

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 13, 2008

1:13 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Kyle Johansen

COMMITTEE CALENDAR

HOUSE CONCURRENT RESOLUTION NO. 21
Supporting the National Crime Victims' Rights Week of 2008.

- MOVED HCR 21 OUT OF COMMITTEE

HOUSE BILL NO. 303

"An Act relating to marine products and motorized recreational products; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 355

"An Act requiring the disclosure of the identity of certain persons, groups, and nongroup entities that expend money in support of or in opposition to ballot initiatives and the aggregate amounts of significant contributions or expenditures made by those persons, groups, and nongroup entities."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 250

"An Act relating to children engaging in inappropriate sexual conduct."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HCR 21

SHORT TITLE: 2008 NATIONAL CRIME VICTIMS' RIGHTS WEEK

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

02/06/08 (H) READ THE FIRST TIME - REFERRALS
02/06/08 (H) JUD
02/13/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 303

SHORT TITLE: MARINE & MOTORIZED RECREATIONAL PRODUCTS

SPONSOR(S): REPRESENTATIVE(S) NEUMAN

01/11/08 (H) PREFILE RELEASED 1/11/08
01/15/08 (H) READ THE FIRST TIME - REFERRALS
01/15/08 (H) L&C
01/30/08 (H) L&C AT 1:00 PM CAPITOL 17
01/30/08 (H) Moved CSHB 303(L&C) Out of Committee
01/30/08 (H) MINUTE(L&C)
01/31/08 (H) L&C RPT CS(L&C) 4DP 3AM
01/31/08 (H) DP: BUCH, RAMRAS, NEUMAN, OLSON
01/31/08 (H) AM: GARDNER, LEDOUX, GATTO
01/31/08 (H) JUD REFERRAL ADDED
02/06/08 (H) JUD AT 1:00 PM CAPITOL 120
02/06/08 (H) Heard & Held
02/06/08 (H) MINUTE(JUD)
02/11/08 (H) JUD AT 1:00 PM CAPITOL 120
02/11/08 (H) <Bill Hearing Canceled>
02/13/08 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HCR 21.

REPRESENTATIVE MARK NEUMAN

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 303.

REX SHATTUCK, Staff
to Representative Mark Neuman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented an explanation of the changes from Version K to Version E of HB 303 on behalf of the sponsor, Representative Neuman.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 303.

TERRY BANNISTER, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 303.

CRAIG COMPEAU, Owner
Compeau's Marine
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 303.

KATHY VAN KLEEK, Senior Vice-President
Government Relations
Specialty Vehicle Institute of America (SVIA)
Irvine, California

POSITION STATEMENT: Testified in opposition to HB 303.

PAUL VATRANO, Executive Vice-President and Counsel
Special Vehicle Institute of America (SVIA)
Irvine, California

POSITION STATEMENT: Testified in opposition to HB 303.

LARRY INNIS, Director of Government Relations
Marine Retailers Association of America (MRAA)
Oak Park, Illinois

POSITION STATEMENT: Testified in support of HB 303.

DAVID DICKERSON, Director, State Government Affairs
National Marine Manufacturers Association (NMMA)

Chicago, Illinois

POSITION STATEMENT: Testified in opposition to HB 303.

DUDLEY BENESCH, Owner
Alaska Mining and Diving Supply
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 303.

BUSTER HALL, President
Alaska Marine Dealers Association (AMDA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 303.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:13:25 PM](#). Representatives Dahlstrom, Lynn, Holmes, Gruenberg, and Ramras were present at the call to order. Representatives Coghill and Samuels arrived as the meeting was in progress.

HCR 21 - 2008 NATIONAL CRIME VICTIMS' RIGHTS WEEK

[1:14:10 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE CONCURRENT RESOLUTION NO. 21, Supporting the National Crime Victims' Rights Week of 2008.

[1:15:09 PM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, as sponsor, explained that HCR 21 recognizes the rights of crime victims and strengthens their rights as guaranteed in our constitution by supporting the National Crime Victims' Rights Week of 2008. He offered his understanding that HCR 21 has overwhelming support.

[1:17:28 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HCR 21 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCR 21 was reported from the House Judiciary Standing Committee.

HB 303 - MARINE & MOTORIZED RECREATIONAL PRODUCTS

[1:18:21 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 303, "An Act relating to marine products and motorized recreational products; and providing for an effective date." [Before the committee was CSHB 303(L&C).]

[1:18:40 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 303, Version 25-LS1183\K, Bannister, 2/5/08, as the work draft.

REPRESENTATIVE HOLMES objected for the purposes of discussion.

[1:20:43 PM](#)

REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, sponsor, relayed that the concept of HB 303 was brought to him by members of the association for outboard motors, snowmobiles, and ATVs dealers of Alaska. He explained that HB 303 is intended to offer dealers some protection, similar to automobile dealers. Since 1976, dealers have attempted to address issues of concern with the manufacturers but have yet to receive a response, he opined. Every outboard motor, snowmobile, and ATVs dealer supports HB 303. This bill is meant to help protect the consumer. He offered his belief that Mr. Sniffen, Department of Law, is now in support of the HB 303.

