

**ALASKA STATE LEGISLATURE  
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 21, 2017

1:06 p.m.

**MEMBERS PRESENT**

Representative Louise Stutes, Co-Chair  
Representative Adam Wool, Co-Chair  
Representative Matt Claman  
Representative Harriet Drummond  
Representative Chuck Kopp  
Representative Mark Neuman  
Representative Colleen Sullivan-Leonard  
Representative David Eastman (alternate)

**MEMBERS ABSENT**

Representative Gabrielle LeDoux (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 136

"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: HB 136

SHORT TITLE: MOTOR VEHICLE DEALER FRANCHISES

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

02/20/17	(H)	READ THE FIRST TIME - REFERRALS
02/20/17	(H)	TRA, L&C
03/16/17	(H)	TRA AT 1:00 PM CAPITOL 17
03/16/17	(H)	<Bill Hearing Canceled>
03/21/17	(H)	TRA AT 1:00 PM BARNES 124

**WITNESS REGISTER**

SARAH PERMAN, Staff  
Representative Matt Claman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 136, offered a sectional analysis.

STEVEN ALLWINE, President  
Mendenhall Auto Center  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 136, offered testimony.

GARY SLEEPER, Attorney  
Alaska Automobile Dealers Association  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 136, offered testimony.

DAVID BRIGHT, Attorney  
Alliance of Automobile Manufacturers  
Washington, D.C.

**POSITION STATEMENT:** During the hearing of HB 136, offered opposition to the legislation.

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

**POSITION STATEMENT:** During the hearing of HB 136, answered questions.

#### **ACTION NARRATIVE**

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**CO-CHAIR ADAM WOOL** called the House Transportation Standing Committee meeting to order at 1:06 p.m. Representatives Stutes, Kopp, Sullivan-Leonard, Wool, Neuman, Claman, and Eastman (visiting alternate) were present at the call to order. Representative Drummond arrived as the meeting was in progress.

#### **HB 136-MOTOR VEHICLE DEALER FRANCHISES**

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**CO-CHAIR WOOL** announced that the only order of business would be HOUSE BILL NO. 136, "An Act relating to motor vehicle

franchises, motor vehicle transactions, motor vehicle dealers, motor vehicle manufacturers, and motor vehicle distributors."

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REPRESENTATIVE CLAMAN presented HB 136 as prime sponsor and related that the legislation was requested by the Alaska Automobile Dealers Association (Association) to address franchise agreements between automotive dealers and manufacturers. Similar legislation was offered during the Twenty-Ninth Alaska State Legislature, he advised, and the Association took the legislative concerns into consideration and requested this modified bill. This legislation brings Alaska's dealer franchise agreements in line with existing law in other states and addresses Alaska's specific circumstances, he said. The issues covered include, franchise termination, inventory returns, and warranty work in off-road communities. He offered that automotive sales and services vary greatly from Anchorage to Kodiak to Nome and a system fair to all Alaska communities was necessary. He explained that responsible franchise agreements directly benefit Alaska's consumers and create a level playing field between the dealers and the manufacturers which is in Alaska's best interest.

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SARAH PERMAN, Staff, Representative Matt Claman, Alaska State Legislature, advised that this bill recognizes that small Alaska automotive dealers require assistance in dealing with larger manufacturers who may not appreciate or understand the geographic and demographic complexities of Alaska, and pursues Alaska friendly automobile franchise law. Alaska statutes were updated in 2002, prior to the 2008 market crash when large manufacturers' shut down franchises. This legislation offers the following: "good cause" for termination; updates notice requirements for franchise termination; sets out required procedures for dissolving a franchise and returning inventory to the manufacturer, including the return of vehicles, parts, and equipment required by the manufacturer; who can provide warranty work; and addresses the sale, transfer, or exchange of franchises.

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MS. PERMAN advised that Section 1, adds a section to uncodified law with legislative findings and an overview of the bill. Sec. 2, amends AS 45.25.110(a) and addresses that manufacturers may

not terminate franchise agreements unless they have met notice requirements, shown good cause, and acted in good faith, or the dealer has engaged in fraud against consumers. Secs. 3-4 specify reasons to not terminate franchises, and what is considered "good cause." She deferred to Steve Allwine.

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STEVEN ALLWINE, President, Mendenhall Auto Center, Alaska Automotive Dealers Association, advised he is an automobile dealer at the Mendenhall Auto Center in Juneau, is a member of the Board of Directors of the Alaska Auto Dealers Association (Association), and a member of the board of the National Automobile Dealers Association. He deferred to Gary Sleeper.

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GARY SLEEPER, Attorney, Alaska Automobile Dealers Association (Association), referred to Sec. 3, and explained that under existing law, a dealership or franchise can be terminated for "good cause," except, the statute does not provide definition as to what constitutes "good cause." Secs. 3-4 add clarity to what constitutes "good cause," which is advantages to dealers, manufacturers, and the court systems. For example, he said, under this legislation, a manufacturer may not terminate a franchise agreement simply because a dealer owns another franchise in that some sales and service agreements provide that if the dealer owns more than one franchise, it can be terminated; it also provides that the dealer cannot be terminated because it sells another brand from the same facility as there are smaller Alaskan cities that are not large enough to not sell multiple brands out of the same facility; and provides other common sense provisions and requirements that protect dealers from termination.

MR. SLEEPER related that under HB 136, the manufacturer is still committed to terminate a dealer if the dealer does not meet sales goals, except these goals must now be clearly communicated by the manufacture. Although the dealer may not be terminated if the dealer's failure to meet these sales goals was not the dealer's fault and resulted from market, economic, or other factors beyond the control of the dealer.

MR. SLEEPER related that another common sense protection is if the manufacturer did not provide the dealer with an adequate supply of vehicles because manufacturers may sometimes favor Lower 48 dealers and provide preferred product lines and then

criticize the Alaska dealers for not meeting sales performance goals. He related that the bill is not a radical departure from existing law, it simply adds additional common sense protections and describes "good cause" for termination of a franchise.

