

**ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE**

March 9, 2017

1:40 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Shelley Hughes, Vice Chair
Senator Kevin Meyer
Senator Gary Stevens
Senator Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARINGS

Alaska State Board of Public Accountancy
Marja Beltrami - Anchorage
Wayne Hogue - Kotzebue
Donavan Rulien, II - Anchorage

CONFIRMATIONS HEARD AND HELD

Fisherman's Fund Advisory and Appeals Council
Clay Bezenek - Ketchikan

CONFIRMATION HEARD AND HELD

Board of Pharmacy
Lana Bell -Anchorage
Taryl Giessel - Eagle River
James Henderson - Soldotna

CONFIRMATIONS HEARD AND HELD

State Board of Registration for Architects, Engineers, and Land Surveyors
Elizabeth Johnston - Fairbanks
Richard Jones - Juneau

CONFIRMATIONS HEARD AND HELD

Board of Certified Real Estate Appraisers

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 56

"An Act relating to product warranties and services for certain products; relating to certain dealers, distributors, and manufacturers; and establishing an unfair trade practice under the Alaska Unfair Trade Practices and Consumer Protection Act."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 56

SHORT TITLE: PRODUCT WARRANTIES & REQUIRED UPDATES

SPONSOR(S): SENATOR(S) GIESSEL

02/13/17	(S)	READ THE FIRST TIME - REFERRALS
02/13/17	(S)	L&C
03/09/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

MARJA BELTRAMI, Appointee

Alaska State Board of Public Accountancy
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska State Board of Public Accountancy.

WAYNE HOGUE, Appointee

Alaska State Board of Public Accountancy
Kotzebue, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska State Board of Public Accountancy.

DONAVAN RULIEN, Appointee

Alaska State Board of Public Accountancy
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska State Board of Public Accountancy.

CLAY BEZENEK, Appointee

Fisherman's Fund Advisory and Appeals Council
Ketchikan, Alaska

POSITION STATEMENT: Testified as appointee to the Fisherman's Fund Advisory and Appeals Council.

MARK SALDI, representing himself
Skagway, Alaska

POSITION STATEMENT: Testified in support of the reappointment of Clay Bezenek to the Fisherman's Fund Advisory and Appeals Council.

JERRY MCCUNE, President
United Fishermen of Alaska
Juneau, Alaska

POSITION STATEMENT: Testified in support of the reappointment of Clay Bezenek to the Fisherman's Fund Advisory and Appeals Council.

LANA BELL, Appointee
Board of Pharmacy
Anchorage, Alaska

POSITION STATEMENT: Testified as an appointee to the Board of Pharmacy.

TARYL GIESSEL, Appointee
Board of Pharmacy
Eagle River, Alaska

POSITION STATEMENT: Testified as an appointee to the Board of Pharmacy.

JAMES HENDERSON, Appointee
Board of Pharmacy
Soldotna, Alaska

POSITION STATEMENT: Testified as an appointee to the Board of Pharmacy.

ELZABETH JOHNSTON, Appointee
State Board of Registration for Architects, Engineers, and Land Surveyors
Fairbanks, Alaska

POSITION STATEMENT: Testified as an appointee to the State Board of Registration for Architects, Engineers, and Land Surveyors.

RICHARD JONES, Appointee
State Board of Registration for Architects, Engineers, and Land Surveyors
Juneau, Alaska

POSITION STATEMENT: Testified as an appointee to the State Board of Registration for Architects, Engineers, and Land Surveyors.

SENATOR CATHY GIESSEL
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 56.

AKIS GIALOPSOS, Staff
Senator Cathy Giessel
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Provided a sectional analysis for SB 56.

ED SNIFFEN, Deputy Attorney General
Civil Division
Regulatory Affairs & Public Advocacy (RAPA)
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Answered questions related to SB 56.

CHRIS GERONDALE
Construction Machinery Industrial, LLC
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 56.

STEVE SEWARD, Attorney
Construction Machinery Industrial, LLC
Seattle, Washington
POSITION STATEMENT: Answered questions related to SB 56.

JIM HALLORAN
Caterpillar Inc.
Peoria, Illinois
POSITION STATEMENT: Testified in opposition to SB 56.

NICK YAKSICH, Senior Vice President
Association of Equipment Manufacturers
POSITION STATEMENT: Testified in opposition to SB 56.