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REX SHATTUCK, Staff to Representative Mark Neuman, Alaska State Legislature, speaking on behalf of the sponsor, Representative Neuman, referred to a document labeled "Explanation of Changes to HB 303 version\E to version\K," and explained that several duplicative sections were removed at the suggestion of both Legislative Legal and Research Services and the Department of Law (DOL). He referred to item 1, which he said deletes proposed AS 45.27.010. He referred to proposed AS 45.27.020, which removes the just cause language that was unnecessary, and changes the cancellation or nonrenewal written notice from 120 days to 90 days. Proposed AS 45.27.030, subsections (b) and (c) were deleted at the recommendation of the DOL, he said. These subsections added unnecessary requirements for manufacturers and were considered duplicative. He referred to proposed AS 45.27.120, and noted that subsection (b) paragraph (2) is deleted since the DOL suggested it may involve anti-trust

issues. He referred to proposed AS 45.27.230, and advised that the language allows a dealer up to 24 months to enter into a new agreement in order to better serve customers. He referred to proposed AS 25.27.300, and explained that several sections relating to mandatory repurchases were combined. He referred to proposed AS 45.27.310, which lengthens the response time from 30 to 60 days, he said. He referred to proposed AS 45.27.330, which changes the language to include the amount allowed by law, which will also cover rate changes, he noted.

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MR. SHATTUCK referred to proposed AS 45.27.410, and stated that an effort was made to eliminate duplication and that this section was included as recommended by the DOL. He referred to proposed AS 45.27.820, which clarifies the amount of the fine and penalties allowed, he stated.

REPRESENTATIVE NEUMAN, in response to Chair Ramras, advised that he is comfortable that Version K addresses the issues of anti-competitive and constitutionality issues.

REPRESENTATIVE HOLMES removed her objection to the adoption of Version K as the work draft. There being no further objection, Version K was before the committee.

REPRESENTATIVE GRUENBERG also noted that members' packets have a sectional analysis for Version K.

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REPRESENTATIVE NEUMAN, in response to Representative Gruenberg, answered that proposed AS 45.27.010, Formation of Agreement, was deleted at Mr. Sniffen's recommendation. He offered that the language is currently contained in AS 45.45.700.

REPRESENTATIVE GRUENBERG referred to proposed AS 45.45.700, which read: "a distributor may not coerce or attempt to coerce a dealer ... " He inquired as to whether a manufacturer that has a separate corporation for distributors is covered under the statute. He offered that the term, "distributor" is defined in proposed AS 45.45.790 (2), which read: "distributor" means a person who enters into a distributorship agreement ...". He expressed concern that the bill is perhaps too narrow to protect the dealer.

CHAIR RAMRAS noted that Representative Gruenberg is speaking to language from a prior version of HB 303. This language is no longer contained in Version K, he stated.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), answered by referring to the definition in AS 45.45.790, and stated that a distributor is defined to mean a wholesaler, a manufacturer, or a person that is a parent corporation or affiliated corporation of either of those. He said he believes this language is broad enough to encompass agreements between manufacturers and dealerships.

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TERRY BANNISTER, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), offered that she has not examined this issue since she considered AS 45.45 to be a separate chapter, but said she does think it should be examined. She opined that even if the term "manufacturer/distributor" is used, it may not apply to the products in the new chapter.

REPRESENTATIVE GRUENBERG opined that the definition would apply to a manufacturer, but only if that manufacturer entered into a distributor agreement.

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MR. SHATTUCK referring to the sectional summary for HB 303, Version K, and explained that proposed AS 45.27 would prohibit a manufacturer/distributor from threatening to cancel without written notice. He referred to proposed AS 45.27.020, which would prohibit a manufacturer/distributor from unreasonably withholding consent to the sale or transfer of an agreement. Mr. Shattuck referred to proposed AS 45.27.030, which would prohibit a manufacturer/distributor from changing an agreement without providing reasonable notice.

MR. SHATTUCK referred to proposed Article 2, AS 45.27.100, and pointed out that this proposed section is derived from AS 45.25 which relates to automotive dealers. He noted that this proposed section refers to geographic areas but mirrors the automotive dealership statutes and tries to strike a balance to establish dealer territories without intruding in the manufacturer/dealer contracts.

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MR. SHATTUCK referred to proposed AS 45.27.110, which would require that a manufacturer or distributor must give a dealer notice before changing an area of responsibility, he stated. He explained that proposed AS 45.27.120 would prohibit a manufacturer/distributor from entering into an agreement to add a dealer within an existing dealer's area of responsibility without giving notice. He pointed out that Alaska is unique in that many dealers offer multiple brands of products. He opined that some of areas of concern about competition are eliminated when these elements are recognized.

MR. SHATTUCK referred to Article 3, proposed AS 45.27.200, which would prohibit a manufacturer/distributor from selling or shipping a product to a dealer prior to the agreement being signed, he stated. He referred to proposed AS 45.27.210, which would prohibit a manufacturer/distributor from coercing a dealer to order or accept deliver of a product, he noted. He stated that proposed AS 45.27.220 would prohibit a manufacturer/distributor from refusing to deal or ship product. He referred to proposed AS 45.27.230, which would require a manufacturer/distributor to continue to sell a dealer parts for a specific length of time after the agreement is termination, he stated. He offered that this provision is needed in Alaska due to the remote areas that dealers serve and to provide consumer protection. He referred to proposed AS 45.27.240, which would prohibit a manufacturer/distributor from delaying, refusing, or failing to deliver reasonable quantities of products, he stated.