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CO-CHAIR WOOL asked whether the existing statute is the result of the 2002 legislation.

MR. SLEEPER agreed that it was the 2002 legislation, [and pointed to [AS 45.25.110(c)], which read as follows:

(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.

MR. SLEEPER explained that that provision is the only guidance given to the courts and dealers in Alaska when determining what constitutes "good cause" for termination. He further explained that the additional language is simply a list of common sense provisions.

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MR. ALLWINE then offered examples as to push back from the manufacturer in the event a dealer decided to add another franchise, and also offered an example of sales goals.

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CO-CHAIR WOOL referred to Mr. Allwine's example of 150 Ferrari's registered in Juneau and scattered all over the world, and opined that the cars were illegally registered ...

MR. ALLWINE interjected that it is legal because an individual can register (coughing) piece of legislation (coughing)...

CO-CHAIR WOOL opined that if an individual registers a car in Alaska and drives it in another location ...

MR. ALLWINE interjected that the venders are based in Montana and actually have an office in Juneau. The venders purchase these cars, register them in Alaska through their Juneau office, and export the car because it is no longer a new car to another

country. Alaska's licensing regulations permit that activity, and he said that the [Department of Motor Vehicles (DMV)] has stacks of license plates that were returned after DMV mailed them out, which is an issue that should be addressed at a later time.

CO-CHAIR WOOL asked whether "they look at these numbers" and see how many cars are "sold in Juneau" but they are not even sold from Juneau dealers.

MR. ALLWINE said "That is exactly right."

CO-CHAIR WOOL noted that it would appear there would be a manner in which to determine which cars are actually sold ...

MR. ALLWINE interjected, "You'd think so, but if they don't have an interest ...

CO-CHAIR WOOL asked whether there would be tax data ...

MR. ALLWINE answered, "They don't want it."

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REPRESENTATIVE CLAMAN surmised that Mr. Allwine is a new car dealer, and asked the brands Mr. Allwine sells at Mendenhall Auto Sales, his competition in terms of new car sales in Juneau, and in the event of competition, what brand they sell.

MR. ALLWINE responded that in Juneau, he and his partners are the last man standing with two stores that sell Chrysler, Jeep, Subaru, (indisc.), Honda, and Chevrolet. Up until the beginning of last year there was a standalone Jeep dealer and due to certain events in 2009, the other dealers either sold or closed. Recently there was a satellite Ford store based out Kenai, but he sold his facility and closed the store so his competition is Seattle, not so much Anchorage.

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REPRESENTATIVE NEUMAN surmised that the committee was hearing from industry as to the legislative intent of the bill.

CO-CHAIR WOOL agreed.

REPRESENTATIVE NEUMAN commented that it is difficult for him to ask questions regarding legislative intent when the industry is

telling the committee what the bill is supposed to do [difficult to decipher].

CO-CHAIR WOOL said he understood.

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REPRESENTATIVE CLAMAN explained that a companion bill had been introduced in the other body, and the legislative request came from the Alaska Automobile Dealers Association (Association). He related that in the world of simplicity, the Association knows the legislation as well as anyone, therefore, it appeared easier to hear directly from them than for "us to try to add another layer" (coughing) when you've got the people that performed a lot of the research here in the room.

REPRESENTATIVE NEUMAN said he understood and reiterated that it was hard for him to ask questions of industry as to the intent of the legislation.

CO-CHAIR WOOL advised there were individuals from the manufacturers' side online.

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MR. ALLWINE explained that the reason industry [requested the legislation] is that under federal law, antitrust laws, the dealers cannot gather or organize as a group and negotiate with manufacturers.

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CO-CHAIR STUTES commented that as an individual, she would think that Mr. Allwine was certainly capable of having a conversation with a manufacturer. She asked whether she was correct.

MR. ALLWINE replied that her comment was incorrect and described that automotive dealer franchise agreements are unilateral agreements and are "take it or leave it" documents. He explained that when a dealer agrees to the terms and signs that document, it receives the franchise, yet the manufacturer can arbitrarily change those terms at any given point in time. The agreements require significant investments in capital, facilities, people, equipment, and the franchise agreements are in effect for specific periods of time. When the agreement is up for renewal, the manufacturer can require the dealer to build

a new building and invest additional capital, and the dealer has no control because there is no negotiation.

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The committee took a brief at-ease.

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CO-CHAIR WOOL noted that he had gotten off track in asking about the cars registered in Juneau that leave the country, and asked that Ms. Perman continue with the sectional analysis.

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MS. PERMAN turned to Sec. 5, and described it as cleanup language that amends AS 45.25.120(a), creates a roadmap for termination, requires that the manufacturer provide notice of 90 days unless the dealer is insolvent or has failed to conduct business for seven consecutive days, is convicted of a felony, or has their license revoked or suspended for more than 30 days, in which case they must only provide 15 days. In the event the manufacturer discontinues sale and distribution of a product, it must provide notice of 180 days.

MS. PERMAN turned to Secs. 6-9, and advised the provisions further discuss termination. Sec. 6, adds new section 45.25.135 and allows that dealer may terminate the franchise agreement by providing the manufacturer with a notice of 90 days. Secs. 7-8 repeals and reenacts 45.25.140 and .150 respectively, and provides termination assistance. Sec. 9, adds new section 45.25.155 and provides no termination assistance for bad behavior. Sec. 10, repeals and reenacts AS 45.25.160, and provides guidance as to the successor of the franchise, the manufacturers may not withhold consent to the sale of a franchise if the buyer meets the manufacturer's standards and is capable of being licensed as a new motor dealer in the state or the manufacturer must provide written grounds for refusal.

