

HOUSE FINANCE COMMITTEE
May 06, 2004
3:40 P.M.

TAPE HFC 04 - 109, Side A
TAPE HFC 04 - 109, Side B

CALL TO ORDER

Vice-Chair Meyer called the House Finance Committee meeting to order at 3:40 P.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Mike Chenault
Representative Eric Croft
Representative Hugh Fate
Representative Richard Foster
Representative Mike Hawker
Representative Reggie Joule
Representative Carl Moses
Representative Bill Stoltze

MEMBERS ABSENT

Representative Bill Williams, Co-Chair

ALSO PRESENT

Richard Schmitz, Staff to Senator John Cowdery; Jacqueline Tupou, Staff to Senator Green; Chip Wagoner, Catholic Conference; Pat Luby, Advocacy Director, American Association of Retired Persons

PRESENT VIA TELECONFERENCE

Steve Cleary, Executive Director, Alaska Public Interest Research Group (AKPIRG); Deborah Fink, Cash Alaska; Mark Davis, Director, Division of Banking, Securities, and Corporations, Department of Community & Economic Development

SUMMARY

CS SB 272(FIN) An Act relating to certain monetary advances in which the deposit or other negotiation of checks to pay the advances is delayed until a later date; and providing for an effective date.

CSSB 272(FIN) was REPORTED out of Committee with individual recommendations and an amended fiscal impact note.

CS SB 288(JUD) An Act relating to temporary custody hearings, and to certain determinations concerning placement of a child in child-in-need-of-aid proceedings; and providing for an effective date.

CSSB 288(JUD) was REPORTED out of Committee with individual recommendations and one previously published fiscal impact note.

#SB288

CS FOR SENATE BILL NO. 288(JUD)

An Act relating to temporary custody hearings, and to certain determinations concerning placement of a child in child-in-need-of-aid proceedings; and providing for an effective date.

JACQUELINE TUPOU, STAFF TO SENATOR LYDA GREEN, explained that the bill is a housekeeping measure. Current state law provides that the courts determine within 48 hours of removing a child whether or not it is "contrary to the welfare of the child to remain in the home of the parent." Varying language is used to express this, but if the judge does not say it is "contrary to the welfare of the child" the child would not be eligible for Title IV-E funding for the duration of the child's life in the system. She said that this is true even if the child is later removed from the home and gains adoption subsidies.

Ms. Tupou said that because the language is so critical, the bill sponsor decided to put in statute that it is "contrary to the welfare of the child to remain in the home of the parent." She pointed out on the fiscal note the estimated federal receipts of \$500 thousand for FY 05.

Co-Chair Harris commented that it is a big fiscal note. Ms. Tupou explained that the four words ["contrary to the welfare"] are needed in order to receive the Title IV-E funding. About 5% of the statewide cases under review did not use that language in the initial hearing and did not receive the funding. About 26% of cases in Anchorage did not qualify, even though the judges had received training. Ms. Tupou concluded that it is very important for the State to take advantage of the federal dollars for these children who have been removed from their homes.

Representative Joule asked the estimated loss of funds. Ms. Tupou replied that the fiscal note reflects about half a million dollars of federal funding lost last year.

Representative Foster MOVED to report SB 288 out of Committee with individual recommendations and the

accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSSB 288(JUD) was REPORTED out of Committee with individual recommendations and one previously published fiscal impact note.

#SB272

CS FOR SENATE BILL NO. 272(FIN)

An Act relating to certain monetary advances in which the deposit or other negotiation of checks to pay the advances is delayed until a later date; and providing for an effective date.

RICHARD SCHMITZ, STAFF TO SENATOR JOHN COWDERY, explained that SB 272 regulates payday lenders, which are businesses doing short-term loans, from payday to payday, for a fee. These lenders had been unregulated. The bill sets out a maximum loan amount of \$500, limits roll-overs that renew the loan to two, and limits the fees. The Department of Law crafted and supports the bill. By limiting it to two roll-overs, the bill's main value is to prevent people from taking out a loan that they forever roll over.

Co-Chair Harris asked why the AARP is opposed to the bill. Mr. Schmitz was unable to answer.

AT EASE: 3:49 P.M.

RECONVENE: 3:50 P.M.