MR. SHATTUCK stated that proposed AS 45.27.250 would prohibit a manufacturer/distributor from refusing to allow a dealer to select the method and carrier for product delivery. He explained that Alaska is unique due to the distances from the manufacturer and this provision would recognize that the dealers have the necessary expertise to know which shipping method is best. He said that proposed AS 45.27.260 would make manufacturers solely responsible for damaged products. He surmised that this provision may need more discussion between manufacturers and dealers.

Mr. SHATTUCK referred to proposed AS 45.27.300, which would require a manufacturer/distributor to repurchase parts from a dealer's inventory when a dealer stops being a dealer. He explained that some members of the House Labor and Commerce Standing Committee expressed concern about Article 4 and suggested that it may need more focus.

MR. SHATTUCK referred to proposed AS 45.27.310, which would require a manufacturer to repurchase products within a certain timeframe. He noted that many products do not leave the state, but are redistributed to other dealers. He referred to proposed AS 45.27.320, which would allow the dealer to retain some discontinued products and parts. He referred to proposed AS 45.27.330, which would require the manufacturer to pay interest to the dealer if the manufacturer/distributor fails to repurchase products, he stated. He referred to proposed AS 45.27.340, which would base the repurchase amounts on the dealer's landed cost at the dealer's facility, he noted. He referred to proposed AS 45.27.350, which would place the responsibility for transportation and storage costs of repurchased products on the manufacturer, he said. He referred to proposed AS 45.27.400, which would require the manufacturer to provide a product's ultimate purchase from a dealer, he stated. This provision relates to a warranty aspect due to a federal requirement that the dealer provide a warranty to the customer at the time of purchase, he offered.

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REPRESENTATIVE NEUMAN pointed out that many of the remaining provisions of HB 303 set out the requirements between the manufacturer and the dealer. He stated that Article 4 sets out product replacement requirements, such as the responsibility for replacement of defective products. He conveyed that Article 6 provides for liability of a manufacturer/distributor or dealer for audits and agreements, and on competition issues. He noted that Article 7 pertains to agreement provisions. He said that Article 8 sets out the general provisions, which are modeled after the statutes that assist automobile dealers.

REPRESENTATIVE NEUMAN referred to Article 5, which pertains to defective parts and the return of the defective parts, he stated. He conveyed that HB 303 takes into account what is realistic for Alaska with respect to the distribution system. He pointed out that the manufacturers' concerns were also factored into HB 303.

CHAIR RAMRAS pointed out that the committee is aware of some of the potential competitive and unconstitutional issues that are raised in HB 303 that are being addressed in the sectional in Version K.

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MR. SNIFFEN, in response to Chair Ramras, posited that Version K has resolved much of the DOL concerns about HB 303. The DOL neither opposes nor supports HB 303, although he said he cannot pinpoint any provision that causes him concern. He offered that the DOL always has some concern with legislation that tends to restrict manufacturer/distributors from activity. He opined that the DOL likes to see the marketplace determine the outcome. He further offered that Version K contains some good consumer protection measures. Other provisions, as noted by Ms. Bannister's memo, may still encounter a few constitutional "snags" that the DOL has not had an opportunity to review. He surmised that he would need to rely on some of the manufacturers and dealers to explain the impacts some of these restrictions might have on their relationships since the DOL does not consider itself to be an expert in this industry with respect to the terms of the agreements.

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CHAIR RAMRAS disclosed that Mr. Compeau resides in his community of Fairbanks. He further disclosed that he previously purchased a boat from Compeau's Marine and that he also has had his "Sea-Doo" repaired at Compeau's Marine.

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CRAIG COMPEAU, Owner, Compeau's Marine, related that his company is a fourth generation family business that sells boats, snowmobiles, four wheelers, and outboard motors. He stated that their customers are primarily from the interior and bush communities of Alaska. He said that over the past 64 years manufacturers have come and gone. He opined that he has seen vast differences in how some manufacturers treat their dealers and consumers. He characterized some manufacturers as honorable and others as less interested in customer satisfaction than in short term profit at the expense of consumers. He opined that HB 303 levels the playing field and helps manufacturers who need guidance in playing fair. Boats, snowmobiles, and four-wheelers are commonly referred to as recreational products. In Alaska, many rely on these vehicles as the primary means of daily transportation. He stated that it is no wonder that every state in the union has passed laws to protect dealers and consumers from abuses from giant automobile manufacturers in the same manner that HB 303 protects dealers and consumers from the manufacturer of recreational vehicles.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. COMPEAU went on to inform members that he has never testified before the legislature prior to HB 303. He surmised that legislators have seen the power and influence that manufacturers can muster by their sheer size, economic power, and clout. He argued that is why HB 303 is important to help small businesses. He stressed that HB 303 would provide safeguards that ensure manufacturers who wield significant power over dealers and consumers cannot use that power to take unfair advantage in their business dealings. Nothing in HB 303 would insulate dealers from impacts of their bad business decisions or practices, he opined. The bill would still allow manufacturers to terminate dealers for just cause. He opined that HB 303 also helps to ensure that manufacturers don't act in an arbitrary manner or in bad faith. This bill would add to the list of states that have enacted similar legislation such as California, Missouri, Georgia, Louisiana, Texas, and New York. This bill would help dealers in all parts of the state, he opined.

