

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

April 19, 2001
1:37 p.m.

MEMBERS PRESENT

Senator Randy Phillips, Chair
Senator Alan Austerman
Senator Loren Lemam
Senator John Torgerson
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 176
"An Act relating to distributorships."

HEARD AND HELD

SENATE BILL NO. 189
"An Act relating to motor vehicles; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 168
"An Act relating to loans made by the commercial fishing loan program."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 176 - No previous action to record.

SB 189 - No previous action to record.

SB 168 - See Labor and Commerce minutes dated 4/12/01.

WITNESS REGISTER

Mr. John Haxby

Waukeshaw Alaska Corporation
P.O. Box 111098
Anchorage AK 99501
POSITION STATEMENT: Supported SB 176.

Ms. Deborah Luper
Eagle River AK
POSITION STATEMENT: Supported SB 176.

Mr. Ronald Young, President
Young's Gear, Inc.
1711 Van Horn Rd.
Fairbanks AK 99701
POSITION STATEMENT: Supported SB 176.

Ms. Janeece Higgins, General Manager
Alaska Rubber Supply
587 Old Seward Hwy.
Anchorage AK 99518
POSITION STATEMENT: Supported SB 176.

Mr. Kurt Winkler, Owner
Global Services
8000 King St.
Anchorage AK 99518
POSITION STATEMENT: Supported SB 176.

Mr. Don Dunnavant, Owner
Polar Supply Co.
300 E 54th Ave.
Anchorage AK 99518
POSITION STATEMENT: Supported SB 176.

Mr. Chuck Vanormer
3801 Barbara Dr.
Anchorage AK 99517
POSITION STATEMENT: Supported SB 176.

Mr. Ed Sniffen
Department of Law
1031 4th Ave., Ste. 200
Anchorage AK 99501
POSITION STATEMENT: Commented on SB 176 and SB 189.

Mr. Ralph Seekins
Alaska Automobile Dealers Association
No address provided
POSITION STATEMENT: Supported SB 189

Mr. Steve Conn, Executive Director

Alaska Public Interest Research Group (AKPIRG)
P.O. Box 101093
Anchorage AK 99510
POSITION STATEMENT: Opposed SB 189.

Ms. Susan Duncan, Executive Director
Alaska Automobile Dealers Association
129965 Lindsey Dr.
Anchorage AK 99517
POSITION STATEMENT: Supported SB 189.

Mr. Rick Morrison, Secretary
National Automobile Dealers Association
Chairman, Anchorage Chamber of Commerce
935 Gambell
Anchorage AK 99501
POSITION STATEMENT: Supported SB 189.

Mr. Steve Conn, Executive Director
Alaska Public Interest Research Group
P.O. Box 101093
Anchorage AK 99510
POSITION STATEMENT: Opposed SB 189.

Mr. Stan Hearst
Daimler Chrysler Dealer
Anchorage AK
POSITION STATEMENT: Commented on SB 189.

Mr. Mark Mueller
General Motors
Detroit MI
POSITION STATEMENT: Commented on SB 189.

Ms. Mary Marshburn
Department of Motor Vehicles
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200
POSITION STATEMENT: Commented on SB 189.

Mr. Ed Crane, CEO
Commercial Fishing and Agriculture Bank
2550 Denali St. #1201
Anchorage AK 99503
POSITION STATEMENT: Supported SB 168.

Mr. Greg Winegar, Director
Division of Investments
Department of Commerce and Economic Development
P.O. Box 34159

Juneau AK 99803

POSITION STATEMENT: Opposed SB 168.

Mr. Jerry McCune, Executive Director
United Fishermen of Alaska
Cordova District Fishermen United
211 4th Ste., #110
Juneau AK 99801

POSITION STATEMENT: Opposed SB 168.

ACTION NARRATIVE

TAPE 01-20, SIDE A

Number 001

#SB176

SB 176-DISTRIBUTORSHIPS

CHAIRMAN RANDY PHILLIPS called the Senate Labor & Commerce Committee meeting to order at 1:37 p.m. and announced SB 176 to be up for consideration.

MR. JOHN HAXBY, Waukeshaw Alaska Corporation, said his business is about 30 years old. They have been in the machinery industry all that time and have a number of relationships with manufacturers around the country. They support this bill, he said, "Because it levels the legal playing field between major manufacturers and small businesses in Alaska."

MR. HAXBY explained:

Some of the key salient points that are good for small businesses are that it keeps manufacturers from forcing unwanted or unordered inventory on the small businesses in Alaska.

The second good point is that it allows for the orderly disposition of inventory in the event that the distributor agreement was somehow yanked or canceled.

The other thing it allows for is in the event there is the death of a distributor or a distributor principal that there is an orderly and reasonable recovery of the inventory that might be left over as of the date the agreement is yanked. It becomes especially important when, in the case of a death, the IRS comes in to evaluate the value of a business and they evaluate it based upon the past performance of that business

assigning a value in a corresponding tax amount. In the event that the distributor agreement is yanked, there may not be any value to the business in the future, however the tax obligation remains.

