

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

April 24, 2001
1:55 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 168

"An Act relating to loans made by the commercial fishing loan program."

MOVED CSSB 168 (L&C) OUT OF COMMITTEE

SENATE BILL NO. 176

"An Act relating to distributorships."

MOVED CSSB 176 (L&C) OUT OF COMMITTEE

SENATE BILL NO. 191

"An Act relating to insurance pooling by members of an airline employers association."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 189

"An Act relating to motor vehicles; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 168 - See Labor and Commerce minutes dated 4/12/01 and 4/19/01.
SB 176 - See Labor and Commerce minutes dated 4/19/01.
SB 191 - See Labor and Commerce minutes dated 4/17/01.

SB 189 - See Labor and Commerce minutes dated 4/19/01.

WITNESS REGISTER

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. Ed Crane, CEO
Commercial Fishing and Agriculture Bank
2550 Denali St. #1201
Anchorage AK 99503

POSITION STATEMENT: Commented on SB 168.

Mr. John Haxby
Waukeshaw Alaska Corporation
P.O. Box 111098
Anchorage AK 99501

POSITION STATEMENT: Commented on 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.

Ms. Deborah Luper
Eagle River AK

POSITION STATEMENT: Commented on SB 176.

Ms. Mary Marshburn
Division of Motor Vehicles
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200

POSITION STATEMENT: Commented on SB 189.

Mr. James Kiley
Alliance of Automobile Manufacturers
Washington, D.C.

POSITION STATEMENT: Commented on SB 189.

Mr. Steve Conn
Alaska Public Interest Research Group (AKPIRG)
P.O. Box 101093
Anchorage AK 99510

POSITION STATEMENT: Commented on SB 189.

Mr. Rick Morrison
Owner, Eero Volkswagen
Secretary, National Automobile Dealers Association
Chairman, Anchorage Chamber of Commerce
935 Gambell
Anchorage AK 99501

POSITION STATEMENT: Supported SB 189.

Ms. Catherine Reardon, Director
Division of Occupational Licensing
Department of Community and Economic Development
P.O. Box 110806
Juneau AK 99811

POSITION STATEMENT: Commented on SB 189.

ACTION NARRATIVE

TAPE 01-22, SIDE A

Number 001
#SB168

SB 168-COMMERCIAL FISHING LOAN PROGRAM

CHAIRMAN RANDY PHILLIPS called the Senate Labor & Commerce Committee meeting to order at 1:55 pm and announced SB 168 to be up for consideration.

MR. GREG WINEGAR, Director, Division of Investments, said that Mr. Crane, CEO of the Commercial Fishing and Agriculture Bank (CFAB), had raised some issues relating to the Division's policies and the way they administer the fund. He said:

I think it's important for the committee to know that we have responded to those issues in writing and through a series of meetings and also some telephone conversations. As I testified last week, we did modify one of our policies relating to quota shares just to be very sure that we were not in any way overlapping their program. Also, I want the committee to know that we will continue to work with CFAB to better coordinate our programs, because that benefits everyone and both of these programs are very, very important programs for a very important industry in this state. We may not agree on everything. Our programs don't target the same people. They have different purposes. So, we may not end up agreeing on every single issue, but I really don't think this is the form to settle those differences, because this bill really doesn't speak to those things.

Basically, this bill, I think, is going to affect the majority of harvesters that utilize this loan fund, most of which don't qualify for CFAB financing. The concern that we have, Mr. Chairman, as we have testified to, is just the extra effort, time and energy that would be needed to go through that application process twice.

MR. CRANE said he didn't have a response, but would answer questions.

SENATOR TORGERSON moved to adopt the L version 4/20/01 of SB 168.

SENATOR AUSTERMAN said he wouldn't object to moving it out of committee, but he objected to the whole concept of the bill. He said, "I think the whole issue revolving around this and the information I've received from Mr. Crane and others that there may be a problem with the Division of Investments and there may be a problem within their fisheries loan programs, but I don't think this is the way to address those issues. I think that if there is a problem there, we should address the problem rather than creating what I consider may another problem by tying it to CFAB."

CHAIRMAN PHILLIPS announced that there were no objections and the committee substitute was adopted.

