

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

January 30, 2008

1:03 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mark Neuman, Vice Chair
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Jay Ramras
Representative Robert L. "Bob" Buch
Representative Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Alaska Comprehensive Health Insurance Association (High-Risk Health Pool) Overview

- HEARD

HOUSE BILL NO. 303

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

- MOVED CSHB 303(L&C) 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

WITNESS REGISTER

LINDA HALL, Director
Division of Insurance
Anchorage Office
Department of Commerce, Community, & Economic Development
(DCCED)
Anchorage, Alaska
POSITION STATEMENT: Introduced speakers during the overview of the Alaska Comprehensive Health Insurance (High Risk Health Pool).

CECIL BYKERK, Executive Director
Alaska Comprehensive Health Insurance Association
Omaha, Nebraska
POSITION STATEMENT: Presented the Alaska Comprehensive Health Insurance Association (High-Risk Health Pool) overview and answered questions.

REX SHATTUCK, Staff
to Representative Mark Neuman
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented changes to HB 303 and answered question during the discussion of HB 303.

DUDLEY BENESCH, Board Member
Alaska Marine Dealers Association;
Partner, Alaska Mining and Diving Supply
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 303 and answered questions.

CRAIG COMPEAU, Owner
Compeau's Marine
Fairbanks, Alaska
POSITION STATEMENT: Testified and answered questions.

KATHY VAN KLEEK, Senior Vice-President
Government Relations
Specialty Vehicle Institute of America (SVIA)
Irvine, California
POSITION STATEMENT: Testified in opposition to HB 303 and answered questions.

DAVID DICKERSON, Director
State Government Relations

National Marine Manufacturers Association (NMMA)
Washington, D.C.

POSITION STATEMENT: Testified and answered questions during the discussion of HB 303.

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

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

ACTION NARRATIVE

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at [1:03:57 PM](#). Representatives Buch, Gardner, Neuman, and Olson were present at the call to order. Representatives Ledoux, Gatto, and Ramras arrived as the meeting was in progress.

Alaska Comprehensive Health Insurance Association (High Risk Health Pool) Overview

[1:04:17 PM](#)

CHAIR OLSON announced that the first order of business would be an overview of the Alaska Comprehensive Health Insurance Association (High Risk Health Pool).

LINDA HALL, Director, Division of Insurance, Anchorage Office, Department of Commerce, Community, & Economic Development (DCCED), introduced Cecil Bykerk, President, Bykerk Consulting, who is the Executive Director of the Alaska Comprehensive Health Insurance Association, and two board members, Brian Angel, American Family Life Assurance Company of Columbus, and Shawn Pollock, Vice President, Government and Industry, Physician Mutual, but noted that both board members represent the Alaska Comprehensive Health Insurance Association (ACHIA) today.

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CECIL BYKERK, Executive Director, Alaska Comprehensive Health Insurance Association, gave an overview of the Alaska Comprehensive Health Insurance Association (ACHIA). He related that his involvement with ACHIA began as a board member of ACHIA from its inception in [1993]. He noted that he became the executive director of ACHIA in 2004.

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MR. BYKERK, in response to a question from Representative Gardner, clarified that since 1993, ACHIA has grown to serve about 500 policyholders. He further noted that ACHIA has served over 1,700 people since 1993, and that in the late 1990s ACHIA was recognized as the federal Health Insurance Portability and Accountability (HIPPA) alternative, so people coming out of government coverage would be eligible for coverage under ACHIA. Since 1993, ACHIA has paid out over \$61 million in claims, and policyholders have paid over \$23 million in premium. The association, ACHIA, provides health insurance coverage for those people who are uninsurable. He specified that the \$40 million shortfall is recovered primarily from assessments by the insurance companies of the people who have individual and small group coverage. Premiums are based on the standard market rate, and are marked up at approximately 40 percent above market rates. He referred to a pie chart on a handout, provided in committee member packets, labeled, "Alaska Comprehensive Health Insurance Association "ACHIA" that shows that [35 percent] of ACHIA's funding is obtained from premiums, and [61 percent] is obtained from assessments. He offered that this is a significant subsidy for high-risk insurance policyholders, but coverage is made available to a segment of the public that is normally uninsurable. He opined that this is a very important program and the feedback from policyholders given at ACHIA's annual meeting is heartwarming to hear.

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REPRESENTATIVE GARDNER in an effort to follow the figures given, asked who pays the balance between the \$23 million in premiums and the \$41.2 million in benefits, and noted that \$2 million was paid by federal grants.

MR. BYKERK referred to his handout and answered that that the shortfall, the assessments collected column, represents fees paid by assessing medical insurance companies who do business in Alaska. He said the assessments are [paid by] major medical insurance, Medicare Medigap (Supplemental Insurance), and health insurance, including stop-loss coverage that covers health care expenses.

REPRESENTATIVE GARDNER offered that insurance companies doing business in Alaska must need to make extra money in order to stay in business.

MR. BYKERK clarified that in some cases the companies absorb it, or add a specific surcharge to their premium to pay the assessment, but in general the assessments range from 1 percent to a maximum of approximately 1.4 percent of the premium. So, he opined, the assessment charged is not a huge burden, but it certainly does impact insurance company costs. He noted that insurance companies were helped when the legislature passed a bill that authorizes insurers to offset half of the assessments against the premium taxes they pay to the State of Alaska. The 2007 premium taxes and assessments, with a one-year lag time, were assessed by ACHIA for the first time in 2008, and can reduce insurance companies' premium tax obligations to the state by 50 percent. He noted that the reimbursement is a general fund revenue source because the premium taxes paid to ACHIA are deposited to the general fund.

