ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 14, 2008
1:09 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

COMMITTEE CALENDAR

HOUSE BILL NO. 303
"An Act relating to marine products and motorized recreational products; and providing for an effective date."

- MOVED CSHB 303(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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
02/13/08	(H)	Heard & Held
02/13/08	(H)	MINUTE(JUD)
02/14/08	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE MARK NEUMAN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 303.

REX SHATTUCK, Staff
to Representative Mark Neuman
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: On behalf of the sponsor, Representative Mark Neuman, provided comments and responded to questions during HB 303.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Answered questions during discussion of HB 303.

CRAIG COMPEAU, Owner
Compeau's Marine
Fairbanks, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 303.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting, which had been recessed on February 13, 2008, back to order at 1:09:06 PM. Representatives Coghill, Samuels, Lynn, Gruenberg, Dahlstrom, and Ramras were present at the call back to order. Representative Holmes arrived as the reconvened meeting was in progress.

HB 303 - MARINE & MOTORIZED RECREATIONAL PRODUCTS

1:09:30 PM

CHAIR RAMRAS announced that the only 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), and adopted as a work draft on 2/13/08 was the proposed committee substitute (CS) for HB 303, Version 25-LS1183\K, Bannister, 2/13/08.]

1:11:01 PM

REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, sponsor, mentioned that he intends to keep working on HB 303 as concerns arise.

The committee took an at-ease from 1:11 p.m. to 1:14 p.m.

REPRESENTATIVE HOLMES, in response to Chair Ramras, stated that although she'd been considering an amendment, she is not yet ready to offer one. She characterized HB 303 as well intentioned, though perhaps overly broad.

REPRESENTATIVE GRUENBERG expressed a desire to continue to work on HB 303 as it moves through the process.

CHAIR RAMRAS surmised that HB 303 addresses some significant needs and protections, particularly for those who reside in rural areas of the state who purchase motorized equipment. However, he cautioned that the legislature must consider HB 303 carefully since it may raise some anti-trust and constitutional issues.

REPRESENTATIVE LYNN expressed concern that HB 303 will affect private contracts. He acknowledged that consumers need adequate service on products, and that dealers need to be able sustain their businesses. He offered his belief that HB 303 may need some additional work.

REPRESENTATIVE SAMUELS said that although HB 303 attempts to address an existing problem, he is reluctant to tamper with contractual agreements between parties without understanding the nature of the agreements. He said that he doesn't believe that HB 303 will provide a remedy for dealers because dealers' costs are generally passed onto consumers, and surmised that any additional costs to manufacturers will ultimately be passed onto consumers, too. He stated that he is happy that the constitutional issues that had been identified were being addressed.

REPRESENTATIVE NEUMAN explained that the intention of HB 303 is to offer consumer protection, but acknowledged that there might be some issues that may still need to be addressed.

CHAIR RAMRAS said he is focusing on the role of state government with respect to private contracts between manufacturers and dealers.

REPRESENTATIVE HOLMES asked whether HB 303 is patterned on either model legislation or on a specific state's legislation.

1:28:27 PM

REX SHATTUCK, Staff to Representative Mark Neuman, Alaska State Legislature, relayed on behalf of Representative Neuman, sponsor, that some elements of HB 303 are based on model law, some are modeled after AS 45.25, some were suggested by the Marine Retailers Association of America (MRAA), and some were modeled after similar laws in other states.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.020 - Consent to transfer of agreement - and said that language seems to be what she called "a forced assignment clause." She asked whether similar language exists in either Alaska's Uniform Commercial Code (UCC) or other areas of law.

1:30:02 PM

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), offered his understanding that similar language can be found under AS 45.25, perhaps AS 45.25.120 or AS 45.25.130.

REPRESENTATIVE GRUENBERG pointed out that those statutes don't contain any such language.

MR. SHATTUCK offered his understanding that similar language can be found in [Alaska's] UCC.

REPRESENTATIVE HOLMES referred to proposed Article 2 - Area of Responsibility - surmised that some provisions of HB 303 attempt to fix problems that may not exist, and expressed concern about potential antitrust issues.

1:32:37 PM

CRAIG COMPEAU, Owner, Compeau's Marine, stated that in the past the dealer's area of responsibility has been a problem. Some provisions were inserted in HB 303 to help ensure that problems other states have experienced don't become issues in Alaska. He offered that when a manufacturer assigns a new dealer to an existing area, it adversely impacts the existing dealer who has made a huge investment to build and maintain a facility. He pointed out that these provisions are intended to provide disincentives for unfair practices by manufacturers.