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MS. PERMAN said that Sec. 11, adds AS 45.25.165 wherein dealers are not relieved of an obligation to mitigate dealer damages upon termination. Sec. 12, repeals and reenacts AS 45.25.170, and provides that the dealer may appoint a successor to the franchise in circumstances of death or incapacity under certain conditions, and manufacturers are required to provide specific

written grounds for refusal to honor succession, and failure to do so within 60 days is considered approval of successor. Sec. 13, repeals and reenacts AS 45.25.180, and provides that a manufacturer must provide 90 days written notice if establishing or relocating additional dealers into a dealer's relevant market area, and the manufacturer must establish good cause for their actions.

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CO-CHAIR WOOL offered the scenario of owning the Chevrolet dealership in town, and the Chevrolet manufacturer advised that it was putting another Chevrolet dealership in town, and asked whether he receives a notice of 90 days under existing law and this proposed legislation.

MR. SLEEPER advised that under current statute there are different notice requirements for termination and establishment ...

CO-CHAIR WOOL interjected, establishing a new dealer.

MR. SLEEPER said that it is 90 days, (coughing) was not changed from existing law.

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CO-CHAIR WOOL asked whether that scenario happens often in Alaska.

MR. SLEEPER responded that he knows it happened at the Anchorage Chrysler Center dealership because the statutory protections that are available to dealers throughout the nation under other franchise laws, was not available in Alaska. He explained that the Chrysler Corporation told the Anchorage Chrysler Center dealership to make some substantial improvements to the facility, the dealer advised that under these economic conditions it could not justifiably make the improvements and asked that Chrysler Corporation give it the Jeep dealership because that would offer added value, especially in Alaska. The Chrysler Corporation refused to give it the Jeep dealership unless it remodeled, the dealership could not afford the remodel so Chrysler Corporation gave the dealership notice. The dealer then challenged the Chrysler Corporation in court, but the Chrysler Corporation was able to open a new dealership and give the Jeep dealership to the new dealer, over the objection of the local dealer. He related that this incident highlights the need

for various protections for dealers because manufacturers can post facility requirements and demand that the dealer improve the facility, even if it doesn't make economic sense, or it will terminate the franchise. Although, he said, this occurrence does not happen frequently.

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MS. PERMAN turned to Sec. 14, adds new section AS 45.25.185, and provides that dealers may file an action in superior court within 30 days of receiving notice of termination to determine whether good cause for termination exists. In the event the manufacturer refuses to approve the sale, dealers have 20 days from receipt of the notice to file an action. Sec. 15, amends AS 45.25 by adding four new consumer protection sections: Sec. 45.20.200, provides that the manufacturer shall pay for all warranty work performed by the dealer if the dealer submitted claims within 90 days of the completion of the work, the manufacturer must approve or deny the claim within 15 days of receipt of the notice and provide written reasons for denial. Sec. 45.25.210, provides that the manufacturer shall provide the dealer with a schedule of compensation for warranty work, policy work, and other services the manufacturer requires, and the manufacturer may not dictate the average retail percentage markup. Sec. 45.20.220, provides that if a certified technician is not available within one business day of delivery, the dealer may use a non-certified technician to perform repair under the supervision of a certified technician, the manufacturer will pay the dealer the same price as if a certified technician had completed the repair. In the event the vehicle is in a location off of the road system for more than 100 miles from a certified dealer, a dealer may arrange for a non-certified technician where the vehicle is located. Sec. 45.25.230, provides that if a manufacturer discontinues or reduces the vehicle line to the extent the franchise is no longer economically viable, the dealer may consider the termination or reduction of the franchise agreement.

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MS. PERMAN turned to Sec. 16, repeals and reenacts AS 45.25.300, which relates to unfair practices and particularly unfair practices that dealers have been forced to take on by manufacturers including: incentive programs, methods for delivery, ability to collect document fees, ability of the manufacturer to withhold accessories, require unreasonable advertising displays, refuse to offer all models manufactured,

bypass the dealer and sell directly to the client, and require the dealer to make material alterations to the dealership facility. Sec. 17, repeals and reenacts AS 45.35.990(19), defines terminate. Sec. 18, amends AS 45.25.990, defines line or make and relevant market area. Sec. 19, repeals AS 45.25.110(b) and AS 45.25.110(c), repeals franchise agreement termination due to death or incapacity, and must provide "good cause." Sec. 20, adds a new section to uncodified law, to the applicability section regarding to whom the bill may be applicable, the effective date, and the definitions. Sec. 21, adds a new section of uncodified law, transition schedule of compensation, and definition section.

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MS. PERMAN deferred to Mr. Sleeper, in response to Representative Neuman's question as to whether there was a difference between a new and established dealer.

MR. SLEEPER explained that a new motor vehicle dealer has a franchise and other motor vehicle dealers are used car dealers. This statute only applies to the holder of new motor vehicles dealer franchise agreement with the manufacturer, he explained.

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CO-CHAIR WOOL surmised that the motor vehicles are new and it's not the dealers that are new.

MR. SLEEPER answered that new motor vehicle is defined and then ...

CO-CHAIR WOOL interjected, dealer of new motor vehicles.

MR. SLEEPER answered in the affirmative.

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REPRESENTATIVE NEUMAN related that he was familiar with this discussion and referred to Sec. 7, inventory and supplies, and said a large issue with the new vehicles is keeping inventory and stock on hand. He asked whether there is an industry standard as to how much inventory and stock the dealer must have on hand for spare parts for any vehicles.

MR. ALLWINE advised that there is a standard. The Chrysler Corporation recently introduced the Chrysler Pacifica, so the

manufacturer arbitrarily ships the dealership a specific batch of parts and components that the manufacturer expects the dealership will need in the coming six months. The dealership carries that level of parts and then the market and demands control that level of parts. Although, he said, in his case he probably has \$1.5 million in just parts and inventory, not including the vehicles, not including special equipment - just parts and inventory.

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REPRESENTATIVE NEUMAN offered a scenario of a vehicle being recalled due to a faulty crankshaft, and asked whether Mr. Allwine was required to keep a set amount of space for those parts.