ACTION NARRATIVE

[1:40:28 PM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:40 p.m. Present at the call to order were Senators Hughes, Gardner, Stevens, Meyer, and Chair Costello.

CONFIRMATION HEARINGS

Alaska State Board of Public Accountancy
Fisherman's Fund Advisory & Appeals Council
Board of Pharmacy

State Board of Registration for Architects, Engineers, & Land
Surveyors

[1:41:11 PM](#)

CHAIR COSTELLO announced the first order of business would be confirmation hearings for governor board & commission appointments. She thanked the nominees and advised that members have information about the individuals in their packets. She noted that the names of all appointees would be forwarded in one batch at a later date.

[1:42:38 PM](#)

CHAIR COSTELLO asked Marja Beltrami of Anchorage to tell the committee about her interest in serving in the CPA seat on the Alaska State Board of Public Accountancy.

[1:43:09 PM](#)

MARJA BELTRAMI, Appointee, Alaska State Board of Public Accountancy, Anchorage, Alaska, said she has been a CPA for more than 20 years and has her own business. Her interest in serving on this board is to keep her profession moving forward and ensure a good future for her staff.

CHAIR COSTELLO asked if she sees any particular challenges the board will address in the coming year.

MS. BELTRAMI replied she is not aware of any major changes on the horizon.

SENATOR GARDNER asked her to talk about the possible conflict of interest given the business she owns and the work with this board.

MS. BELTRAMI said she is subject to all the decisions that board makes so she may potentially be affected both positively and negatively. "That's why I answered 'yes' I may potentially benefit from any decisions the board would have, as would any CPA that sits on this board and is in current practice."

SENATOR GARDNER, noting that five of the seven members of this board are CPAs, commented that it makes sense applicants would have an interest in serving in their area of expertise.

CHAIR COSTELLO thanked Ms. Beltrami for being willing to serve and reiterated that the names would be forwarded in one batch at a later date.

1:46:55 PM

CHAIR COSTELLO asked Wayne Hogue of Kotzebue to tell the committee about his interest in serving in the public seat on the Alaska State Board of Public Accountancy.

1:47:19 PM

WAYNE HOGUE, Appointee, Alaska State Board of Public Accountancy, Kotzebue, Alaska, stated that he is not a CPA and thus has no potential conflict of interest serving on this board. He wants to serve in order to fulfill his civic duty. The Governor's Office asked him to serve and he submitted his application.

CHAIR COSTELLO noted that in the past he served on the Kotzebue Alcohol Beverage Control Board.

MR. HOGUE confirmed that service and explained that he helped implement the first city-owned liquor store in Kotzebue. It provided good experience in rule-making and bringing regulations in line with the rest of the nation.

SENATOR STEVENS asked if most of the meetings of the Alaska State Board of Public Accountancy are audio conference or face-to-face.

MR. HOGUE replied his first meeting was audio conference, but he found it difficult to participate because the applications the board was evaluating were physical files. The next meeting was in Juneau and he traveled there to meet with legislators to discuss potential changes; it was very productive. He said the board is trying to get permission to bring him to the quarterly meetings since he is remote. He and one other member are not on the road system.

SENATOR STEVENS agreed that face-to-face meetings are better and said he assumes that attending occasional meetings will not be a hardship.

MR. HOGUE confirmed it would not be a problem.

1:50:50 PM

SENATOR HUGHES noted his employment history and asked what a virtualization consultant is.

MR. HOGUE explained that virtualization is consolidating computer resources into a centralized stack. He has been involved with virtualization since the 1990s; it is the way of the future.

SENATOR HUGHES asked if a virtual meeting would include synchronous video teleconferencing and if that would be a possibility for some of the state boards.

MR. HOGUE replied that is a possibility, but it won't work for this board until everything under review is digitized. He noted that teleconferencing is used extensively in the medical field and that WebEx (which is a shared meeting) would enhance online meetings and save on travel.

SENATOR HUGHES suggested he help usher that in for all boards and commissions to save travel costs.

MR. HOGUE agreed that is a possibility and admitted he is very pro technology.

CHAIR COSTELLO thanked Mr. Hogue for being willing to serve and noted that public testimony would remain open on this and all nominees.