REPRESENTATIVE SAMUELS asked whether dealer agreements restrict the distance between dealers and whether that is an appropriate way to alleviate the problem.

MR. COMPEAU explained that the dealer agreements in Fairbanks allow for an area of responsibility of 30 miles, and offered his understanding that the dealer agreements in Anchorage allow for an area of responsibility of 12 miles.

1:35:24 PM

MR. SHATTUCK indicated that although areas of responsibility are often set out in the dealer's agreement, proposed AS 45.27.100 provides that if the dealer's agreement doesn't establish a smaller area of responsibility, then the area of responsibility may be a geographical area designated by zip code, municipality, or mileage radius; and that if either there is no area of responsibility established in the dealer's agreement or the dealer rejects the area set out by the manufacturer/distributor, the area of responsibility shall be within a 12-mile radius [of the dealership in municipalities with 4,000 or more people], and within a 30-mile radius [of the dealership in municipalities with fewer than 4,000 people]. He characterized this provision as setting up reasonable guidelines in instances where the area of responsibility has not been addressed by contract.

REPRESENTATIVE HOLMES questioned whether this provision raises any anti-trust issues.

MR. SNIFFEN first clarified that the statute prohibiting manufactures from denying transfer of a car dealership is AS 45.25.170, and then offered his understanding that anti-trust issues are somewhat avoided because the language in subsection (a) allows manufacturers to set the area of responsibility in the dealer's agreement. With regard to automobiles, dealerships often don't sell more than one make of car, so it doesn't matter

if another dealer across the street, for example, sells another make of car. However, he offered his understanding that while ATV dealers are generally limited to one brand of ATV, many "marine dealers" sell multiple brands. If multiple brands are sold by a single dealer, then anti-trust issues might become more of a concern; furthermore, manufacturers may not like having their brand sold in dealerships that also sell other brands. So although he didn't think that the language in Version K would actually raise an anti-trust issue, the potential does exist.

REPRESENTATIVE DAHLSTROM asked whether a dealer who sells one brand such as Arctic Cat could offer to take another brand in as a trade-in, and subsequently resell the other brand that they don't normally carry.

1:41:42 PM

MR. SNIFFEN said that in the automotive realm he thought that generally dealers can sell any used products; when a dealer enters into an agreement, it only applies to new products, with the used product market being fairly fungible.

MR. COMPEAU concurred that a lot of dealers will take other brands as trade-ins, although his company limits trade-ins to the brand of product that he carries.

REPRESENTATIVE DAHLSTROM related her own experiences and opined that purchasing recreational vehicles and automobiles are totally different experiences.

MR. SNIFFEN acknowledged that his Commercial/Fair Business Section does not receive as many complaints from consumers on marine and recreational vehicles such as snowmobiles as it does on automobiles. Thus, his office has more familiarity with automobile industry issues than with issues surrounding marine and other recreational vehicles such as ATVs.

REPRESENTATIVE HOLMES asked whether proposed AS 47.27.100(c), which requires manufacturers and distributors to adopt uniform procedures to establish areas of responsibility is feasible.

MR. COMPEAU answered that he thought so since the data required by subsection (c) is readily available and would provide good information for the dealer and the manufacturer.

REPRESENTATIVE COGHILL pointed out that under proposed AS 45.27.100(a), an area of responsibility "may" be established by the uniform procedures adopted under subsection (c), but subsection (c) says that the manufacturer or distributor "shall" adopt uniform procedures to establish an area of responsibility. Thus this language needs to be clarified, he surmised.

CHAIR RAMRAS questioned whether proposed AS 45.27.100(c) should be deleted.

REPRESENTATIVE HOLMES agreed that deleting subsection (c) might be warranted.

1:49:12 PM

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 1, to delete subsection (c) from page 2, lines 25-29, and make conforming language changes. There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE SAMUELS asked who sets the price of the product being sold.

MR. COMPEAU offered that the manufacturer sets a suggested retail price, but the dealer is not limited to that since the manufacturer's suggested retail price does not take into account any of the dealer's freight charges and handling fees. In response to another question, he explained that the manufacturer remits a fixed flat rate to the dealer for warranty repairs.

REPRESENTATIVE COGHILL surmised that at issue are two points: how a dealer can charge the customer for services; and how the manufacturer will reimburse the dealer for those services.

REPRESENTATIVE GRUENBERG referred to proposed AS 45.27.030, which addresses giving notice by mail. The parties may wish to use electronic means to provide notice, but the term "mail" is defined in proposed AS 45.27.990(10) to means registered or certified mail, return receipt requested. He said he would like the bill to also allow for electronic notification.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.230 - Sale after termination or nonrenewal - and asked whether the manufacturer or distributor would still be required to provide parts for products afterwards even if a dealer's agreement is being terminated "for cause."

