ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE
March 10, 2016
1:30 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Cathy Giessel, Vice Chair
Senator Kevin Meyer
Senator Gary Stevens

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 168
"An Act relating to the membership of the Board of Barbers and Hairdressers."

- MOVED SB 168 OUT OF COMMITTEE

SENATE BILL NO. 55
"An Act relating to the practice of optometry."

- HEARD & HELD

SENATE BILL NO. 197
"An Act relating to motor vehicle franchises, motor vehicle transactions, motor vehicle dealers, motor vehicle manufacturers, and motor vehicle distributors."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 168
SHORT TITLE: BOARD OF BARBERS AND HAIRDRESSERS
SPONSOR(s): SENATOR(s) MCGUIRE

02/03/16	(S)	READ THE FIRST TIME - REFERRALS
02/03/16	(S)	L&C, FIN
03/08/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

03/08/16	(S)	Heard & Held
03/08/16	(S)	MINUTE (L&C)
03/10/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 55
SHORT TITLE: OPTOMETRY & OPTOMETRISTS
SPONSOR(s): SENATOR(s) GIESSEL BY REQUEST

02/18/15	(S)	READ THE FIRST TIME - REFERRALS
02/18/15	(S)	HSS, L&C
03/18/15	(S)	HSS AT 1:30 PM BUTROVICH 205
03/18/15	(S)	Heard & Held
03/18/15	(S)	MINUTE (HSS)
02/01/16	(S)	HSS AT 1:30 PM BUTROVICH 205
02/01/16	(S)	Moved SB 55 Out of Committee
02/01/16	(S)	MINUTE (HSS)
02/08/16	(S)	HSS RPT 3DP 1NR
02/08/16	(S)	DP: STEDMAN, STOLTZE, GIESSEL
02/08/16	(S)	NR: ELLIS
03/10/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 197
SHORT TITLE: MOTOR VEHICLE DEALER FRANCHISES
SPONSOR(s): SENATOR(s) COGHILL

02/22/16	(S)	READ THE FIRST TIME - REFERRALS
02/22/16	(S)	L&C, JUD
03/10/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JANE CONWAY, Staff
Senator Cathy Giessel
POSITION STATEMENT: Presented the sectional analysis for SB 55 on behalf of the sponsor.

JANEY HOVENDEN
Director
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community and Economic Development
Juneau, Alaska
POSITION STATEMENT: Stated that the division does not have a position on SB 55.

FORREST MESSERSCHMIDT, Optometrist
Alaska Optometric Association
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 55.

JILL MATHESON, Optometrist
Alaska Optometric Association
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 55.

OLIVER JORSHIN, Ophthalmologist
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to SB 55.

RACHEL REINHARDT, Ophthalmologist
American Academy of Ophthalmology
POSITION STATEMENT: Testified in opposition to SB 55.

JEFF GONNASON, Optometrist and Legislative Chair
Alaska Optometry Association
POSITION STATEMENT: Testified in support of SB 55.

RYNNIEVA MOSS, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Delivered the sectional analysis for SB 195.

KELLEN FISCH, Intern
Senator John Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Introduced SB 195 on behalf of the sponsor.

ACTION NARRATIVE

1:30:09 PM
CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Giessel, Meyer, Stevens, and Chair Costello.

SB 168-BOARD OF BARBERS AND HAIRDRESSERS

1:30:34 PM
CHAIR COSTELLO announced the consideration of SB 168. She noted this is the second hearing and public testimony is closed. Finding no questions, she solicited a motion.

1:31:02 PM

SENATOR GIESSEL moved to report SB 168, labeled 29-LS1385\A, from committee with individual recommendations and attached fiscal note(s).

CHAIR COSTELLO announced that without objection, SB 168 is reported from Senate Labor and Commerce Standing Committee.

1:31:19 PM
At ease

SB 55-OPTOMETRY & OPTOMETRISTS

1:32:55 PM
CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 55.

SENATOR CATHY GIESSEL, Alaska State Legislature, sponsor of SB 55, introduced the legislation, speaking to the following sponsor statement:

> SB 55 modernizes and updates the Alaska Optometry Statute.
>
> This bill moves the continuing education (CE) requirements back into regulation, as desired by the Department of Commerce, Community and Economic Development. Continuing education is still required by current statute, but the hours and subjects will be determined by the Board of Optometry, as with other professions. The current regulations require more CE hours than the statute subsection deleted by this bill.
>
> SB 55 allows the board to determine prescribed drug schedules anticipating federal regulations that may change again in the future as they did in 2014; that regulation required another statute change, and this bill would allow the board to move in step with its industry.
>
> This bill updates the optometry definition to reflect current education and training, but specifically prohibits invasive surgery. This allows for future new and improved diagnostic and therapeutic procedures as determined by the board, while not having to return to the legislature for every new technological advance.

It also defines that optometrists must be qualified for any procedure that they perform.

SENATOR GIESSEL noted that detractors will say the bill would allow optometrists to perform surgery on the eye, and that is not true. That authority is specifically prohibited in the bill. Current statute already authorizes Alaska optometrists to do superficial surgical procedures such as removal of corneal foreign bodies, but nothing invasive would be allowed.