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REPRESENTATIVE GARDNER offered her understanding that the cost of the 50 percent premium of the high-risk insurance policyholder is paid by the state, and 50 percent is paid by the insurance company.

MR. BYKERK opined there is no doubt that the cost of the premium assessment is passed on to the consumer. He offered that there are 35 states with some form of a high-risk pool. He added that about two-thirds of the states fund the pool through general fund revenue, and that some states make direct appropriations, but others provide premium tax offsets. He offered to provide committee members a copy of an annual publication by the National Association of High-Risk Pools, for those interested in how other states are doing with respect to funding high-risk insurance pools and the benefits of high-risk pool insurance. He added that the benefits provided by ACHIA to its policyholders are first rate benefits, comparable to what is available in the individual marketplace.

CHAIR OLSON inquired as to whether the assessments to insurance companies were on a pro rata basis.

MR. BYKERK responded yes. He explained the process ACHIA uses to calculate the individual premium assessment paid by insurance companies is derived by obtaining a list of providers from the Division of Insurance then dividing the total premium dollars by the total premium assessments paid, and arriving at the percentage applicable to each insurance company. He also

expressed his appreciation for the help and support from the Division of Insurance to ACHIA.

REPRESENTATIVE GARDNER surmised then that the insurance being discussed pertains only to the high-risk insurance pool.

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REPRESENTATIVE GARDNER inquired whether the \$41 million represented the total insurance assessment.

MR. BYKERK clarified that \$41 million is the amount that has been assessed from inception until now, and of that one-third has been paid for premiums and two-thirds has been paid for assessments. He offered that ACHIA believes this shows that the program is working because people are enrolled in coverage, and pay a portion of their premiums. He explained that the high-risk group is helped because insurers cannot price high-risk insurance that is affordable, and is, in fact, the reason why this segment of the public is considered uninsurable.

REPRESENTATIVE BUCH inquired as to which companies are assessed.

MR. BYKERK answered that the Division of Insurance tabulates the premiums that include all health insurance premium policies and hospital indemnity policies, but does not include automobile insurance, disability income insurance, long-term care, workers' compensation, or self-funded plans such as the State of Alaska, which is a fully self-funded insurance plan.

MR. BYKERK, in response to a comment, noted that legislators should have received a copy of the 2006 ACHIA annual report, which includes the specific companies assessed and the percentage of the gross premiums they pay.

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REPRESENTATIVE LEDOUX asked whether a person who is uninsured who learns he/she has cancer would qualify for the high-risk pool insurance.

MR. BYKERK said that under the program, an applicant is eligible if they apply, pay the premium, is under the age of 65, is not be eligible for other insurance coverage, and can prove declination from an insurance carrier, except that there is a list of illnesses for which the person does not need to show a declination. He noted there is a six-month waiver for a pre-

existing condition, which is waived if the party comes in under HIPPA, or the federal employees' program, and is also waived if the person's insurance was canceled, which generally only occurs when a carrier leaves the state.

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REPRESENTATIVE LEDOUX offered her belief that it seems as if the high-risk insurance is for people who have catastrophic illnesses and is not for day-to-day coverage. She added that it almost seems as if one could make a decision to go without insurance, but could then come under the state program for a catastrophic event.

MR. BYKERK answered that the purpose of the pre-existing condition waiver is to encourage people to apply. He explained the general principal is that insurance only works when people pay premiums, but do not collect on insurance claims. He said if the pre-existing condition waiver period did not exist, people would only apply when they contracted a catastrophic illness, and thus could avoid paying the premiums. He related an instance under ACHIA in which gastric bypass surgery patients would pay the premiums for six months to have the costly surgery covered, then drop the policy and no longer pay the premiums. He said that policies range from those with a \$1,000 deductible to those with a \$15,000 deductible with a considerably reduced premium and offered that it is not uncommon for people to purchase catastrophic coverage with a \$10,000 deductible policy, because it is worthwhile just to have the coverage when something major happens.

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REPRESENTATIVE BUCH inquired as to whether there are caps for coverage.

MR. BYKERK answered that ACHIA originally had a \$1 million maximum payment, although it is now commonplace to have \$3, \$5, or \$10 million caps. He said that two years ago ACHIA discovered a policyholder was pushing his/her \$1 million maximum so the ACHIA board met and raised the maximum payable to \$2 million. He offered that in this way, ACHIA can manage its overall risk, but he noted that it would be difficult for ACHIA if it received an \$8 million claim in one year.

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REPRESENTATIVE BUCH asked whether ACHIA has had anyone exceed the maximum.

MR. BYKERK answered that when a person gets to the point of reaching his/her maximum benefit there is no other place for that person to go except to the federal government for relief, although he noted that ACHIA has not yet had such a case.

REPRESENTATIVE LEDOUX inquired as to whether ACHIA covers mental health benefits.

MR. BYKERK answered that ACHIA does cover mental health, but there is an internal maximum limitation of \$4,000.

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The committee took an at-ease from 1:28 p.m. to 1:31 p.m.

HB 303-MARINE & MOTORIZED RECREATIONAL PRODUCTS

[1:31:48 PM](#)

CHAIR OLSON 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 HB 303.]

REPRESENTATIVE BUCH made a motion to adopt a proposed committee substitute (CS) for HB 303, Version 25-LS1183\C, Bannister, 1/29/08 [as the work draft]. There being no objection, Version C was before the committee.

