

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

January 28, 2004

3:34 p.m.

**MEMBERS PRESENT**

Representative Tom Anderson, Chair  
Representative Carl Gatto, Vice Chair  
Representative Nancy Dahlstrom  
Representative Bob Lynn  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 389

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

- HEARD AND HELD

WORKER'S COMPENSATION OVERVIEW & UPDATE

- HEARD [See 4:10 p.m. minutes for this date]

**PREVIOUS COMMITTEE ACTION**

BILL: HB 389

SHORT TITLE: DEFERRED DEPOSIT ADVANCES (PAYDAY LOANS)

SPONSOR(S): LABOR & COMMERCE

01/20/04	(H)	READ THE FIRST TIME - REFERRALS
01/20/04	(H)	L&C, FIN
01/23/04	(H)	L&C AT 3:15 PM CAPITOL 17
01/23/04	(H)	<Bill Hearing Postponed 1/28/04>
01/28/04	(H)	L&C AT 3:30 PM SENATE FINANCE 532

**WITNESS REGISTER**

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

POSITION STATEMENT: Testified in support of HB 389; said he would be willing to work with the committee.

DEBRA FINK, Owner  
Cash Alaska  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 389.

### **ACTION NARRATIVE**

#### **TAPE 04-4, SIDE A**

Number 0001

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 3:34 p.m. Representatives Anderson, Gatto, Dahlstrom, Rokeberg, Crawford, and Guttenberg were present at the call to order. Representative Lynn arrived as the meeting was in progress.

#### HB 389-DEFERRED DEPOSIT ADVANCES (PAYDAY LOANS)

Number 0100

CHAIR ANDERSON announced that the committee would hear HOUSE BILL NO. 389, "An Act relating to certain monetary advances in which the deposit or other negotiation of certain instruments to pay the advances is delayed until a later date; and providing for an effective date." [HB 389 was sponsored by the House Labor and Commerce Standing Committee.]

CHAIR ANDERSON said this bill recognizes there is consumer demand for smaller, short-term credit options. This demand is increasing, with 39 states and the District of Columbia currently regulating this service; Alaska is currently unregulated. House Bill 389 adheres to two important aspects of the deferred deposit [payroll advance] issue. He said the primary reason for this bill was consumer protection: shielding citizens from unconscionable fees and predatory lending tactics. The second reason is business protection. He said it would allow businesses that are fulfilling a legitimate need for Alaskan consumers to operate without unreasonable regulation.

Number 0136

CHAIR ANDERSON listed further purposes of HB 389. It is to define and codify the state's practices with regard to businesses that pay money [to the consumer] in exchange for a check. He noted that the state is also attempting to prevent delays in depositing. He said HB 389 also gives the Department of Community and Economic Development (DCED) additional licensing and regulatory authority over people who are making deferred deposit advances.

CHAIR ANDERSON said HB 389 gives the recipients of deferred deposit advances the right to rescind the advance without cost before the end of the following business day, if they choose to. It prohibits onerous collection practices by both deferred deposit advances licensees and licensees' third-party collectors, including the threat of criminal charges. In addition, it prohibits the collection of collateral other than the check itself. Finally, it clearly defines the necessary additional disclosures for persons who make deferred deposit advances. He said the disclaimer will clarify the process for the consumer and the lender.

Number 0351

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law, stated that the protection unit is aware of the problems that consumers have with deferred deposit advances. He noted problems such as triple-digit interest rates, exorbitant fees, lenders allowing multiple renewals [rollovers], taking out loans from one payday lender to pay off loans to another, and businesses that mask these transactions in the form of catalog sales. He continued:

We first became aware of the seriousness of these lenders when a legal assistance attorney for the U.S. Army in Fairbanks contacted our office. There was a serviceman there who was being sued by a payday lender on a \$200 loan. As part of the transaction, he was forced to buy 50 bucks of coupons that could be redeemed from a catalog that the lender had. He didn't want these items, of course, but he was required to purchase them.

At the end of the day, he was sued. He paid a lot of fees. Part of the transaction included his signing a

waiver on the back of a form, where he basically waived all of his rights under the Fair Debt Collection Practices Act. He agreed that creditors could call him and anyone he knew about the debt, and he agreed to a 25 percent collection charge from a collection agency, who happened to be owned by the same payday lender. There was a [mishmash] of consumer problems in that transaction that didn't seem right, for lots of reasons.

