee that he is a new-car dealer, and he listed his credits as follows: board of directors for the Alaska Automobile Dealers Association; and member of the board of directors for the National Automobile Dealers Association, serving as secretary and head of government affairs, and nominee for the national chair's position. Mr. Morrison said he has been in the car business for about 30 years and has been a car dealer since 1985. He stated that he knows many of the previous testifiers personally. Mr. Morrison stated that the important key to remember is that nobody is "pointing fingers at these people, trying to say that these people are a problem."

MR. MORRISON turned to the issue of Canadian vehicles, which he said is a complex, controversial issue getting national attention. He stated his belief that the State of Alaska is probably not going to be the one that comes up with the answer; therefore, he opined, trying to correct the importation questions within the Alaska State Legislature is "going the wrong direction." He stated that the basis of this legislation is about brokering a "like-new" car.

MR. MORRISON said that this legislation is about clarifying a law that is currently on the books. The "second part" of the bill is an attempt to clean up the language from previously passed legislation, in order to clarify consumer protection issues regarding advertising, for example.

MR. MORRISON turned to Section 1. He said the issue of people being allowed to sell a "like-new" car was already handled by the state in a law made in 1993. He stated that there is a substantial difference in selling a new car today, and a customer's expectations of what comes with a new car is really what the issue is about. He added that he believes that's why the original bill was passed 10 years ago.

MR. MORRISON noted that this year alone, he will be spending close to \$100,000 between his two stores, solely for training.

He offered an example of one vehicle that will require \$70,000 to set up the "warrants process" and training. He told the committee that the salespeople cannot even sell the vehicle unless they are certified by the manufacturer to do so. A customer who buys a car with 10 miles on it, for example, is not getting that trained personnel "to take care of it," he said. He explained that nobody will have taken the time to lay out the differences between a Heritage warranty and the manufacturer's warranty, which he expressed are substantially different.

MR. MORRISON said, "I can't tell you how many customers I have had call me with other brand names of cars - other than my brand names - saying, 'What can I do about this situation, and how can I deal with this?' And they have no leg to stand on." He explained that they can't go back on lemon laws, nor can they [follow] the normal processes [a person would follow regarding a] new car.

Number 0860

MR. MORRISON said that he has invested "several hundreds of thousands of dollars" to protect the customer and to provide "the top level of service to meet the expectations that are being put forward." He opined that a used-car [dealer] selling a current-model car is trying to become a new-car dealer, without the commitment and investment that a new-car franchised dealer has. That's the reason the law was changed [in 1993]. He said he thinks it's important to keep in mind that [HB 272] is not about regulating Canadian cars. He added that he doesn't think "we" can do that. Rather, it's about clarifying an existing law to make it more understandable. He said he thinks the fact that "a lot of these lots have been tolerated and allowed to sell these cars, doesn't mean that it's been right; because they have been violating the law ... up through this time, doesn't mean that they're justified in doing so."

MR. MORRISON said that [the impetus for HB 272] began with discussion between the attorney general's office and the Alaska Auto Dealers Association regarding issues and difficulties that the AG's office was having because of consumer complaints. He noted that customers were also complaining to service managers of new-car dealerships. He said he would be thrilled to have employees as dedicated as those who have previously testified [on behalf of the used-car dealers], and he noted that the committee has heard a lot of testimony from people who work for the used-car facilities. He said, "That doesn't mean that the law that was passed 10 years ago was a bad law. If there's

something that needs to be addressed on that, then I think that's a separate issue."

Number 0722

MR. MORRISON noted that there are numerous states that have laws that prohibit the sale of a current-model car. He named the State of Washington as one. In conclusion, he reiterated that this issue is a national one, and that the Canadian car issue is not one that will be solved in the Alaska State Legislature.