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REPRESENTATIVE NEUMAN, speaking as the sponsor, explained that he represents House District 15 and that marine outboard and snowmobile dealerships approached him to introduce HB 303 in order to reduce the cost of warranty work, [particularly] in rural Alaska, and to keep costs more in line [with the costs for warranty work in the] automotive industry. He opined that HB 303 will create a better business climate. Although there are a few changes contained in the committee substitute, there was not any substantial change to the bill, he noted.

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REX SHATTUCK, Staff to Representative Mark Neuman, Alaska State Legislature, characterized the changes in the committee substitute as primarily clean-up language. He explained that proposed AS 45.27.410 (c), has been restructured to reflect that a dealer must return the defective product prior to receiving an identical product that is not defective, and that proposed AS 45.27.450 was clarified by inserting the language "cost as a handling fee" to reflect the specific cost of the handling fee by the dealer. Proposed AS 45.27.610(b) was changed to clarify the date and to decrease the timeframe from 3 months to 30 days, and thus proposed AS 45.27.610(b) now reads:

If an authorized dealer retains a product part for at least 30 days after the warranty claim is filed, the authorized dealer is not liable to a manufacturer or distributor for failing to retain the product part for a longer time.

MR. SHATTUCK went on to explain that the next few changes [relate to] trailers. Under proposed AS 45.27.990, paragraph (2) the language, "and includes a trailer for an all-terrain vehicle" was stricken to eliminate trailers from the definition of an all-terrain vehicle because DMV had some issues with including trailers. In proposed AS 45.27.990 paragraph (14), the reference to a watercraft trailer was stricken. In proposed AS 45.27.990, paragraph (15), the reference to trailer was stricken. All of proposed AS 45.27.990, paragraph (18) which defines "trailer" was stricken. These changes require renumbering the remaining paragraphs in the proposed section. He noted that the final change removes proposed Section 7 because the drafter felt that the length of time of the agreement between the dealer and manufacturer and the enactment date of HB 303 posed some coordination problems.

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REPRESENTATIVE BUCH offered that he has a good friend who would be a beneficiary of HB 303 and asked for clarification on the enforcement provision of this proposed bill.

REPRESENTATIVE NEUMAN deferred to others that will testify, but said that he thought [the bill] made it possible for industry to have the opportunity [for] enforcement.

MR. SHATTUCK suggested that one section of HB 303 addresses enforcement.

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REPRESENTATIVE GARDNER offered her belief that, in general, that businesses operate in the free market and enter into distributor or manufacturer's agreements, and that the state typically only intervenes in cases that pertain to health care, safety issues, or fraud. She offered her understanding of the sponsor's concern that in rural Alaska there are not many places to purchase equipment or to get warranty work done, but referred to proposed AS 45.27.010, as follows:

A manufacturer or distributor may not coerce or attempt to coerce an authorized dealer to enter into an agreement with the manufacturer or distributor.

REPRESENTATIVE GARDNER then inquired as to how that provision would apply differently in Alaska than [it does] in other states.

REPRESENTATIVE NEUMAN offered his understanding that businesses have gone to industry for years to ask for changes, however, they have not had success in doing so. He stated HB 303 would force changes in the relationship between manufacturers and dealers, similar to what has happened with the automotive industry [in which dealers and manufacturer's have] more of a partnership. He opined that currently the large manufacturer can tell the distributor what it must do in order to be able to carry its brand of motor or snowmobile.

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REPRESENTATIVE GARDNER, regarding wholesale distributor and manufacturer relationships, opined that each one is trying to obtain the benefit, but the manufacturer always sets the terms of the agreement.

REPRESENTATIVE NEUMAN clarified that HB 303 categorizes the manufacturer/distributor as one group and the dealer as the other group.

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REPRESENTATIVE LEDOUX surmised then that there are two separate parts to HB 303. She noted her understanding that the first

part of HB 303 outlines the agreements between manufacturers/distributors and dealers, and is followed by a second part, on page 7, Article 5, that outlines the product warranty provisions. She asked whether a manufacturer could cancel a dealer for engaging in poor business practices, except when a dealer does not meet financial requirements or where fraud is involved. She also inquired as to whether a manufacturer should be able to switch to a dealer who seems more entrepreneurial oriented when problems arise.

MR. SHATTUCK suggested that perhaps providing the committee with the formal structure might help answer some questions. He reviewed the bill sections: Section 1 adds proposed AS 45.25.920 to distinguish between motor vehicles and power sports equipment.

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REPRESENTATIVE LEDOUX inquired as to whether a car manufacturer dealership could only be terminated when the aforementioned two conditions were met.

MR. SHATTUCK offered that there are several ways in which the agreements can be terminated under HB 303. For example, the agreement could be initiated by the dealer or the manufacturer/distributor, but the agreement between the manufacturer/distributor and dealer may vary from a year to multiple years. However, in Alaska the contracts tend to be single years. In terms of the contract, HB 303 does not attempt to insert the state into the process, except as it draws a parallel to the automotive dealerships and manufacturer's relationships.

REPRESENTATIVE LEDOUX asked whether a car manufacturer can only cancel the dealership when the dealer fails to pay for the cars or engages in fraud.

MR. SHATTUCK further answered that there are ways for either the manufacturer or the dealer to cancel an agreement.

REPRESENTATIVE NEUMAN informed Representative LeDoux that there will be testimony by dealers who can better explain the relationship.