[1:56:36 PM](#)

CHAIR COSTELLO asked Donovan Rulien of Anchorage to tell the committee about his interest in continuing to serve on the Board of Public Accountancy. She noted his long history of volunteering.

[1:57:27 PM](#)

DONAVAN RULIEN, Appointee, Alaska State Board of Public Accountancy, Anchorage, Alaska, said he and his wife moved to Alaska 33 years ago and they believe it is important to be part of and give back to the community. He advised that he just finished his first term on this board and currently serves as chair. He listed other organizations he has and does serve on that have given him a good background to help serve Alaska CPA licensees. He stressed that protection of the public is of paramount importance.

SENATOR GARDNER noted his service as an expert witness and wondered of many were divorce cases.

MR. DONAVAN answered yes, to establish fair valuations before property is divided.

CHAIR COSTELLO thanked Mr. Rulien for being willing to serve.

[2:00:05 PM](#)

CHAIR COSTELLO asked Clay Bezenek of Ketchikan to comment on serving on the Fisherman's Fund Advisory and Appeals Council.

[2:00:43 PM](#)

CLAY BEZENEK, Appointee, Fisherman's Fund Advisory and Appeals Council, Ketchikan, Alaska, said he has been on the appeals council for 11 years and is honored to be nominated to continue to serve. He has been a fisherman for 34 years and has a clear understanding that health concerns are very important for the fleet, particularly since it is graying. The current board has a good mix of fishermen statewide and historical knowledge is transferred to newer members. He discussed the solvency of the fund, licensing scams the legislature helped eliminate, and tipped his hat to the people who started the fisherman's fund in 1952.

SENATOR STEVENS asked if the board becomes involved after a fisherman has been hurt or become sick and a negative decision has been reached on his/her coverage.

MR. BEZENEK said that's correct; the board looks at things after it is deemed that the general criteria have not been met.

[2:04:49 PM](#)

MARK SALDI, representing himself, Skagway, Alaska, testified in support of the reappointment of Mr. Bezenek to the Fisherman's Fund Advisory and Appeals Council. He related that he has worked with Mr. Bezenek for nine years and finds him to be a top notch guy who likes to get things done. "Besides that, Clay knows just about everybody in the state when it comes to fishing."

[2:05:50 PM](#)

JERRY MCCUNE, President, United Fishermen of Alaska, Juneau, Alaska, testified in support of the reappointment of Clay Bezenek to the Fisherman's Fund Advisory and Appeals Council. He has served the longest of any member and has a clear understanding of what is going on with insurance. His reappointment is essential to the council. He noted that fishermen have to use their own insurance if they have it, but many do not.

CHAIR COSTELLO agreed that continuity is important, particularly on the small boards. She thanked Mr. Bezenek for being willing to serve and noted that public testimony would remain open and that all the names would be forwarded in one batch.

[2:07:39 PM](#)

CHAIR COSTELLO asked Lana Bell of Anchorage to tell the committee about her interest in serving on the Board of Pharmacy in the pharmacist seat.

[2:08:07 PM](#)

LANA BELL, Appointee, Board of Pharmacy, Anchorage, Alaska, stated that she was licensed in Alaska in 1988 and spent most of her career in retail pharmacy. For the last 14 years she has worked for the state at Pioneer Home Pharmacy. Alaska has provided her great opportunities throughout her career and she would like to give back. She discussed her participation as the pharmacy board representative on the Governor's Controlled Substance Advisory Council. It is an important topic for pharmacists. She shared that in retail pharmacy she always had to work closely with law enforcement because people will go to great lengths to obtain prescription opioids. It is not a new problem; "it's just out of control now."

CHAIR COSTELLO thanked Ms. Bell for her contribution and for being willing to serve.

SENATOR GARDNER observed that she has expertise that could be valuable to the legislature when it contemplates legislation to address the opioid epidemic. She asked if in her role as a board of pharmacy member or as a member of the controlled substance council she is able to testify on legislation that would affect her work at the state or federal level.

MS. BELL replied she would need to ask if she could testify, but she is always available as a resource.

SENATOR HUGHES asked if she could talk about the frequency of requests for prescription opioids now compared to five years ago.

MS. BELL replied she no longer works retail; she works in an institutional pharmacy where access is more controlled so there isn't abuse. She clarified that street drugs have a large impact on the out of control situation she referenced.