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REPRESENTATIVE COGHILL offered that he is sympathetic to the concerns expressed by dealers. Outside of the legal issues that were raised, he noted that one of the criticisms is state involvement in negotiations between manufacturers and dealers.

MR. COMPEAU answered that one provision in HB 303, is that the manufacturers treat the dealers fairly when it pertains to warranty reimbursement. He pointed out that for years his company has sold products with a warranty. However, unfortunately the reimbursement rates are extremely questionable, he opined. He further added that dealers in rural Alaska incur high costs since the manufacturer refuses to cover any of the transportation costs. He opined that dealers absorb those costs. He characterized the problem as one that hurts the consumer since the dealer must pass on the costs of warranty work. He said, "We're obligated by the contract to do the warranty work and we want to do the warranty work. We just don't want to do it at a loss."

REPRESENTATIVE COGHILL related his understanding that HB 303 would supply the dealer with legal tools. He inquired as to whether dealers currently have any recourse on warranty costs.

MR. COMPEAU answered that it is impossible to complete the warranty work in the timeframes for some of the warranty

repairs. For example, some warranty reimbursement claims are set at .3 hours, or 20 minutes, which does not allow dealers to get the machine in the shop, and replace the part, let alone to do the necessary paperwork, he noted. One of the provisions in HB 303 would require manufacturers to pay the dealers one hour of administrative charge for the warranty, which he surmised would help dealers. He offered that the dealers don't want to argue about manufacturers using flat rates for warranty repairs, but the dealers must have some means to offset these costs.

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REPRESENTATIVE COGHILL related his own experiences in living in Nenana, Alaska and the reality and necessity to fix ones own equipment even if it is under warranty. He expressed concern with the practical aspects of HB 303 for dealers. He surmised that under HB 303, the dealers would still need to hire an attorney to assert their contractual terms. He acknowledged some cases in which the dealer must negotiate with an egregious manufacturer.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. COMPEAU offered his belief that passage of HB 303 would effectively force manufacturers to focus on quality control of their products. He opined that the dealers want a higher quality product and fewer warranty issues so the dealer and consumer can enjoy the products. He characterized HB 303 as a safeguard for dealers against poor quality distributors. He surmised that the only manufacturers that would be affected by the bill are those that currently do not cover warranties or build defective products.

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REPRESENTATIVE GRUENBERG referred to proposed Section 1, AS 45.25.920 and characterized AS 25 is a complex title that covers motor vehicle repairs, distributorships, and other provisions that relate to motor vehicles. He noted that the chapter covers the Uniform Commercial Code.. He pointed out that Section 1 resolves at least one conflict between proposed AS 45.25.920 and AS 45.25, which pertains to motor vehicle transactions. Since conflict of laws is a complex subject, which he opined often troubles judges, he surmised that the question will be which of these various state laws applies. He speculated that a court might view that Section 1, if enacted, would make AS 45.25.920 "trump" the motor vehicle transactions. However, it is

difficult to sort through which provision will apply. He inquired as to whether Mr. Sniffen or Ms. Bannister could answer if other sections need to be added to HB 303 to resolve these conflicts of law issues.

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MS. BANNISTER offered her belief that it would be a good idea to include a statement in AS 45.45.700 to AS 45.45.790 to describe which chapter governs if a conflict between statutes arises. The committee has addressed AS 45.25 to explain that this new chapter would govern, but it is desirable to outline the authority in case a conflict exists.

REPRESENTATIVE GRUENBERG noted that the Uniform Commercial Code (UCC) has several provisions pertaining to sales, such as warranty section. It would be useful to have the legal drafter review potential conflicts and ensure resolution of the conflicts to avoid legal problems for dealers and consumers.

REPRESENTATIVE NEUMAN referred to page 1, line 5-6, of proposed AS 45.25.920, which read:

If a provision of this chapter conflicts with a provision in AS 45.27, the provision in AS 45.27 governs.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

REPRESENTATIVE GRUENBERG pointed out that proposed AS 45.25.920 only covers one chapter. He noted that AS 45.25, which pertains solely to motor vehicle transactions and does not cover distributorships addressed in proposed AS 45.27. He cautioned committee members should resolve the governing authority for all chapters covered in HB 303.

REPRESENTATIVE NEUMAN opined that HB 303 does address the legal authority for the proposed chapter under Title 27.

REPRESENTATIVE LYNN inquired as to the magnitude of the issues that dealers face. He further asked for clarification of any detrimental impact HB 303 will have on manufacturers and expressed concern that some manufacturers may no longer wish to do business in Alaska.

MR. COMPEAU offered his understanding that other states have adopted similar legislation. He pointed out that manufacturers

have not decreased conducting business in those states. He opined that the legislation is better for consumers. Initially, these states held similar concerns about the impact legislation would have on the number of manufacturers that would operate, but they found that manufacturers did not leave the state or quit selling products in their states. He acknowledged that while it may cost manufacturers more to do business, it provides an incentive for them to build better quality products so dealers are not burdened with warranty costs and consumers are not burdened with non-functioning motors.

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REPRESENTATIVE LYNN inquired as to why manufacturers do not support the bill.