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MR. SHATTUCK went on to explain the sectional analysis of HB 303. He said that Article 1 addresses the agreement practices between manufacturers and dealers. Proposed AS 45.20.010-040, address the formation, cancelation, and non-renewal of the agreements, and the consent to transfer and change the existing agreement that set parameters in line with how industry currently operates. Article 2 addresses the responsibilities of the parties in proposed AS 14.27.100-120, and also the determination of the dealer's area and [sets up] how to make changes in the [dealer's] area. He said that Article 3 under proposed AS 45.27.200-260, addresses sale or shipment prior to an agreement, and the respective responsibilities of the manufacturer/distributor and the dealer on matters such as involuntary order or delivery, refusal to deliver, sale or termination, and delivery and condition of the products.

MR. SHATTUCK explained that proposed Article 4 provisions address product repurchase requirements, while proposed Article 5 outlines the product warranties. Proposed AS 45.27.400 - 45.27.500 addresses the written warranty requirement and also provides the basis for defective product reimbursements and shipping costs, as well as timely reimbursement for claims. All of this, he opined, creates a friendlier environment for the customer. Mr. Shattuck concluded by saying that proposed Article 6 outlines the liability resulting from audit, competition with an authorized dealer, factory recall notices, advertising, and required posting by an authorized dealer; proposed Article 7 sets up the manufacturer and distributor liability, civil and criminal penalties; and finally that proposed Article 8 outlines the exemptions and creates definitions.

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REPRESENTATIVE NEUMAN, in response to Chair Olson, answered that he has not had anyone contact this office and that the first hint of opposition surfaced in the committee materials passed out today. He related an example in which an outboard dealer sells an outboard motor to someone in Hoonah, however, the product warranty recall reveals all motors of that model have a crankshaft problem. He opined that the replacement cost or repair of the motor should be borne by manufacturer and should not be a burden for the dealer who sold the motor, who will [ultimately] pass the cost back to the customer.

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REPRESENTATIVE LEDOUX noted her agreement and offered that it seems that proposed Article 5 through the rest of HB 303 should take care of her concerns about warranty repairs. However, she maintained her concern with Article 1 because it seems unnecessary.

REPRESENTATIVE NEUMAN stated that as an attorney, Representative LeDoux probably knows more than most people that when a party has something in writing, he/she is probably better off [than with a verbal understanding]. He suggested obtaining information regarding how warranties are structured from those that deal with the issues every day.

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DUDLEY BENESCH, Board Member, Alaska Marine Dealers Association; Partner, Alaska Mining and Diving Supply, stated that HB 303 is important legislation for all Alaskan consumers, especially anyone who uses boats, outboard motors, snowmobiles, or all-terrain vehicles (ATVs) and the dealers that sell and service these products. He offered that he has seen many changes within the power sports and marine industry over his 30 plus years as a dealership partner. Although the numbers of ATVs, outboard motors, and boats is relatively small, the industry is dominated by a few very powerful manufacturers, he opined. He said manufacturers have, over time, initiated one-sided dealer agreements with all the terms, policies, restrictions, and conditions written by the manufacturer's legal staff. He said he thought these agreements have led to many problems, [which are] well-documented and written about in-trade industry publications, that have a significant impact on the Alaskan consumer and the servicing Alaskan dealer. He said he believes that HB 303 is the key to establishing a better balance in the relationship between manufacturer, the servicing dealer, and the consumer. He noted that Alaska is not alone in addressing the problems currently within the industry. In fact, according to the latest Marine Retailers Association of America (MRAA) statistics, seven states including Texas, New York, Oklahoma, Louisiana, and Missouri have passed legislation to address many, if not all of the issues addressed in HB 303. Furthermore, according to the MRAA, five states, including Alaska, have legislation pending.

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MR. BENESCH, in response to a question by Representative Gardner, explained that the MRAA is a group of marine dealers

throughout the country. The bill addresses the problem of defective product or assembly, he said, by requiring the manufacturer to solve and remedy defective design issues in a timely manner, which is not currently the case. He opined that these issues in far too many cases are not being resolved and the manufacturers often offer a temporary fix instead of finding a permanent solution. He also said that HB 303 would require the manufacturer to solve the design issue, replace the product with a non-defective product, or refund the money to the dealer as a pass through to the consumer. Currently, some manufacturers routinely ship products with known defects to a dealer, he opined, using the philosophy that "it is less expensive to fix in it in the field than in their own facility." He noted that, in many instances the manufacturer does not have the parts available to fix the product, and since a product is being shipped to a remote location, the delay can give the manufacturer time to either figure out how to fix the product or secure the necessary parts to fix the product. He said as a dealer, he frequently receives products with recall notices, sometimes that include a notice from the manufacturer that the shipment just received - that the dealer [may have] already sold - is now either unsalable, or potentially unsafe until the product is fixed. He opined that shipment of defective parts creates special problems in rural areas because the outboard, the ATV, or the snowmobile, with the defective part may already be in use. Furthermore, the vehicle may be the sole transportation used to get food and go to work. He suggested that HB 303 would prevent manufacturers from threatening dealers with product availability, the practice of overloading dealers with un-needed inventory, and dealership termination without just cause. This bill in its entirety attempts to create a level playing field by establishing a better balance between the manufacturer, the dealer, and the consumer.

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REPRESENTATIVE GARDNER asked whether it would be effective to include a disincentive in HB 303 such that when a manufacturer ships products subject to recall, the dealer is not obliged to pay for the products.

MR. BENESCH replied that, in his view, oftentimes a manufacturer does not discover the problem until the product has been shipped, or just prior to shipping the product. He offered that there are [only] four major snowmobile manufacturers, and five manufacturers of outboard motors, therefore, the dealers just don't have enough leverage. He alleged that manufacturers keep

dealers separated. He offered that although his dealership is huge and he may be the biggest dealer in North America for a particular brand, [he has found] the manufacturer to be inflexible, especially when the repair will cost the manufacturer money. He acknowledged that the provisions in HB 303 will cost the manufacturer, but he pointed out that currently, [the warranty repair] cost is borne by the dealers and the consumers.

