

**ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE**

February 28, 2008

5:04 p.m.

MEMBERS PRESENT

Representative John Coghill, Chair
Representative John Harris
Representative Anna Fairclough
Representative Craig Johnson
Representative Ralph Samuels
Representative Beth Kerttula
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 14

Urging the United States Congress to enact Senate Bill 552 so that individuals receiving a damage award from the Exxon Valdez oil spill can benefit from the income averaging and retirement contribution provisions of the bill.

- MOVED CSHJR 14(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 303

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

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 14

SHORT TITLE: FED S 552/HR 1334; EXXON PLAINTIFFS

SPONSOR(s): FISHERIES

03/14/07	(H)	READ THE FIRST TIME - REFERRALS
03/14/07	(H)	FSH, RES
03/19/07	(H)	FSH RPT CS(FSH) NT 7DP
03/19/07	(H)	DP: JOHNSON, LEDOUX, WILSON, JOHANSEN, HOLMES, EDGMON, SEATON
03/19/07	(H)	FSH AT 8:30 AM BARNES 124

03/19/07 (H) Moved CSHJR 14(FSH) Out of Committee
03/19/07 (H) MINUTE(FSH)
03/21/07 (H) FSH AT 8:30 AM BARNES 124
03/21/07 (H) <Bill Hearing Canceled>
04/03/07 (H) RES REFERRAL WAIVED
02/28/08 (H) RLS AT 5:00 PM CAPITOL 120

BILL: HB 303

SHORT TITLE: MARINE & MOTORIZED RECREATIONAL PRODUCTS

SPONSOR(S): REPRESENTATIVE(S) NEUMAN

01/11/08 (H) PREFILE RELEASED 1/11/08
01/15/08 (H) READ THE FIRST TIME - REFERRALS
01/15/08 (H) L&C
01/30/08 (H) L&C AT 1:00 PM CAPITOL 17
01/30/08 (H) Moved CSHB 303(L&C) Out of Committee
01/30/08 (H) MINUTE(L&C)
01/31/08 (H) L&C RPT CS(L&C) 4DP 3AM
01/31/08 (H) DP: BUCH, RAMRAS, NEUMAN, OLSON
01/31/08 (H) AM: GARDNER, LEDOUX, GATTO
01/31/08 (H) JUD REFERRAL ADDED
02/06/08 (H) JUD AT 1:00 PM CAPITOL 120
02/06/08 (H) Heard & Held
02/06/08 (H) MINUTE(JUD)
02/11/08 (H) JUD AT 1:00 PM CAPITOL 120
02/11/08 (H) <Bill Hearing Canceled>
02/13/08 (H) JUD AT 1:00 PM CAPITOL 120
02/13/08 (H) Heard & Held
02/13/08 (H) MINUTE(JUD)
02/14/08 (H) JUD AT 1:00 PM CAPITOL 120
02/14/08 (H) Moved CSHB 303(JUD) Out of Committee
02/14/08 (H) MINUTE(JUD)
02/20/08 (H) JUD RPT CS(JUD) 1NR 5AM
02/20/08 (H) NR: LYNN
02/20/08 (H) AM: GRUENBERG, COGHILL, SAMUELS,
HOLMES, RAMRAS
02/28/08 (H) RLS AT 5:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE PAUL SEATON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke as the chair of the House Special
Committee on Fisheries, sponsor of HJR 14.

JUDD WHITAKER

(No address provided)

POSITION STATEMENT: Provided comments on HJR 14.

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

POSITION STATEMENT: Spoke on behalf of the sponsor of HB 303, Representative Neuman.

ACTION NARRATIVE

CHAIR JOHN COGHILL called the House Rules Standing Committee meeting to order at [5:04:47 PM](#). Representatives Coghill, Harris, Fairclough, Johnson, Samuels, Kerttula, and Guttenberg were present at the call to order.

HJR 14-FED S 552/HR 1334; EXXON PLAINTIFFS

[5:05:02 PM](#)

CHAIR COGHILL announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 14, Urging the United States Congress to enact Senate Bill 552 so that individuals receiving a damage award from the Exxon Valdez oil spill can benefit from the income averaging and retirement contribution provisions of the bill.

[5:05:31 PM](#)

REPRESENTATIVE SAMUELS moved to adopt CSHJR 14, Version 25-LS0639\L, Bullock, 2/20/08, as the working document. There being no objection, Version L was before the committee.

[5:05:54 PM](#)

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, speaking as the chair of the House Special Committee on Fisheries, sponsor of HJR 14, explained that this would support the congressional legislation allowing Exxon Valdez plaintiffs, if they receive the settlement, to deposit more than the current allowable yearly amount in a retirement plan. The resolution would also allow three-year income averaging, as is done with farmers with variable income. The only changes encompassed in Version L are the elimination of the reference to the previous

congressional legislation in the U.S. House and U.S. Senate and replaces those with the current applicable legislation.