REPRESENTATIVE GRUENBERG noted that such a requirement could put the manufacturer or distributor at financial risk if the dealership was being shutdown for financial reasons, because then those parts could be seized by a creditor.

MR. SHATTUCK indicated that that provision is meant to ensure that the consumer can continue to receive service even after a dealer's agreement is terminated - the dealer relationship with the manufacturer with regard to parts would continue until either the manufacturer establishes a new dealership or within 24 months, whichever happens first.

REPRESENTATIVE HOLMES opined that proposed AS 45.27.230 needs to be clarified with regard to when it applies. For example, what types of terminations would warrant requiring the manufacturer or distributor to continue to provide parts.

MR. SHATTUCK noted that proposed AS 45.27.220 specifies that a manufacturer or distributor may not refuse to deliver or ship a product without just cause.

REPRESENTATIVE HOLMES pointed out that that doesn't address proposed AS 45.27.230.

1:58:11 PM

REPRESENTATIVE GRUENBERG noted that the term, "just cause" isn't defined, and cautioned that a contractual agreement could contain a provision to define "just cause" to mean whatever one wants, thus circumventing the proposed law.

REPRESENTATIVE HOLMES reiterated that proposed AS 45.27.230 does not include the words "just cause".

REPRESENTATIVE NEUMAN said the goal of this provision is to ensure that a dealer will continue to be able to provide warranty repairs until such time as the manufacturer or distributor enters into an agreement with another dealer who can then provide service to the first dealer's customers.

REPRESENTATIVE HOLMES relayed that she is still concerned with proposed AS 45.27.230.

CHAIR RAMRAS surmised that her concern is that proposed AS 45.27.230 forces the manufacturer or distributor to continue to have a relationship with the dealer.

REPRESENTATIVE HOLMES concurred; a manufacturer or distributor may have a very good reason for terminating an agreement with a dealer, and this provision doesn't take that into account.

REPRESENTATIVE GRUENBERG surmised that if the dealer is in bankruptcy or goes out of business, this provision essentially forces the manufacturer to set up its own dealership.

2:01:31 PM

CHAIR RAMRAS relayed that his intent is to clean up some of the nebulous aspects of Version K, as well as those provisions that put pressure on the manufacturer/distributor.

REPRESENTATIVE SAMUELS posed a scenario in which the dealer has not been paying the manufacturer or distributor for the products and parts. Under proposed AS 45.27.230, the manufacturer or distributor must still keep sending the dealer parts. He said he agrees with the intent of proposed AS 45.27.230, which is to offer consumer protection.

CHAIR RAMRAS emphasized that they need to be fair to the manufacturers as well.

MR. COMPEAU said that because the intent of this legislation has always been to provide consumer protection, it is hard to consider the manufacturer/distributor's view point. He surmised that the provision, which was suggested by the DOL, in proposed AS 45.27.230 limiting the continuance of the dealer's relationship with regard to providing parts to either just 24 months or to when an agreement is entered into with another dealer will provide an incentive to the manufacturer to establish another dealer. He offered his belief that once a dealer is bankrupt, he/she will no longer be able to purchase parts from the manufacturer/distributor, and so proposed AS 45.27.230 would not apply.

REPRESENTATIVE GRUENBERG acknowledged that proposed AS 47.27.230 doesn't require the manufacturer/distributor to sell the dealer parts if he/she has gone out of business, but again pointed out that it still puts the manufacturer/distributor at great risk because it could be argued that the manufacturer might be required to sell products to a dealer even when the dealer's credit is no good.

MR. COMPEAU said manufacturers often place dealers on cash on delivery (COD) status.

REPRESENTATIVE GRUENBERG argued, though, that the bill requires the manufacturer to sell the dealer parts regardless of whether the dealer can pay for them. He pointed out that the bill doesn't address who is allowed to make final decisions in the event of a dispute between the manufacturer/distributor and the dealer; litigation is costly and HB 303 does not provide provisions for arbitration.

CHAIR RAMRAS questioned whether proposed AS 45.27.230 should simply be removed.

REPRESENTATIVE NEUMAN expressed a willingness to have proposed AS 45.27.230 removed.

REPRESENTATIVE GRUENBERG offered his understanding that bankruptcy law doesn't allow one creditor to be treated differently from another creditor.

REPRESENTATIVE SAMUELS disagreed.