SENATOR HUGHES asked if she is seeing an increase in prescriptions with an opioid base.

MS. BELL said she believes that many prescribers are more careful now than in years past. She discussed how a certain number of people will become addicted if they are legitimately prescribed opioids. She said it's a balance to give a person enough to heal without chancing addiction.

[2:20:11 PM](#)

SENATOR MEYER said his experience with pharmacists and getting prescriptions filled is that the insurance companies are always changing the rules on supply. He asked if she hears about that difficulty and if there is anything that the legislature can do to help the situation.

MS. BELL said her pharmacy does long-term billing and the nightmare it has faced is on the federal level from the Centers for Medicare and Medicaid Services (CMS) regarding the short cycle. They can only dispense up to a 14 day supply, which results in copay issues. What she has learned is that it is critically important to do every claim correctly the first time.

[2:25:11 PM](#)

SENATOR GARDNER asked the reason for the 14-day limit on prescriptions.

MS. BELL said it is a Medicare rule for long-term-care facilities.

[2:25:44 PM](#)

CHAIR COSTELLO thanked Ms. Bell for being willing to serve.

[2:26:05 PM](#)

CHAIR COSTELLO asked Taryl Giessel of Eagle River to tell the committee about her interest in continuing to serve on the Board of Pharmacy in public seat.

[2:26:31 PM](#)

TARYL GIESSEL, Appointee, Board of Pharmacy, Eagle River, Alaska, said she is a homemaker who has served one term on the board in the second public member seat. It is an excellent board that is doing a lot to further public safety and to protect the profession. Her focus as a public member is public safety and how to serve the public without tying the hands of the professionals practicing in this field.

CHAIR COSTELLO found no questions or public testimony and thanked Ms. Giessel for being willing to serve.

[2:28:08 PM](#)

CHAIR COSTELLO asked James Henderson of Soldotna to tell the committee about his interest in serving on the Board of Pharmacy in a pharmacist seat.

[2:28:32 PM](#)

JAMES HENDERSON, Appointee, Board of Pharmacy, Soldotna, Alaska, said he has been in Alaska for 10 years and a pharmacist for 22 years. Most of his career has been in retail pharmacy and now he has a home infusion pharmacy business. He was asked to serve on the board and he feels it would be a good way to provide public service and shape his profession.

[2:29:33 PM](#)

CHAIR COSTELLO found no questions or public testimony and thanked Mr. Henderson for being willing to serve.

[2:30:05 PM](#)

CHAIR COSTELLO asked Elizabeth Johnson of Fairbanks to tell the committee about her interest in serving on the State Board of Registration for Architects, Engineers, and Land Surveyors in the electrical engineer seat.

[2:30:46 PM](#)

ELIZABETH JOHNSTON, Appointee, State Board of Registration for Architects, Engineers, and Land Surveyors, Fairbanks, Alaska, said she is a registered electrical engineer and registered fire protection engineer, which are two of the disciplines the board governs for professional registration and practice.

[2:30:58 PM](#)

At ease

[2:31:02 PM](#)

CHAIR COSTELLO reconvened the meeting and asked if she anticipates any challenges the board will face in the next year.

MS. JOHNSTON replied an issue she sees is the debate about whether or not to include software engineering as a new form of registration in Alaska.

CHAIR COSTELLO found no questions or public testimony and thanked Ms. Johnston for being willing to serve.

[2:33:15 PM](#)

CHAIR COSTELLO asked Richard Jones of Juneau to tell the committee about his interest in serving on the State Board of Registration for Architects, Engineers, and Land Surveyors in the public seat.

[2:33:38 PM](#)

RICHARD JONES, Appointee, State Board of Registration for Architects, Engineers, and Land Surveyors, Juneau, Alaska, said that before he retired from the state he worked in professional licensing. In that capacity he worked with this board for several years. He enjoyed that work and found the board provided a valuable service. He said he is also aware of the importance of an outside perspective and that is why he would like to serve.

[2:34:29 PM](#)

CHAIR COSTELLO found no questions or public testimony and thanked Mr. Jones for being willing to serve.

She reiterated her thanks to the nominees for providing their time and expertise to the boards. She advised that there are over 200 boards in Alaska and many are significant in managing the profession across the state.