MR. COMPEAU offered his belief that HB 303 is aimed at those manufacturers that don't such as those that pay half the labor amount for repairs. In further response to Representative Lynn, Mr. Compeau opined that those who do not support HB 303, may be manufacturers that are not doing a good job of working with dealers. He also acknowledged that some manufacturers are performing well with dealers.

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REPRESENTATIVE COGHILL inquired as to the regular length of dealer contracts with manufacturers.

MR. COMPEAU advised that most dealer contracts are annual contracts that are typically signed during the annual meeting. However, contracts vary in length and some span a two or three year period of time.

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MR. COMPEAU, in response to Representative Holmes, noted that HB 303 does not change the current territorial limitations for dealers and manufacturers, which tends to be driven by demand. Most manufacturers realize that it isn't a good business practice to set up too many dealers in an area. In further response to Representative Holmes, Mr. Compeau answered that HB 303 codifies what is current practice with respect to limits on dealer territories.

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REPRESENTATIVE HOLMES referred to proposed AS 45.27.440(d), which refers to reimbursement rates, and reads:

A manufacturer or distributor shall reimburse the authorized dealer for product parts at the current manufacturer's full suggested retail price and shall ship each part to the authorized dealer without cost for freight or handling. The reimbursement shall be calculated at 1.5 times the authorized dealer's landed cost.

MR. COMPEAU answered that it is very unusual that manufacturers would not list a suggested retail price for parts. He surmised that the language in this subsection would cover instances in cases in which a product price is not listed.

REPRESENTATIVE HOLMES inquired as to whether dealers are currently reimbursed at the full retail price.

MR. COMPEAU answered that dealers are currently reimbursed closer to the actual dealer cost with a small increase. However, problems arise when dealers must perform warranty work in lieu of selling the same products at full price to retail customers. He characterized this situation as literally "chasing business away."

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

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KATHY VAN KLEEK, Senior Vice-President, Government Relations, Specialty Vehicle Institute of America (SVIA), stated she has not had an opportunity to review the committee substitute and would like to do so. Thus, her remarks may not be applicable to Version K, but she is making her comments based on the earlier version of HB 303. She stated that SVIA opposes HB 303 as overreaching and simply "bad public policy." She related that SVIA believes the bill would have a negative effect on ATV manufacturers, distributors, and consumers. The other seven states referenced as having similar legislation perhaps are boat laws since she is not aware of any state with an ATV law with the some of the egregious provisions of HB 303. She related that SVIA has concerns with a number of the bill's provisions, but offered to only highlight a few. She offered that SVIA believes that these issues are more appropriately addressed between the individual manufacturers and their dealers than by statute. She stated that SVIA has never been contacted to

discuss these issues since 1976. In fact, the ATV industry did not even start until the 1980s. She offered that SVIA was formed in 1983.

MS. VAN KLEEK noted that the issues involve competitive considerations and the majority of the dealerships are multi-brand dealers. Every dealer signs an agreement with the manufacturers stating the terms of agreement. She related that SVIA would welcome the opportunity to discuss specific concerns with dealers. She pointed out that HB 303 mandates lengthy notice agreements before a dealer can be terminated so materially underperforming dealers will be allowed to continue with seriously deficient behavior for an overly long period of time causing high levels of customer dissatisfaction, costing manufacturers money in sales revenue and unreasonably raising business costs. Even more egregious, she opined, is that the manufacturers must continue to provide the dealers with parts for 2 years after termination and allow any dealer who discontinues business to retain discontinued parts and products effectively ensuring that the underperforming dealer will continue to represent the brand names.

MS. VAN KLEEK noted that SVIA's dealerships are full line dealerships that are designed to sell and service its products and provide its customers with the highest quality experience, in terms of product choice, after-sale service, and customer support. She added that dividing product sales from part sales, and enabling dealers to provide one vital function but not the other, is unacceptable to SVIA. This practice would only allow unfair competition, would cause customer confusion, would have a negative impact on the permanent investment of full-line dealers, and would disrupt distribution channels. She noted that replacement parts represent a significant profit center for SVIA dealers, who make a sizeable permanent investment in facility, inventory, staffing, and advertising. She opined that a parts only dealer could, and likely would, capture the lucrative profit opportunity while making little to no permanent investment.

MS. VAN KLEEK offered that parts could even be sold online in which case facility or customer interface is not required, which would allow terminated dealers to continue to engage in the sale of parts undercutting all the valued dealers in Alaska, who carry a full line of products and parts and provide quality service to the consumer. She said that SVIA manufacturers reasonably reimburse dealers for the required warranty service. While each manufacturer establishes its own reimbursement rate,

agreed upon by the dealer in its agreement, the ATV industry generally reimburses dealers at the posted retail rate for warranty and recall work, and at least the dealer cost for parts plus a 10 percent markup depending on the certified technicians.

MS. VAN KLEEK said that furthermore, HB 303 requires that warranty service work be reimbursed at the dealer's retail rate, which is not a discount rate, as well as reimbursement of an additional hour at the retail rate for the dealer's administration, and an additional 25 percent mark-up of the dealer's handling fee to cover the shipping costs for parts replaced under warranty. She noted that replacement parts represent a significant profit center for SVIA dealers, who make a sizeable permanent investment in facility, inventory, staffing, and advertising. She opined that a parts only dealer could, and likely would, capture the lucrative profit opportunity while making little to no permanent investment.