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REPRESENTATIVE LEDOUX pointed out that proposed Section 2, Article 1, doesn't seem to deal with defective products.

MR. BENESCH answered that he appreciates this opportunity to address that issue because he thinks that issue is well addressed in Version C. He related that when a dealer does not serve the market area [well], the manufacturer can use a process to serve notice to the dealer. While the manufacturer must initially work with the dealer when the dealer does not improve or perform, [Version C gives the] manufacturer a process to repurchase the inventory back from the dealer, at the dealer's landed cost, the cost for the product and the freight. Version C specifically gives the manufacturer the ability to change dealers. In further response to a question by Representative LeDoux, he referred to page 3, lines 18-21, in proposed section, which read:

45.27.110. Changing the area of responsibility. Before changing an area of responsibility, the manufacturer or distributor shall give the authorized dealer at least 90 days' written notice by mail before the change. This section does not apply to an authorized dealer who relocates or opens additional facilities within two miles ...

MR. BENESCH, then referred to page 3, lines 24-31, proposed AS 45.27.120 (a)-(b)(3) which sets up provisions to allow a manufacturer to add an authorized dealer, which read:

Section 45.27.120. Adding authorized dealer to area of responsibility.

(a) A manufacturer or distributor may not enter into an agreement that would add an authorized dealer within the existing authorized dealer's area of responsibility without giving at least 90 days'

written notice by mail to all potentially affected authorized dealers in the area of responsibility.

(b) The notice under (a) of this section must include (1) a determination that the community or territory can support an additional authorized dealer. (2) a calculation of the financial effect on the new authorized dealer and the existing authorized dealers who may be affected; and (3) a determination of whether the existing authorized dealers of the same line of product makes, models, or classifications in the authorized dealer's area of responsibility are providing adequate representation, competition, and convenient consumer care for the same line of product makes, models, and classifications.

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REPRESENTATIVE LEDOUX interjected that she did not believe the proposed sections identify just cause for determination.

MR. BENESCH related his understanding that the intent of HB 303 is not to take away the manufacturer's ability to change authorized dealers, even though dealer changes have posed problems. He outlined that currently a manufacturer will assign a dealer and when perhaps sales slow [down] due to the economy, the manufacturer will put another dealer in the same market area and refuse to repurchase or take back the product from the initial dealer. When that happens, it negatively impacts small businesses and consumers. He said he felt that the manufacturer's predatory techniques sometimes put small businesses out of business. He recalled receiving a notice requesting an explanation as to why his company had not sold 50 lawnmowers in Barrow [because] the manufacturer's statistics showed that for every 1,000 in population, 50 lawnmowers should be sold. He stressed that manufacturers will [threaten] to set up another dealer [in the dealer's immediate area] if the dealer hasn't increased sales.

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REPRESENTATIVE LEDOUX agreed that [such tactics] might be bad for small dealers. However, [setting up another dealer] would [also] give consumers two businesses from which to choose.

MR. BENESCH explained that HB 303 contains a provision for spacing, that [mirrors] automotive [dealership] spacing, such that in an area with 4,000 or more people a manufacturer could

set up a dealership every 12 miles while in smaller villages, [dealerships] could be set at 30 mile [intervals]. Although it might seem that having a number of dealers every 12 miles makes more sense, it actually results in dealers selling their products at a loss, thus those businesses risk going out of business. He asserted that many provisions in HB 303 are aimed at [warranty] service because dealers lose money on warranty work.

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REPRESENTATIVE NEUMAN, regarding an earlier question with respect to a dealer who is not performing, referred to page 2, lines 25-28, of Version C, to proposed AS 45.27.040 which read:

Except as provided by AS 45.25.110, a manufacturer or distributor may not change an agreement with an authorized dealer unless the manufacturer or distributor gives notice by mail to the authorized dealer at least 90 days before the change.

REPRESENTATIVE NEUMAN suggested that this proposed statute allows for a change to an existing manufacturer/dealer's agreement, thus with notice [given], a manufacturer can [change] or add dealers.

REPRESENTATIVE LEDOUX, referring to Version C, page 1, lines 13-14, and to page 2, lines 1-9, pointed out that proposed AS 45.27.020 would only allow the manufacturer [to change dealers when] the dealers don't meet [two conditions], financial requirements or due to fraud.

REPRESENTATIVE NEUMAN agreed that a manufacturer cannot cancel the agreement without having just cause [to do so].

REPRESENTATIVE LEDOUX noted her agreement.

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MR. BENESCH pointed out that [each of] his dealer agreements contain a termination clause, which outlines [grounds for termination] and provides that the manufacturer can immediately [terminate a dealer] when fraud is involved.

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REPRESENTATIVE GARDNER opined that it is difficult to pass legislation without unintended consequences. She related her prior experience as a dealer, and said that oftentimes she had to explain that [doing business in Alaska is different], as was illustrated in the previous example about the [dealer's] lawnmower [sales requirement] in Barrow. She expressed concern that should [proposed HB 303] pass, some manufacturers might decide doing business in Alaska is onerous.