[2:35:19 PM](#)

At ease

SB 56-PRODUCT WARRANTIES & REQUIRED UPDATES

[2:38:00 PM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 56.

[2:38:29 PM](#)

SENATOR CATHY GIESSEL, sponsor of SB 56, introduced the bill speaking to the following sponsor statement:

Senate Bill 56 proposes fair treatment to Alaskan consumers and businesses. Heavy equipment is expensive and complicated. Most resource companies, contractors, and many other consumers are dependent on the availability of equipment to keep Alaskans employed and businesses running.

Our state's remote locations and transportation challenges, coupled with high shipping costs, often

can result in high costs to local dealers and distributors when delivering warranty and update services for a manufacturer's defective or deficient products. Many of these services are not reimbursed by the manufacturers who require this high cost work. This results in our local businesses, or their customers, absorbing expenses for shipping, transportation, and labor that should be paid by the company that manufactures the defective or deficient products, provides the warranty, and requires the updates.

Senate Bill 56 protects buyers of heavy equipment. If, during the term of a warranty or, if earlier, within one year after the date equipment is delivered to a buyer, the manufacturer or dealer is unable to repair equipment after a reasonable number of attempts, the bill requires a refund or replacement of the equipment.

Senate Bill 56 also would ensure that local dealers and distributors of heavy equipment, machinery, and tools used for construction, maintenance, resources development and similar activities are adequately compensated when providing required warranty service and manufacturer's required updates on the products they sell.

Senate Bill 56 builds on existing state law pertaining to boats, and all-terrain vehicles (ATVs). The legislation provides clarity, and certainty, for the consumers that use and the manufacturers and dealers that provide the equipment that keeps Alaska's heavy equipment industries running. Senate Bill 56 would not apply to vehicles licensed for use on roads, boats, and ATVs; those items are covered under a separate and current statute.

Senate Bill 56 protects consumers and balances the interests of local dealers to be adequately made whole for meeting their obligations to customers, while setting clear guidelines for manufacturers of heavy equipment products.

SENATOR GIESSEL said her staff, Mr. Gialopsos, is available to take the committee through a sectional analysis if the chair wishes.

[2:44:10 PM](#)

AKIS GIALOPSOS, Staff, Senator Cathy Giessel, provided a sectional analysis for SB 56 speaking to the following prepared document:

Section 1: Enacts 45.45.772 - 45.45.788, which outline the obligations and duties of manufacturers, contractors, dealers, and distributors when providing "required services" which include warranty work, corrective work on defective products, and updates required by manufacturers. For simplification of this sectional, the word "dealer" is used instead of "dealer or distributor," the phrase that appears in the bill.

Sec. 45.45.772 Requires a dealer to provide any manufacturer's warranty in effect at the time of sale to the purchaser. Outlines the obligations of each party when a contractor provides warranty service on behalf of the manufacturer.

Sec. 45.45.773 Requires a dealer to explain the warranty coverage, including disclaimers, and limitations; prohibits a dealer from making a representation about a warranty that is not made in the warranty; and requires the dealer to provide manuals to the purchaser.

Sec. 45.45.774 Requires the dealer to provide warranty service and to make all claims for warranty reimbursement in the manner established by the manufacturer.

Sec. 45.45.775 Prohibits a manufacturer from restricting the nature or extent of labor or parts that are needed to perform the work in accordance with generally accepted standards.

Sec. 45.45.776 Requires the manufacturer to follow the process outlined in this bill and standard industry claim procedures when paying a dealer for required services.

Sec. 45.45.777 Establishes the minimum compensation for work performed by a dealer on behalf of a manufacturer. Specifies the minimum rate and time for

labor costs. Also requires the manufacturer to pay for transportation and lodging costs if the dealer has to send an employee to the field to perform the work.

Sec. 45.45.778 Requires a manufacturer to reimburse a dealer for parts used at the manufacturer's full suggested retail price.

Sec. 45.45.779 If a part needed that is not in the dealer's inventory, requires the manufacturer to pay the cost to send the item, as soon as possible, to the purchaser's choice of either the dealer that sold the product or the dealer closest to the purchaser.

Sec. 45.45.780 Requires the manufacturer to pay or disapprove a claim within 30 days or it is considered approved and accrues a penalty of 1.5% per month.