2:09:13 PM

CHAIR RAMRAS made a motion to adopt Amendment 2, to delete proposed AS 45.27.230 from page 4, lines 5-14. There being no objection, Amendment 2 was adopted.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.240 - Delivery of products in reasonable quantities - and asked whether the term, "reasonable quantities" has already been defined, who would determine what constitutes a reasonable quantity, or whether it is a common term.

CHAIR RAMRAS posed a scenario in which a dealer orders four of a product and then sells them before they even arrive. He indicated that he doesn't expect that term to cause a problem.

MR. SNIFFEN, in response to a question, stated that he is not aware of a broader interpretation of the term, "reasonable quantity", and characterized Chair Ramras's scenario as identifying that term fairly accurately.

REPRESENTATIVE GRUENBERG argued that that term will be the subject of litigation, particularly given the difficulties in shipping items into and around Alaska.

MR. COMPEAU pointed out that proposed AS 45.27.240 also provides an exception to its mandate when the delay, refusal, or failure to deliver products in reasonable quantities is beyond the control of the manufacturer, the distributor, or a person related to either. No one can predict which items will sell well, and dealers simply want the opportunity to receive the products that are in demand.

REPRESENTATIVE DAHLSTROM concurred, and relayed her own experience in purchasing a four-wheeler with limited color options. She noted that she was not able to purchase one in the color she wanted, because those vehicles had already been sold.

REPRESENTATIVE GRUENBERG surmised that the dealer could use this provision to threaten the manufacturer with litigation if the dealer is not given priority with regard to the next shipment.

REPRESENTATIVE COGHILL opined that all of proposed AS 45.27.240 is problematic, not just the term, "reasonable quantities", adding that as currently written, proposed AS 45.27.240 puts pressure on the manufacturers to produce.

REPRESENTATIVE GRUENBERG concurred, and suggested that proposed AS 45.27.240 may need to be altered a bit.

REPRESENTATIVE HOLMES, with regard to the aforementioned exception, observed that production amount could be interpreted to be within the control of the manufacturer. She too suggested that this provision should be altered to take that into consideration.

CHAIR RAMRAS concurred, and recommended that the sponsor should consider addressing that issue as the bill continues through the process.

2:15:33 PM

REPRESENTATIVE HOLMES referred to proposed AS 45.27.250 - Selection of delivery method - and asked who would pay for the shipping, given that under this provision the dealer is authorized to select the shipping method and carrier.

REPRESENTATIVE GRUENBERG surmised that the manufacturer covers the cost of shipping the products to the dealer. He offered his understanding that another provision of the bill stipulates that shipping on returned items is paid for by the dealer.

REPRESENTATIVE NEUMAN noted that the intent of proposed AS 45.27.250 is to allow the dealer to select what he/she considers to be the best method for shipping, since a manufacturer might not be aware of any local methods of shipping goods inexpensively; this provision should keep costs down for the consumer.

REPRESENTATIVE HOLMES pointed out, though, that proposed AS 45.27.250 doesn't actually stipulate that; instead, it simply says that the manufacturer may not refuse to allow the dealer to select the method and carrier. She again asked who is required to cover those shipping expenses. For example, a dealer may choose overnight express shipping if he/she is not required to cover the shipping charges. In other words, is the person who is not paying the shipping bill getting to select the method of shipping?

REPRESENTATIVE NEUMAN offered his understanding that who pays for shipping depends on the quantity being purchased, and that the manufacturer/distributor and dealer generally work out such issues via the agreement; proposed 45.27.250 merely provides a default when the agreement doesn't speak specifically speak to method and carrier of delivery.

REPRESENTATIVE HOLMES indicated that that still doesn't answer her question.

2:19:54 PM

CHAIR RAMRAS referred to a letter dated February 13, 2007, from Kathy Van Kleeck, of the Specialty Vehicle Institute of America (SVIA), that with regard to proposed AS 45.27.250, read:

> We are not aware of any other state statute providing that a dealer can dictate the method and carrier for product deliver. Manufacturers have an established delivery system and using another carrier or method will raise costs, not only for delivery itself, but also in manpower costs for administering different systems.

REPRESENTATIVE SAMUELS opined that a manufacturer shipping a large quantity of snowmobiles would obtain a break in the shipping costs, and the dealer may not know the shipping cost per unit because that type of information is proprietary and the manufacturer is not required to share that information with the dealer.

MR. COMPEAU said manufacturers generally sign contracts with specific carriers to ship most of their products. He surmised that the dealer would be responsible for the shipping costs.