MR. ALLWINE answered that recalls are a complex issue because in many cases it may be as simple as the availability of the part. He explained that the consumer and dealerships are notified, and the manufacture advises the dealerships of the availability of the part, the manufacturer then sends out a secondary mailing to the consumer, and subject to what the manufacturer made available to the nationwide dealers determines how the dealer stocks and what it stocks. He referred to Honda's airbag recall and he said he probably has 60 of those airbags on the shelf currently for his consumers in the area, he stocks those and pays for those airbags out of his pocket. He related that as to the recovery of that investment, at the point the recall is executed, the manufacturer reimburses him.

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REPRESENTATIVE NEUMAN asked whether he was required to have a certain amount of recalled parts in stock, and whether he was required to keep the recalled part on the shelf for a certain amount of time.

MR. ALLWINE answered that that is entirely possible, it would depend upon each recall, but that it was not out of the question.

MR. ALLWINE, in response to Representative Neuman, advised that the statute was not being changed.

REPRESENTATIVE NEUMAN asked what was changed in Sec. 7.

MR. SLEEPER replied that under existing law, Sec. 7 is referred to as "termination assistance," and it simply includes a couple of items the manufacturers would be required to buyback. For example, manufacturers require that dealers buy loaners and carry a certain inventory. Under current law, if the manufacturer terminates a dealer with a fleet of loaners, the manufacturer does not have to buyback the loaners. This bill language adds loaners to the buyback requirements, and adds computers, printers, and such, because the dealers are required to operate sophisticated dealer management systems with the manufacturer's computers, printers, and hardware. The bill language also read that if the manufacturer terminates the dealer, the manufacturer must buyback these additional items, which is not in current law.

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CO-CHAIR STUTES offered confusion as to why the committee should get between private industries, and described it as a slight overreach. She referred to the 3/16/17 letter from Curt Augustine, Alliance of Automobile Manufactures, directed to Marten Martensen, Alaska Auto Dealers Association, wherein the discussion is meeting to discuss this legislation, and she asked whether the parties had gotten together to discuss the legislation or decided it would be more expedient to appear before the legislature. She reiterated concern as to getting involved in private industry because once the legislature opens this floodgate, where does it stop. While she understands the dealers need some type of accommodating agreement with the manufacturers, she noted her problem in seeing the legislature's responsibility to ensure that accommodation.

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MR. SLEEPER read an excerpt from a 1978 United States Supreme Court decision, as follows:

Dealers are, with few exceptions, completely dependent on the manufacturer for their supply of cars. When a dealer has invested to the extent required to secure a franchise, he becomes in a real sense the economic captive of his manufacturer. The substantial investment of his own personal funds by the dealer in the business, the inability to convert easily the facilities to other uses, the dependence upon a single manufacturer for supply of vehicles, and the difficulty of obtaining a franchise from another

manufacturer, all contribute toward making the dealer an easy prey for domination by the factory. On the other hand, from the standpoint of the automobile manufacturer, any single dealer is expendable. The faults of the factory dealer system are directly attributable to the superior market position of the manufacturer.

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MR. SLEEPER pointed out that the excerpt was the United States Supreme Court's statement of the overall problem. When discussing contracts between parties, he described, it is envisioned that one person makes an offer, the other person makes an acceptance, and they negotiate over the terms. In the United States there is no negotiation over these contracts, these franchise agreements are a "take it or leave it agreement," and the same agreement is used by every manufacturer in every state with no negotiation. All 50 states have recognized that because these are contracts of adhesion, the government does need to intervene. He related that under current Alaska law a provision read as follows:

The terms and conditions in agreement -- in agreement between a manufacturer and a new motor vehicle dealer in this state, including a motor franchise agreement, that are inconsistent with the law of this state do not have any force or effect in this state.

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MR. SLEEPER reiterated that that is how all 50 states are protecting these dealers because these are "take it or leave it" contracts. These state statutes protect dealers and in many instances protect the consumer, and that consumer protections are written into the bill language. He referred to a series of maps [included in the committee packets], and acknowledged that the Alliance of Automobile Manufacturers (Alliance) believes this is a radical departure from existing law, that Alaska is making new law, and so forth. Thus, a series of maps were prepared depicting how Alaska is behind the curve, that the provisions are common in every state depicted in red - a state with a franchise statute providing termination assistance that currently requires warranty reimbursement at resale rates. He related that these adhesion contracts are a major reason it is important for the legislature to get between the manufacturers and the dealers because the only protections are when state

legislatures determine that the laws of that state are inconsistent with (indisc.) contract that the law controls.

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CO-CHAIR STUTES referred to the discussion of franchise and wondered whether it was same when buying a McDonald's franchise, and offered a scenario of McDonald's requiring a franchise to purchase the golden arches, and if the dealer did not abide, McDonald's would take the franchise away. She advised there is one car dealership in her district and the dealer loves the franchise, and that she could not quite get past the overreach.

MR. SLEEPER reiterated that the reason all 50 states have the franchise statutes is due to the relationship between the automobile dealers and manufacturers. He pointed out that there is incredible overreach and disparate bargaining power between the manufacturers and the automobile dealers. Although, he said he does not know whether the McDonald's franchises have statutory protection, but just because they do not have it does not mean they need protection. He stated that the franchise agreements "literally say, this is what they say, as long as we adopt the same contract in every state, so if you want to amend our franchise agreement after you've signed it, we can amend it as long as we amend it in all 50 states." While that may work in 49 states with good franchise protection, Alaska's dealers do not have that protection. For example, he pointed out, a manufacturer can tell an Alaska dealer to order 10 two-wheel drive convertibles if they want to receive three four-wheel drive vehicles, and that sort of heavy handling can't be done in the other 49 states. He then offered examples of dealers in Alaska being treated with a heavy hand.

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REPRESENTATIVE KOPP related that there appears to be some anomalies in "our free market" with manufacturers and automobile dealers that are difficult for free market minded people to get their heads around and why this issue is so different. He asked where the public money was involved - so why was the legislature involved, and whether McDonald's and other franchises would come to the legislature for some type of protection. Except, he pointed out, those franchises are not, which then says that possibly there is something unique happening in this situation.