MS. DEBORAH LUPER, Eagle River former small business owner, supported SB 176. She said:

There are many reasons why I personally support this bill. One is that I spent approximately two years as a representative of a major small business organization, a national organization, and talked to hundreds of businesses over the course of those two years.

Businesses in Alaska have unique challenges as it is, but when they are pitted against the megaforges, represented by manufacturers and wholesalers in the Lower 48, they have fairly shallow pockets in comparison to the deep pockets that these manufacturers have. They cannot afford, just by the nature of being a small business with limited staff and limited finances, to fight legal battles when the playing field is already so uneven.

There are three areas of this bill that I think are excellent. One is preventing the manufacturer from using coercion to force a dealer or distributor to carry product or purchase product that they did not want and did not order.

Secondly, it sets in place a mechanism where the inventory will be purchased back. In some cases that is in the hundreds of thousands of dollars. It sets in place a mechanism to purchase the inventory back if the distributor agreement is yanked and that can be done for any number of reasons including - in Alaska, a product has not been offered before, the manufacturer is up here looking for someone to distribute it. He finally gets someone to do so. That person, then, develops the market for it. Once that market is established, the wholesaler manufacturer has firmer ground to stand on and at that point, they may decide to go for someone larger or someone who has more offices around the state or something like that. So, they do have the right to yank the agreement, but in a case such as that, when inventory has been purchased to facilitate the agreement that was in existence before that date, this law would require that they purchase it back at the value that was

established at the time the inventory was originally purchased.

Finally, the portion that is most meaningful to me is the area where, if the dealer dies, that the heirs have some recourse, if the manufacturer or wholesaler declines to allow the heir to carry forward the agreement, which is perfectly within their rights. But in the case where a loved one dies and you're dealing already with the emotional loss, you also have to deal with a significant financial loss in terms of that business, not being able to do anything with that inventory. You might have hundreds of thousands of dollars worth of capital tied up in inventory. It's just simple human interest to set in place a mechanism where the manufacturer, if he declines to further the agreement with the heirs, buys the inventory back.

Number 200

MR. RON YOUNG, President, Young's Gear, Inc., supported SB 176. He related:

Over the last few years and one particular case about five years ago, as an example, we were a large CD axel supplier in the state. We were a dealership for a major manufacturer in the eastern seaboard. We built up a very large business for this company and the product became very popular and what happened, the company in the eastern seaboard basically went to large chain warehouse wholesale outlets, like Napa. The product got devalued and part of the behind the scenes agreements, which I will never see, was to squeeze out or eliminate the small local representatives. Consequently, they refused to do business short-term; they would not buy back any old stock. Virtually the old stock that I had on the shelf, which was current at the time, I should say, it became old stock, outdated nonsellable. I talked to an attorney, but there is no way to legally force them on the eastern seaboard to come to court for the amount of the money involved, well over \$100,000 cash in reality.

That is one of the reasons I came here to testify. I strongly believe there is a need for a law of this sort to be passed in the State of Alaska.

MS. JANEECE HIGGINS, Alaska Rubber Supply, said:

In 1995, we had a distributorship pulled. The corporation was a large corporation. They were given assurances by another company in Alaska that they would be able to triple the business. We were in the top 12 in the nation for three years in their distributorship for organizations. They pulled the distributorship with a 30 day notice, refused to buy back any inventory. We had close to \$600,000 worth of inventory on the shelf. They went through our customers and notified them that we were no longer the authorized distributor and they would not get factory support from us and that they should be going with the new distributor. Therefore, we couldn't even sell the product to our customers. We lost a \$600,000 customer right off the bat. The fall out from that was close to \$2 million in sales.

We counter sued and it has been through the Ninth Circuit. They have appealed every decision that has gone our way. We have won in every court battle; they have appealed every one of them. It has cost us over \$1 million in legal fees. In hindsight, we probably should have settled, but the owner decided that he didn't have a lot to leave, but he had his word and he was going to go to the grave with it. So, here we are \$1.2 million later in legal fees. We still have over \$100,000 worth of inventory on the shelf that we have not been able to get rid of. We have other customers that have slowly taken the inventory at a reduced cost. This loss was quite significant to our company. This bill certainly would have been welcome five years ago and I urge you to pass it.

MR. KURT WINKLER, Global Services, said he had been in business here for about 20 years. He supported SB 176. "I'd see the far away Alaskans get mistreated by the people in the Lower 48, especially the east coast. We are so far away from them and we're only Alaskans. I'd like to see the mistreatment stop..."

MR. DON DUNNAVANT, Owner, Polar Supply Co., said he got his first business license in 1975 and employs 50 - 60 Alaskans currently. He said, "I have plenty of horror stories to tell."

He testified on behalf of his employees who work hard on getting trained and bringing technology to Alaska. Their families are dependent on the success of their businesses. He supported this bill, because it would make life a lot less risky for them.