[5:07:48 PM](#)

JUDD WHITAKER informed the committee that he was present the first week of the Exxon Valdez [oil spill] and heard ExxonMobil Corporation lie. This resolution is problematic in that it's not secure that the U.S. Supreme Court will award the punitive damages. Although he opined that it's good to see this effort, he highlighted the history of Exxon's behavior is not honorable. Therefore, should the U.S. Supreme Court not award punitive damages, he urged the committee to consider revoking ExxonMobil Corporation's charter to do business in the state.

[5:09:10 PM](#)

REPRESENTATIVE SAMUELS moved to report CSHJR 14, Version 25-LS0639\L, Bullock, 2/20/08, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHJR 14(RLS) was reported from the House Rules Standing Committee.

The committee took a brief at-ease at 5:09 p.m.

HB 303-MARINE & MOTORIZED RECREATIONAL PRODUCTS

[5:09:50 PM](#)

CHAIR COGHILL 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."

[5:10:15 PM](#)

REPRESENTATIVE SAMUELS moved to adopt CSHB 303, Version 25-LS1183\O, Bannister, 2/20/08, as the working document.

CHAIR COGHILL objected. He then announced his intention not to move HB 303 from committee today.

[5:11:12 PM](#)

REX SHATTUCK, Staff, Representative Mark Neuman, Alaska State Legislature, speaking on behalf of the sponsor, began by

explaining that the legislation was brought forth to address some of the needs of consumers in Alaska as well as the small businesses in Alaska that sell four wheelers, snow machines, and marine products. He highlighted that the aforementioned products are not just recreational vehicles but rather have greater transportation and commercial use. He then highlighted the need to recognize the seasonal use of these vehicles in Alaska. Mr. Shattuck characterized the legislation as a work in progress.

MR. SHATTUCK reviewed the changes encompassed in Version O as related in the sectional analysis for Version O, which is included in the committee packet. He noted that due to the many deletions, Version O reflects the significant renumbering that occurred. He mentioned that the language in Version L on page 3, line 18, was moved to Article 4 on page 5 of Version O.

[5:18:37 PM](#)

CHAIR COGHILL inquired as to what Version O has with regard to a continuity with law.

[5:19:01 PM](#)

CHAIR COGHILL, in response to Representative Kerttula, related that his plan is to determine whether the committee wants to bring this proposal before it. However, he expressed the desire to have Mr. Shattuck review the current legislation and take questions as the hearing proceeds.

[5:21:06 PM](#)

MR. SHATTUCK said that the major policy issues that have been identified with HB 303 are possible interstate commerce and anti-trust issues. In working with Legal and Research Services and the Department of Law (DOL), the sponsor tried to address those issues. During the last discussion with DOL, it seems that the interstate commerce concern has been negated. He related his understanding that the measurement or weight in regard to interstate commerce is whether the manufacturer or dealer is unduly impacted. He noted that this law is in place in many other states. Furthermore, the attorney general reviewing the legislation didn't believe the legislation at this time had particular issues burdening one side or the other. In response to Chair Coghill, Mr. Shattuck confirmed that the aforementioned is the result of going from CSHB 303(JUD) to

Version 0. He said numerous sections were deleted in relation to interstate commerce.

[5:23:42 PM](#)

REPRESENTATIVE KERTTULA related that she is pro-consumer and concerned when there isn't appropriate reaction from manufacturers for Alaskans. In terms of the Interstate Commerce Act (ICC), she inquired as to what the federal law sets as the standard for states. She then expressed concern with regard to what the Consumer Product Safety Commission does because she related her understanding that there may be some preemption from that federal law in this legislation. If what's proposed in HB 303 is the law in other states, she expressed interest in seeing the law in those other states. Representative Kerttula then turned to anti-trust issues and inquired as to how distributorships work. Referring to page 5, lines 14-17, she inquired as to why that provision is included in legislation addressing problems with manufacturers.

MR. SHATTUCK offered to provide the committee with information regarding the ICC criteria. In further response, Mr. Shattuck confirmed that he has information from some of the other states with similar laws. He noted that Louisiana has the most strongly written law that far surpasses what's proposed in HB 303. He said he would generate a matrix [comparing the states with laws similar to that proposed in HB 303].

[5:27:10 PM](#)

REPRESENTATIVE FAIRCLOUGH, referring to page 5, line 14, requested a definition of "territory" since she said she understands that dealerships have territories. She then inquired as to how that will interact with the "may not compete" component of the law in relation to the Internet and other dealerships.

CHAIR COGHILL recalled that in a prior version the [language "may not compete"] referred to a 30-mile radius restriction.

MR. SHATTUCK said that [the aforementioned restriction] was removed from the legislation. The Attorney General's Office advised that territories are recognized by geographic boundaries. If there's an attempt to limit competition between different brands, there would be an issue. However, addressing territories agreed upon by the manufacturer and having like

brands and products wouldn't seem to be a problem. He indicated that the section was removed.