REPRESENTATIVE SAMUELS posed a scenario in which a distribution hub in Anchorage ships products to a dealer located in Bethel. He opined the dealer may have options for better shipping rates with specific carriers since he/she would have forged relationships with local shippers.

MR. COMPEAU explained that most manufacturers ship to a hub and then the dealers have to arrange for shipping from the hub to points in rural Alaska.

REPRESENTATIVE GRUENBERG said he doesn't see anything in the bill that would preclude the manufacturer, as the drafter of a contract of adhesion, from requiring the dealer to waive the protections outlined in HB 303.

REPRESENTATIVE NEUMAN offered to work with Representative Gruenberg on that issue, and acknowledged that addressing that point might improve the bill.

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REPRESENTATIVE HOLMES noted that proposed AS 45.27.800 reads, "If a provision in an agreement violates this chapter, the provision is not enforceable".

REPRESENTATIVE GRUENBERG pointed out that including a waiver in the agreement may not be considered a violation of AS 45.27.

REPRESENTATIVE COGHILL offered that in his experience, some manufacturers will only ship by highway methods and will not use shippers that do ship to Alaska, since Alaska is not part of the contiguous United States. He surmised that he appreciates the dealer having the option to select the delivery method in order to provide better service to customers.

REPRESENTATIVE HOLMES said she would like to see this issue addressed at some point, but she does not yet have a specific amendment in mind unless it would be to change the provision such that it would instead simply create a duty for the parties to consult with each other on this issue.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.260 - Product damage responsibility - and expressed concern that a potential loophole may exist in that under subsection (c), a dealer is responsible for damage to a product after it is accepted from the carrier, whereas under subsection (d), the dealer is allowed 10 business days after the product is delivered to refuse to accept the product. She posed a scenario in which the product arrives at the shop and is then damaged by the dealer's forklift, but the dealer, under subsection (d), then refuses to accept the product even though he/she is the one responsible for the damage.

CHAIR RAMRAS noted that his business once received a shipment of 63 televisions, 48 of which needed repair. He relayed that it took 10 days to obtain the return authorization (RA). However, the manufacturer elected to send a representative to pick up the entire shipment of 63 televisions rather than repair the 48 damaged television sets. He surmised that the 10 days reflected in proposed AS 45.27.260(d) would allow for transactions of that type to occur.

REPRESENTATIVE HOLMES said she does not have a problem with the 10-day provision remaining in the bill, so long as the manufacturers are not held responsible for damage that occurs once the products are in the dealer's possession.

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CHAIR RAMRAS noted that the last sentence in subsection (c) says, "An authorized dealer accepts a product when the authorized dealer signs a delivery receipt for the product." He said he assumes that means that once a dealer accepts the product, then the dealer has essentially purchased the product.

REPRESENTATIVE HOLMES concurred, but maintained that subsection (d) creates an ambiguity in that regard because the dealer appears to have an additional 10 days in which to reject the product.

CHAIR RAMRAS suggested deleting subsection (d).

REPRESENTATIVE GRUENBERG argued against doing so at this time, and suggested instead that the next committee of referral could examine that provision.

REPRESENTATIVE GRUENBERG pointed out that the dealer is simply signing receipt of the box the product is being delivered in,

[and may not know whether the product is damaged until the shipment is later opened].

REPRESENTATIVE NEUMAN concurred.

REPRESENTATIVE HOLMES referred to proposed 45.27.300 - Manufacturer or distributor mandatory repurchase - and expressed concern that it would allow a dealer to make bad purchasing decisions at no cost to himself/herself. Furthermore proposed AS 45.27.340 stipulates that the amount of repurchase be based on the dealer's landed cost, which, she surmised, includes fees for handling and storing products.

REPRESENTATIVE DAHLSTROM asked how often products are sold back to the manufacturer. She relayed that she appreciates being able to buy "last year's model" at a marked down price.

MR. COMPEAU relayed that a repurchase situation might occur if the manufacturer has overloaded the dealer with more product than he/she can sell, and that in those instances, the manufacturer would typically find another dealer to take control of the excess product. It would be rare, he opined, for the dealer to ship the excess product back to the manufacturer.

REPRESENTATIVE COGHILL posed a scenario in which a dealer provides notice to the manufacturer, as provided under proposed AS 45.27.300, and subsequently files for bankruptcy. He then referred to the language on page 5, line 17-18, which in part read, "manufacturer or distributor shall, at a minimum, repurchase from the authorized dealer's inventory", and expressed concern that the word, "shall" and the words, "at a minimum" conflict with each other. He suggested that the words, "at a minimum" should be removed.