She said the vast majority of Alaskans visit one of Alaska's [195] optometrists for their eye care needs. By contrast, there are approximately 20 ophthalmologists in Alaska. They are eye surgeons. It's these 20 ophthalmologists who are opposing this bill, she said. She discussed the history of the credible, safe healthcare providers that were routinely opposed by physician groups to regulate themselves and highlighted that safe, affordable healthcare was expanded when the legislature listened to the facts. She also point out that optometrists have one of the lowest malpractice insurance rates in the nation.

SENATOR GIESSEL summarized that SB 55 gives the Board of Examiners in Optometry the authority to oversee and regulate its own profession, just as other professional boards are trusted to do.

1:39:27 PM
JANE CONWAY, Staff, Senator Cathy Giessel, presented the following sectional analysis for SB 55 on behalf of the sponsor:

Section 1 requires the Board of Examiners in Optometry to adopt regulations governing prescription and use of pharmaceutical agents.

Section 2 amends AS 08.72.181(d) by removing specified hours and period of continuing education requirements for the renewal of an optometrist's license but retains delegation of those requirements to the board in regulation.

Section 3 repeals and reenacts AS 08.72.272(a) to provide that pharmaceutical agents, including controlled substances, may be used by a licensed optometrist if consistent with standards adopted by the board and any limitations on practice under section 5 of the bill.

Section 4 reenacts and modifies the prohibition by a licensee to perform an intravitreal injection.

Section 5 provides that a licensee may perform only services within the licensee's training and experience as provided by board regulation.

Section 6 revises the definition of optometry.

Section 7 adds a definition of "invasive surgery."

1:41:34 PM
CHAIR COSTELLO asked what pharmaceutical agents optometrists are currently allowed to prescribe and how the bill expands that authority.

SENATOR GIESSEL said optometrists can prescribe simple antibiotics as well as schedule II and schedule III opioids. Responding to a further question, she said the bill would allow any updates to be regulated by the board. For example, it could adjust to federal regulation changes without coming before the legislature.

CHAIR COSTELLO asked the statutory definition of "optometry" and if the bill changes that.

MS. CONWAY read the definition of "optometry" in AS 08.72.300(3) found on page 2, lines 24-27. The bill repeals and reenacts that section of statute.

CHAIR COSTELLO asked how the definition changed when the definition was repealed and reenacted.

1:44:53 PM
MS. CONWAY said it's very similar but the new definition removed specific reference to x-rays and scans. They were removed because those things are already being practiced within the scope of optometrists' education.

CHAIR COSTELLO asked if including the term "preventive procedures" within the definition is intentional.

SENATOR GIESSEL deferred the question to optometrists online.

CHAIR COSTELLO asked if the bill makes Alaska unique compared to other states.

MS. CONWAY said it's unique in that other states allow more use of lasers and other techniques that will continue to be prohibited in Alaska.

1:46:59 PM
SENATOR STEVENS asked who makes up the board, its powers, and if it is limited to regulating optometrists.

SENATOR GIESSEL said ophthalmologists are eye surgeons and are regulated by the State Medical Board. Optometrists are regulated by the Board of Optometry, which is a five-member board consisting of one public member and four practicing optometrists.

SENATOR STEVENS asked if the Board of Optometry has the power to authorize the increased use of lasers.

SENATOR GIESSEL clarified that laser technology currently is used in diagnostic procedures, and the board only authorizes practices for which the person is educated.

SENATOR STEVENS asked for information on injections in the eye.

SENATOR GIESSEL explained that optometrists are prohibited from performing an intravitreal injection.

SENATOR STEVENS asked what modifications were made to [AS 08.72.272].

1:51:30 PM
MS. CONWAY explained that subsection (e) was added to specifically state that a licensee cannot perform an intravitreal injection.

SENATOR MEYER asked what the educational requirements are for optometrists.

SENATOR GIESSEL read the qualifications in AS 08.72.140; the education is doctoral level and has a residency option.

MS. CONWAY added that it's 4 years for a bachelor's degree, an additional 4 years in optometry school, and an optional residency.

SENATOR MEYER asked if optometrists would be prohibited from treating conditions of the eyelid.

SENATOR GIESSEL replied optometrist currently are qualified to remove fish hooks, metal fragments from the cornea, debris from the eye, and treat maladies of the eyelid such as a stye.

SENATOR MEYER asked if the bill expands what optometrists can do to the eyelid.

SENATOR GIESSEL answered no.

CHAIR COSTELLO asked if she said that ophthalmologists do not have a separate board; they are regulated by the State Medical Board so they.

SENATOR GIESSEL replied ophthalmologists are specialty surgeons regulated by the State Medical Board. An ophthalmologist may or may not sit on that board, but they do not have their own board.

CHAIR COSTELLO mentioned the list in the packets and asked if the bill will shift work away from ophthalmologists toward optometrists.

SENATOR GIESSEL indicated that optometrists will continue to practice within the scope of their education and refer patients to ophthalmologists when appropriate.

1:56:38 PM
CHAIR COSTELLO asked Ms. Hovenden to address the fiscal note and tell the committee whether or not the administration has a position on the bill.