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MR. ALLWINE responded that car dealers are all free market people in a unique situation. He explained that on the manufacturer side, various levels can dictate to the dealers such as at the business center level, and in the event the interests, bonus plans, and/or personnel change, the "whole game can change for us, it changes on a whim." He related that they have worked on this bill for two years, on August 25, 2016, the Alaska Auto Dealers Association (Association) directed a letter to the Alliance of Automobile Manufacturers (Alliance) with zero response, and that the Association has tried on multiple occasions to have a discussion with the Alliance regarding this bill. He related that a couple of weeks ago the Senate companion bill was heard, and after the hearing, Ross Good, representative from Fiat-Chrysler and he promised each other that if there was no communication, that they would communicate. On March 17, 2017, he called Mr. Good and advised he had not yet heard from anyone, and exactly two hours later he received the 3/16/17 letter Co-Chair Stutes referred to. He stated, "I guarantee you that letter wasn't written on March 16, 2017, and it wasn't a coincidence that it showed up on March 17, 2017 in an email." The Alliance has been non-cooperative and non-responsive on these issues, he stressed, and pointed out that the letter requested a detailed list of the Association's concerns, and he said "We already have it in detail, 29 pages."

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CO-CHAIR WOOL noted that these issues appeared to be inter-industry disagreements which the legislature hoped could be resolved using existing statute.

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REPRESENTATIVE CLAMAN noted that as of 2002, there was the sense that the market wasn't working well for Alaskans, and the perspective of the dealers is that the statute still needs work. He related that as sponsor of this bill he hears the committee's comments as to whether the bill needs to go all that far, what's wrong with the status quo, and to identify the problems with the status quo. He said he would look carefully at the perceived problems with existing statutes that may need improvement.

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REPRESENTATIVE KOPP asked how this legislation would impact consumers.

MR. ALLWINE answered that one of the biggest sections in the legislation deals with warranties and recalls, which is the single most important area as far as impact to consumers. He referred to consumers living 100 miles off-road or on an island, and advised it would allow dealers the ability to facilitate repairs in remote locations in a manner that would benefit a consumer. Current statutes do not give dealers enough control in assisting consumers, whether it is for the recall or a warranty repair. He then offered a recall example wherein a person living in Ketchikan had a Chrysler vehicle recalled, and the Chrysler manufacturer paid for the ferry in both directions. Except, when the gentleman had another Chrysler vehicle subject to a recall, the Chrysler manufacturer wasn't interested in reimbursing him for the ferry. He pointed out that the manufacturers are inconsistent in their decisions. The gentleman contacted the Better Business Bureau twice, and Mr. Allwine had to respond twice, then the gentleman wrote to the Attorney General's Office, and Mr. Allwine responded that it was not in his purview. Mr. Allwine explained that this legislation would assist in those situations because it would allow dealers to facilitate those issues in an effective manner.

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REPRESENTATIVE KOPP referred to repairs and warranty, and said the manufacturer manufactures all of the parts for repairs and warranties, and asked whether it sells those parts directly to the dealers at a market rate, or whether there other things it can do with those parts that are problematic as far as "filling into a part shop cheaper than to the dealers."

MR. ALLWINE responded that different manufacturers sell to their dealers at varying markups, such as General Motors, in addition to selling certain things to their dealers inconsistently, it also sells to outlying parts houses at rates that are sometimes less than what their dealers are buying. He related that a General Motors dealer cannot buy a Chevrolet engine from General Motors, they have to go to another Chevrolet dealer, and he is a Chevrolet dealer. There are significant inconsistencies existing within the industry which demonstrates why this legislation was put forth in that it is not just with a single manufacturer, but rather a number of manufacturers, and they all have a different take.

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MR. SLEEPER added that, currently if a certified technician is not available for warranty work, the person must wait to have the work performed. In the event another technician was available that could do the work and be supervised by a certified technician, it is the dealers' belief that that practice should be allowed and reimbursed by the manufacturer, he said. This issue is corrected with the language in HB 136, he explained, in the event a person lived 100-miles from a service facility, any facility could fix it as long as they were supervised by the manufacturer's representative, which is the dealer. He explained that the manufacturer requires that the dealers perform warranty work and the manufacturer specifies the price the dealer can charge for that warranty work. He then referred to the rights of contracts and parties, and asked where else does the buyer dictate the price the seller can charge, except in this business. Warranty work is expensive, he expressed, because dealers must have special tools, send their service technicians out for schooling, and such, and according to the manufacturer, the dealer can only charge 70 percent and limits the amount of time spent on the repair to bring the cost down for the manufacturer. Capitalism and economic principles were previously discussed, and he pointed out that when that cost is shifted to the manufacturer and the dealer can't charge a fair rate for the warranty work, that extra cost gets made up in the non-warranty work performed for consumers. He explained that in the event a manufacturer wanted to move into a new location and open a new store, there are four or five new provisions that specifically direct the court to consider the competition, the effect on the consumer, what it would do for pricing, and to make certain it did not result in a monopoly.

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CO-CHAIR WOOL asked whether warranty work was only dealer authorized work and he could only go to that dealer and not shop around for the best price.

MR. SLEEPER opined that any dealer in the authorized service centers could perform the work.

CO-CHAIR WOOL clarified his question and said that as far as being a dealer that performs warranty work, a lot of the dealer's business is probably warranty work at a reduced rate, which is similar to a doctor taking Medicaid patients wherein the doctor receives a discount in reimbursement but also receives a large amount of patients.

MR. ALLWINE responded that the nationwide reality, not just in Alaska, is that approximately 30 percent of his work is warranty work and the bulk of the work is retail work for his customers. He explained that prior to the massive recalls, manufacturers had always advised the dealers that the manufacturers would not be a prime part of the dealer's business, and that the dealers needed to cultivate their retail consumers, which is the bases under which dealers operate.