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MR. BENESCH related that his company, [Alaska Mining & Diving] is the largest Ski-Doo dealer in North American and is also one of the largest outboard dealers. He pointed out that Alaskan dealers are large compared to the Lower-48 dealers. Although the Alaska [outboard motor] market is not as large as the outboard [motor] market in Florida, Alaska dealerships have significant volumes because the [boat, outboard motor, or snowmobile] is utilized as an automobile. Consequently, Alaska dealerships tend to represent larger dealers for the manufacturers, and work with major manufacturers. Although some smaller manufacturers might find that [proposed HB 303] makes doing business in Alaska [onerous]; he pointed out that legislation of this type exists in seven other states. In fact, Louisiana passed legislation that licenses the actual manufacturer, the dealerships, and the salespeople. Still, all of the major manufacturers sell their products to Louisiana. He noted five states have pending legislation [of this type], and opined that manufacturers [oppose] the proposed legislation. A proposal in Michigan was thwarted, but Michigan currently is considering another bill that is [similar] to HB 303.

REPRESENTATIVE GARDNER offered her reluctance to interfere with the free business market, and opined that as a larger dealer Mr. Benesch would have some clout to negotiate. She expressed concern about the allegation that manufacturers knowingly ship defective products to Alaskans, and offered her support to add punitive provisions [to HB 303] that would exempt [dealers] from paying for product until the product is fixed.

CHAIR OLSON noted there are other people [scheduled to] testify who probably could shed light on her questions.

[2:19:58 PM](#)

REPRESENTATIVE GARDNER inquired as to the impact on dealers and consumers in states that have passed legislation similar [to HB 303].

MR. BENESCH answered that [he cannot address] the financial impact on manufacturers. However, from the annual dealer meetings he has attended, he has gleaned that dealers are extremely happy with the results. He opined [HB 303] shifts the burden of warranty issues and defective product design issues back to the manufacturers where it belongs. Mr. Benesch said he also [supports] the provisions of HB 303 that prevent a manufacturer from threatening dealers because he said he thinks this is an issue. He offered that he has 30 years experience in business and has invested lots of energy, time, and history with his manufacturers.

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REPRESENTATIVE BUCH requested that Mr. Benesch expand on [the differences in] Alaska [compared] to the contiguous United States, with respect to the product performance and life and safety issues of people who rely on these products. Often the products are used to sustain a subsistence economy and are not recreational [vehicles], but rather provide necessary transportation.

MR. BENESCH agreed that much of the bill is safety related and when a person is 100 miles up a river and discovers his [outboard or snowmobile] is defective, the result can be a serious life or death issue. He recalled the 1970s when American manufacturers produced low quality automobiles with many defects. At that time, automobile manufacturers had policies such that manufacturers did not pay dealers a fair rate for servicing. Once the automotive industry started paying full retail on parts for warranty repairs, full shop labor rates, changed the flat time rates to "real world times", and the manufacturers started working with dealers on the servicing, the burden shifted to the manufacturer. Therefore, the manufacturer turned attention to making better products with a renewed commitment to lower defect rates which resulted in American manufacturers producing a quality product with a higher level of consumer enjoyment. He said he believes that HB 303 will help outboard motors, ATVS, and snowmobiles dealers in the same way.

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CRAIG COMPEAU, Owner, Compeau's Marine, opined that HB 303 is an important bill for Alaska and Alaskan consumers. He offered that Alaska's power sport dealers have shouldered a disproportionate burden of responsibility to remedy defective product issues and warranty situations that arise because he believes it is up to the dealers to keep their valued customers happy and satisfied with the products they sell. He opined that HB 303 puts the onus back on the manufacturers to treat Alaska dealerships fairly when these unfortunate situations arise by compensating the dealers for [an amount] closer to the actual cost of diagnosing, repairing, and shipping defective products. As mentioned earlier, 20 years ago the auto industry faced many of the issues that the marine power sports industry is facing, and now any car dealership would relate that things have improved regarding warranty service and reimbursement. He offered that historically, in an effort to protect the reputation of a company and the product lines, dealerships have covered the costs that manufacturers do not rather than pass the cost on to consumers. As a 63-year old family business, he said, his dealership has attempted to make these situations transparent to the customers. He stated [warranty costs] are even more difficult for the smaller dealers to absorb, and that ultimately both the dealer and customer suffer the consequences of an issue that is outside [the dealer's] control. He shared that his grandfather, Bob Compeau, Sr., who started the business in 1945, used to say, "Treat your customers right, and they'll tell four or five others, but treat them poorly and they'll tell four or five hundred." He stated that at his Fairbanks store, customer service is not a department, it is an attitude. He said he believes that HB 303 has the ability to create a better environment for dealers, and therefore a better experience for Alaskan consumers. "The bottom line," quite literally, is that HB 303 is good for Alaska, he opined.

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REPRESENTATIVE GARDNER suggested that there are other approaches to place the responsibility of warranty repairs on manufacturers. She related an example in which the purchase price is 40 percent off the list [price], but that a manufacturer in Idaho could offer [a dealer] 50 percent off [the price] if the dealer is willing to take on the responsibility for warranties. She opined that the manufacturer and the dealer [should] decide and negotiate such agreements. Representative Gardner acknowledged that the [ability to] negotiate [is limited due to] smaller [sales] in Alaska, but she expressed concern

that HB 303 may have unintended consequences for consumer access to products in Alaska.

MR. COMPEAU responded that the issue of dealer liability due to defective products puts the dealer in an untenable position. He explained that customers want products and when products are not safe and need to be held [by the dealer], or when defective products are delivered but are unsafe the dealers [are caught in the middle]. He offered that dealers want manufacturers to build better products to minimize warranty issues. However, [currently] dealers are burdened with the costs to "make it right for the customers," so dealers shoulder the costs. He opined that dealers want to shift some of that responsibility and cost back to the manufacturers.