Number 0640

MIKE McCABE, Fleet Manager, Kodiak Auto Auction in Anchorage, told the committee that his company sells exclusively to motor vehicle dealers licensed in the state of Alaska. He noted that the House Labor and Commerce Standing Committee, while hearing HB 272, imposed a six-month [minimum] time limit on rental vehicles being in a bona fide rental fleet. He said that his company deals with a lot of corporate and fleet accounts that lease vehicles to rental car companies on terms shorter than six months. He said he might see three- and four-month vehicles come out of the rental car fleet and be brought to the auction to be liquidated. He added that that is something that the committee might want to consider.

MR. McCABE continued as follows:

A new-car dealer can take in a current-model-year vehicle in on trade. Say, for example, a 2003 Chevrolet Tahoe gets traded in at a Ford store that is selling 2003 Ford Expeditions. Sometimes that new-car dealer would elect to take that vehicle to auction and liquidate it; it doesn't want to sell a competitive-make vehicle next to its Ford Expeditions. Under the current statute, the buyers at the auction cannot resell the unit, and knowing that the buyers at the auction cannot buy that 2003 Tahoe, the dealer that's taking that Tahoe in on trade will not give that customer a fair deal. It creates a place where the consumer would lose, and that would impact the car business in general.

MR. McCABE referred to testimony he believed was offered by Mr. Alexander yesterday regarding current-model-year bank repossessions that have been sold at auction. He noted that currently there's no language that will allow used-car dealers

to buy and then resell a current-model-year vehicle that is repossessed by a lending institution and liquidated at auction. He remarked that that's something that should be added to this bill before it is passed.

Number 0401

MR. McCABE pointed out that his business services both used-car and new-car dealers alike, who buy large volumes of cars at auction to maintain a large and diverse inventory, and in its current form, [HB 272] will severely affect the way these dealers do business "with consideration to the auctions." In the end, he concluded, that will effect the livelihood of "our small businesses in Alaska" and the consumer.

Number 0369

MR. McCABE, in response to a question by Representative Crawford, said that he has only seen Version D, and has not seen a copy of Version H for HB 272.

REPRESENTATIVE CRAWFORD read Sections (4) through (6) of Version H for Mr. McCabe [text provided previously]. He stated that [the drafters of Version H] were trying to address Mr. McCabe's concerns, and he asked him if they were successful in doing so.

MR. McCABE responded that from what he just heard Representative Crawford read, it sounds as though a good job has been done to meet his concerns. Notwithstanding that, he said that he thinks that [Section (4)] should be changed to allow for the four-month program that is seen from [Diamler] Chrysler, for example.

Number 0066

MR. ALWINE summarized that the existing law precludes both new- and used-car dealers from selling a current-model used vehicle.

**TAPE 03-67, SIDE A**

Number 0001

MR. ALWINE reviewed the changes that would be effected by Section (1) in Version H, and reiterated that it would allow all dealers a level playing field. He noted that it would not support "the brokering of new cars in the form of a low-mileage used car."

MR. ALWINE stated for the record that he is not paid by the Alaska Auto Dealers Association. On behalf of all the members of the association, he reminded the committee that new-car dealers are required to have the tools, training, and facilities, and must meet very specific requirements and restrictions in order to sell a new car. A used-car dealer who is selling a "brokered" new car that he/she has obtained outside of the system has none of the obligations or responsibilities [as does the new-car dealer]. Ultimately, if there is a problem with a current-model vehicle [sold by that used-car dealer], "they will come back to ... all the new-car dealers." He commented that the AG may or may not have received a lot of complaints, because the new-car dealers "go out and try and make it right for the consumer, so that it doesn't reach that level."

Number 0219

REPRESENTATIVE CRAWFORD asked if leased vehicles are included anywhere in the proposed legislation.

MR. ALWINE answered yes. He explained that a leased vehicle is a vehicle that's on a term, much like a rental. He added, "And, frankly, that would be a used vehicle, and it could be disposed of through the auctions."

REPRESENTATIVE CRAWFORD asked, "That's under the 'normal course of business'?"

MR. ALWINE answered yes.

[The objection to Version H was left pending. HB 272 was held over.]

#### **ADJOURNMENT**

The House State Affairs Standing Committee meeting was recessed at 11:27 p.m., to be continued at 8:00 a.m. on May 16, 2003.