SENATOR TORGERSON moved to pass CSSB 168 (L&C) out of committee with individual recommendations. There were no objections and it was so ordered.

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#SB176

SB 176-DISTRIBUTORSHIPS

CHAIRMAN PHILLIPS announced SB 176 to be up for consideration.

MR. JOHN HAXBY, Waukeshaw Alaska Corporation of Anchorage, said he would answer questions.

MR. ED SNIFFEN, Department of Law, said they don't have any concerns with this bill, but he has two recommendations. One deals with the definition of the required payment by a distributor to a dealer of merchandise that's held as inventory. On page 2, line 6, language currently requires the distributor to pay the dealer 100 percent of the net cost of any merchandise that he might have in his inventory at the time of a termination of a dealership. Inventory depreciates over time and it may or may not be worth what the dealer pays, but he suggested changing it to something more

like on page 3, lines 11 and 12, which states that the distributor is required to pay a commercially reasonable business value for that inventory.

Also, under the exemption section on page 5, line 5, the distributorship agreement for the sale, repair or servicing of motor vehicles that are required to get registered are excluded from the bill and MR. SNIFFEN said he would add some language to that definition that would include "franchise agreement" to make it clear that automobile franchise agreements between manufacturers and dealers are also excluded.

He said other than those recommendations, Mr. Sniffen said he supports the bill.

MR. HAXBY responded to the issue of depreciating merchandise, that in many cases while it may depreciate for tax purposes, many times the inventory valuation increases as the sectors increase prices. So, he thought it would be better to leave the language as it is.

MS. DEBORAH LUPER, Eagle River, said she would answer questions.

MR. SNIFFEN clarified that these really aren't technical problems; they're more suggestions and they don't have strong feelings one way or another about any of those things.

SENATOR TORGERSON noted page 2, line 6, where it says 100 percent of net merchandise except for repair parts, and said the first thing that came to his mind is what happens if you're a merchandiser of repair parts.

MR. HAXBY said he understood what he was saying and that he was correct.

SENATOR TORGERSON moved on page 2, line 6, to delete ", except repair parts,". There were no objections and it was so ordered.

MR. HAXBY concurred with the motion.

SENATOR LEMAN asked if that amendment would affect language on lines 2 that said: "85 percent of the current net price for repair parts."

MR. HAXBY answered, "It should not affect it as line 2 is to include superceded parts."

SENATOR LEMAN moved to pass CSSB 176 (L&C) from committee with the accompanying fiscal note and individual recommendations. There were

no objections and it was so ordered.

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#SB191

SB 191-JOINT AVIATION INSURANCE ARRANGEMENTS

CHAIRMAN PHILLIPS said that the prime sponsor of SB 191, Senator Taylor, asked him to hold this bill while he worked on some amendments.

#SB189

SB 189-MOTOR VEHICLE SALES AND DEALERS

CHAIRMAN PHILLIPS announced SB 189 to be up for consideration.

MS. MARY MARSHBURN, Division of Motor Vehicles, said that she had submitted her comments to the committee. She said that the Division has had a good relationship with its dealers and understands their concerns. The Division has also experienced problems with "fly-by-night" operations. She said:

But SB 189 would propose to repeal all of the existing dealer law and replace it with SB 189 provisions, which seems to be geared in large measure towards manufacturers and their franchises, mostly their commercial, their working and their economic relationships. The dealer world is larger than manufacturers and franchises and includes a lot of smaller players. DMV has listed about four pages of recommendations in the bill.

Very briefly, we question the need for licensing all of the required parties in SB 189. We do believe there is a continuing need to license the dealers as they are, short of individual-to-individual sales, the public's primary point of contact. We would propose some changes on page 2 of our comments to the dealer license section. Right now, as it reads, it appears to us that one must sell both new and used vehicles to be licensed as a dealer. We believe that there should not be a requirement to sell both kinds of vehicles, but one or the other, which is the requirement for our recommendation for inserting "or" in place of "and". We think, if the committee chooses to continue with the licensing provisions, they should be on a multiple year basis and coincide with other licensing the state does.