1:57:11 PM
JANEY HOVENDEN, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), said the division doesn't have a position on SB 55 because of the situation that two boards have opposing views. She explained that the fiscal note reflects a $2,500 regulations project. This is a receipt supported service so the costs would be paid for by licensing fees.

CHAIR COSTELLO opened public testimony.

1:58:19 PM
FORREST MESSERSCHMIDT, Optometrist, said he is representing himself and the Alaska Optometric Association testifying in support of SB 55. He has been practicing for 27 years and just completed a four-year term on the Board of Examiners in Optometry. He described SB 55 as good legislation. It puts the

regulation of optometry where it belongs, modernizes the statutes, allows details of regulation to be determined by the board, and is the current standard with other professions in Alaska. Optometrists should be held to the same high standard of care as other medical professionals, but it defies logic to suggest that the profession cannot regulate standards through its own board.

He talked about how eye care has changed in the last 27 years; now more than 70 percent of his patient business is medically oriented. A few years ago many of the cases he manages would have required referrals. Consultations and close work with eye surgeons and other medical providers is done on a daily basis.

DR. MESSERSCHMIDT said there will be claims that harm will come if SB 55 passes, but the past 40 years of optometry scope expansion law has not shown that to be the case. Optometry malpractice insurance rates are among the lowest of all providers for a reason. He said the people that don't like the bill miss the point that this is all about patients' best interest. There are not enough skilled ophthalmologists to serve the population, so all eye care physicians need to be able to practice to their full level of training and expertise.

DR. MESSERSCHMIDT said his practice won't change with the passage of SB 55, and it probably won't change for other optometric physicians practicing in Alaska. He concluded saying that SB 55 is good for optometry and it's good for Alaskans.

2:02:26 PM
SENATOR STEVENS asked if the responsibilities of the board will increase if SB 55 were to pass.

DR. MESSERSCHMIDT replied it will be a bigger job for the board but it won't change the mindset.

2:03:36 PM
JILL MATHESON, Optometrist, said she is representing herself and the Alaska Optometric Association testifying in support of SB 55. She has served two terms on the board, once as chair. As a practicing optometrist for over 24 years she has testified on four different optometry bills. Each time the legislature has carefully considered the information put forth and passed bills to get the optometry profession where it is today. SB 55 is the next step. It gives the board the autonomy to run the optometric profession in the state. The legislature continues to have oversight by approving members of the board. The malpractice

insurance rates are under $500 per year, which is an indication that the profession is run safely and conservatively. She opined that the bill protects the public by keeping optometrists at the highest level of training.

2:06:42 PM
SENATOR STEVENS asked how she gets training.

DR MATHESON replied continuing education is offered in different locations throughout the state and approved classes are also offered at the numerous optometry conferences. Optometry schools also offer continuing education classes. She discussed what qualifies as continuing education and noted that when optometrists were approved to do injections, a class was offered in the state to ensure that optometrists received the training if they hadn't gotten it in school.

CHAIR COSTELLO asked if optometrists charge by the hour or procedure.

DR. MATHESON replied charges are based on the procedure.

CHAIR COSTELLO asked how optometrist charges compare to ophthalmologist charges.

DR. MATHESON said she doesn't know but the reimbursement rate from insurance companies is the same because it's based on the procedure.

2:09:24 PM
OLIVER JORSHIN, Ophthalmologist, testified in opposition to SB 55. He has been in private practice since 1985 and before that was chief of ophthalmology at the Alaska Native Medical Center. He related that he has had four years of medical school, a year internship in internal medicine, and an obligatory three-year residency in ophthalmology. He has worked alongside optometrists and is well acquainted with their skills in diagnosing and treating eye conditions. His respect for the profession is great, but optometrists are not medical doctors.

DR. JORSHIN maintained that the broad language in SB 55 substitutes the judgement of the members of the board of optometry for the years of training and experience ophthalmologists must go through before they can practice. The bill defines what surgery an optometrist cannot perform, but leaves open what they can perform. Invasive surgery is prohibited but is defined in such narrow terms that optometrists

could legally perform complex procedures that involve the eyeball, eyelid, eye socket, and surrounding tissues. He questioned why the bill permits optometrists to use controlled substances when they are used so infrequently in ophthalmology. He related his experience is to write such a prescription every couple of years. Also, adding a new class of subscribers won't help alleviate the epidemic of misuse of prescription narcotics. He urged the committee to vote against the bill in the interest of patient safety.

2:13:28 PM
RACHEL REINHARDT, Ophthalmologist, American Academy of Ophthalmology, testified in opposition to SB 55. She explained her concern with how the bill relates to surgery. She noted only four other states allow lasers. The language is misleading and would allow optometrists to do all procedures not mentioned in the bill. The bill does not list all surgical procedures needed; there are more procedures not listed, such as laser surgery. The bill removes existing safeguards about injections. She stressed the importance of understanding that the bill creates loopholes. She described the education needed to become an ophthalmologist; four years of medical school and four years of surgical residency. She expressed concern that the bill allows the use of prescription narcotics, which undermines state and federal efforts to stem the epidemic of prescription narcotic abuse. She said the claim that Alaskan's have limited access to ophthalmologists isn't a valid argument. The ratio of ophthalmologists to residents is about one in 24,000 in Washington state and about one in 27,000 in Alaska. She concluded that if the proponents of the bill say it's not a surgery bill, it either needs to be rejected or redrafted.