[2:10:13 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD noted that manufacturing entities operate primarily in the Eastern United States and many of the dealerships are all across this state, and asked how the Federal Trade Commission is then overseeing how the agreements are made between the manufacturers and the dealerships. She opined that part of this discussion is state oversight, but also federal oversight, and she asked for a description of the federal umbrella ...

[2:11:09 PM](#)

MR. SLEEPER answered that because it is a matter of contract in general, the federal government defers to state franchise laws to govern the dealer/manufacturer relationship. The Federal Trade Commission comes in to govern the relationship between dealers and consumers, he explained.

[2:12:07 PM](#)

DAVID BRIGHT, Attorney, Alliance of Automobile Manufacturers, advised that he is an attorney for the Alliance of Automobile Manufacturers (Alliance) representing 12 manufacturers of cars and light trucks and combined, produces roughly 70 percent of the cars sold in the United States every year. He pointed out that this bill rewrites existing contracts between business partners, and as such there is no compelling public purpose here or reason for the legislature's involvement. During this hearing, the contracts have been discussed as contracts of adhesion or somehow nefarious strong-arm type of contracts, and simply stated that is not the case, he said. The manufacturers must offer the same deal to all dealers and the only manner in which to do that is to use form contracts. The alternative, he pointed out, would be to negotiate with each individual dealer resulting in different deals for each dealer, and given the attention the current law and this bill gives to unfair practices or discriminating against dealers, he could not

imagine that would be the outcome Alaska dealers would prefer over the uniform contracts, he said. The uniform contracts, he described, are not just handed out as edicts from "on high," as dealers do have a means to influence those contracts, as well as the rest of the business between the manufacturer and the dealer, through "dealer councils." Mr. Bright likened the dealer council as almost legislative bodies (indisc.) sample of different dealers able to give input to the manufacturer on the franchise contract and any programs or incentives the manufacturer may be running, and those dealers advise as to certain pitfalls and issues the manufacturer may not have considered. Those dealer councils are productive and viable ways for manufacturers and dealers to communicate and work out their differences, he said.

[2:14:45 PM](#)

MR. BRIGHT related that in terms of this bill generally, he submitted that this bill does not catch Alaska up to the rest of the country, but rather this language makes Alaska an outlier by adopting extreme versions of almost every single idea [in the bill]. He referred to Map 5, addressing that most of the states in the country have termination assistance, and he said he agreed, but definitely not by what is contemplated in this bill. This legislation would require payment for "even the dealer who quits the business," wherein the rest of the country generally accepts what happens when the manufacturer is the entity terminating a dealer, he related. For example, an entity generally would not give the same severance package to someone who quit working, as opposed to some asked to leave. He referred to Maps 8-9, reimbursements for parts and signs, and noted there is an important distinction because in only seven states in the country do they follow the model suggested in HB 136, the manufacturer reimburse for items recommended or required. Typically, he said, other states are reimbursed only what the manufacture required as opposed to recommended because expanding the scope of the liability to include simple recommendations would stifle what the manufacturer may suggest to the dealer that should be helpful for everyone. The manufacturer certainly does not intend to expose itself to liability upon making a simple recommendation, he explained. He referred to Map 23, regarding warranty audits wherein a manufacturer reviews what it had already paid car dealers for warranty work in order to be certain the claims and payments were proper. Alaska already would be a bit of an outlier for the fact it limits that audit period to six months, he related, but then it adds another wrinkle which is that a manufacturer

may audit six months back but it can only do that once per year. Thereby, allowing a six month period where the manufacturer cannot review or "do anything" which, he described, is an invitation for sloppiness and a free for all. He noted that he had submitted a separate document explaining his issues with the bill.

2:17:55 PM

MR. BRIGHT referred to "intra-brand competition", and advised that Sec. 10 will make it harder for manufacturers to prevent one dealer from buying up all of the dealerships in an area. Wherein, he pointed out, that problem will be exacerbated by Sec. 13, which then makes it harder for the manufacturer to create new dealerships. Consumers benefit from dealers competing against each other for their business in terms of the services offered and the prices charged, he related, and it is not in the consumer's interest to have not have intra-brand competition for consumers.

2:18:47 PM

MR. BRIGHT then referred to Sec. 15, and explained that the section creates upward pressure on retail prices by directing the manufacturer to reimburse at whatever rate the dealer charges to the consumer, not at a pre-arranged bulk rate. This bill, he described, is a bit of an outlier in that it limits the manufacturer's ability to pushback on what is, or is not, a reasonable retail rate. For example, the bill read that if a dealer was not the most expensive in "this area," then it was a reasonable rate, and that is not common, he stated. The language also read that the manufacture cannot surcharge to recoup its increased costs generated from an Alaska specific law, and the manufacturer has no ability to push back on the height of those rates, he explained.

MR. BRIGHT referred to "document fee" in the industry, and explained that a manufacturer will run some type of program, such as a "friends and family" program or a recent (indisc.) program, and the manufacturer was simply putting cash on the hood and meant it to go directly to the consumer. Typically, he said, when the manufacturer runs this program, the program is optional and dealers are not required to participate. (Indisc.) line in the agreement, he said, "If you do participate, you can't charge more than 'X' amount of dollars in document fees," such as titling fees, registration fees, and such. Without the ability to put a cap on that, he stressed, the money the

manufacturer intended to go to the consumer may well be eaten up by these document fees, and that is not good for the consumer. He described that this is a complex and esoteric area of law and the language and issues matter quite a bit, and because it is so complicated it takes quite a bit of time to go through these bills and negotiate. The Alliance, he related, has not yet had the opportunity to sit down and negotiate with the Association on this bill, and it is prepare to do so. However, he pointed out, given the complexity and length of the bill, there is simply no time to do that until the interim session of the legislature.

[2:22:00 PM](#)

MR. BRIGHT related that there is no need to rush this bill through the legislature as harm comes from rushing. The language is complex, he reiterated, there is collateral damage to the manufacturers as well as Alaskan consumers and, therefore, the Alliance requests more time to negotiate the bill.

[2:22:45 PM](#)

CO-CHAIR STUTES asked whether there had been consumer protection problems with existing law.