SB 189 would repeal the bonding requirement for dealers. Currently, that's \$10,000 and it's \$3,000 for a

motorcycle dealer. We think the dealers are in agreement, as is the Department of Law, that this is an important provision. Ten thousand dollars is insufficient if someone does wish to seek redress. We recommend a minimum floor of \$50,000. I believe that the Department of Law and perhaps the Dealers Association are looking at \$100,000. We've included some suggested language in our amendments.

SB 189 speaks to the sale of three or more vehicles as part of the qualification for a dealer. Current dealer law does not list any number of sales for a dealer and that's presented problems to the Division when trying to work with people who purport not to be dealers, but in fact, all of their business conduct seems to point to the fact that they are dealers. We support putting a limit or putting a floor, if you will, on the number of sales for someone qualifying as a dealer. We think that three is too few and would suggest five. The state national averages for dealers ranges from three to 12. We believe that five or six is a reasonable number. This would not restrict an individual who is selling on behalf of a family member or selling for personal use.

We do not support the need for issuing a state I.D. card to every dealer and sales person. We believe that the employee conduct is the responsibility of the dealer. We believe that some businesses do require their employees to have I.D. cards, like maybe oil companies, but these can be obtained privately rather than through DMV and that, in turn, will help with the fiscal note.

We raise the issue of the appropriate role of the state in the relationship between the manufacturer and the franchisee. Obviously, we do not make any recommendations on that issue as we do with the Motor Vehicle Advisory Boards and its constitution.

We do make recommendations. The commissioner is given quite a bit of responsibility and authority. There is a recommendation that he can assess penalties. If there are multiple penalties within a 30-day period, one of the sections in the bill recommends that these be treated as a single violation. We recommend that consideration be given to treating these as separate violations. Right now, under current law, the dealer definition includes businesses that sell trailers. This is on the third page of our note to the committee. These are units without

power. I'm talking camping trailers, snow machines and utility trailers. It is questionable in this Senate bill whether they would be included in the bill and have to be licensed or not. We really don't see any need for businesses that sell only non-self-propelled equipment to be licensed to dealers. So, we have recommended a change in that. It also conflicts with motor vehicle law in Title 28.

We raise the issue of one of the prohibitions on page 38, prohibiting consignment lot sellers. The committee may want to consider whether they wish to do this. Consignment lot sellers can be problematic for the consumer, for the Division. By the same token, there is merit to having consignment lot sales in that the availability of that avenue for advertising a vehicle will allow an individual to place their vehicle in usually a more visible location and give a little bit more exposure.

Last, but not least, on page 41 of the bill, the requirement to be licensed as a dealer includes having a principle place of business. This is defined as a permanent structure with a certain minimum of square footage. Again, we understand where the dealers are going with this and the effort to clean up this issue is commendable, but this would prohibit not only businesses that have tents or no structure, simply an open car lot. As we read it, a permanent structure would not include a prefab unit or a mobile home. We think this section deserves some consideration and some flexibility in construction to allow a more temporary kind of structure, such as a mobile home. It is true that the large dealerships, the General Motors, the Ford dealerships, and the dealerships in town have significant investments in the community. There are other smaller businesses that do have an investment in the community, as well. It may not be as large. They may not be able to necessarily afford a structure as is described here. We do think there is merit in trying to assure that individuals going into business for the purpose of selling cars to the public are responsible and can back up that product. Obviously, there is a fine line between that and excluding a sizeable chunk of the population from being able to go into business.

Those are briefly the substance of our comments. I'll be happy to answer questions...

MR. JAMES KILEY, Alliance of Automobile Manufacturers, said they had submitted their suggestions and would answer questions.

MR. STEVE CONN, Alaska Public Interest Research Group (AKPIRG), said he had the statutory sites where he suggested changes. He said they are focused on the consumer perspective and that they should have multiple options. They did not want anything in the bill that would discourage opening of other dealerships. His focus has been on the immediate needs of consumers who engage automobile dealers and sales people.

The sales person license provision we would add to Mr. Sniffen's suggestion of a course of study in consumer law, that there be a background check for crimes of moral turpitude. On the issue of the principle place of business, which is AS 45.25.750, our main concern is not the physical plant, but rather that books, records, and files pertaining to automobile transactions be at a place ready and available for individuals who might want to discover matters to bring a private action under the private attorney general provisions of the consumer protection law or for the Department of Law or other individuals.