CHAIR COSTELLO asked how the malpractice rates were affected in the four states that allow lasers.

DR. REINHARDT said it’s too early to have any data.

SENATOR STEVENS asked how often she prescribes a prescription narcotics to a patient.

DR. REINHARDT said it’s rare and generally for a surgical patient.

2:23:32 PM
JEFF GONNASON, Optometrist and Legislative Chair, Alaska Optometry Association, testified in support of SB 55. He shared his professional background. He shared the history of Alaska's

optometric journey and the opposition by the American Academy of Ophthalmology. He described how optometrists work, their limitations on practice, and that they use their professional judgement as to when to refer patients to specialists. Optometrists have been defined as physicians under Medicare for many years and have had the authority to prescribe narcotics for nine years. SB 55 updates the statutes and gives the state board better autonomy to regulate itself. The board would never authorize optometrists to do anything they are not trained to do.

2:27:56 PM
CHAIR COSTELLO held SB 55 in committee with public testimony open.

SB 197-MOTOR VEHICLE DEALER FRANCHISES

2:28:40 PM
CHAIR COSTELLO announced the consideration of SB 197.

2:29:07 PM
RYNNIEVA MOSS, Staff, Senator John Coghill, introduced herself and Mr. Fisch who is carrying the bill for the sponsor.

2:29:34 PM
KELLEN FISCH, Intern, Senator John Coghill, stated that SB 197 is about protecting auto dealerships in the state. He continued the introduction speaking to the following sponsor statement:

> This bills brings Alaskan dealers up to date with standards adopted by other states and helps to add language for Alaska specific circumstances. This is done in a variety of different ways.
>
> By adding good cause language for termination and putting good faith requirements upon the manufacturers, which includes performance goals and supplying inventory. Its sets out required procedures for returning inventory to the manufacturer, which was previously required by the manufacturer. This helps to properly compensate the dealer, to keep the dealer supplied, and to compensate the dealer properly on termination.
>
> This bill also strengthens notice requirements in cases of termination and discontinuation of franchise agreements. It establishes a procedure for determining

fair compensation to dealers for warranty work. It sets out rules governing manufacturer audits. It puts forth procedures for dealerships to succeed, sell, transfer, or exchange the dealership. The bill, contains provisions governing the establishment of new dealerships in order to make them more appropriate for Alaska.

It contains provisions allowing dealers to provide warranty work for consumers over 100 miles from the dealer or in locations not accessible by road.
These provisions help to address issues with Alaska's unique landscape and limited number of roads. The manufacture warranty work is not allowed to be done by local mechanics. This causes a great problem for people in the areas that are isolated. This bill creates needed assistance for people in these areas which includes, Nome and Tanana.

2:35:00 PM
CHAIR COSTELLO asked for the context for introducing the bill.

MS. MOSS said this is a national trend and a recognition that Alaska has unique issues with warranty and recall work due to geography. Getting a vehicle to a dealer can be expensive and inconvenient. The bill allows a dealer to contract with someone in the community where the vehicle is located to do that work. It is also a matter of the industry changing considerably since 2002 when car dealership statutes were passed. She provided examples of specialty tools needed and new signage that dealers may need. The bill also has provisions for leases that are canceled if a dealership is terminated.

She directed attention to the sectional analysis, a list of the repealed language and a comparison to the new language, and definitions cited in statutes.

CHAIR COSTELLO asked how the relationship between the dealer and manufacturer is established.

MS. MOSS replied they are franchise agreements, many of which are years old and have been amended. The bill is designed to make changes to the way the manufacturer treats the franchisee.

2:39:16 PM
SENATOR MEYER asked if the bill is retroactive.

MS. MOSS said yes, but the applicability clause on page 2, line 2, clarifies that none of the provisions in the bill can violate the U.S. Constitution or the Alaska State Constitution.

She provided the following sectional analysis for SB 197: [Original punctuation provided.]

Sec. 1. Legislative Findings.

Findings that this bill is a cure to some issues in the new vehicle industry that affects the general economy, the public interest and public welfare of the state by insuring the new vehicle manufacturers provide reasonable incentives to new vehicle dealers to keeping prices low and warranty and recall services timely.

Alaska is a unique market that has unique geographical challenges for motor vehicle owners that need warranty and recall work. Getting a vehicle from Hoonah to Juneau or Bethel to Anchorage for warranty work or recall work can be expensive and time consuming. This bill will allow technicians in remote areas to do the work.

Manufacturers make franchises invest large amounts of money in facilities, signage, equipment, specialty tools, supplies, and parts. Some facility requirements are unfeasible for Fairbanks or Anchorage but feasible for Los Angeles. One example is requirements for windows versus solid, insulated walls. While signage used to be leased to dealers, dealers are now required to invest upwards of $100,000 for signage.

All these investments need to be protected should a manufacturer terminate an agreement without cause. At the same time, the manufacturer should be able to terminate a franchise when there is cause without having to pay the price for a bad business practice. This bill brings a balance to what is good faith, fair practices and what is unfair practice.