2:30:03 PM

KATHY VAN KLEEK, Senior Vice-President, Government Relations, Specialty Vehicle Institute of America (SVIA), informed the committee that SVIA is a national trade association that represents manufacturers and distributors of all-terrain vehicles [ATVs]. She noted that the International Snowmobile Manufacturer's Association supports her comments as well. Ms. Van Kleek related SVIA's opposition to HB 303. With respect to a comment made that dealers have gone to industry for years with complaints, she said that although that may be true, that this is the first time that SVIA has heard about these problems. She noted that SVIA has not been approached about the problems or potential solutions to this issue. She related her understanding that manufacturers cover warranty costs and product recall costs. She informed the committee that it is criminal activity and criminal conduct to knowingly market a defective product, which is addressed by a myriad of federal laws. She opined that no reputable manufacturer would ship defective products to dealers in Alaska or any other state. Although the prior speaker's comments were geared to the boating industry, she related her assumption that any reputable manufacturer would follow federal law [because of the] severe federal penalties attached to it. She said she has concerns with numerous provisions of HB 303, and SVIA believes the bill will have a negative impact on manufacturers, distributors, and Alaska consumers. She opined that these issues are more appropriately addressed by manufacturers [through] their dealers. She offered that the issues involve competitive considerations. She further offered that Alaska statutes provide numerous protections under AS 45.25, Article 9 (a), which apply to distributors and dealerships. She related that

SVIA does not believe a particular class of dealer should be singled out for special treatment under the law.

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MS. VAN KLEEK offered her understanding that HB 303 mandates lengthy notice periods before a dealer can be terminated, and that an underperforming dealer would be allowed to continue [to sell products even though their practices contribute to] high levels of consumer [dis]satisfaction and lost revenue which unreasonably raises business costs. But even more egregious, she opined, is that [HB 303] provides that the manufacturer must continue to provide a terminated dealer with product parts for [up to] two years after the dealer is terminated, which allows any dealer to retain and discontinue product and parts, and allows the underperforming or non-performing dealer to continue to represent the brand name. She said that SVIA dealerships are full-line dealerships designed to both sell and service its products and to 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 function, but not the other is unacceptable to SVIA. The aforementioned would [only] allow unfair competition, cause customer confusion, and 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 [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. 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 25 percent mark-up of the dealer's handling fee [to cover the] shipping [costs] for parts replaced under warranty. She reiterated that federal law strictly regulates recalls and notice thereof, and therefore it is unnecessary, if not inappropriate, for state law to do so as well. Manufacturers, she opined, 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.

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, but 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 [because] higher operation costs for manufacturers and increased litigation costs lead to higher product costs. She said that SVIA respectfully requests that the committee oppose [HB 303 because] the interests of retail purchasers, distributors, manufacturers, and good dealers will be harmed.

[2:38:39 PM](#)

REPRESENTATIVE NEUMAN inquired as to whether she was aware that HB 303 is supported by the Alaska Snowmobile Association, and whether she contacted any dealers in Alaska as the manufacturer's representative or any industry representatives to see if they oppose HB 303.

MS. VAN KLEEK answered no.

[2:39:24 PM](#)

DAVID DICKERSON, Director, State Government Relations, National Marine Manufacturers Association (NMMA), said that NMMA represents about 1,700 boat builders and engine manufacturers, as well as accessory manufacturers, which and represents about 90 percent of the recreational marine products made in the United States. He expressed significant concerns about HB 303 and said he would address the overall effect of this bill and how he believes it will present problems for the marketplace. He opined that HB 303 absolves the dealer of the impact of poor business decisions. For instance, if a dealer overstocks or has trouble with a particular line that [he/she] brought into the dealership voluntarily, that the dealer basically has a "get out debt free card". He explained that a dealer could write a [termination] letter within 30 days and the manufacturer then has to pull parts, rugs, signs, and engines. If it is a package sale, the manufacturer must pull the engines and boats from the [dealer's floor], out of [the dealer's loan portfolio], and [the dealer] is then free to [select] another brand [to carry]. He said he thinks that scenario [demonstrates] a significant concern when [seen as a whole].

[2:41:48 PM](#)

MR. DICKERSON related that he called the United States Coast Guard (USCG) as well as the two largest manufacturers of boats and engines in the world, who all [acknowledged] that if USCG mandates a recall, the federal law requires that [the manufacturers] pay for the cost of administering that recall. He explained that when the recall is voluntarily entered into by the manufacturer, the two largest [manufacturers] advised they issue a service bill, which means that [manufacturers] do not ask people to bring the product immediately because it does not meet a USCG safety standard. However, when the [customer] brings the item in for service, the product would be repaired and would fall under the cost of warranty reimbursement. He noted that replacing a dealer is very expensive and is a lengthy process exacerbated by the short boating and marketing season in Alaska. However, [that process], he opined, [would be] unbalanced by giving the dealer a 30-day option to move on to another manufacturer.

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MR. DICKERSON said he believes [HB 303] ignores the system by which boat dealers and manufacturers preorder [the number of] boats that need to be built to meet demand. He explained that preorder decisions are made in August and September by dealers who [assess and order] boats by brand [for the] next boat season. Preorders are voluntary and while [dealers] are not entirely held to the order, [preorders represent] an important part of [how a] manufacturing plant runs, and [allows manufacturers to pull] together national figures. He opined that to set up a system in which a dealer can easily walk away from [the preorder] is anticompetitive and shifts the risk away from the dealer to an extent that is unfair to all concerned.