MR. CHUCK VANORMER said his is a department manager for a large supply house in Anchorage. He has been in customer service product

support in Alaska for about 28 years. He said:

As an employee of companies that have had distributorships cancelled, I have been forced to lay off other employees due to loss of business as well as pick up a lot of dead stock inventory as has been alluded to. It suddenly becomes wasted shelf space and is still taxed under the inventory tax system, but is basically worthless. It eventually ends up in a scrap pile. Additionally, most of the products I handle are an engineered product and when there is a change in distributorship, sometimes you can no longer support the products you have sold and you're forced to go to your competition to purchase items to repair those things that you still have under your warranty control and do start ups and service to.

There is a major concern of mine on rolling stock equipment. As more and more large firms move into the state of Alaska, especially oil yards, they bring in national agreements of distributorships of equipment from manufacturers that give them basically predatory price due to volume buying against the local Alaskan distributorships.

MR. VANORMER said he knew many businessmen who had given up on developing a line because someone else came up from the Lower 48 as a national concern and now has that product available at a cheaper price. He thought this bill was of the utmost importance for the Alaskan distributor and it's going to become more important with the passage of the gas line.

SENATOR LEMAN asked if the inventory system required him to pay tax on the original purchase price of the item and if that was true when the value became worthless.

MR. VANORMER answered that unless you devalue the product immediately upon cancellation, you're stuck with it at the occurred value. He is not sure how it's depreciated, but you carry it for a couple of years in hopes that you can move it out as good stock or find a wholesaler who's willing to take it off your hands.

MR. DUNNAVANT inserted that his bank finances him on the value of his inventory and if that value goes, they are less willing to finance him. So, it does not necessarily work to devalue the product.

MR. ED SNIFFEN, Department of Law, said they didn't see too many problems with this bill, but there might be one potential conflict with the definition of distributor if it was intended to include

auto manufacturers.

CHAIRMAN PHILLIPS asked him to fax the recommendations to him.

SENATOR LEMAN asked if he had any other significant comments about this legislation.

MR. SNIFFEN replied that he had looked through it and it appears to be good legislation and he didn't see anything that would cause DOL any concern.

SENATOR TORGERSON asked which would prevail: two willing parties that enter into a contract for a distributorship - that document or this piece of legislation.

MR. SNIFFEN replied:

That's a good question and that's why we have lawyers, I suppose. Contract rights between private individuals are hard to disrupt, but the state does have an interest in enacting legislation to further legitimate state interests. I would think if this law were in effect, it would have some authority over a private contract that was entered after the law was on the books that conflicted with this legislation, but I don't know if we could enact something like this that would take retroactive effect. That might be a problem. There is also an issue that comes up sometimes dealing with some constitutional question about impairment of contracts. I could talk for an hour about what all that entails, but in this case I think that most of the problems that arise under an impairment of contract analysis are not present.

SENATOR TORGERSON said he'd had several dealerships and franchises and he didn't have any choice. He signed a deal as it was laid out and it had all kinds of provisions on buying back stock and how to dissolve the contract. He was concerned if the manufacturer outside the state was not aware of this law and someone enters into a willing contract, what was the basis of this law.

MR. SNIFFEN replied that the manufacturer is almost presumed to know the laws of the state that it's doing business in. "So, if they're not aware of our law, it's almost shame on them."

If two people enter into a contract and the terms are inconsistent with this legislation, he thought it was a gamble on behalf of both parties. He thought in most cases, the statute would prevail.

SENATOR TORGERSON asked if he thought this would be detrimental to getting distributorships up here.

MR. SNIFFEN replied that he couldn't answer that.

Number 1100

MS. LUPER commented on page 5, number 3, under exceptions, specifically excludes motor vehicle distributors and dealerships and that should take care of the DOL's concerns.

Regarding Senator Torgerson's concerns about whether manufacturers would be willing to enter into agreements with Alaskan business, she said, "Alaska is one of the few states that does not have a law that is similar to this. Businesses located in other states are doing fine under laws that are actually more stringent than this. In fact, some states have made some of these provisions rather than being civil, they have actually gone to criminal ramifications."

SENATOR LEMAN asked her if she wanted to respond to what prevails, a contract or the statute.

MS. LUPER said she wasn't qualified to comment on it.

CHAIRMAN PHILLIPS noted that this bill was going to the Judiciary Committee where these questions would be addressed.

MR. YOUNG commented that before a person goes into a distributorship with a large corporation, they have to sign hundreds of contracts saying that they are liable for attorneys fees, collection fees, on and on and on. He didn't see that there would be a difference where the large corporation is held liable for a change.

CHAIRMAN PHILLIPS said he would hold the bill while he checks out some questions with the Department of Law.

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#SB189

SB 189-MOTOR VEHICLE SALES AND DEALERS

CHAIRMAN PHILLIPS announced SB 189 to be up for consideration.

MR. RALPH SEEKINS, Chairman, Alaska Automobile Dealer Association, said he is a Ford dealer in Fairbanks and Soldotna. He said the Association has spent about two and half years researching this issue. It came about because Alaska is the last state without any effective motor vehicle franchise legislation. "When we looked at this, we didn't want to just look at those things that affected relationships between manufacturers and dealers, we also wanted to take a look at those things that affect relationships between dealers and manufacturers and the consumer in the end."