Maintaining a healthy new vehicle dealer industry in Alaska provides better consumer protection for Alaskans and provides good paying, private sector jobs.

Sec. 2. Applicability.

The applicability clause states that any provision of this legislation that does not violate the Constitution of Alaska or the U.S. applies to any

franchise agreement in effect in Alaska between a new motor vehicle dealer and a new motor vehicle manufacturer.

Unlike most other contracts, new motor vehicle franchise agreements are not renewed in a time certain manner. There are franchise agreements that are thirty years old and have had some amendments but never renewed.

Sec. 3. Termination of Franchise agreements.

This section amends language requiring a manufacturer to have good cause to terminate a franchise agreement to include provisions of AS.25.115, a new section of law found in **Sec. 4 of the** bill that clearly lays out "good cause is", what notification requirements are, allows for corrective actions on the part of the dealer, and sets timelines for both the manufacturer and the dealer.

Sec. 4. Good cause.

(a) Good cause exists if:

1. Dealer fails to comply with a franchise agreement that is reasonable and materially significant;

2. The manufacturer notifies the dealer of a failure in the agreement and the dealer does not take corrective action in 180 days;

(b) If the failure of performance is in sales, service, or level of customer satisfaction it must be a standard that is applied uniformly across the state, the manufacturer must notify the dealer in writing of the failure that the dealer has no less than 180 days to take corrective action, and, if the dealer does not comply, the noncompliance was because of factors in the control of the dealer.

(c) If the manufacturer did not provide adequate supply, both in quantity and product mix, the franchise agreement cannot be terminated.

(d) Good cause to terminate is also insolvency, bankruptcy or receivership proceedings, failure to open for business for seven consecutive days, principal operator is convicted of a felony, the

dealer has had a license revoked or suspended for more than 30 days.

(e) Unfair practices by the manufacturer are not good cause for termination.

2:43:40 PM
SENATOR STEVENS asked for an explanation of subsection (e).

MS. MOSS explained that a contractor cannot terminate a contract on the basis of good cause if the practice is listed as an unfair practice.

SENATOR STEVENS asked if that doesn't apply to every franchise.

MS. MOSS opined that this is called for due to the nature of the industry and the investment required for a franchise.

(f) Burden of proof for good cause is on the manufacturer.

Sec. 5. Notice of Termination.
Amends AS 45.25.120 added a good cause for 15-day notice to terminate for a dealer having a license revoked or suspended for more than 30 days.

Sec. 6. Termination by dealer.
A new section that provides that a dealer may terminate a franchise agreement by notifying the manufacturer at least 90 days before the termination.

Sec. 7. Payment for inventory, equipment, and other items.
When a franchise is terminated, this section outlines in detail how the dealer will recover the cost of his investment in vehicles, equipment, parts, supplies, signage, office equipment, and special tools that were required by the manufacturer, less certain credits.

Vehicles are reimbursed at the dealers cost for two model years in inventory, plus charges for distribution, delivery and taxes, less allowances to dealer by the manufacturer, repairable damage to a vehicle, and 20 cents per mile for all mileage over 200 miles. This includes vehicle required by the manufacturer to be used as loaners, demonstrators, or display purposes.

2:46:59 PM
CHAIR COSTELLO asked if this type of description currently is included in franchise agreements.

MS. MOSS replied it is in some and not in others.

Sec. 7 continued.

All unsold supplies, parts, and accessories in the original unbroken package that are listed in the manufacturer's current catalog and those supplies, parts or accessories that the manufacturer required the dealer to buy will be reimbursed at the dealer's cost.

For each undamaged sign that bears a common name, trade name, or trademark and the manufacturer recommended or required the signs purchase will be reimbursed at fair market value.

All equipment, furnishings, and special tools owned by the dealer because the manufacturer recommended or required the purchase will be reimbursed at fair market value. If items were leased, the manufacturer will reimburse the dealer the amount necessary to terminate the lease agreement.

All computers, software and printers required by the manufacturer or reasonable necessary to operate the dealership to the manufacturer's standards will be reimbursed at fair market value. If the items were leased the manufacturer will reimburse the dealer the amount necessary to terminate the lease(s).

The manufacturer will pay the dealer for the cost to transport, handle, pack and load the items above.

If the franchise agreement requires the manufacturer to pay the dealer an amount higher than stipulated in statute, the provisions of the franchise agreement prevail.

The dealer will return all the items to the manufacturer within 90 days of the termination of the franchise and the manufacturer will pay the dealer within 30 days of the delivery of the items. The title to items are not clear, the manufacturer will jointly pay the holder of the security interest and the dealer.

2:48:47 PM

Sec. 8. Payments for dealership facilities and business.

Dealers make significant investments in dealer locations. Manufacturers require renovations and renovations that require hundreds of thousands of dollars for the dealer to comply. This section provides for the manufacturer to pay the dealer the cost of relocation, substantial alteration, or remodeling of a dealer's facilities if the franchise agreement is terminated and the improvements were completed in the three years prior to the termination.

If the facility was leased, the manufacturer would pay the dealer for the shorter period of time of the unexpired term of the lease or 24 months or the time provided the time provided for in the franchise agreement.