MR. DICKERSON opined that [under HB 303] the dealer territories [established] are inflexible, particularly given the topography of Alaska, as well as the need to use ferries. He also opined that [HB 303] does not [take into consideration] the differences in travel time that [happens with] a 30-mile territory, or even a 12-mile territory, which might affect where someone would buy a dealership. He also said he believes [HB 303] makes it difficult for the manufacturer to make prudent decisions [when] transferring to a new dealership owner. A manufacturer who tries to manage his dealer network could view a change in dealership owners as an opportunity to consolidate dealerships. HB 303, he opined allows that if the new buyer of the dealership meets the manufacturer's requirements, the manufacturer is mandated to continue the relationship with the new dealer, regardless of market conditions. Mr. Dickerson asked the committee to consider delaying action on HB 303 [to allow him] an opportunity to come to Alaska and meet individually with the bill sponsors and with dealers who are concerned [about these issues]. He offered to work with those involved [in HB 303].

2:47:19 PM

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law, in response to a question about his position, explained his responsibilities include enforcement of Alaska's anti-trust and consumer protection laws, which he has been doing for eight years.

[2:47:45 PM](#)

REPRESENTATIVE BUCH asked whether he has any comments regarding enforcement of HB 303.

MR. SNIFFEN noted that a provision of HB 303 would make a violation of any of these provisions a violation of Alaska's Consumer Protection Act (ACPA). Therefore, when a dealer thought a manufacturer was in violation of an agreement, the dealer would file a complaint and Mr. Sniffen would investigate the complaint to determine if a violation had occurred and would take the appropriate action.

REPRESENTATIVE BUCH asked whether that would be Mr. Sniffen's only involvement.

MR. SNIFFEN responded that is probably correct, but highlighted that HB 303 contains provisions that conflict with provisions of the ACPA. For example, under the ACPA, a violation of the statute can result in penalties of up to \$25,000 and injunctive relief. Furthermore, there are treble damage provisions for private enforcement of the ACPA that are a little at odds with the penalty provisions that exist in the language of HB 303. He said he is not sure how to work those out, but that the division is reviewing those provisions to determine if there is a better way to approach enforcement.

[2:49:12 PM](#)

REPRESENTATIVE GARDNER asked whether the provisions of HB 303 focus largely on consumer protection or on dealer protection or if one part of HB 303 focuses on dealer protection and one part deals with consumer protection.

MR. SNIFFEN expressed concern with legislation that attempts to restrict parties in the marketplace from freely entering into agreements so long as they are not illegal agreements because it puts an anti-competitive pressure on the system. He noted that as a consumer advocate he likes the warranty provisions of HB 303 to some extent. He said although he wasn't familiar enough with the specific problems in the [recreational vehicle] industry since his main expertise lies with the auto industry, consumers who live in areas without a variety of services could benefit from some of the provisions in HB 303 that require warranty service be performed by trained technicians and that require certain parts are available. Although there are consumer protections in HB 303, the bill would place significant

restrictions on the marketplace that could be harmful in some ways. He related that his division is still working to determine whether there are direct federal conflicts with the Uniform Commercial Code, the Magnuson-Moss Warranty Act, and anti-trust laws that HB 303 might impact. He offered to work to identify and solve any concerns he has with HB 303.

[2:51:53 PM](#)

REPRESENTATIVE GARDNER asked whether Mr. Sniffen was aware of any problem in Alaska with consumer complaints on vehicles addressed in HB 303.

MR. SNIFFEN responded that the Commercial/Fair Business Section does not receive nearly as many complaints about recreational vehicles as with automobiles, although he has had some experience with recreational vehicle complaints. He explained that Alaska currently has a "lemon law" that applies to new motor vehicles, but does not apply to recreational vehicles. He opined that consumers with warranty complaints in the automobile industry might report their problems because they have recourse with automobile manufacturers.

CHAIR OLSON closed the public testimony on HB 303.

[2:53:36 PM](#)

The committee took an at-ease from 2:53 p.m. to 2:59 p.m.

[2:59:51 PM](#)

CHAIR OLSON asked if there was any further discussion on HB 303.

REPRESENTATIVE RAMRAS said he thought HB 303 is a good [bill] and he thanked the sponsor for proposing HB 303. He said while he has enjoyed courtesies from dealerships in urban settings, he acknowledged that [the situation differs] in a rural setting.

REPRESENTATIVE LEDOUX said that she likes the warranty portion of HB 303. She doesn't want to hold up HB 303, but believes that some parts of HB 303 are problematic.

REPRESENTATIVE GARDNER noted her agreement with Representative LeDoux. She specified that although she has misgivings about the contractual obligations and the state defining dealer territories, she would not object to moving HB 303 forward.

[3:02:27 PM](#)

CHAIR OLSON stated that he has checked daily with the bill sponsor and that there has not been any opposition to HB 303 until early this afternoon. He said although he has some concerns, the good provisions of the bill more than outweigh his concerns. Therefore, he said he would like to see HB 303 moved out. He noted that HB 303 was filed on January 15, 2008, the first day of session.

REPRESENTATIVE GARDNER noted her interest in the impact on dealers in states where similar legislation has passed. She expressed interest in any unintended consequences of legislation [of this type].

[3:03:51 PM](#)

REPRESENTATIVE NEUMAN moved to report proposed CS for HB 303, Version 25-LS1183\C, Bannister, 1/29/08, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 303(L&C) was reported from the House Labor and Commerce Standing Committee.

[3:04:24 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:04 p.m.