2:33:47 PM

CHAIR RAMRAS made a motion to adopt Amendment 3, to delete from page 3, line 17, the words "[,] at a minimum,". There being no objection, Amendment 3 was adopted.

REPRESENTATIVE GRUENBERG suggested that a review of the interplay between HB 303 and the current bankruptcy law should also be undertaken.

REPRESENTATIVE HOLMES expressed a desire to ensure that HB 303, in addition to protecting consumers and [dealers] from over-reaching manufacturers and distributors, also provides

protections for manufacturers and distributors from unscrupulous dealers.

CHAIR RAMRAS remarked, "The bill overreaches."

REPRESENTATIVE HOLMES suggested that under the repurchase provisions of the bill, an unscrupulous dealer, for example, could have a manufacturer send a lot of product and then require the manufacture to buy it all back and pay all the shipping, handling, and storage costs.

REPRESENTATIVE GRUENBERG surmised that manufactures/distributors would probably like members to review the term, "landed cost" as well to ensure that it isn't defined too broadly in the bill.

2:36:28 PM

REPRESENTATIVE SAMUELS expressed concern that HB 303 would allow a dealer to over order products every year without being responsible for the cost of doing so.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.330 - Failure to repurchase - and noted that the term, "inventory value" as used on page 6, line 14, is not defined elsewhere in HB 303. She asked whether this is a common term or if it is defined in other statutes.

REPRESENTATIVE NEUMAN offered his belief that they could formulate a description of that term, conceptually, right now.

CHAIR RAMRAS suggested instead that that term be defined by the next committee of referral.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.340, and offered her view that the definition of "landed cost" - seems to allow the dealer the discretion to decide what costs are included and how high they will be; the definition of "landed cost" - located on page 12, lines 21-24 - reads:

> (9) "landed cost" means the total cost of a product delivered at a given location, including the initial authorized dealer invoice price and any freight, transportation, flooring expense, interest expense, authorized dealer preparation cost, assembly cost, and reasonable handling cost;

REPRESENTATIVE HOLMES referred to proposed AS 45 27.400 - Warranty provided - and characterized it as awkwardly worded.

REPRESENTATIVE GRUENBERG referred to proposed AS 45.27.350 - Carrier selection and costs - and suggested that members compare that to the language of proposed AS 45.27.250 - Selection of delivery method. Proposed AS 45.27.350 outlines who is responsible for the transportation and storage costs, whereas proposed AS 45.27.259 does not. He opined that the party who gets to select the transportation/delivery method and carrier should also be required to pay the transportation and storage costs. In this way, HB 303 would be treating the parties equitably.

CHAIR RAMRAS acknowledged that point.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.410 - Defective products - and indicated that a provision that requires the manufacturer to replace the entire product when an original factory part is not available to complete the warranty repair seems unreasonable in instances where the part is small or nonessential.

MR. COMPEAU explained that generally, when the damaged part is a component of the boat, for example, only the damaged part would be returned. However, if the hull on that boat has a structural defect that can't be repaired, the entire boat needs to be returned to the manufacturer.

REPRESENTATIVE HOLMES surmised that for the most part, most consumers would not want to return their whole boat if just a small part is defective. She suggested, though, that this issue be considered further to ensure that nothing is overlooked. Referring to proposed AS 47.27.430 - Timely warranty service and claims - she said she was not certain who would determine what constitutes "timely", or about using the word "timely" in statute.

MR. SNIFFEN said he was not aware of other statutes that use that particular phrase.

2:43:00 PM

CHAIR RAMRAS made a motion to adopt Amendment 4, to delete proposed 45.27.430 from page 7, lines 25-30, and immediately announced that Amendment 4 was adopted.

REPRESENTATIVE LYNN questioned whether they should instead just delete the word, "timely" [where it appears in proposed AS 45.27.430].

REPRESENTATIVE HOLMES and LYNN objected to the motion to adopt Amendment 4.

REPRESENTATIVE NEUMAN expressed a preference for either deleting only the word, "timely" from proposed AS 45.27.430, or else defining that term in the bill. He explained that consumers generally want to know when the warranty work will be completed.

CHAIR RAMRAS characterized HB 303 as extraordinarily top heavy.

CHAIR RAMRAS withdrew Amendment 4. He noted that the matter could again be addressed in the bill's next committee of referral.

2:44:28 PM

REPRESENTATIVE HOLMES referred to proposed AS 45.27.440(d) - Basis for reimbursements - and noted that the rate for reimbursement of product parts, should a manufacturer's full suggested retail price not exist, is 1.5 times the dealer's landed cost. She expressed concern with that language in light of the discussion thus far regarding the definition of the term, "landed cost".