We're concerned under AS 45.25.730 that the Motor Dealers Advisory Board have audits by a member of the consumer organization, because our concern has to do with activities that might ultimately be for a good reason, but inadvertently serve to limit competition. We think that subsection (g) should be eliminated entirely since no private entity or quasi private entity should be a screen for decisions made by the attorney general pertaining to the statutory provisions.

Under AS 45.25.410, we are mostly concerned that that's a very elaborate recitation of ways that the dealer and manufacturer might engage each other on matters of their own understandings, but we want none of that process to delay repair and compensation due and owing. The consumer who ultimately pays and is responsible is a secondary matter from the consumer's perspective who cannot afford to have his or her vehicle without repair.

Subsections (r) and (s) in that same provision (AS 45.25.410), in the matter of exposure to hazardous materials and substances, most assuredly, if such information is available, it should be shared with the purchaser of the vehicle, as well as, present and former

employees of the dealer who may have been exposed along the way. We happen to agree with the Department of Law that there are federal laws here that do apply regarding notice. But our mantra from the consumer's perspective is whichever law is more protective of consumer rights, new state law or the federal, that should be applicable in our state.

Number 1700

Under AS 45.25.420, on matters of damage resulting from transportation, which of course, is a truly Alaskan issue, we have not yet set a dollar amount, but we definitely believe that any damage that would cause a reasonable purchaser to reconsider his or her purchase, should be shared. So, we err on the side of sharing information, even if a repair has been made at whatever level resulting from transportation.

On installment sales in the service contracts, there again, there is state law on the subject and we hope that the most protective would prevail. We very much like AS 45.25.520 that deals with deceptive practices that the dealers have brought to the legislature. It's very nice work on their part, but we would like to add to (b)(2) some specification on service contracts whether manufacturers or dealers by name or both are obligated to honor the service contract. In other words, can a purchaser take that contract and have it honored if they move from Alaska to Florida, etc.?

We also very much like section AS 45.25.610, but we would add to line 30, subsection 15, an addition - vehicles declared wrecked, junked or totaled by insurers or other state authorities." That is a strong matter of disclosure, which is common in other states. On Section 610, we would add 25 and this would be essentially an extension of the cooling off period from extant state law to the subject of automobile sales and not merely new automobiles, but other automobiles. We would suggest as a preliminary matter, a five business day or five hundred mile cooling off period, with provision for the dealer, of course, to receive compensation should the vehicle be returned aligned to normal rental or mileage fees for days or miles which the dealer was held by the buyer prior to the notice of rescission and redelivery of the vehicle.

And then finally, on the statutory language pertaining to warranties, we as the Attorney General's Office, note that there are federal laws pertaining to these subjects as well as notice. There again, our mantra is the issue is that the strongest law should prevail, but overall we have left aside many of the things that are of interest to other people regarding the core relationship between franchisers and franchisees and focus on this piece of legislation as it pertains to the consumer, because obviously the consumer is there at the table. We very much appreciate the opportunity to weigh in in some detail and share this information, not only with you, the lawmakers, but also with Rick Morrison and the dealers.

MR. RICK MORRISON, owner of Anchorage Euro Volkswagen, Chairman of the Chamber of Commerce, and Secretary of the National Auto Dealers Association, added that they have had meetings with Assistant Attorney General Ed Sniffen and Mary Marshburn, DMV, and they came up with some amendments that could eliminate a lot of their concerns. He said:

When we talk about consumer issues, one of the things that hasn't been looked at - the things that we are looking at for warranty coverage from manufacturers and for protection to keep that dealer's contract alive as a franchise agreement is also a consumer protection issue, if you've got a business that is taking care of the customers. Just since our last conversation on Thursday, I had a conversation with our Porsche division yesterday. They informed me that even though I've got a higher than average market penetration, even though my customer relations and customer satisfaction index rates at 98 - 100 percent continuously and has done so for the last several years, and even though we're 100 percent trained with our employees and even though we have a tool and part requirement by our dealer agreement, they inform me that now the new thing is if I don't build a 1,500 square foot show room separate from the others that they will not renew my dealer franchise license. This is the kind of heavy-handed action that we have from the manufacturers. When I discussed this with Ed Sniffen earlier today, he said there is a federal law that will allow me to go back and fight that and, in fact, there is. The problem is that I don't have the resources, nor the money, nor the legal staff to go back to do that. That is exactly why these bills have been passed in 49 other states of the U.S.