Sec. 45.45.781 Requires a manufacturer's claim disapproval to be in writing and issued within 30 days of receipt of the claim.

"Lemon Law" Provisions:

Sec. 45.45.782 Requires the manufacturer or dealer to repair a product defect that is covered under warranty when reported by the purchaser.

Sec. 45.45.783 If a product cannot be repaired after a "reasonable number" of attempts during the term of the warranty or one year after purchase, whichever comes first, requires the manufacturer to either replace the product with a new comparable product or refund an amount equal to the full purchase price minus a "reasonable amount" for the period that the purchaser was able to use the product. The purchaser can choose whether to get a new product or refund. Outlines how to calculate the "reasonable amount" for a refund.

Sec. 45.45.784 Establishes a process for the purchaser to make a claim under 45.45.783. The purchaser must make a written claim by certified mail to the manufacturer within 60 days of the end of the term of the warranty or one year after the purchase date, whichever comes first. Outlines what must be in that written claim. Allows the manufacturer to make a final attempt to fix the item within 30 days.

Sec. 45.45.785 States that the manufacturer does not have to replace/refund if the claimed product defect is either not a defect or resulted from alteration, abuse or neglect by a person who is not an authorized dealer.

Sec. 45.45.786 Creates a rebuttable presumption that if the product has been in the shop for repairs three separate times or for 30 days during the warranty period or first year of ownership, whichever is shorter, a "reasonable number of attempts" to fix the product has been made.

Definitions for language enacted in this bill:

Sec. 45.45.787 Defines what products are covered by this legislation.

Sec. 45.45.788 Establishes what qualifies as a "warranty service."

Section 2: Amends the definition of "merchandise" in AS 45.45.790 to include "covered products" - a term used in this bill.

Section 3: Adds definitions to AS 45.45.790 for terms used in this legislation.

Section 4: Adds violations to the provisions in Section 1 to the list of unfair methods of competition and unfair or deceptive acts or practices found in AS 45.50.471.

Section [5]: Applicability - specifies that this bill applies to agreements entered into on and after the effective date of this act.

[2:54:01 PM](#)

SENATOR STEVENS asked if passing this bill might result in a manufacturer such as Caterpillar deciding it isn't worth doing business in Alaska.

SENATOR GIESSEL clarified that the vendor travels to the locations, not the manufacturer. She posed the hypothetical scenario of a vendor in Anchorage who is required to either travel to the remote location to provide warranty service or

ship the equipment back to Anchorage for repair. Right now, the vendor is required to do that to cover the warranty, but the manufacturer may decline to pay the vendor's full costs. The Alaska vendor assumes the extra costs. SB 56 seeks to remedy that; the manufacturer must agree to cover the full costs.

SENATOR STEVENS voiced concern about potential harm if manufacturers decided not to do business in Alaska if they had to cover what could be enormous additional costs.

SENATOR GIESSEL suggested that he ask the vendors who are online to offer their perspective, but she believes it is unlikely that the bill would cause a company like Caterpillar to stop doing business in Alaska.

[2:57:48 PM](#)

SENATOR GARDNER said she too shares that concern. It may be an unintended consequence that Alaskans would have to buy equipment in Seattle and the warranty would only be valid in the state of Washington.

She referred to Sec. 45.45.787 on page 7 that refers to the products that are covered under the bill. She asked, if this is a good idea, why not apply it to all products sold in Alaska?

MR. GIALOPSOS explained that this legislation was introduced at the request of some of the affected stakeholders that specifically work with off the road system manufacturing and dealer issues. The language is based on the legislation that passed in 2009 when all-terrain vehicles, boats, snow machines and other off-road vehicles were brought under coverage for warranty service in remote regions. The legislative intent in 2009 was clear that there was a delineation between items registered for operation on a road and those that are specifically purposed for off-road use.

SENATOR GARDNER continued to question limiting the coverage to items involved in resource development or construction. She pointed out that it could be similarly expensive to get warranty work done on a commercial refrigerator that was shipped to Cold Bay, for example.

MR. GIALOPSOS said the individuals who will testify can talk about the relationship between a dealer of industrial commercial pieces of equipment versus a home appliance from a big box store that provides a direct, through-the-manufacturer warranty. Those purchases are different for several reasons, one of which is the

exclusivity clause for some franchise holders and dealers. He said it was the sponsor's intent to narrowly tailor the legislation to cover the products it does.