CHAIR COGHILL characterized the aforementioned as a significant change.

[5:29:39 PM](#)

REPRESENTATIVE JOHNSON inquired as to how Internet sales would be addressed. He related his understanding that the language doesn't prohibit Internet sales by a manufacturer.

[5:30:18 PM](#)

REPRESENTATIVE HARRIS asked if a dealer signs an agreement with the manufacturer in which both agree to do certain things.

MR. SHATTUCK replied yes.

REPRESENTATIVE HARRIS asked then if all parties are clear with regard to their responsibilities, requirements, and restrictions.

MR. SHATTUCK related his understanding that the contracts address many of those issues. However, marine dealers within the state and nationally have raised concerns with regard to the way in which the contracts are written. The aforementioned has led to a movement in which to negotiate changes in new contracts.

[5:33:10 PM](#)

REPRESENTATIVE HARRIS turned attention to Section 2, Article 1, which prohibits a manufacturer from threatening to cancel an agreement. He asked if the language refers to cancelation for any reason. He inquired as to what would happen in a situation in which the dealership didn't pay for the product purchased from the manufacturer.

MR. SHATTUCK specified that coercion is what's being discussed, such as some of the practices through which dealers are coerced to take on additional or different product.

REPRESENTATIVE HARRIS commented that he didn't see any language referring to coercion. He then turned attention to the language in Article 1 that says "without 90 days' advance written notice". He posed a scenario in which a distributor doesn't pay

the manufacturer for the product he sold the distributor. In such a situation the distributor can use the product for 90 days after which the manufacturer can try to get the product back. He asked if the manufacturer would have some recourse in such a situation.

MR. SHATTUCK said there are several different ways a manufacturer would have the product, including flooring in which the manufacturer owns the product. In such a situation, when the product is sold, the dealer pays the money to the manufacturer. In a situation in which a dealer decides he/she took on too much product/obligation, whether the manufacturer, with 90 days' written notice, can cancel the agreement is spelled out in the contracts.

REPRESENTATIVE HARRIS then inquired as to why this proposed law is necessary if the contracts specify such details.

MR. SHATTUCK said that the dealers might better be able to answer.

[5:37:43 PM](#)

REPRESENTATIVE SAMUELS recalled that in the last committee, the legislation required the manufacturer to sell as much product as the dealer could handle. Still, the dealer can force the manufacturer to buy the inventory back. He inquired as to whether that language is in Version 0. He then directed attention to page 5, lines 14-17, and related his understanding that it's trying to stop a manufacturer from opening an extension of the manufacturer within the [area agreed upon as the competitive area] with the dealer.

MR. SHATTUCK related his understanding that [the buy back] language was removed in Version 0.

[5:40:10 PM](#)

REPRESENTATIVE GUTTENBERG, referring to proposed Article 4 on page 5, line 10, related his belief that there must be conditions upon which the manufacturer and distributor agree. He posed a situation in which the manufacturer doesn't want to do business with a retailer after that retailer violates the terms of the agreement. He inquired as to how that comports with the language "without just cause".

[5:42:24 PM](#)

CHAIR COGHILL directed attention to page 8, line 24, which specifies that AS 45.45.700-45.45.790 don't apply. He inquired as to why those statutes don't apply.

MR. SHATTUCK said the sponsor is trying to fully understand how those statutes tie in.

[5:43:38 PM](#)

CHAIR COGHILL suggested that the legislation needs some work. He related the need to ensure that all parties involved, distributors, manufacturers, and consumers, receive a fair shake.

[5:44:17 PM](#)

REPRESENTATIVE JOHNSON expressed concern with page 6, line 12, which he read to mean that if someone alleges an act, the manufacturer is responsible for all legal fees.

[5:45:04 PM](#)

CHAIR COGHILL removed his objection to the motion to adopt Version 0 as the working document. There being no further objection, Version 0 was before the committee.

[5:46:12 PM](#)

REPRESENTATIVE JOHNSON related that he already had a conversation with the sponsor regarding many issues that weren't discussed today. He said he wanted to be sure that those matters are also addressed.

[5:46:33 PM](#)

CHAIR COGHILL emphasized that the sponsor will need to work with the committee to produce balanced legislation. He then announced his intention to work on this legislation to provide distributors a shield. Therefore, HB 303 was held over.

HJR 14-FED S 552/HR 1334; EXXON PLAINTIFFS

The committee returned its attention to HOUSE JOINT RESOLUTION NO. 14, Urging the United States Congress to enact Senate Bill 552 so that individuals receiving a damage award from the Exxon

Valdez oil spill can benefit from the income averaging and retirement contribution provisions of the bill.

[5:47:16 PM](#)

REPRESENTATIVE SAMUELS inquired as to the timing of the congressional action to which HJR 14 speaks.

REPRESENTATIVE SEATON informed the committee that the congressional legislation has passed the U.S. House and is in the U.S. Senate.

[5:47:54 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at [5:47:57 PM](#).