CHAIR RAMRAS questioned whether subsection (d) should be deleted.

REPRESENTATIVE COGHILL made a motion to adopt Amendment 5, to delete from page 8, lines 16-18, the sentence, "If a manufacturer's full suggested retail price does not exist, the reimbursement shall be calculated at 1.5 times the authorized dealer's landed cost." There being no objection, Amendment 5 was adopted.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.450 - Shipping costs for returned items - and expressed concern with the language in subsection (a) that reads, "A manufacturer or distributor shall pay for any costs incurred by the authorized dealer, plus 25 percent of the normal authorized dealer's cost as a handling fee". She said she doesn't know whether that is the correct amount.

CHAIR RAMRAS remarked, "It seems like we're setting shop policy."

REPRESENTATIVE HOLMES concurred.

MR. COMPEAU said that the suggested industry standard for the cost of handling and stocking parts ranges between 18 and 23 percent.

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CHAIR RAMRAS made a motion to adopt Conceptual Amendment 6, to delete proposed AS 45.27.450(a) from page 8, lines 19-23. There being no objection, Conceptual Amendment 6 was adopted.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.480 - Performance of warranty service work - and expressed concern that it doesn't specify what is meant by the term, "readily available".

CHAIR RAMRAS suggested that that issue be addressed in the bill's next committee of referral.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.500 - Warranty claim disapproval, and expressed concern that it is not clear when the 30-day period outlined therein would start.

CHAIR RAMRAS suggested that that issue be addressed in the bill's next committee of referral.

REPRESENTATIVE GRUENBERG offered his understanding that the intent is to have the 30-day period begin upon receipt of the claim.

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REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 7, such that the words, "after receipt of the claim by the manufacturer or distributor" would be inserted on page 9, line 22, after the words, "30 days". There being no objection, Amendment 7 was adopted.

REPRESENTATIVE HOLMES asked Mr. Sniffen whether the language of proposed AS 45.27.600, which addresses liability resulting from an audit, is already part of [Alaska's] UCC.

MR. SNIFFEN said he doesn't belief that the specific liability provisions in proposed AS 45.27.600 are covered in [Alaska's] UCC. The biggest concern with this provision, he offered, is that it changes the statute of limitations, from three years to two years, for a manufacturer to bring a claim against a dealer under a contract.

CHAIR RAMRAS suggested that that issue be addressed in the bill's next committee of referral.

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REPRESENTATIVE HOLMES referred to proposed AS 45.27.610 - Competition with authorized dealer - and questioned its meaning and whether it could cause problems.

REPRESENTATIVE SAMUELS offered his understanding that it means that a manufacturer/distributor cannot compete with an authorized dealer [of the same line, brand, model, or make of product].

REPRESENTATIVE GRUENBERG pointed out that a manufacturer/distributor would not be competing with a dealer unless they were established in the same area.

REPRESENTATIVE HOLMES asked whether online sales would be viewed as competition.

REPRESENTATIVE GRUENBERG said HB 303 does not address online sales.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.630 - Advertizing - and asked whether other statutes already prohibit false or misleading advertising.

MR. SNIFFEN said that the Alaska Unfair Trade Practices and Consumer Protection Act already prohibits such conduct, and ventured that it causes no harm to have similar language in other provisions of statute.

REPRESENTATIVE HOLMES suggested, then, that it is not necessary to include proposed AS 45.27.630 in HB 303.

REPRESENTATIVE GRUENBERG, offering his recollection that under the bill, the penalty for such conduct is a class B misdemeanor, asked what the penalty is for a violation of the Alaska Unfair Trade Practices and Consumer Protection Act.

MR. SNIFFEN said that for state-enforcement actions, the penalties range between $1,000 and $25,000 per violation, and if an individual brings an action, he/she could be awarded treble damages or $500, whichever is less, plus punitive damages and all fees and costs. He noted that the Alaska Unfair Trade Practices and Consumer Protection Act doesn't contain any criminal provisions.

REPRESENTATIVE GRUENBERG suggested leaving proposed AS 45.27.630 as is since then the bill would allow for both civil and criminal actions.

REPRESENTATIVE HOLMES agreed to let that issue be addressed further in the bill's next committee of referral.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.640 - Required posting - and asked whether a notice should also be posted informing consumers that warranty work would not be performed by a factory-certified or factory-trained technician.

REPRESENTATIVE GRUENBERG recalled that the legislature previously amended the state's automobile statutes to require the posting of information regarding whether those who performed repairs were paid on commission.