MR. SNIFFEN said the largest payday lenders in Anchorage typically charge \$15 for every \$100 borrowed, or 15 percent; on a \$500 loan that amounts to \$75. He calculated that for two weeks that is 365 percent interest. He doesn't think these rates are hidden from consumers, but they are written in small print on the backs of contracts, if disclosed at all. He noted that it is an expensive way to borrow short-term money. He also listed \$25 service fees if the check bounces. Mentioning an Anchorage consumer who borrowed \$500 in July 2003 and had a [suit] for \$1,283 brought against her seven months later, he said payday lenders file hundreds of small claims actions each year against defaulting borrowers; this is easy to do because Alaska has a permanent fund dividend that is easy to attach.

Number 0747

MR. SNIFFEN continued:

There are borrowers in Anchorage who get behind, and one of the biggest evils of this whole process is this rollover opportunity, where you are begging from Peter to pay Paul, so to speak. We know of a lender who borrowed \$400 and couldn't pay it back. She went to another payday lender, borrowed another \$400; it cost her \$460 to do that. The next day she borrowed another \$400 for \$60 to pay off the prior loan and two days later went to another payday lender. Over a short period of time, it is very easy for consumers to rack up enormous debt. ...

Some of the features that we need to pay attention to are making sure there are caps on interest rates and fees, that there are minimum terms for loans, that we prohibit the amount of rollovers that can happen, that there are full disclosures to consumers about the fees and interest rates, and that lenders use contracts that have been approved by the state. We might want

to consider bonding requirements for lenders if we're going to license them in some way. Maybe [we might want to consider] allowing consumers to make partial payments, giving private rights of actions to consumers, and a right to recover damages against lenders for violations of this Act, and, finally, maybe limiting the lenders' remedy for nonsufficient check fees to a reasonable amount.

Number 1005

MR. SNIFFEN continued:

One of the problems with the current structure is when you use a check as an instrument to secure a loan and the check bounces. Under our banking laws, you can recover three times the amount of the check, up to a certain amount. So, it's kind of a backdoor way of getting damages from consumers - by allowing lenders to use the check mechanism. If there were other ways to make the loans where consumers weren't subject to these kinds of penalties ... if their check bounces, they could be liable for three times the face value of the check.

Number 1030

CHAIR ANDERSON asked Mr. Sniffen if, to some degree, he supports HB 389, and if he'd be willing to work with the committee.

MR. SNIFFEN affirmed that, agreeing there certainly is a need for some kind of legislation that addresses this scenario, because there is a loophole where the usury statute has a \$25,000 cutoff on interest rates. He explained:

If you borrow money above \$25,000, you are not subject to the usury law; if it's under \$25,000, you are subject to usury. However, Alaska's Small Loan Act is sort of an exemption to the usury law. So, if you're making small loans through the Small Loan Act, I think you can charge interest rates up to about 36 percent. Unfortunately, there's an exemption to the Small Loan Act for these payday lenders who are lending amounts of \$500 or less. There's sort of a never-never-land out there for these payday lenders that we haven't been able to fit into a regulatory scheme anywhere.

Absolutely, something should be done to address that situation.

Number 1200

DEBRA FINK, Owner, Cash Alaska, Anchorage, agreed with much of what Mr. Sniffen said. She added that Alaska needs some regulation in these areas of concern. She gave the opinion that the consumer loves deferred deposit advances. She had brought a survey of customers to share with the House Labor and Commerce Standing Committee and also referred to a cost-comparison sheet she had distributed to the committee.

MS. FINK characterized her customers as caring not about how much it costs to borrow the money short-term, but about the benefit of being able to borrow short term, given the alternatives. She testified that a deferred deposit, according to the chart, would cost \$15. She noted:

If the same consumer were behind on a payment to a utility company, and behind on a late fee to a credit card company, they would have to pay \$79: \$50 to re-hook their utility and \$29 to the credit card company, as a late fee. These are all averages that [we've] got in the state of Alaska. Then, if they bounced two checks, even worse.

The average charge by any bank here in Alaska is \$22 to the customer for a bad check, and the vendor charges \$25. So, if you write a check that bounces, that's a \$47 fee. You write two of them and you are out \$94. Anybody looking at this would say, "Gee, should I go in the hole \$94, \$79, or should I take out a deferred deposit advance for \$15 and save myself a bunch of money." Those are the kinds of decisions our customers are making. They are looking at their alternatives.

This industry grew out of nobody being there to provide any money for a group of people that work. They're responsible citizens. They make \$25,000 to \$50,000 a year. A third of them have homes. They have college education, many of them. But they are kind of what we call the "under-banked." They haven't saved any money; they're at that stage in their lives, kind of in their mid-thirtyish time where you have to have big TVs, and you have to have nice stereo

systems, and you got a nice big truck, and a big car payment, and they aren't saving yet.