MS. VAN KLEEK offered that parts could even be sold online with no facility or customer interface, which would allow terminated dealers to continue to engage in the sale of parts and undercut all the valued dealers in Alaska, who carry a full line of products and parts and provide quality service to the consumer. Basically, HB 303 requires manufacturers to insulate dealers from all risks normally associated and assumed by business owners in the free enterprise system. She suggested that if a dealer decides to go out of business and terminates his franchise, under HB 303 the manufacturer is responsible for repurchasing his inventory.

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MS. VAN KLEEK opined that manufacturers strive to make parts available for warranty repairs as quickly as possible and she said she was not aware of any state law that mandates that manufacturers provide the part within 30 days or offer a full product replacement or full refund to the dealer. She opined that [setting] an absolute time for supplying the repair part is not only extremely problematic, but unreasonable. The overriding objective of warranty repair and recall is customer safety. Curing a defect may involve reengineering and manufacturer in addition to distribution and these functions can't be rushed to meet an unrealistic deadline.

MS. VAN KLEEK reiterated that she was not aware of any other state statute that [allows] a dealer to dictate the method and carrier for product delivery. Manufacturers have established

delivery systems and to use another carrier or shipping method raises costs, in terms of the delivery itself and also manpower costs and costs to administer different shipping systems. Ms. Van Kleek opined that proposed HB 303 disproportionately protects underperforming dealers who aren't providing appropriate levels of service and sales support to customers at the expense of other dealers and Alaska consumers. Therefore, dealers who invest in the brand are harmed because underperforming dealers remain in the network and offer buyers poor experiences, both in terms of service and availability of product, she opined. Such dealers hurt SVIA brand names and hurt the consumers since higher operation costs for manufacturers and increased litigation costs lead to higher product costs. Regulating dealerships in this manner will only increase the business cost for all, will reduce consumer choice, decrease competition and ultimately increase the cost of recreation products to Alaskans.

[2:38:01 PM](#)

REPRESENTATIVE NEUMAN referred to a letter in committee members packets from the Marine Retailers Association of America (MRAA) He read a portion of the letter, as follows:

I'm very pleased to report MRAA has not heard of any loss of business or jobs in any of these states. Actually, to the contrary of what many boat manufacturers thought, we now see dealers in those areas investing in new facilities and hiring new employees, because the long-term legal agreements have given them security. We see dealers increasing inventories and expanding business, because the lack of fear of unforeseen cancellations by manufacturers. And, most importantly we see happier customers, because their boats are being serviced in a vastly improved time period and because the state legislation provides for warranty reimbursement on labor and parts at a fair level to the dealers.

REPRESENTATIVE NEUMAN pointed out that allowing a dealer to stock parts for up to 24 months after the termination of a contract provides consumer protection by ensuring that parts are continually available. Under HB 303, when a dealer loses his/her dealership, he/she can retain product parts for up to 24 months so that consumers have the parts available for repairs. He noted that the consumer also is entitled to know what date to

expect the warranty part. He characterized the provisions in HB 303 as "fair to consumers."

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

[2:40:41 PM](#)

REPRESENTATIVE GRUENBERG noted that Ms. Van Kleek's testimony outlines SVIA's concerns with a prior version of HB 303. He surmised that some of those concerns may have been addressed in Version K. He inquired as to whether Ms. Van Kleek could review Version K and provide the committee with any outstanding concerns she may have with the bill.

MS. VAN KLEEK agreed to provide the committee with written comments.

[2:43:37 PM](#)

PAUL VATRANO, Executive Vice-President and Counsel, Special Vehicle Institute of America (SVIA), stated that he has also not had an opportunity to review Version K. He noted that many of the industry's legal concerns were addressed in Mr. Sniffen's letter of February 6, 2008. He noted that several provisions of the bill address obligations, conduct and remedies in conjunction with sales transactions between dealers and manufacturers. First, these provisions are not necessary because Alaska has adopted the Uniform Commercial Code (UCC) which already addresses the same subjects, he opined. Proposed AS 45.27.410 would restrictively mandate the response by manufacturers and distributors to defects. This bill's approach is inconsistent with the Consumer Product Safety Act (CPSA) regulatory scheme, he opined.

MR. VATRANO also pointed out that the applicable CPSA regulations provide manufacturers and distributors the option of submitting to the Consumer Product Safety Commission (CPSC) a corrective action plan outlining remedial action to protect the public from substantial product hazards. The regulations specifically require "a statement of the action which will be undertaken to correct the product unit in the distribution chain, including a timetable and specific information about the number and location of such units." Recognizing that appropriate and efficient responses depend on particular circumstances, CPSA regulations permit manufacturers and distributors to develop a flexible situation specific response for units within the distribution chain and that response shall

be approved by CPSC. This bill mandates an unreasonably short initial response time and punitive remedies for a late initial response, which is inconsistent with the letter and spirit of the CPSA regulatory scheme, he opined.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. VATRANO continued by stating that proposed AS 45.25.410 is problematic because it is vague and overly broad. The term "defective" is not defined in HB 303 so it could be interpreted to encompass significantly more products than those that are considered substantial hazard products under the CPSA. It is incongruous for state law to provide onerous and restrictive responses in connection with all defects while federal law provides for a flexible situation for response in connection with potentially dangerous defects, he opined.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. VATRANO continued by stating that proposed AS 45.27.600 would exempt dealers from paying manufacturer or distributors for items identified by an audit, if the underlying transaction occurred more than two years prior to the beginning of an audit. This provision would create a special statute of limitations without justification, he opined. Currently, AS 09.10.053 provides a 3-year special statute of limitations for expressed or implied contractual claims, he stated. This bill would alter established Alaska law regarding contractual limitations for a single class of claimants that is manufacturers or distributors, he opined. He concluded that there is no need or justification for such unique and discriminatory treatment.