He said the National Automobile Dealer Association provides two huge bound volumes of laws of all the other states. His association looked at the business cases that needed to be addressed in Alaska and used these volumes to find which state dealt with it best. He thought that about 90 percent of the language in SB 189 is what other states have already done.

Number 1573

MS. SUSAN DUNCAN, Alaska Automobile Dealers Association, supported Mr. Seekins testimony and reiterated:

It sets up if there are any disputes between the manufacturers and the Alaska dealer, that it will be followed through the Alaska Court System. It brings in many consumer friendly provisions making sure for instance, advertising and high pressure tactics are regulated. So, when a consumer purchases a vehicle, they don't get home with that vehicle and find that the financing terms are different than what they understood them to be at the dealer. Again, it provides licensing that identifies all the players, including the sales people. They have a card with their picture on it and you know when you walk into that dealership, that you're dealing with an employee at that dealership. It also provides definitions for specific terms that might not be clearly understood or used in different methods. It also provides franchise protection so that dealers who invest a lot of time and money can be assured they will have their dealership available for years to come, that they can keep providing the level of service their customers depend upon. This act really covers a lot of things that have been missing in the state of Alaska.

SENATOR LEMAN said he assumed most of the bill was established on well-established case law.

MS. DUNCAN responded that was correct.

CHAIRMAN PHILLIPS asked if Alaska Sales and Service is part of their organization.

MS. DUNCAN replied yes.

MR. RICK MORRISON, founding-President, Alaska Automobile Dealers Association, said he currently serves on the Board as Secretary of the National Automobile Dealers Association and is the Chairman of the Anchorage Chamber of Commerce. He strongly supported SB 189. He said in reality, they have been working on this bill for over seven years. He said the dealership laws are already in every other state

out there and this bill has involved a tremendous amount of research. "When you look at this bill, it isn't just for manufacturers. This is about protection for consumers, protection for small business people and protection for the manufacturers."

MR. MORRISON said that there really aren't any negotiations with the "big guns." He said, "It's either you sign it or you give it back and you're out of business."

He also said that, "Contracts are what make friends stay friends."

TAPE 01-20, SIDE B

MR. MORRISON said that this bill would give dealers and consumers a way to resolve differences. There are provisions for contract issues, training and licensing, stocking, disclosures on damage on new vehicles and advertising. The Customer Satisfaction Index (CFI) is the buzzword and has become very important to the manufacturers.

He said there is a misconception in the news media. Dealers think that about 85 percent of their customers were very or completely satisfied. A Gallup poll showed that 75 percent of customers were completely satisfied. The news media thought five percent of the customers would be unhappy with dealers. He hoped this bill would help clear some of that up.

MR. MORRISON reiterated that about 90 - 95 percent of what is in this bill is boilerplate from other states. A few things are different. One of them is the training aspect and a stronger parts and warranty section.

He said there is a question from DMV about whether dealers are bonded and he said they are currently required to get a state license with a bond for \$10,000, which is very inadequate. They are asking to change it to \$100,000 - \$200,000.

MR. MORRISON said they have had some difficulty with "the small corner lots," which are set up very easily and sell junk cars or cars without disclosing what is wrong with them. A tougher bonding process would help ensure that people who get into the business have the means to back it up.

Another thing that has come up is hazardous waste and hazardous waste disposal. Right now manufacturers are not liable for parts that dealers take off under warranty. Dealers are 100 percent responsible for it, but this bill says that manufacturers must assist them in the process.

MR. STEVE CONN, Executive Director, Alaska Public Interest Research Group (AKPIRG), opposed SB 189. He said there were many interesting provisions in this bill and he wouldn't try to address them all. He

thought this was a bill that was written for the automobile dealers with a very limited amount of concern for the consumer. The attempt to establish a Motor Dealer's Advisory Board falls short of protecting the consumer who deserves more than just a seat at the table. He said:

The consumer guides the economy and the system and the market. At the end of the day, it's the consumer's needs, even the unorganized consumer, it's his and her buying dollar that makes things happen. This idea that the motor dealer should be lent state authority and then should be positioned so that they can vet, in essence, consumer related laws that have to do with industry is unacceptable by any stretch of the imagination.

The further concern for the fly-by-night, of course, is the concern that all professions have. However, it would seem that this bill is tilted towards protection of extant dealerships and would be in many ways restrictive of new entrants into the market. There is a jointly held concern on the part of the dealers and the consumers for protection of the consumers, if for no other reason, to enhance the credibility of the established profession. That could be best dealt with, of course, if we could garner the support of the Motor Vehicles Association and enhancing the budget of the Department of Law in the area of consumer protection.

Further, a bill of this nature that tries to address both the evident needs of the dealerships vis-à-vis the manufacturers, the relationship between the consumers and the dealers and many things in between would be best dealt with had there been and if there were real collaboration between consumer organizations and those representing the dealerships. Our door is open to those forms of collaboration and I would strongly suggest, particularly given the history of this bill on the House side where it's been sent back to committee for a little bit of reworking, that an opportunity be taken to have that sort of discussion and collaboration. It may very well be that a bill that is truly satisfactory to the dealerships and to the consumers can evolve from this bill, but as it presently stands, it is a bill written by the dealerships for the dealerships, with some concern placed as to others, some legislation replacing, effectively speaking, common law, but so many problems that I would hope the bill is not passed forward until there is a moment to pause and reflect to assure that the

needs of the consumer, the driver of this market, no pun intended, and his and her concerns about today's and tomorrow's automobile market find their way into this legislation. The consumers also guide the Department of Law in the development of useful and productive laws and regulations pertaining to the sale and repair of motor vehicles.