CHIP WAGONER, CATHOLIC CONFERENCE, stated that the industry feels the changes that would cut the interest rate 400%, plus the annual percentage interest rate down to a lower figure, and cut the minimum term from a 14-day to a 30-day loan period would put out them of business. The Catholic Conference hopes that the Committee will adopt the amendment that would add reporting requirements on the amount of fees collected from customers, how many payment plans are offered, the number of recipients whose debts are sent over to third-party collection agencies, and the income from court actions. This information would allow the State to evaluate the industry. He said that after one or two years of hard data, the State could better balance the competing factors of regulating the industry and protecting the consumer.

Mr. Wagoner explained the three amendments. Amendment #1 would provide reporting requirements to gain industry information. Amendment #2 would change the allowed roll-overs from two to one to avoid increasing the consumer's debt. Amendment #3 would make the bill close to revenue neutral so that if the State regulates the industry, it would receive enough licensing fees to cover the costs. Mr.

Wagoner said that the amendments would not hurt the industry and would improve the bill, which the Catholic Conference doesn't entirely support.

PAT LUBY, ADVOCACY DIRECTOR, AMERICAN ASSOCIATION OF RETIRED PERSONS (AARP), explained that the AARP is participating in a lawsuit filed by Alaska Legal Services (ALS). The AARP attorneys agree with ALS that payday loans should be subject to the Small Loans Act and these businesses should not have any loans outstanding for more than 36%. The current rate for a payday loan is 391% [\$15 per \$100 loan], and the AARP feels that is "usurious" and that these lenders should be subject to the same requirements of all financial lending institutions.

Mr. Luby continued, stating that the interest rates are too high and payday lenders should allow people to make partial repayments. These borrowers are not financially savvy and many have to roll over the loans. Currently there are unlimited roll-overs. The industry is asking the State to regulate it, and he questioned why it would. The AARP fears the industry will do "touch and go loans," and probably allow unlimited roll-overs again. The bill presumes 20 payday lenders with 30 more in the next five years. The AARP opposes the additional lenders but without them, he noted that the revenue stream would not pay for the staff on the fiscal note. The AARP supports the amendments. The cost for licensing ought to be high enough that the State would not be subsidizing these "predatory lenders." The industry needs to be regulated.

STEVE CLEARY, EXECUTIVE DIRECTOR, ALASKA PUBLIC INTEREST RESEARCH GROUP (AKPIRG), explained that the AKPIRG has been involved in consumer advocacy and education since 1974. It is currently starting a program to help people begin savings accounts so that they would not have to choose payday loans. He said that the AKPIRG believes that interest rates are too high, and this bill would legalize rates sometimes in excess of 400%. The organization has looked for ways to compromise, considering the General Usury statute interest rate cap at 10-1/4% and the Small Loan Act rate cap at 36%. The AKPIRG believes a drastic jump to 400% is unreasonable and it opposes the bill.

Mr. Cleary suggested a change extending the time period of the loan from a minimum of 14 days to a minimum of 30 days to repay the loan without defaulting. If the loan period is not extended, he suggested deleting the language mandating lenders to disclose the APR (Annual Percentage Rate) for 30 days, which would only confuse the consumer. He noted that Senator Bunde raised the license fee to \$5000 but the change was not adopted in the Senate, and he hoped that the House would rectify this to ensure that the industry is paying for its own regulation. He summarized that the AKPIRG would like

to see roll-overs reduced to one, the time period extended to 30 days, and the license fee increased to \$5000.

Representative Fate asked if a need exists for this type of lending. Mr. Schmitz asserted that these loans are a good alternative and are not designed for people who want long-term loans. He said that consumers like these loans with a set rate and fee. The intent of the bill is to institute some regulations and limit the roll-overs to two.

Representative Fate asked if the amendment reducing the roll-overs would be a regulatory or a punitive change. Mr. Schmitz replied that the one roll-over is designed to hurt the industry and takes choice away from the consumer. A consumer can lower the amount through a roll-over, and can set up a payment plan before the case is sent to court. Two roll-overs give the consumer an option.

Representative Fate repeated his question.

DEBORAH FINK, CASH ALASKA, replied that the change from two to one roll-over is punitive to the customer who can't pay off the entire debt, and do a "roll down." A roll down involves paying off a portion and taking out a new loan for a lesser amount. It is not unusual for a customer to do two roll-overs instead of letting the check go into default. She said that from the industry standpoint, two roll-overs are far superior to one.

Representative Croft asked where the language states that a consumer can proportionately reduce the amount owed. Ms. Fink replied that a customer could essentially roll over the entire amount if they don't have the money when the loan is due. If the customer could make a partial payment, the customer would roll over the remaining balance.

