

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 27, 2006

3:38 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 255(FIN)

"An Act extending the termination date and duties for the Board of Examiners in Optometry; amending the licensing, endorsement, and renewal provisions for optometrists; and providing for an effective date."

- MOVED CSSB 255(FIN) OUT OF COMMITTEE

SENATE BILL NO. 273

"An Act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties."

- HEARD AND HELD

CS FOR SENATE BILL NO. 298(JUD)

"An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 255

SHORT TITLE: OPTOMETRY: EXTEND BD/LIC. ENDORSEMENT

SPONSOR(s): RULES BY REQUEST OF LEG BUDGET & AUDIT

01/30/06 (S) READ THE FIRST TIME - REFERRALS
01/30/06 (S) L&C, FIN
02/14/06 (S) L&C AT 1:30 PM BELTZ 211
02/14/06 (S) Moved CSSB 255(L&C) Out of Committee
02/14/06 (S) MINUTE(L&C)
02/16/06 (S) L&C RPT CS 5DP NEW TITLE
02/16/06 (S) DP: BUNDE, DAVIS, ELLIS, SEEKINS,
STEVENS B
03/01/06 (S) FIN RPT CS 5DP NEW TITLE
03/01/06 (S) DP: BUNDE, HOFFMAN, OLSON, DYSON,
STEDMAN
03/01/06 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/01/06 (S) Moved CSSB 255(FIN) Out of Committee
03/01/06 (S) MINUTE(FIN)
03/03/06 (S) TRANSMITTED TO (H)
03/03/06 (S) VERSION: CSSB 255(FIN)
03/06/06 (H) READ THE FIRST TIME - REFERRALS
03/06/06 (H) HES, L&C, FIN
03/13/06 (H) L&C AT 3:15 PM CAPITOL 17
03/13/06 (H) <Pending Referral>
03/23/06 (H) HES AT 3:00 PM CAPITOL 106
03/23/06 (H) Moved Out of Committee
03/23/06 (H) MINUTE(HES)
03/24/06 (H) HES RPT 1DP 4NR
03/24/06 (H) DP: SEATON;
03/24/06 (H) NR: CISSNA, GARDNER, GATTO, WILSON
03/27/06 (H) L&C AT 3:15 PM CAPITOL 17

BILL: SB 273

SHORT TITLE: MOTOR VEHICLE SALES

SPONSOR(s): SENATOR(s) COWDERY

02/08/06 (S) READ THE FIRST TIME - REFERRALS
02/08/06 (S) TRA, L&C
02/23/06 (H) TRA AT 1:30 PM CAPITOL 17
02/23/06 (H) -- Meeting Canceled --
03/02/06 (S) TRA AT 2:00 PM FAHRENKAMP 203
03/02/06 (S) Moved SB 273 Out of Committee
03/02/06 (S) MINUTE(TRA)
03/03/06 (S) TRA RPT 4DP

03/03/06 (S) DP: HUGGINS, THERRIAULT, COWDERY,
KOOKESH
03/16/06 (S) L&C AT 1:30 PM BELTZ 211
03/16/06 (S) Moved SB 273 Out of Committee
03/16/06 (S) MINUTE(L&C)
03/17/06 (S) L&C RPT 5DP
03/17/06 (S) DP: BUNDE, DAVIS, ELLIS, SEEKINS,
STEVENS B
03/20/06 (S) TRANSMITTED TO (H)
03/20/06 (S) VERSION: SB 273
03/22/06 (H) READ THE FIRST TIME - REFERRALS
03/22/06 (H) L&C, JUD
03/27/06 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

TOM MAHER, Staff
to Senator Gene Therriault
Legislative Budget and Audit Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 255 on behalf of the
Legislative Budget and Audit Committee.

PAT DAVIDSON, Legislative Auditor
Legislative Audit Division
Juneau, Alaska

POSITION STATEMENT: Answered questions during hearing on SB
255.

RYAN MAKINSTER, Staff
to Senator John Cowdery
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 273 on behalf of Senator
Cowdery, sponsor.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing
Committee meeting to order at [3:38:54 PM](#). Representatives
Crawford, Rokeberg, Lynn, Kott, and Anderson were present at the
call to order. Representatives LeDoux and Guttenberg arrived as
the meeting was in progress.