CHAIRMAN PHILLIPS asked him to have his suggestions prepared and submitted by next Monday.

Number 1400

SENATOR LEMAN asked Mr. Conn to look at page 41 and the "Requirement of Principle Place of Business." He asked if he thought the specific requirement that an office be a permanent and enclosed building unduly restricted either other small businesses or consumers.

MR. STAN HEARST, Anchorage Daimler Chrysler Dealer, said that 49 other states have passed legislation similar to this and conceptually he agrees that certain rights granted through contracts between dealer and manufacturers should be codified, but he takes exception to the number of issues where this bill goes beyond existing legislation in other states. Wording is overly burdensome and restrictive and would ultimately increase cost to the consumer. He hoped a subcommittee could work with dealers and manufacturers to develop a workable bill.

MR. HEARST pointed out several significant problems:

Initially, the bill equates warranty work with extended service contracts and they put the same sorts of restrictions on the manufacturers as it pertains to warranty work that's in the services contracts. Let me just give you a little history with regards to those businesses. A manufacturer of any kind issues a warranty and it's really a marketing tool, because it makes the consumer feel more confident about buying a product. If something goes wrong, the manufacturer stands behind it. So, it really comes part and parcel with the sale of the product.

Extended service contracts is a separate business altogether and manufacturers offer extended service contracts, but independents are in that market, as well. The two are totally separate businesses. Dealers have no obligation to enter into an extended service business with a manufacturer. They can go anywhere and enter into

a partnership with an independent extended service contract company.

This bill, because it equates extended service contracts as warranty places restrictions on the manufacturer and obligations on the manufacturer that are not placed on independent offerers of extended warranty contracts. As a result, this bill, if it were to pass, would basically take four major competitors out of the market. Those major competitors being Daimler Chrysler, Ford, GM and Toyota - out of that extended service contract market, because it greatly increases the cost to the manufacturers and as a result, the manufacturers won't be able to successfully compete with the independents. That's bad for the consumers, because when you have fewer competitors in the market, naturally the price is going to go up, because there is less supply. So, that's bad for everybody around...

MR. HEARST said that several provisions actually hurt the dealers:

There's a provision that tries to eliminate price discrimination, but what it does is also eliminates various programs that the manufacturers provides to the dealers - cash payments to dealers that the dealers really want. We in the industry call these stair step programs where there's an objective that is set and it's based upon the dealer's size. So that small dealers get smaller objectives and larger dealers get larger objectives. So, it's functionally available to everyone. If the dealer meets that objective, they get graduated cash payments depending upon the volume of the vehicles they sell. I don't think the dealers want to make those programs illegal, because most of the dealers like those programs.

There's another provision, AS 25.25.402, which makes it unlawful for dealers to do a contract where they waive their rights. That also eliminates the ability of a dealer to settle [indisc.] with the manufacturer. To give you an example of how that would work, if the manufacturer wants to put another dealer in the market and the neighboring dealer objects to that as this bill would allow, and we don't want to go through the administrative battle, sometimes we'll work out a deal where we can put another dealer in and we'll give you a point somewhere else. That language is basically eliminated...

MR. HEARST said that other provisions are impossible to comply with:

One pertains to distribution or the allocation of vehicles. We allocate vehicles nation-wide. We have a computer system that is designed to try and distribute those vehicles fairly. It's based upon what we call a turn and earn system. The more you sell, the more you get. We really can't think of a fairer way of doing it. Most of the manufacturers allocate on the same basis. What this provision would do would, in essence, make a prima fascia case that if one dealer received a vehicle subsequent to another dealer, and the dealer who didn't get the vehicle first, that dealer would have a prima fascia case that we unfairly distributed the vehicles not taking into account whether the dealer who did not get the vehicle first had already gone through his allocation, had not sold as many cars as the other dealer and that sort of thing. Since our computers are designed that way, it would cost us literally millions of dollars to change the programs. We couldn't comply with that.

Another provision in the bill would also require that a manufacturer not consider vehicles that are in transit as part of the dealer's inventory. Again, it would be impossible for us to comply with that, because we look at what a dealer has in his inventory, what he has in transit, to determine how many more vehicles he would need. So, that would be extremely difficult, if not impossible, for us to comply with.

There are a couple of provisions in there that are unconstitutional. One requires that we don't charge dealers in Alaska any more than we charge dealers anywhere else in the country. We do have regional marketing programs that are based upon the needs of a particular market. We'll give discounts on vehicles where as in other markets, we'll give discounts on different vehicles, but clearly, that would be a restriction on interstate commerce. Likewise, the provision with regard to destination charges we think is unconstitutional, again, a violation of the interstate commerce clause.