In response to a question by Representative Croft, Ms. Fink explained that the fees are approved at the time the loan is taken out.

Representative Croft clarified that the Catholic Conference proposed the three amendments and he added them to the bill packets.

Representative Fate MOVED to ADOPT Amendment #1. Vice-Chair Meyer OBJECTED.

Representative Fate explained that Amendment #1 would add to the existing reporting requirements to build up a good data base.

Vice-Chair Meyer asked about AS 06.50. Representative Fate stated that it's in the body of the bill.

Representative Hawker felt that Amendment #1 is not a technical amendment, and unless the Committee passed Amendment #3 with a substantive change addressing the issue of balancing the fiscal note, he would not be inclined to support Amendment #1. He proposed addressing Amendment #3 first and then returning to Amendment #1.

Representative Fate WITHDREW his motion to MOVE Amendment #1. There being NO OBJECTION, it was so ordered.

Representative Hawker MOVED Amendment #3. Representative Fate OBJECTED for purposes of discussion.

Amendment #3 reads:

Page 4, line 4
Delete [\$3,000]
Insert \$5,000

Representative Hawker explained that Amendment #3 addresses the fiscal note which, as written, indicates that the revenues generated through the service charges would never meet the costs incurred by the legislation. He asked if both the Financial Institution Examiner I and Administrative Clerk III positions are needed and where to find partial persons [1-1/2 positions].

Mr. Schmitz indicated that it is the sponsor's wish that the nonrefundable application fee remain at \$3000. Increasing the fee to \$5000 would remove all but the major lenders.

Representative Hawker asked what the Department would do with two ¾-time persons.

MARK DAVIS, DIRECTOR, DIVISION OF BANKING, SECURITIES, AND CORPORATIONS, DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT (DCED), VIA TELECONFERENCE, stated that the Department is unsure what would be required to regulate the industry, but thought that it would take 75% of one examiner's time. The DCED is behind schedule on examinations of companies that lend substantial amounts of money to pay insurance premiums. The Department would utilize the staff person to stay current on the premium finance companies that have not been examined in the past.

Representative Hawker questioned the \$35 thousand in Contractual that increases to \$70 thousand in FY 2010. Mr. Davis replied that it reflects the anticipated services from the Department of Law to revoke licenses, which will go to hearings. The DCED is uncertain how many license applications it will receive, and he said that these could be contractual expenses.

Representative Hawker pointed out that it's not a receipt supported service. Mr. Davis agreed, but stated that the Department would pay as much as possible through receipts, not knowing how the industry would grow.

Representative Hawker noted that it is a technical rather than a substantive problem. He opposed passing out the bill with a deficit fiscal note when it isn't really the case.

Representative Chenault asked if it would generate a significant number of consumer complaints if put into regulation. Mr. Davis thought so, and said that the Department has jurisdiction in this matter. It would use its current staff for these investigations.

Representative Chenault discussed the examination costs estimated on page 2 of the fiscal note, expressing that it did not appear to warrant two full-time positions. Mr. Davis reiterated that it is an estimate. While the Department is almost current in the exams, seven of the eight small loan companies are licensees of Wells Fargo Bank, which require a different type of examination.

Representative Chenault expressed concern that the numbers appear a little high.

Representative Hawker WITHDREW Amendment #3.

Representative Hawker MOVED a conceptual Amendment to revise Fiscal Note #2, DCED, Component 1233 dated 4/28/04 to make it a net zero for each fiscal year under Contractual. Vice-Chair Meyer OBJECTED for purposes of discussion, and asked if a specific number is needed.

Representative Hawker repeated that his amendment would zero out the contractual line to yield a net zero fiscal note, from FY 2005 through FY 2010.

Vice-Chair Meyer WITHDREW his OBJECTION. The conceptual Amendment was ADOPTED.

Representative Fate MOVED to ADOPT Amendment #1. Vice-Chair Meyer OBJECTED for purposes of discussion.

Amendment #1 reads:

Page 7, line 24:

Insert the following and renumber accordingly:

(11) the total amount of fees received per AS 06.50.460;

(12) the total amount of fees, costs, and other income received per AS 06.50.550;

- (13) the total number of recipients offered a payment plan;
- (14) the average length of the payment plans;
- (15) the total number of recipients whose payment obligation was assigned to a third party for collection;
- (16) the total number of recipients that had a court action initiated against them;

Representative Fate explained that Amendment #1 adds to the reporting requirements in the bill.