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REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 8, "that similar language from the automobile chapter be added here, that if they are paid on a commission basis [that] that also be included in the notice."

REPRESENTATIVE GRUENBERG, in response to a question, indicated that the aforementioned notice would be posted in the shop.

CHAIR RAMRAS objected for the purpose of discussion.

MR. SNIFFEN relayed that Representative Gruenberg was referring to language in AS 45.25.530, which states that motor vehicle service operations whose employees receive a commission must post a conspicuous sign to inform consumers of that fact. He surmised that Conceptual Amendment 8 would add similar language to HB 303.

CHAIR RAMRAS withdrew his objection. Noting that there were no further objections, announced that Conceptual Amendment 8 was adopted.

CHAIR RAMRAS remarked that the bill sponsor still has a great deal of work to do on the bill.

REPRESENTATIVE HOLMES referred to proposed AS 45.27.810 - Manufacturer and distributor liability - and asked whether existing law already addresses this issue. She questioned whether it is appropriate to retain the language of proposed AS 45.27.810(b)(1) requires the manufacturer/distributor to hold harmless and indemnify the dealer for damages arising out of alleged acts of the manufacturer/distributor that relate to the dealer's sale or other handling of the product.

MR. SNIFFEN characterized that as an unusual requirement. He said he is not certain that similar indemnification language exists elsewhere in statute, and offered to work with the bill's sponsor to address this issue.

3:00:28 PM

REPRESENTATIVE HOLMES referred to proposed AS 45.27.820 - Civil penalty - and noted that although this provision in CSHB 303(L&C) says, "Notwithstanding AS 45.50.551, a person who violates this chapter is liable to the state for a civil fine of not more than $5,000 for each day the violation continues", this provision in Version K now says, "In addition to the penalties allowed under AS 45.50.471 - 45.50.561, a person who violates this chapter is liable to the state for a civil fine of $5,000 for each day the violation continues". She asked why this provision was changed in this manner, particularly given the penalties already provided for in the Alaska Unfair Trade Practices and Consumer Protection Act.

REPRESENTATIVE NEUMAN said that that change came at Mr. Sniffen's recommendation.

MR. SNIFFEN said that the change from "Notwithstanding AS 45.50.551" to "In addition to the penalties allowed under AS 45.50.471 - 45.27.561" will allow the state to also enforce the provisions under the Alaska Unfair Trade Practices and Consumer Protection Act. He relayed, though, that he'd not suggested the change from "a civil fine of not more than $5,000" to "a civil fine of $5,000". He said that he thought the penalties under the Alaska Unfair Trade Practices and Consumer Protection Act

were sufficient, but if the intent is to make violations of HB 303 more egregious, than additional penalties might be in order.

CHAIR RAMRAS characterized the $5,000 penalty as egregious.

MR. SNIFFEN, in response to comments and questions, offered his interpretation that the term, "per violation" means per transaction. Under the bill, the civil penalty could end up being very high, depending on the conduct.

CHAIR RAMRAS, referring to proposed AS 43.27.830, pointed out that the aforementioned letter by the SVIA indicates that it feels that creating a criminal penalty is an unreasonably harsh consequence for what amounts to a mere business dispute. He questioned whether it is appropriate to make a violation of proposed AS 45.27 a class B misdemeanor.

MR. SNIFFEN said it is highly unusual to impose criminal penalties for "these kinds of violations," and the "anti-trust statute" is the only other consumer-related statute that imposes criminal penalties for "this kind of conduct."

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CHAIR RAMRAS made a motion to adopt Amendment 9, to delete proposed AS 47.27.830 from page 11, lines 11-12. There being no objection, Amendment 9 was adopted.

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 10, "to adjust the civil penalties" in proposed AS 45.27.820.

MR. SNIFFEN suggested that Conceptual Amendment 10 could insert the language, "A violation of provisions of this Act are considered a violation of AS 45.50.471 - 45.50.561."

CHAIR RAMRAS, after ascertaining that there were no objections, announced that Conceptual Amendment 10 was adopted.

REPRESENTATIVE HOLMES relayed that she still has concern over the definition of landed cost.

CHAIR RAMRAS suggested to Representative Neuman that perhaps HB 303 should be divided into separate pieces of legislation, and characterized the bill as a "very dense, obtuse, ambitious effort that will have a very difficult time" passing if its focus is not narrowed down.

3:08:54 PM

REPRESENTATIVE SAMUELS moved to report the proposed committee substitute (CS) for HB 303, Version 25-LS1183\K, Bannister, 2/13/08, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 303(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:09 p.m.