So, that just gives you an idea of some of the major problems there are in the bill that need to be worked out.

CHAIRMAN PHILLIPS asked Mr. Hearst to submit his suggestions to the committee by Monday.

MR. MARK MUELLER, General Motors, said that Mr. Hurst covered most of their concerns. He said he had met with his Alaskan dealers last week and the spirit was very cooperative. He was invited back to try and work out a lot of details. An area that Mr. Hearst didn't discuss was brokers and Internet.

We, the manufacturers have developed our own Internet web sites and are trying to drive customers to the dealers through sales and the service departments. We have a lot of third parties trying to get into our business and try to take business away from our dealers and our Alaska dealers. We want to be able to provide that service and have spent a lot of time and money on the Internet and broker areas...

CHAIRMAN PHILLIPS requested his suggestions by Monday.

Number 800

MR. MORRISON said he appreciated Mr. Conn's comments, but he said it was not the intent to have the consumer's issues addressed in the Dealer Advisory Board for the state. The consumer interests are best taken care of in the Attorney General's Office or the Better Business Bureau. The intent behind the design of the Board is for state issues, manufacturers issues and things like that.

He also said regarding Mr. Hearst's concerns about the warranty and the service contract difficulties, that they are only seeking consistency.

He said the National Automobile Society is against the stair step programs that sell vehicles wholesale to one dealer cheaper than it does to the dealer across the street from him. He said that most manufacturers have a good allocation system set up, although there have been some difficulties in the past where franchises were given for money under the table. This bill makes it clearer.

The vehicle inventory issue does not change a manufacturer's computer program, but changes when the vehicles are counted. It's a simple process. He said that just about every manufacturer has a one price for destination charge to all states in the United States. Most of them include Alaska, but the bill is saying, "If they are going to have the same price for a destination charge in Detroit where a car is made, and the same price for southern California, it should be the same price in Anchorage, Alaska or Fairbanks or Juneau or any place in Alaska at the same time."

CHAIRMAN PHILLIPS asked him to send his comments to the committee by Monday.

MR. SNIFFEN said he would also provide written comments, but he had "anti-trust flags going off all over my head."

At first, Mr. Sniffen thought this bill did nothing more than protect automobile dealers from territory infringement, erecting all kinds of barriers to entry and exist from the market. After some research, he found all kinds of cases that say this kind of legislation is O.K. if it's properly done. "Don't be fooled into thinking that this bill exists anywhere else in the country, because it does not. This bill cherry picks sort of a selection of laws from other states that are favorable to dealers and it really doesn't have a lot of the other more negative parts of other laws..."

He concluded, "This is really an over reaching bill and I think it needs to be limited in little, but significant ways."

MR. SNIFFEN thought the retroactive effect provisions brought up a whole lot of very serious questions about impairment of contract analysis, an issue is being challenged in other states right now.

MS. MARY MARSHBURN, Department of Motor Vehicles, said that they currently register only dealers and it is a relatively simple process and needs improving. She said:

The bill does make some improvement; however, in reading the bill, we find there a number of provisions that are ambiguous. Several provisions conflict with other statutes and need clarification.

We are concerned, as well, with the Motor Vehicle Advisory Board and the insertion of the Commissioner of Administration into the mediation process between manufacturers and the distributors. We, too, have concerns, and believe Senator Leman raised the question about the principle place of business issue. Obviously, it is a policy call, but it would restrict businesses that do not have a permanently enclosed structure. Again, we believe there is improvement needed in the dealer licensing law, but there are some areas that need clarification in this bill and we will send those down.

She added that \$10,000 bonding is totally inadequate for any sort of an automobile issue and should be raised.

CHAIRMAN PHILLIPS announced that they would hold the bill for further work.

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#SB168

SB 168-COMMERCIAL FISHING LOAN PROGRAM

CHAIRMAN PHILLIPS announced SB 168 to be up for consideration.

MR. ED CRANE, CEO, Commercial Fishing and Agriculture Banks (CFAB), said he would answer questions, but explained his earlier comment about the Division of Investments being subsidized competition.

Both CFAB and Division of Investments were created by the legislature to do, at least superficially, similar things, one with public money and the other with private money. First of all, the Division of Investments is not burdened with any cost of funds over the last 10 years. CFABs annual interest expense is average \$687,000. The Division of Investments is not required to establish a reserve for loan losses - that we have set aside \$168,000 per year on average over the last 10 years. The Division of Investments pays no taxes. CFAB has paid an average of \$152,000 in state and federal income taxes over the last 10 years. The Division of Investments is not burdened with the cost of the board of directors; there's \$25,000 or so per year. The Division of Investments does not bear the burden of a statutorily mandated annual audit or annual examination by the state. That costs us approximately \$30,000 per year. The Division of Investments enjoys considerable infrastructure provided by the Department of Administration, the Department of Revenue, and the Department of Law, and I have no idea of who else and have no idea how to measure that. There are other aspects, as well, simply the cooperative structure our statute mandates for CFAC. It's a good structure, but the fact is that we spend a good \$35,000 per year on record keeping and communications with members on things other than simply loans, because of that structure. If we were simply a lender, if we simply shoveled money out the door, we would be able to get by with probably less than 10 people in our organization rather than the 15 that we have. I think there is a considerable subsidy the state has provided to the Division of Investments, again, in competition with CFAB.