If the facility is owned by the dealer the manufacturer will pay the dealer a reasonable rent for the facilities for 24 months or until the facilities are leased or sold.

The payment for the facilities will be for only that portion of the facilities that was used for activities under that specific franchise agreement. Many dealers have multiple franchise agreements and sell more than one make of vehicles.

If a manufacturer discontinues the sale and distribution of a vehicle line nationwide, the manufacturer will pay the dealer fair market value for the franchise.

If the manufacturer is making payments for rent of the facilities, the manufacturer is entitled to possess and use the space.

2:50:26 PM

Sec. 9. Application of payment provisions.

Reimbursement for vehicles, equipment, supplies, parts, furnishings, computers, software, signage, and facilities space by the manufacturer is not required when the manufacturer terminates a franchise agreement because the dealer is insolvent, the subject of a bankruptcy or receivership proceeding, has failed to conduct its customary operations for seven consecutive days, is convicted of a felony, has had a license revoked for more than 30 days, or when a dealer voluntarily enters an agreement to sell the franchise and the manufacturer has approved the agreement.

2:51:22 PM

Sec. 10. Sale, transfer, or exchange of a franchise.

This section defines what a qualified buyer of a new motor vehicle franchise is. A qualified buyer must meet normal reasonable, and uniformly applied standards established by the manufacturer, or already hold a franchise from the manufacturer, or is capable of being licensed as a new motor vehicle dealer in Alaska. A dealer must possess a business license renewable every two years and a DMV license which is $50.

A qualified buyer must promptly provide personal and financial information to the manufacturer and agree to be bound by all reasonable terms and conditions of the franchise.

If a manufacturer refuses to approve a qualified buyer, they must serve written notice on the applicant and the dealer not later than 60 days after the date the manufacturer received the dealer's written request for the transfer or, if personal or financial information was requested, not later than 60 days the information was received. The notice of denial must be made by personal delivery or certified mail, return receipt requested.

The manufacturer's failure to respond in a timely manner is considered consent by the manufacturer.

The manufacturer must state specific grounds for the denial in the written notice.

2:52:28 PM

Sec. 11. Mitigation of damages.

This section clarifies that the dealer has an obligation to justify any damages it claims upon termination.

Sec. 12. Successions.

Dealers make a huge investment in their business and as with any major investment they want to pass on their investment to family or other designated successors. Section 11 lays out the process for assigning succession for a franchise dealership agreement.

The owner of a franchise has two methods of appointing a successor. At any time the dealer can appoint a designated successor to succeed ownership of the franchise to someone upon the owner's death or incapacity by giving a written notice to the manufacturer.

OR if the dealer has owned the franchise he or she may designate someone to succeed ownership at a time certain date before the dealer's death or incapacity by giving the manufacturer written notice.
The designated successor must meet the following guidelines:

1. Meets the normal, reasonable, and uniformly applied standards of the manufacturer or agree to employ someone who meets those standards.
2. Give written notice to the manufacturer within 60 days of the death or incapacity of the dealer of the intention to succeed the franchise or in the case of a time certain designation, give written notice to the manufacturer at least 30 days prior to succeeding.
3. Agree to be bound by all terms and conditions of the existing franchise.

The manufacturer may request personal and financial information of the successor.
The manufacturer with good cause refuse to honor the successor by giving written notice to the designated successor not earlier than 60 days after manufacturer received written notice, or if the manufacturer requested financial information not later than 30 days after receipt of that information. The notice must state specific grounds for the denial.

If the manufacturer does not serve notice of refusal in a timely manner the successor if approved.
A manufacturer has the burden of proof to show good cause exists.

If the dealer enters into a purchase agreement with a person who is related in the first or second degree or is the husband or wife of a relative of the owner in the first or second degree, the manufacturer cannot exercise a right of first refusal.

A manufacturer cannot require changes in capitalization or facilities of a franchise as a condition of approving a purchase agreement of a relative.

2:54:00 PM

Sec. 13. New or relocated dealership

Before a manufacturer can establish or relocate a dealership within a dealers relevant market area the manufacturer must give the any existing dealer in the relevant market area 90-day notice.

"relevant market area" means the greater of the area

(A) within a radius of 14 miles around an existing new motor vehicle dealer; or

(B) of responsibility defined in a governing franchise agreement;

Notification is not required for:

1. the relocation of an existing dealership;
2. the sale or transfer of an existing dealership if the location is within 10 miles of the current location and the same line make will be sold;
3. or if the new dealership location is at or within 10 miles of a former dealership that ceased operation within the previous 24 months;
4. the proposed relocation is two miles or less from the existing location of the relocating dealer; or
5. if the proposed relocation of an existing dealership is farther away from any other dealer of the same make line than the existing location.

Before the manufacturer can create a new dealership location or relocate a dealership into an existing relevant maker area, the manufacturer must show good cause for such an action by considering existing circumstances such as:

1. The ability of the existing dealer to perform its investment obligations and profitability of the dealership and the impact a new dealership would have on that ability;
2. Growth and decline in population and the five year trend of new motor vehicle registration;
3. Effect on the consumer public;
4. Effect on the existing dealers, including adverse financial effect;
5. Reasonable expected or anticipated market including age of population, income, education, product popularity, etc.;
6. Would an additional dealership would injure or benefit the public welfare;
7. Whether the existing dealership is providing adequate competition and convenient customer care;
8. Whether manufacturer is motivated by good faith and economic considerations;
9. Whether the manufacturer has denied the existing dealer the opportunity for reasonable growth.
10. Whether the existing dealer is substantially and significantly violating the franchise agreement.