MR. BRIGHT answered that he was not familiar with any consumer protection issues that may have arisen.

[2:23:13 PM](#)

ED SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), responded that the attorney general receives a number of consumer complaints related to automobile issues and warranty work, but he could not recall whether any of the complaints were specifically related to issues addressed by this legislation.

CO-CHAIR STUTES related that it was odd Mr. Bright stated that he would have to wait until the interim to have any type of conversation [with the Association], and asked the reason.

MR. BRIGHT replied that his role at the Alliance is to fly around the country and meet with auto dealer associations and negotiate these bills, it takes several hours to get through a four or five issue bill for both sides to solve and work out

agreed upon language, and this is a large and complex bill with many wrinkles.

CO-CHAIR STUTES expressed her confusion as to the difference it makes as to whether or not the legislature is, or is not, in session to have this conversation.

MR. BRIGHT opined that whether the legislature was in session was not important, the point was how long the process would take and he understood there were legislative deadlines. He advised that he did not expect it would be possible to finish a negotiation in time to meet the legislature's deadlines.

[2:26:38 PM](#)

MR. BRIGHT, in response to Representative Kopp, agreed to provide a recap of the issues he highlighted in his testimony today.

CO-CHAIR WOOL asked whether Mr. Bright's job was to travel around the country dealing with individual states and dealer associations within those states to negotiate an agreement with the various dealer associations.

MR. BRIGHT clarified that his role is limited to negotiating legislative language, and not to negotiate the actual franchise contract itself. He offered to submit a typical franchise agreement to review, and reiterated that he represents the industry and not a specific company. He said his negotiations are all with state automobile dealers associations as well as legislators interested in safe franchise laws and legislation.

[2:28:14 PM](#)

CO-CHAIR WOOL related that the franchise agreement would be interesting to see because everyone is familiar with the dealer's side, but probably consumers do not give a lot of consideration to the intricacies between the manufacturer and the dealership, and take it for granted because the dealerships appear to be "hunky dory."

CO-CHAIR WOOL noted that the discussion had been around contracts the dealers must sign, yet the manufacturers can change the contract unilaterally later down the line and the dealers have to accept the change.

MR. BRIGHT pointed to the need to offer the same deal to everyone and the only way to do so was to use those form contracts. In the event those form contracts need to be updated, a vote or negotiation does not take place and "it is just a simple every so often a manufacture needs to update the contracts," and there must be no discrimination amongst dealers, he said.

[2:30:10 PM](#)

REPRESENTATIVE CLAMAN noted the 5-6 page Alliance analysis of the problematic issues in HB 136, which appeared to be more extensive than Mr. Bright's testimony. He asked whether Mr. Bright based his testimony on the Alliance's sectional analysis in response to the provisions in the bill.

MR. BRIGHT answered yes, but in the interest of time he did not want to go through every column highlighted in that document, and that his testimony was largely excerpted from that document.

REPRESENTATIVE CLAMAN surmised that this document reflects the Alliance's objections. Representative Claman requested three good model states to review that Mr. Bright broadly believes have done a good job of striking a good balance between the consumer, dealer, and manufacturers' interests, recognizing that those three interests may not always be aligned.

MR. BRIGHT responded that it was difficult to provide an exact answer, and that recently the Alliance negotiated well in Indiana and Michigan. Typically, he explained, when he meets with dealer associations to hammer out agreeable compromises, rather than reinventing the wheel, they identify certain states that have performed certain concepts well and try to borrow from those concepts. It is difficult to make the entire code perfect, he pointed out, which is why was difficult to point to one specific perfect state.

[2:33:16 PM](#)

CO-CHAIR STUTES asked that when the manufacturers have to make adjustments to the contracts every three or four years whether the adjustments are made without the dealers' knowledge, or any type of conversation with the dealers.

MR. BRIGHT answered that, typically, it is not so much that these contracts are being modified, they are just being renewed once every five years, more or less, and it is not common to

have significant changes made to these boilerplate contracts, they are just meant to be renewed as opposed to amended. Potentially, he related, the most surprising thing the committee will find in the contract is that, unlike McDonald's or other typical fast food franchises, the dealers do not pay any type of fee to the manufactures to obtain the franchise or to keep the franchise.

[2:35:00 PM](#)

CO-CHAIR WOOL related that in previous conversations a dealer mentioned that the manufacturer had required the dealer to paint the floor in the shop to its specifications, and he thought that that was too much of a detailed request to put in front of the legislature. He commented that painting the shop floor was not something in a contract, but yet it was required of the dealer.

MR. BRIGHT answered that perhaps the dealer was discussing a facilities incentive program, sometimes there are side agreements wherein a manufacturer makes an offer to the dealer that if the dealer would make the following changes to their facility, the dealer would be eligible for "X" incentive. Again, he reiterated, that is meant to help the dealers renovate their facilities, keep the facilities modern, and provide a strong representation of the brand to the consumer. The franchise contract itself may make reference to dealers keeping their facility up to snuff, but typically the franchise contract does not discuss paint schemes and such. As manufacturers, he added, the only way to get to the consumer is through the dealer, and as such it cares about the presentation of the brand to the consumer, and at the same time, if the dealer is not successful, the manufacturer is not successful. The manufacturers, he related, do not look at this as an adversarial process, but rather as two business partners who have worked together for decades, who keep their business affairs out of the public view by not causing a scene in the legislature, and work it out amongst themselves.

[2:37:41 PM](#)

CO-CHAIR STUTES offered that if [the manufacturer] suggested the dealership put in new floors or paint their facility and the dealer chose not to, whether that would trigger a revocation of the franchise.

MR. BRIGHT opined that, generally, the dealers believe that anyone in the franchise may have a requirement to meet certain

minimal considerations, but he could not imagine anyone being terminated solely for not repainting the floors from one color to another color. Typically, he said, when he talks to his members about problems they've had on the facilities front, it has been stores that are not simply out of date, but almost dilapidated.