But the most important element from a practical standpoint, is really unquantifiable, but it is very significant and that's the lack of accountability or oversight and the ability of the Division of Investments to change directions and policies at will with no analyses and no concern for the bottom line. I, as

manager of CFAB, provide a report to our board of directors each month. We have to meet with the board of directors six times a year and are accountable to them and I do mean accountable. We are accountable to our members through an annual report and our members expect to receive the patronage refunds we pay and they also expect the dividends on the stock. I mentioned before the cost of our annual audit by outside auditors and the examination by the State of Alaska banking examiners. We are required by statute to provide those to the legislature as well as to our members. You have nothing that's anywhere analogous from the Division of Investments. They set their own standards in many ways..

SENATOR AUSTERMAN said he could tell that CFAB has done well over time and asked if they are in trouble now and that's why they need the other loans to keep going.

MR. CRANE replied that they are not in trouble, although this year hasn't been particularly good:

I won't say that we necessarily need more loans. I would stress and reemphasize what is mentioned in the sponsor statement and what is illustrated in the page of numbers you have in your packets there. CFAB actually provides significant benefits to those people who borrow from it. I have, and our Board of Directors has and all our management has a very clear fiduciary responsibility to those people who are the owners of CFAB - our borrowing members. Those are the people we have to attempt to protect and provide for. Fortunately, everything we do in that regard is totally consistent with our effort and intent to keep CFAB strong so that we can lend to fishermen in the future. It is not really a matter of survival or anything like that. It is, perhaps in a more general sense, a desire to have as much good loan volume and as diverse a loan portfolio as we can get. But as to what has precipitated this bill, again, I'm not necessarily trying to pick a fight with anybody, but I would say over the last three or four years in particular we have become increasingly frustrated by the aggressiveness of the Division of Investments, the liberalization of certain of their policies and what we see as irrationality in some of their practices. One of the effects of that and we see it in some of the letters we have seen about this bill from fishermen's organizations, it's almost an instinctive perception on

the part of many people of, "Gee, if it's state money, it must be a better deal."

There are many loans that we never get a chance for and we never have the opportunity to address. We believe there is some exploitation. I'm not questioning anybody's motives. This bill is also part of our reaction to our concern..

TAPE 01-21, SIDE A

MR. CRANE continued:

"...I'll give you a reference to it on the top of page 3, line 1, this is a reference to the quota share loans (IFQs). The statute has said for about five years now, the Division of Investments can make loans for quota shares to people who are not eligible for financing from other recognized commercial lending institutions. Our view, and I know the Division will disagree with us, but our view, and we have seen considerable evidence to support our view, is that the Division has ignored that. That has been troubling to us. In summary that's really what's behind this bill, Senator.

MR. GREG WINEGAR, Director, Division of Investments, testified:

We have several problems with this legislation, especially under section (a). Borrowers currently have a choice as to which program they wish to utilize. If this legislation passes, basically, they will have one choice and that's to go to CFAB first. The concern we have is that most of our borrowers under this section will not qualify for CFAB financing. There may be a few, but most will not. So, those applicants are going to have to go through the extra process, the extra paperwork, time and effort necessary to go through the process twice.

The other thing we are concerned about is that although the number of applications are relatively small, those are going to be the stronger loans and so CFAB will basically pick and choose which loans they wish to have for their portfolio. Those stronger loans do help balance out the risks of our portfolio and that does benefit the program as a whole.

Some of the things I mentioned last week that we are still concerned about - the use of the word "identical," which is used in several places here in the bill - on

page 1, line 12; page 3, line 2; page 4, lines 1 and 8. We are concerned about the use of that term, because our rates and our terms are not related to CFAB's or not tied to CFAB's nor are they tied to any private sector lender. So, we're concerned that the use of "identical" may make it very difficult for borrowers to actually meet that requirement.

In section 10 of our statutes, which is actually page 3, line 29, of the bill, this is an internal refinancing program and the sole purpose of this section is to allow existing borrowers to take advantage of lower interest rates when they occur to lower the rates on their loans. As I testified last week, requiring these borrowers to go through a whole new application process through another lender, the time involved in that, the money involved in that, is going to pretty much eliminate the usefulness of this program.

I think it's important to note that since inception, we've had 1,300 borrowers that have taken advantage of this program and have been able to lower their rates. And also, because rates are dropping rapidly right now, this will have an effect on future borrowers under the program.

I think it's very important to point out that this fund has been a very successful program for the last 29 years. A House Research Agency report done a few years ago said it was one of the healthiest loan programs ever created by the state. The fund is totally self sufficient. We get no general fund monies; it's been that way since 1985. There was a total of about \$60,201,000 that was used to set up the program that went from the general fund into this fund. Sixty-nine million dollars has actually been transferred back out of the fund with the majority of those funds going back to the general fund. On top of that, we've been able to leverage those funds into \$341 million in loans.