If the manufacturer is creating a new location in an existing relevant market area, the existing dealership is given the first offer by the manufacturer to establish a new location by providing the dealer 90-days advance written notice by certified mail to include:

1. Specific location
2. Date to begin business
3. Identity of existing dealership(s) in relevant market area and the names and addresses of the principal investors
4. Specific grounds or reasons for proposed new dealer or relocation

The manufacturer has the burden of proof to establish good cause for a the new dealership or relocation.

2:55:32 PM

Sec. 14. Court Actions.

This section establishes a process to bring court action for notice of termination, approval of sale or transfer, and new dealerships.

Sec. 15. Rates for warranty and policy work.

This section sets rates for warranty and policy work. It requires the manufacturer to provide the dealer with a schedule of compensation for warranty work, policy work, predelivery service, or other service that the manufacturer requires the dealer to perform. This schedule will include:

1. Compensation for parts, labor, and diagnostic work
2. A schedule that is not less than the rates that the new motor vehicle dealer charges retail customers
3. An average retail percentage markup that will be determined by the dealer submitting 50 sequential service order invoices or 45 days of retail repair order which is fewer, all of which were performed less than 180 days prior to submission, establishing the average

When calculating the retail price for parts and labor there are half a dozen things that should not be in the calculation. They include:

1. Repairs for manufacturer special events, manufacturer specials, or retail customer repair promotional discounts.
2. Insurances repairs, parts sold at wholesale or at reduced or specially negotiated rates
3. Routine maintenance not covered under warranty (replacement of belts, fluids, filters)
4. Items that don't have an individual part number like nuts and bolts
5. Tires, batteries and light bulbs
6. Vehicle reconditioning

Once the percentage markup has been established by the manufacturer the rate goes into effect no more than 30 days after it is established.

A manufacturer will compensate a dealer for labor and diagnostic work at the same hourly rates as charged to regular customers plus any documentation work or contact time with the manufacturer including photographs, paperwork, consultation, and electronic data.

A manufacturer can disapprove hourly rates or other charges if the manufacturer can prove the rate unreasonably exceed the rates and charges of all other dealers.

A dealer is limited to one rate increase a calendar year.

The manufacturer will pay for all repairs performed by a dealer that are covered under a manufacturer's warranty, policy, or service contract, whether the need for repair was discovered by the customer or the dealership personnel. In current practice many manufacturers deny payment for warranty work that was discovered by dealership personnel while performing other warranty work.

The dealer must submit billing for warranty work within 90 days of when the work was performed and the manufacturer has 15 days to approve or deny the billing. If the manufacturer does not deny or approve a billing within 15 days, the billing is considered approved. The manufacturer then has 30 days to pay the billing.

If the manufacturer denies the claim the manufacturer will contact the dealer in writing or electronically and explain the denial. The dealer will then have 30 days to resubmit the bill if it is correctible.

Dealer incentive claims are handled the same way. These are factory rebates on the purchase on cars purchase.

If the manufacturer chooses to audit a dealer they must initiate the audit within six months of the date of the paid claims.

The manufacturer cannot deny or charge back a claim on an audit if the dealer can demonstrate that the reason for the repair existed, the repair was performed, and the cause for the repair was cured. This goes back to the manufacturer denying the claim because a warranty issue was discovered by dealer personnel while doing warranty work on another repair.

One issue that makes Alaska unique is the remoteness of some of the new vehicles and the ability to take the vehicle to a dealership for warranty and recall work. Subsections (u) and (v) of this section (page 20, line 28) allow for flexibility to accommodate this issue.

If a certified technician cannot perform the repairs within one business day, an uncertified technician may perform the repairs under the supervision of a certified technician or service manager. The repairs will be billed at the same rate as a certified technician.

If the dealership is not accessible by road or is more than 100 road miles from the dealership, the dealership can make arrangements with a technician accessible to the vehicle to perform the repairs. The manufacturer will reimburse the dealer at the current schedule of compensation for parts and labor, plus any freight or shipping charges **OR** the retail rate in the community where the repairs are made, whichever is less.

Sec. 15. Discontinuation or reduction of line.

This section provides that if a manufacturer discontinues the sale or distribution of a vehicle line or reduces the selection of a vehicle line to the point it is not economically viable, the dealer can terminate the franchise dealership agreement with good cause.

2:56:02 PM

MS. MOSS noted that Section 16 addresses Senator Steven's question about unfair practices.

Sec. 16. Unfair practices.

The section of the bill outlines practices that a manufacturer should not impose on a dealer and use the failure of the dealer to accept such a practice as a reason for termination of the dealership agreement.