They're not saving at all. Mostly, they're not even thinking about their next bill. When they get to their late thirties or early forties, they start saving. Our customers tend to be on the youngish side because it's kind of a lifestyle transition. There's no place they can get money. If you don't have a savings account, and your car breaks down, poof, you're out of luck! There's no lender in town that's going to give you anything.

Many of our customers have credit cards; they're maxed out. What do they do? Well, they come to one of these deferred deposit advance providers and they get relatively cheap money, given the alternatives. It's a great service. That's why they filled these surveys out: they love the service. Are there a few nightmare stories that Ed [Sniffen] can tell you about? You bet. There are credit-card-nightmare stories and there are "losing homes, losing cars" horror stories. There's always horror stories, but the bulk of our customers love the service, and I personally think they ought to be able to choose it.

Number 1642

MS. FINK continued:

That being said, it should be regulated. It's a growing industry. There are 40 states in the United States right now that are offering the service, essentially in the same form that is in [HB] 389. It's a good piece of legislation. The Council of State Governments and ALEC [American Legislative Exchange Council] have both come out with suggested legislation that, pretty much, matches what we have here. So, we are not reinventing the wheel: this is something that's been going on a lot in the last 10 years.

It is posited that there are 15,000 to 20,000 storefronts across the country, up from zero in the late 1980s. How does it work, for those of you who don't know? Somebody, who has a job and is working, comes in to one of the deferred deposit storefronts;

we'll say Cash Alaska. They come in with a check. The average PRA is in the \$300 range. Incidentally, I will sometimes refer to it as "PRA" - that's what we call them in our stores, that's payroll advances. They are called deferred deposit advances, payroll advances, payday loans, and cash advances. Everybody calls them different things.

Number 1727

MS. FINK continued:

In our case, somebody will come in. They'll write a check for \$115 and we'll give them \$100 cash. We check, make sure they're working, make sure they have a checking account, and we will give them up to 25 percent of what their take-home pay is going to be for the term of the loan, which is 15 days. So, there's every reason to believe they would be able to repay it. The deposit date is actually fixed at 15 days out. On the sixteenth day we deposit their check in our account and they are debited for that amount of money.

Sometimes, they come in and say, "Well, I don't want you to deposit the check. But, here's the \$115 in cash. Give me my check back." We do that, too. Sometimes they come in and say, on the fifteenth day, "I really don't want you to take the money out of my account yet. Can I roll it over?" So, they are saying, "Given my alternatives, I am better off paying \$15 and rolling this over for two weeks, and giving you \$115, than writing some bad checks."

Number 1813

MS. FINK continued:

Under this bill they would be able to do that four times. Right now, of course, we're unregulated so anybody can do anything they want. Four times is the limit recommended by the Council of State Governments. Most people we don't see again, we just deposit their checks. That's how it works. For a 15-day term loan, these are small loans; [it costs] a couple hundred bucks. This is a really great benefit to the consumer. And I think they should have the choice of

opting for this, if they want to. So do 40 other states. So, we've got our own bill now. I really hope you'll give it some consideration. It's a good piece of legislation.

Number 2011

REPRESENTATIVE LYNN asked why a loan couldn't just be rolled over into a longer-term loan.

MS. FINK replied that they are not licensed to do that kind of a loan. She said most of her customers are not interested in longer-term loans. She added, "They don't want to get into debt; they don't want to have a bad credit rating."

Number 2112

REPRESENTATIVE CRAWFORD asked Ms. Fink to clarify her statement about payment programs.

MS. FINK said they are not set up to do long-term loans. She is able to do roll downs. She explained:

What sometimes will happen, say, somebody has a \$200 deferred deposit advance for which there's a check for \$230. Thirty dollars would be our fee. What they'll do is say, "Well, I don't have that amount. I have \$130." And so, we'll roll the debt down, we'll roll down to a PRA [deferred deposit advance] that's only \$100. So it's a way for them to pay it off, without anything else happening. When checks bounce, we do payment plans on those. Most of the time, on those payment plans, it's \$25 to \$50 a payday, without any interest at all. But, again, most of the customers don't want to do that.

Number 2230

CHAIR ANDERSON announced that HB 389 would be held over.

**ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:59 p.m. [For minutes on the Worker's Compensation Overview & Update, heard jointly with the Senate Labor and Commerce Standing Committee, see the 4:10 p.m. minutes for this date.]