Certainly, we've had some challenges. The industry has had a lot of changes. We have had to work with a lot of our borrowers; we've had some difficult seasons; market conditions have changed and so, we have had to modify a number of loans for our borrowers. But the flexibility that we have because we are a public sector lender has been very important in a real important public policy issue, which is to try to keep Alaska fisheries in the

hands of Alaskans. So, we are concerned about the legislation. We're worried it is going to limit the effectiveness of this program and we do continue to oppose the bill. Thank you Mr. Chairman, I appreciate the opportunity to testify and will answer any questions you might have.

SENATOR AUSTERMAN asked when this program was originally set up, was it set up to help pick up those loans that were not eligible for other funds.

MR. WINEGAR replied:

There has been a number of changes in the program over the years, but I think that was one of the very important purposes of the fund - was to make financing available to a majority of Alaskans. A lot of those harvesters do not meet your standard lending type of criteria. I think the program was created to try and insure that those folks have access to financing - so that we can keep those fisheries in the hands of Alaskans.

SENATOR AUSTERMAN asked if they currently require them to be declined from another agency first.

MR. WINEGAR answered:

It depends on the section. Our statute is divided up into several different sections and each has different eligibility requirements. The situation Mr. Crane was referring to, for example, under section (c), loans for quota shares, there is language in the statute that says you need to not have access to financing through a private sector lender. The Division was basically looking at those applications and in cases where it was obvious they did not have access to that financing, we would consider the request without the turn down letter. In November Mr. Crane indicated a concern about that policy to us and so we actually had two meetings with him in January and February. We amended our policy so that now in every case, we require a turn down letter now for someone to apply under section (c).

On the other hand, like section (a), loans for limited entry permits, currently there is no restriction. There are only two options available, our program or CFAB's and right now borrowers have a choice as to which program they wish to pursue. So, I guess what I'm saying is

different parts of the statute have different eligibility requirements. Some require turn downs and some do not.

Number 600

CHAIRMAN PHILLIPS said he understood that no other industry, other than the fishing industry, has a loan program like this within state government and asked if that was right.

MR. WINEGAR replied that they have a couple of other small business programs.

CHAIRMAN PHILLIPS asked if they were for a specific industry.

MR. WINEGAR replied that they cover lots of different industries. He explained that the small business program they had was turned over to the Alaska Industrial Development and Export Authority. They provide financing for different types of industries like mining and tourism, etc.

CHAIRMAN PHILLIPS said that was a multi-industry portfolio and his was for just the one industry.

MR. WINEGAR said that was true of this particular loan program.

SENATOR LEMAN commented that the state has other incentive programs for other industries.

SENATOR AUSTERMAN stated: "This program has been there 29 years and I think the reason it's there obviously is that it's the number one industry in the State of Alaska...It's the number one exporter of product in the State of Alaska. It's not oil; it's fish. We need to make sure that we do protect our fishermen."

SENATOR TORGERSON added that the reason the program was started was that the fishing industry was in bad array. You couldn't borrow anything from a commercial lender.

MR. JERRY MCCUNE, United Fishermen of Alaska, Cordova District Fishermen United, said when CFAB was created, there was a lot of discussion, and Cordova fishermen thought an alternative to the state program would be good, because banks couldn't use permits as collateral.

He said that the two are very useful loan programs. He thought the Division of Investments was a good program because it encourages permits to stay in residents' hands.

CFAB is a very conservative bank and has high profile loans, but in a lot of cases in the villages and out in the other places, young people don't have a credit

history. They have to have some experience to be able to get this loan. This helps a lot of young folks. I can name four or five guys in Cordova coming out of high school that took part in the educational fishing program that got loans from the state and are now successful fishermen and have paid their loans back. That's the usefulness of the Division of Investment Loan Program.

If you were to do away with the Division of Investments' loan program and leave CFAB on its own, I don't think we're encouraging residents to keep the permits in the state.

He added that CFAB has a floating interest rate and the Division is more flexible and the reason is encourage residents to get into the fishery.

Number 1000

MR. CRANE responded that at CFAB, "None of us have any desire or intent to see the Commercial Fishing Revolving Loan Fund done away with or no longer be able to do what it does."

MR. CRANE agreed with Mr. McCune's remarks, but he thought the loan administrator should not look upon the program as a loan program. "It should not be looked at or talked about as being one of two programs. It is not. It is a state loan program. CFAB is a private lending institution. They are not two loan programs..."

He said that five or six years ago, there was a requirement that an applicant be denied by two other lenders before a loan could be made and he didn't know why it was changed. He said it wasn't impossible for anybody to live with at the time and he pointed out the letter of intent, which describes the program that was in place then when CFAB would often forward applicants' paperwork and some of their analysis to the Division of Investments. So, there was no redundancy. He also didn't know why this bill would affect the opportunity to change interest rates.

SENATOR TORGERSON interrupted him and asked what they do with CFAB's profits.

MR. CRANE replied that they distribute them to their borrowers.
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CHAIRMAN PHILLIPS thanked everyone for their testimony and adjourned the meeting at 3:30 p.m.