[2:39:05 PM](#)

REPRESENTATIVE CLAMAN asked Mr. Sleeper which states the committee should review in continuing to review this legislation (coughing).

MR. SLEEPER advised that the legislation was modeled after Washington law, and suggested Oregon and New York franchise laws. He referred to the maps and related that wherever a color was shown on the map it meant that that state had adopted a franchise statute dealing specifically with something in that franchise contract. All of these states, he said, due to the provisions in the contract that allow the manufacturer to dictate remodeling, have had to step forward and provide their dealers statutory protection. He reiterated that these contract are not unilaterally negotiated, the manufacturers say that these sales and service agreements are "take it or leave it." The state legislatures then step in and protection for the dealers and consumers.

[2:42:20 PM](#)

CO-CHAIR WOOL noted there had been some question as to state involvement between two private entities, contract negotiations, the 2002 franchise statutes in Alaska and other states, and he asked Mr. Sniffen for his thoughts.

MR. SNIFFEN responded that the administration does not have a position on this bill one way or the other, but he had heard testimony worthy of clarification. He referred to testimony that the state's current franchise law does not provide many standards when it comes to establishing or terminating an existing dealership, and what it means to terminate for cause. Currently, he explained, Alaska law does address that issue but it does so in a cumbersome manner, such that under AS 45.25.180, if an existing dealership had a concern with a manufacturer putting a new dealership into the area, it could file an action with the court and the court was given some guidance on how to determine whether or not good cause existed. The law spells out that the court is to look at whether or not the new dealership

was warranted by economic and market conditions, whether or not the investment made by the existing dealership would be jeopardized, and so forth. He referred to previous testimony as to whether or not a manufacturer could coerce a dealer to do things such as paint the floors or change the facilities and just do that on their own, and he explained that currently under AS 45.25.300, a manufacturer cannot require a motor vehicle dealer to engage in any unreasonable substantial alterations, and if there isn't a sufficient supply of new motor vehicles. Current law, he pointed out, is certainly not as detailed as the proposed legislation and this bill would add more clarification and detail.

[2:45:23 PM](#)

MR. SNIFFEN turned to the consumer side and said he agreed with the dealers in that there are a couple of good consumer benefits in this bill such as, allowing non-certified technicians in certain circumstances to perform repairs is a good fix for consumers. The new 100-mile rule allowing a non-certified [technician] to perform repairs in an area where a certified-technician does not exist certainly does make sense in Alaska. Although, he noted, there are concerns with other consequences of this bill and referred to the effect of intra-brand competition. He put forth that this bill would essentially make it "very, very difficult for a manufacturer" to put a new dealership in an area with an existing dealer, it would cement in place all of the dealers in the state pretty much right now, and make it difficult for new dealers to come in. Under this bill, he explained, the existing dealers would have the first shot of refusal to not to put in a new dealership and that they would just open up a satellite dealership. That may be good or bad, the Department of Law (DOL) does not take a position on that, but that is just one consequence of this legislation. He related that his office has not been a fan of document fees for a long time, although they are allowed in certain circumstances. In the event a promotion is offered to a consumer, that would limit those fees and pass that (indisc.) on to the consumer, this proposed statute would say, "No, you could still add on some more document fees. So, the consumer that is buying this vehicle in some other area that accepts this promotion, but pay a lesser amount than Alaskan consumers that might have to pay more if those kinds of fees were added on." Again, he said, those might be necessary fees, the dealers may have that added expenses to justify those fees, therefore, the DOL does not take a position as to whether it is good or bad but that is one of the consequences.

[2:47:28 PM](#)

MR. SNIFFEN related that overall, there are franchise statutes in other states and a recognition that this is in the public interests, including the United States Supreme Court wherein it recognized the issues, in the quote read by Mr. Sleeper, from the seminal United States Supreme Court case. Alaska has existing franchise law and whether this particular law is better or worse is something for the committee to decide, but it certainly is more comprehensive than most of the franchise laws he is has read, he said.

[2:48:06 PM](#)

REPRESENTATIVE NEUMAN asked whether he had received any complaints as to dealers or manufacturers on this issue.

MR. SNIFFEN reiterated, not that he could recall in recent history, and advised that he was involved in passing the existing franchise law in 2002, wherein Representatives Lisa Murkowski and Andrew Halcro headed up discussion groups with manufacturers and dealers, and at that time there were some complaints which created the current franchise law. Other than through this legislative process, he said he has not been aware of any adverse consequences from the issues this legislation addresses.

[2:48:55 PM](#)

REPRESENTATIVE NEUMAN referred to the issue of a new dealership coming to town with an existing dealership, and asked whether there was anything in the legislation that would prevent an even playing field for a new dealership.

MR. SNIFFEN opined that this bill would certainly give the existing automobile dealers more ammunition to resist the infiltration of a new dealer into the state. Although, he said, he did not see anything in the law that would differentiate among them once they were established.

[2:50:14 PM](#)

CO-CHAIR STUTES referred to the maps and said that it appears Alaska's franchise laws are quite similar to Washington for the most part, and asked whether she was correct.

MR. SNIFFEN replied that the proposed legislation would bring Alaska closer to Washington than Alaska's current franchise law, although, it probably does more than Washington. He explained that he had not performed a side-by-side comparison of the two states and was uncertain.

[2:51:03 PM](#)

MR. SLEEPER explained that the maps show what Alaska would look like, in some cases, if the bill passed the legislature and there will be some cases where Alaska law already mirrors Washington.

CO-CHAIR STUTES asked whether Mr. Sleeper had anything to show what Alaska looks like currently.

MR. SLEEPER answered no, [through the maps] they tried to show a [comparison] to the other states.

[2:51:57 PM](#)

CO-CHAIR WOOL surmised this is if the bill were to pass, this is how Alaska would stack up, and it doesn't show where Alaska stacks up currently.

MR. SLEEPER replied that in some cases it does because there is the protection ...

[HB 136 was held over.]

[2:52:50 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:52 p.m.