SENATOR GARDNER asked if the provisions in subsections (b), (c), (d), and (e) that start on page 3, line 1, are the same in other parts of the country or unique to Alaska.

MR. GIALOPSOS deferred the question to the Department of Law.

CHAIR COSTELLO indicated the question would be held until later.

SENATOR GARDNER reviewed the provision in subsection (e) on page 3, lines 17-20, that requires the manufacturer to reimburse a dealer or distributor for transportation and lodging costs to travel to a location to perform required service. She said a lot of her questions are about whether this is done in other states or is unique to Alaska.

[3:03:49 PM](#)

SENATOR GIESSEL responded that it is impossible to compare the challenges associated with doing business in a remote area of Indiana, for example, versus the challenges of doing business in remote areas of Alaska that can only be reached by air. "It is in fact true that Alaska is different."

SENATOR GARDNER referred to Sec. 45.45.785 on page 6 that talks about exceptions. She asked if a manufacturer would need to send somebody to Cold Bay, for example, to show that an alleged defect either is not a defect or is the result of an alteration by somebody who is not the dealer or distributor.

MR. GIALOPSOS deferred the question to the people online waiting to testify. They can recount specific case studies, he said.

[3:05:27 PM](#)

At ease

[3:06:22 PM](#)

CHAIR COSTELLO reconvened the meeting and asked Mr. Sniffen to respond to Senator Gardner's questions.

[3:06:43 PM](#)

ED SNIFFEN, Deputy Attorney General, Civil Division, Regulatory Affairs & Public Advocacy (RAPA), Department of Law, Anchorage, Alaska, said he is not aware of what other states do with lemon laws for large construction equipment. He agreed with Mr.

Gialopsos that some of the dealers who are online to testify may have a more comprehensive understanding of how other states handle this.

3:07:26 PM

SENATOR HUGHES referred to the list of products that are covered starting on page 7, line 7. She asked if the Department of Transportation and Public Facilities (DOTPF) will benefit from the bill, resulting in a cost savings to the state.

SENATOR GIESSEL offered to follow up after doing research about whether DOTPF purchases equipment through a local vendor or goes directly to the manufacturer.

SENATOR HUGHES said if the department does deal with local vendors, the list should be reviewed to ensure it is complete.

CHAIR COSTELLO asked Mr. Sniffen why contract law fails to address the concerns that prompted the sponsor to introduce the bill.

MR. SNIFFEN said most of these franchise relationships start with contract negotiations and over time it becomes something like an adhesion contract where the dealer doesn't have a lot of bargaining power. That's why states like Alaska have auto franchise laws.

SENATOR STEVENS asked if a manufacturer could declare that a warranty is not covered in distant or remote locations.

MR. SNIFFEN said that would be difficult to do for a manufacturer that sells equipment into a state knowing that it is likely it will be transported to a remote area. Warranties generally follow the equipment and unless there is a clearly stated exception, the manufacturer would probably be required to provide that service.

SENATOR STEVENS observed that it is simple economics; if it costs too much to do business you find a way not to do it. He said he agrees with Senator Gardner's comment about unintended consequences but Mr. Sniffen doesn't seem to agree.

MR. SNIFFEN clarified that he is saying the manufacturer might adjust the warranty after getting stuck with a large bill. He added, "It's hard to say what the consequences of this legislation might be."

[3:12:50 PM](#)

SENATOR HUGHES asked the estimated annual dollar amount that dealers are paying for unreimbursed warranty work.

SENATOR GIESSEL suggested the franchise dealers answer the question. She added that she has anecdotal evidence that they do not pass those unreimbursed costs on to the consumer. "They absorb that cost as Alaskan businesses themselves, and therein lies the problem."

[3:13:36 PM](#)

At ease

[3:13:55 PM](#)

CHAIR COSTELLO reconvened the meeting and asked Mr. Sniffen if lemon laws are in current statute.

MR. SNIFFEN replied Alaska has two lemon laws. The 2009 ATV lemon law that was predicated on the existing automobile lemon law. Alaska also has a distributorship law in Title 45 that protects distributors of all products from certain practices of manufacturers.