REPRESENTATIVE GRUENBERG asked Mr. Vatrano to key his comments to the specific page and line number of Version K in his written testimony. He characterized Mr. Vatrano's testimony as raising important legal issues to review.

[2:49:05 PM](#)

REPRESENTATIVE SAMUELS inquired as to the fundamental problem that HB 303 tries to address. He posed a scenario in which a new Yamaha dealer would receive a contract. He surmised the contract would be a standard contract prepared for all dealers. He surmised that the problem Alaska dealers encounter may be due to its geography and the associated shipping costs.

MR. COMPEAU agreed.

REPRESENTATIVE SAMUELS asked whether a Yamaha Dealers Association exists for dealers to outline the unique problems for Alaska's dealers that are different than in other states.

MR. COMPEAU explained that these issues have been brought up on numerous occasions, but manufacturers have not addressed the dealer's concerns.

REPRESENTATIVE SAMUELS expressed concern with the state being involved in negotiations of contracts between two private businesses.

[2:52:35 PM](#)

LARRY INNIS, Director of Government Relations, Marine Retailers Association of America (MRAA), said that MRAA strongly supports HB 303. He read prepared testimony as follows [original punctuation provided]:

Thank you for giving the Marine Retailers Association of America (MRAA) the opportunity to testify in strong support of H.B. 303. MRAA is the national trade association representing small businesses in the retail-side of recreational boating. MRAA represents approximately 3,000 boat dealerships, marinas, and marine retail stores. In addition, MRAA works closely with local, state, and regional marine trades associations, such as the Alaska Marine Dealers Association.

Since MRAA was founded 35-years ago, we have worked to protect the investments and to promote fair business practices of the boat dealer and other retailers. Dealers are clearly the contact point between boat manufacturers and consumers, and boat dealers work hard to enhance the buying and boating experiences to make recreational boating safe and enjoyable.

By way of background on the MRAA position on dealer/manufacturer agreements and legislation, as early as in 1976, MRAA first prepared a model dealer/manufacturer agreement that contained about 20 specific clauses that we believed would have made a fair and level playing field between dealers and boat manufacturers. The model agreement was circulated to boat manufacturers, and MRAA and boat dealers

encouraged manufacturers to use the model agreement. We received virtually no response to our request.

In 1996, 20-years later, MRAA authored a second version of the model dealer/manufacturer agreement with several updates and additions. We went through the same communication process and encouraged boat manufacturers to use the model agreement to establish and improve the business relationship with dealers. We again received virtually no response.

In 2002, responding to numerous requests from our membership, MRAA prepared a model dealer/manufacturer agreement legislative bill. The model bill was intended to be used as a basis for enactment of state legislation. Any state marine trades association could use the model bill in total or in part, and several have, including Missouri, Georgia, and New York.

There are now seven states that have dealer/manufacturer legislation in place, and I'm very pleased to report MRAA has not heard of any loss of business or jobs in any of these states. Actually, to the contrary of what many boat manufacturers thought, we now see dealers in those areas investing in new facilities and hiring new employees, because the long-term legal agreements have given them security. We see dealers increasing inventories and expanding business, because the lack of fear of unforeseen cancellations by manufacturers. And, most importantly we see happier customers, because their boats are being serviced in a vastly improved time period and because the state legislation provides for warranty reimbursement on labor and parts at a fair level to the dealers.

In 2004, the National Marine Manufacturers Association (NMMA) responded to the increasing concern expressed by dealers over the business relationships with their manufacturers, the increased number of forced and unforeseen dealer cancellations by manufacturers, and the increased number of dealer/manufacturers bills being introduced in state houses by organizing a special task force to once again study the language of dealer/manufacturers agreements. The task force consisted of both boat dealers and boat manufacturers

with the clear purpose to provide a usable document that would address the major areas of concern. 12 dealers and 12 manufacturers worked for many months on the project with the result that a new model agreement containing 10-sections, which addressed most of the items of concern, was created. A large number of manufacturers made promises to honor the agreement, however, in actuality the long history of broken promises remains with only one manufacturer indicating it planned to use the model language in its 2007 agreement. As a result, dealers are again going to their state houses to ask for a legislative fix.

H.B. 303 addresses many concerns expressed by dealers throughout the history of this issue, including fair and timely payment of warranty claims, product by-backs due to manufacturer cancellations, assurances of territorial rights, the long-term security of multi-year contracts, and protection from unwarranted cancellations by manufacturers, such as a failure to re-new for no cause. The dealer ability to cancel a manufacturer is the right of any small business that we have not seen abused in other states.