MR. MORRISON said he has a manual for all the associated laws throughout the United States and that he would share it and work at resolving the issues with the different parties, but he reminded them that it took placing a bill in Juneau to get the manufacturers to even sit down and start talking to him. The gentleman from Chrysler said Thursday that the whole thing could be thrown out after he agreed to work with Mr. Morrison on the issues.

MR. MORRISON said this is a good bill and he is still willing to work on the issues with everyone.

Number 2000

MR. SNIFFEN commented that there is a remedy under federal law Mr. Morrison mentioned that requires manufacturers to act in good faith towards dealers. It can be expensive to litigate those issues, because the act requires a person to file a court action in federal or state court. This bill shifts the cost of that to the State of Alaska. He didn't know if this bill really added any more protection than the Automobile dealers already have, but it requires the state to absorb the cost instead of the private litigants.

MR. SNIFFEN also didn't think a bill like this could be applied retroactively to affect existing franchise relationships. He had seen it done in a couple of states, but only where a proposed law doesn't significantly impair the obligations that already exist under the current franchise relationships. He thought that SB 189 does impair or significantly change those obligations. He, therefore, didn't see how they could apply those obligations retroactively. He noted that he had met with Mr. Morrison and he would like to work with him.

MS. CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community and Economic Development, suggested a technical change on page 46, line 14 where her department's name was used instead of the Department of Administration. She said that the bill references the Administrative Procedures Act and it is set up so that all of the duties are performed by the Department of Administration.

SENATOR AUSTERMAN said that the Automobile Dealers Association say that the licensing should be done through her office. He asked if she had a position statement on that.

MS. REARDON said she didn't have a position yet, but had a conversation with the Director of DMV three hours ago on that subject, but her department had not had time to prepare a formal position.

CHAIRMAN PHILLIPS asked her to prepare her recommendation in a letter and bring it to the committee along with Senator Austerman's position so that all the positions could be in one place. He said they had a lot of work ahead of them on this issue.

He asked regarding Mr. Conn's recommendations on page 2, if damaged vehicles by natural causes, such as a flood, could be added to section (15), line 30, or was it included in the wording already.

MR. CONN responded that normally those types of situations would be included in the wording.

MR. MORRISON said that one of Mr. Sniffen's concerns was cost to the state on litigation and the National Organization pointed out that when state laws are in place, the manufacturers have a tendency to back off unless they have a true solid issue.

TAPE 20, SIDE B

CHAIRMAN PHILLIPS asked Mr. Morrison and Mr. Sniffen to come up with another draft that everyone could look at. Mr. Morrison and Mr. Sniffen agreed with that.

SENATOR LEMAN commented that the Alliance of Automobile Manufacturers and others had come forward with some very substantial comments and he thought that there should be a reason given for accepting the suggestions or why they are rejected or that the Chairman should appoint a subcommittee to grind through it.

CHAIRMAN PHILLIPS said he would give copies of all the concerns to Mr. Morrison and Mr. Sniffen to work through in preparing a bill and then he would consider a subcommittee.

SENATOR AUSTERMAN commented that going through the comments from the Alliance of Automobile Manufacturers, he saw that sometimes they were talking about apples and oranges and that 30 days is not long enough. He thought it was very important on the occupational licensing aspects of this that they don't create new bureaucracies to take care of this issue when there are already bureaucracies in existence that can handle it. He also has a hard time with AS 45.25.170, sales person licensing, and whether that should be required.

SENATOR TORGERSON said if they pick a bigger bond that \$50,000, he wanted the committee to consider a sliding scale for a small dealer who doesn't sell more than eight or 10 cars.

SENATOR AUSTERMAN agreed.

SENATOR LEMAN agreed, also.

CHAIRMAN PHILLIPS said he appreciated everyone's patience with this bill and adjourned the meeting at 2:53 p.m.

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