CHAIR COSTELLO observed that the committee heard similar legislation last week; the legislature is being asked to set the guidelines in certain areas because it doesn't appear that the contracts are addressing the issues.

MR. SNIFFEN said this bill does not have the retroactive provision that SB 47 has. It would only apply to new contracts.

[3:16:23 PM](#)

CHAIR COSTELLO opened public testimony on SB 56.

[3:16:37 PM](#)

CHRIS GERONDALE, Construction Machinery Industrial, LLC, Anchorage, Alaska, testified in support of SB 56. He stated that his family has been in the construction and heavy equipment industry in Alaska since the 1930s. He works in the family business and also does contract work for other heavy equipment contractors and several mines in Southeast Alaska. He said that he can see this issue from both sides.

He discussed heavy equipment warranties and product updates and noted that in both instances the manufacturer is not required to cover all labor or freight associated with these repairs. SB 56 would require manufacturers to cover a higher percentage of

those costs. This will be particularly helpful for small contractors, farmers, loggers, and placer miners.

MR. GERONDALE explained the process when there is a failure and the equipment is under warranty. First, the end user has to pay the airfare, travel labor, and travel costs to get the problem diagnosed. Once diagnosed, the part is ordered on a stock order, which can take four weeks or 15-20 percent of the construction season in Alaska. To speed the process the end user often elects to pay for expedited freight. Once the part arrives, the end user will again have to pay the costs to have the mechanic come back out and fix the piece of equipment. He estimated that on a \$4,000-\$5,000 warranty work order, the manufacturer may only cover \$500.

Product updates are similarly problematic. The costs can easily be \$3,000-\$4,000 on a repair that only takes two hours, which is what the manufacturer will cover plus maybe \$450 in travel costs. The balance is put on the vendor or the end user.

MR. GERONDALE said the only opposition to SB 56 that he has heard comes from the manufacturers. They argue that the additional cost will increase the price of equipment, but the reality is that the end user already assumes the burden of the additional costs. SB 56 puts some of the burden back on the manufacturer that built a piece of equipment that needs to be repaired.

Responding to the concern expressed that manufacturers may stop doing business in Alaska, he pointed out that boat and ATV manufacturers did not pull out after the ATV lemon law was enacted in 2009.

[3:22:13 PM](#)

SENATOR GARDNER asked where product updates are covered in the bill.

MR. GERONDALE deferred the question to Steve Seward.

[3:22:44 PM](#)

At ease

[3:22:48 PM](#)

CHAIR COSTELLO reconvened the meeting.

[3:23:10 PM](#)

STEVE SEWARD, Attorney for Construction Machinery Industrial, LLC, Seattle, Washington, directed attention to page 8, line 12. It is part of the definition of required services.

[3:23:52 PM](#)

JIM HALLORAN, Caterpillar Inc., Peoria, Illinois, said he wanted to make three points. First, N.C. Machinery and Caterpillar have had an agreement in place since 1926 and there has not been an issue. Second, because Caterpillar's agreements are global, he disputes the statement that Alaska is unique. Third, he maintained that Caterpillar's contracts are working and have allowed the company to service its Alaska customers for over 90 years.

SENATOR STEVENS asked how much of the burden would go back on the manufacturers if the bill were to pass.

MR. HALLORAN explained that Caterpillar pays for parts. They do not pay for time and travel, but they will discount the price of the machine to cover things like that. The dealer appreciates that unique twist because they can use the money as they see fit if warranty service isn't required. For example, it could be used to provide an incentive for the customer to purchase the machine.

[3:27:01 PM](#)

NICK YAKSICH, Senior Vice President, Association of Equipment Manufacturers (AEM), stated that AEM represents over 950 companies that manufacture off-road highway equipment. He made four points and reinforced Mr. Halloran's comments. First, they work with and support the dealer and manufacturer as a partnership to ensure customer satisfaction. Second, he has yet to hear any specific problems that have arisen with dealers in Alaska. In any event, they would prefer to work directly with the dealer to resolve an issue. Third, this bill infringes on the private contractual relationship between the manufacturer and the dealer. Fourth, they would prefer to work directly with the dealer and outside the legislative process to find a solution to ultimately serve the customer.

[3:28:43 PM](#)

CHAIR COSTELLO held SB 56 in committee with public testimony open.

[3:29:20 PM](#)

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 3:29 p.m.