I fear that once again the 35+ years of frustration continues. It is clear to MRAA that dealers have again been misled and their only alternative to find protection and the fair treatment they deserve in the business relationship they have with their manufacturing suppliers is to seek a legislative answer. We applaud the work of the Alaska House to look into this problem and to offer an outstanding solution with H.B. 303. We thank especially Representative Mark Neuman, as the primary sponsor of H.B. 303.

Again, thank you for allowing me to testify in strong support of H.B. 303.

[2:57:57 PM](#)

DAVID DICKERSON, Director, State Government Affairs, National Marine Manufacturers Association (NMMA), characterized Mr. Innis's testimony as not recognizing the progress that has been made through the task force process. He argued that far more than one manufacturer has adopted the plan. He opined that the fair market and open market works and that a tremendous number

of the elements within the dealer agreement have been adopted. He pointed out that Mr. Innis's claim insists that every single word must be adopted in order for the agreement to be held in compliance. He argued that the free market has shown that a number of provisions have been adopted by more than 100 [manufacturers]. However, HB 303 does not cover the reimbursement to manufacturers for travel to an offsite location to provide warranty service, he noted. He pointed out that when any the warranty request is approved, the person must bring in the product for repair, just as they would with an automobile repair. He offered that of the 354 warranty requests on Mercury engines last year, only 3 requests were made for distance travel and all were approved at the standard rate.

[3:00:13 PM](#)

MR. DICKERSON inquired as to whether Version K provides for the "buyback" of products in the event that the dealer cancels the annual agreement.

REPRESENTATIVE NEUMAN answered that the reason for the buyback provision is that the manufacturers changes the numbers of products shipped, which results in the consumer paying a higher price. Primarily, this provision would help dealers cover costs when the business closes, he opined.

MR. DICKERSON pointed out that under HB 303, manufacturers could be required to buy back 3 year old boats on 30 days notice. This provision would remove the dealer's risk for inventory decisions, decisions to stock certain parts, or the amount of parts to stock. He opined that the responsibility is totally shifted from the dealer to the manufacturers such as with respect to arbitrary cancellation by the dealer without notice. He characterized HB 303 as a bill that has "cherry picked" provisions from the franchise laws that benefit dealers and ignores the equality that a franchise law attempts to provide to both parties. Additionally, as far as renewal of contracts, if a boat dealer decides he needs to sell his business, the manufacturer is not allowed to drop that market area due to low sales, if necessary. He opined these types of restrictions are unfair to the free market process and do not accurately follow what happens in the marketplace. He concluded by stating that NMMA is opposed to HB 303.

[3:04:24 PM](#)

DUDLEY BENESCH, Owner, Alaska Mining and Diving Supply, opined that HB 303 is necessary to protect the Alaskan consumers and small businesses. Over time, the manufacturers in the marine industry and power sports industry have created one-sided dealer agreements containing conditions that benefit them, he opined. He offered that the manufacturers use their legal departments to craft agreements that benefit the manufacturer. Additionally, he noted that the manufacturers set the allowable warranty labor rates, the flat rate repair times, and have written policies for defective products and warranty repairs that benefit the manufacturers, he opined. He emphasized that the dealer does not have any input in developing the manufacturer's policies, which he characterized as "one size fits all." He offered that seven states have already passed legislation similar to HB 303 to address these issues. Contrary to earlier testimony, Louisiana covers ATVs in the same manner as boats in its motor vehicle act, he opined. He also pointed out that Montana introduced specific legislation aimed at ATVs and snowmobiles. He opined that the dealers attempt in HB 303 to provide Alaskan dealers and consumers with protection from current manufacturer's practices. He argued that the reason manufacturers strongly oppose HB 303 is because the bill requires the manufacturers to bear the cost of design and manufacturing defects. He opined that HB 303 would require manufacturers to treat dealers and consumers in a fair and equitable manner. He characterized HB 303 as a bill that is "all about fair play" and will provide the dealer and consumer with quality products.

[3:07:26 PM](#)

BUSTER HALL, President, Alaska Marine Dealers Association (AMDA), stated that he also owns Buster's Professional Upholstery, and that his business makes custom boat tops. He is a 49 year resident of Alaska. He said that AMDA was organized as a not-for-profit organization to help dealers work together. He explained that the AMDA board requested legislation, similar to other states' legislation to address long standing issues that dealers have had with manufacturers. He has been pleased that ATV and snowmobile dealers have joined the boat dealers in supporting HB 303, he stated. He predicted that when HB 303 passes that the "real winners will be the consumers of Alaska." He offered his support and the AMDA's support for HB 303.

[3:08:38 PM](#)

VICE CHAIR DAHLSTROM, after first determining no one else wished to testify, closed public testimony on HB 303.

REPRESENTATIVE GRUENBERG inquired as to whether any association representatives are aware of any legal decisions that have construed the questions in these contracts of adhesion between manufacturers and dealers that have determined that the contracts are contracts of adhesion. If so, these contracts are most strictly construed against the drafter of the contract.

VICE CHAIR DAHLSTROM advised that any association representatives who wish to respond could provide their responses in writing for the committee.

[HB 303 was held over.]

ADJOURNMENT

The House Judiciary Standing Committee was recessed at 3:11 p.m. to be continued at 1:00 p.m. on February 14, 2008.