1. Sell vehicles or parts or accessories to one dealer at a lower price than sold to another dealer.
2. Use a promotion plan or marketing plan that would result in a one dealer being charged a lower price for a vehicle than another dealer.
3. Use a promotion plan or marketing plan that provides a rebate or incentive program that requires a dealer inventory with a predetermined number or percentage of vehicles.
4. Adopt an unreasonable, unfair and unequitable method for the allocation, scheduling, or delivery of new vehicles, parts, or accessories.
5. Refuse or fail to deliver, in reasonable quantities and a reasonable time, product if it is being delivered to other dealers.
6. Require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles.
7. Fail or refuse to offer the dealer all models manufactured for that line make of vehicles.
8. Sell, lease, ship or deliver a new vehicle to a person other than a dealer in the relevant market area, unless the vehicle is sold, leased, or delivered to a federal agency or the vehicle is purchased in one relevant market area to be delivered in a different relevant market area.
9. Own, operate, or control a dealership in Alaska, except for a temporary period not to exceed two years during a transition from one owner to another

is the dealership is currently for sale at a fair and reasonable price; **OR** in conjunction with another person who lacks resources to immediately purchase the dealership but the person cannot be connected to the manufacturer, has made a significant capital investment in the dealership, has an ownership interest, and will be able to acquire full ownership in a reasonable time.

10. Own, operate, or control a service facility or contract with a person other than its franchised dealer for a service facility without written consent of the franchised dealer unless the vehicles being serviced are owned and operated solely by the manufacturer.
11. Use of or sell of confidential or proprietary information from a dealer to compete with dealer such as trade secrets, business plans, market plans, customer lists, etc.
12. Terminate a franchise the dealer holds additional line make franchises and uses the same dealership facilities for the sale of other line makes.
13. Coerce or attempt to coerce a dealer to refrain from or prohibit or attempt to prohibit a dealer from acquiring another make line.
14. Require the dealer to make material alteration to, expansion of or addition to a dealership facility unless all dealers similarly situated are required to take the same action. The dealer will select who does the work.
15. Require the dealer to order or accept delivery of any vehicles, parts, accessories, equipment, promotional material, display items or other items not required by law. This does not apply to recall of safety and emissions parts or to a vehicle feature, part, accessory or other component required by federal, state, or local law.
16. Coerce or attempt to coerce a dealer to join, contribute to or affiliate with an advertising association or participate monetarily in an advertising campaign. If the dealer does participate the dealer will be identified as the advertiser, not the association.
17. Prevent the dealer from changing executive management unless the manufacturer can prove the change will result in management by a person who does not have good moral character or who does not meet reasonable, preexisting, and equitably applied

standards of the manufacturer. Rejection of such a change must be given in written notice with 60 days by the manufacturer.

18. Condition the sale, transfer, relocation, or renewal of a franchise on the manufacturer obtaining site control or requiring the dealer to make substantial facility improvements or renovations that exceed $5,000.
19. Require a dealer, as a condition of granting or renewing a franchise, to waive, limit, or disclaim the right to protest the establishment or relocation of another dealer in the relevant market area.
20. Require the dealer to change the capital structure of the dealership or means by which the dealer finances the operation unless the dealership does not at all times meet reasonable capital investment requirements.
21. Increase the price of a vehicle for which there exists a purchaser at the time of the order and the order was made before the manufacturer provided the dealer with a written price increase notification.
22. Fails to indemnify and hold harmless a dealer when the manufacturer settles in writing a court judgment for damages or when applicable law or a franchise agreement requires indemnification and holding harmless.

The provisions of Sec. 16(a)(1)-(3) ***lower price for vehicles, parts, and promotional plans*** do not apply to:

1. Sale for resale to a federal agency
2. Sells or donates the vehicles for use in a driver's education program
3. Bona fide uniformly applied manufacturer promotional program
4. Manufacturers bona fide quantity discount program to sell parts or accessories
5. Manufacturer's bona fide discount program for a fleet of 15 or more new vehicles

Subsection (c) has definitions.

Sec. 17. Redefines "terminate".

Repeals the current definition of "terminate" which is "includes nonrenewal or cancellation;" and redefines "terminate" as "includes to cancel, not to

renew, or to discontinue or make a reduction under AS 45.25.200”.

Sec. 18. Definitions.
Adds definitions for “line make” and “relevant market area”.

Sec. 19. Repealer.
Sec. 45.25.110. Termination of franchise agreements.
(b) Notwithstanding (a)(1) of this section, a manufacturer may not terminate a franchise agreement with a new motor vehicle dealer because of the death or incapacity of an owner if the owner is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.
(c) In this section, "good cause" includes when the new motor vehicle dealer fails to comply with or observe a material provision of the franchise agreement. For the purposes of determining good cause under this subsection, reasonable sales and service performance criteria and capital and facility requirements may be considered material provisions only if the criteria or requirements were communicated in writing to the new motor vehicle dealer within a reasonable period before the effective date of the termination or nonrenewal so that a reasonable opportunity was afforded over a period of not less than six months to comply with the criteria or requirements.

Sec. 20. Transition: Schedule of Compensation.
This section provides that the schedule of compensation on the effective date of SB 197 cannot be less than it was immediately before the effective date. It also makes reference to definitions in current law.

2:59:57 PM
CHAIR COSTELLO held SB 197 in committee.

3:00:25 PM
There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 3:00 p.m.