Representative Hawker reiterated that in the interest of expediency, he could support a substantive change but not this amendment. He felt that the existing language is adequate on page 7, line 24: "(11) any other information the Department determines is required to conduct its review."

Representative Croft spoke to the merits of the amendment proposed by the Catholic Conference, noting that it is uncertain what the bureaucracy would require to regulate the industry.

TAPE HFC 04 - 109, Side B

Representative Croft continued speaking in support of Amendment #1 and felt that there was time to improve the bill in Committee.

Representative Hawker spoke against imposing the level of detail on small businesses that is inherent in Amendment #1.

Vice-Chair Meyer noted that the amendment is more specific than the language in the bill.

Representative Fate expressed support for the data that would be generated by the last two parts in the amendment, (15) and (16). He reiterated that reporting mechanisms are important in establishing a data bank.

Representative Fate MOVED to AMEND Amendment #1 to exclude (11) and (12), and to include (13) through (16).

Mr. Davis clarified that this amendment addresses Section 06.50.310, reports to the Department by the licensee. The DCED would gather a lot of this information during the exam, and he questioned whether it needed to be in the form of a report. In response to a question by Vice-Chair Meyer, Mr. Davis said that lines 13-16 are unnecessary in Amendment #1. The Department would ensure that licensees adhere to the statute.

Representative Fate commented that it is not a problem when the licensee knows the statute, but there can be information gaps when the requirements are in regulation.

Representative Fate MOVED to ADOPT the Amended Amendment #1. Vice-Chair Meyer OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Fate, Joule, Moses
OPPOSED: Chenault, Foster, Hawker, Meyer, Stoltze

Representatives Harris and Williams were absent. The MOTION FAILED (4-5). The Amended Amendment #1 was not adopted.

Representative Croft MOVED to ADOPT Amendment #2. Vice-Chair Meyer OBJECTED for purposes of discussion.

Amendment #2 reads:

Page 10, line 28:

Delete [TWO CONSECUTIVE TIMES]
Insert once

Representative Croft explained that the AARP, AKPIrg and the Catholic Conference recommended the amendment, which reduces the number of times that someone can roll over the loan. He expressed that the loan ceases to be a useful financial tool and becomes damaging when it is rolled over multiple times.

Mr. Schmitz reiterated that the bill limits to two roll-overs, which seems reasonable. The problem with consumers is with unlimited roll-overs.

Ms. Fink commented that she didn't favor the roll-over amendment because it removes consumer choice and penalizes the consumer.

Representative Stoltze asked what happens after the last roll-over. Ms. Fink explained that the customer's check would be in default and would go into collections. A series of notifications would ensue, offering the customer a payoff plan over six months. If the customer opted for the payoff plan, there would be no other cost except the bad check fee.

Vice-Chair Meyer agreed with Representative Stoltze that two consecutive times appears to the advantage of the consumer rather than the industry.

Representative Croft argued that it's not to the benefit of the consumer because repeated roll-overs put the consumer into a cycle of debt.

Mr. Schmitz repeated that it's not another loan or unlimited roll-overs.

A roll call vote was taken on the motion to adopt Amendment #2.

IN FAVOR: Croft, Joule, Moses
Opposed: Fate, Foster, Hawker, Meyer, Stoltze, Chenault

Representatives Williams and Harris were absent.
The MOTION FAILED (3-6). Amendment #2 was not adopted.

Representative Foster MOVED to report SB 272 out of Committee with individual recommendations and the accompanying amended fiscal note. Representative Croft OBJECTED.

Representative Croft commented that to establish a 400% interest rate and call it a consumer protection bill is improper. He felt that the bill does not do what it purports. He regretted that the Committee rejected the advice of the Catholic Conference and the AARP. He said that he could not support the legislation in its present form.

Representative Hawker commented that his constituents hold a misconception that the bill would legalize "something that was previously illegal."

Representative Croft noted that 10 states ban these loans for good reason because the loans can often be fit under traditional lending practice at a much lower interest rate.

A roll call vote was taken on the motion to move the bill from committee.

IN FAVOR: Fate, Foster, Hawker, Meyer, Moses, Stoltze,
Chenault, Harris

OPPOSED: Croft
Representatives Joule and Williams were absent.

The MOTION PASSED (8-1).

CSSB 272(FIN) was REPORTED out of Committee with individual recommendations and an amended fiscal impact note.

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ADJOURNMENT

The meeting was adjourned at 4:48 P.M.