SB 255-OPTOMETRY: EXTEND BD/LIC. ENDORSEMENT

CHAIR ANDERSON announced that the first order of business would be CS FOR SENATE BILL NO. 255(FIN), "An Act extending the termination date and duties for the Board of Examiners in Optometry; amending the licensing, endorsement, and renewal provisions for optometrists; and providing for an effective date."

[3:39:32 PM](#)

TOM MAHER, Staff to Senator Gene Therriault, Legislative Budget and Audit Committee, Alaska State Legislature, explained that SB 255 stems from recommendations contained in the Legislative Audit report entitled "Department of Commerce, Community, & Economic Development, Board of Examiners in Optometry Sunset Audit," dated September 27, 2005. He said that Legislative Audit concluded that the Board of Examiners in Optometry (BEO) continues to serve a public need and is operating in the public interest. In addition, he said, the regulation and licensing of qualified optometrists is necessary to protect the public. He stated that the BEO has operated effectively, adopted regulatory changes, and supported legislation to improve its oversight process, in addition to promoting more effective regulation of licensed optometrists. He said that SB 255 extends the sunset date for the BEO to June 30, 2014.

[3:41:21 PM](#)

MR. MAHER went on to say that Legislative Audit also recommended that the legislature amend the optometry statutes to ensure they support current license endorsements for the diagnostic use of pharmaceutical agents. He explained that current statutory language provides for a single endorsement for both prescribing and use; however, the BEO is currently issuing two endorsements. He stated that the first type of endorsement allows the practitioner to prescribe and use pharmaceutical agents, while the second type of endorsement is a "use-only" endorsement. He said that current law does not authorize the use-only endorsement; therefore, SB 255 adds a section authorizing a use-only endorsement and "grandfathers" in the practitioners that were given the endorsement over the years.

MR. MAHER stated that the Senate Labor and Commerce Standing Committee deleted the statute requiring 24 hours of continuing education instruction, which will allow the BEO to establish the number of required hours through regulation. In addition, the Senate Finance Committee adopted several statutory "housekeeping" amendments at the request of the BEO. These

amendments would delete unnecessary references and improve the BEOs function, in order to better protect the public.

[3:43:35 PM](#)

CHAIR ANDERSON, in regard to the eight year extension, opined that there is always concern regarding whether a board should be extended this far out. He asked if it is common to extend a board for this length of time.

MR. MAHER replied that during the previous legislative session, the statutory maximum [for extension of a board] was changed from four to eight years.

[3:44:18 PM](#)

CHAIR ANDERSON acknowledged that [Legislative Audit] prefers a longer extension date, but noted that the legislature retains the ability to review a board or commission at any time. He stated that while there may not be a problem with extending the sunset date for eight years, there may be issues concerning consumer and patient protection.

[3:44:48 PM](#)

PAT DAVIDSON, Legislative Auditor, Legislative Audit Division, explained that the aforementioned bill was passed because the boards and commissions, particularly those which are occupational in nature, have gone through the sunset process many times. She said that most of the current issues are those regarding board efficiency and continuation of the board, the latter of which is the purpose of the sunset process.

CHAIR ANDERSON remarked that in the past there was disagreement on the powers and duties of optometrists. Referring to page 4, [subsection 10], he asked for confirmation that this is not adding any new authority.

MS. DAVIDSON confirmed that no new authority is being added. She explained that the statute was changed in 1992, adding the phrase "prescribe and use." She said that not all practitioners at the time had the education to support the prescribe as well as the use license. Furthermore, some practitioners prefer not to prescribe. She said that while the BEO would like to eventually have all practitioners prescribe and use, limiting the profession to this would eliminate some practitioners. She

added that it is better for the public to have more practitioners.

CHAIR ANDERSON noted that the bill is retroactive 14 years and effective immediately.

[3:47:32 PM](#)

REPRESENTATIVE KOTT asked how often the BEO audits are done.

MS. DAVIDSON replied that the audits were previously done every four years, however, this was changed to six years. She stated that most of the boards have been in existence for over 20 years, and estimated that the BEO has been audited 5-10 times.

[3:48:15 PM](#)

REPRESENTATIVE KOTT surmised, then, that the BEO would not be audited for a minimum of four years.

MS. DAVIDSON said that extending the sunset date to 2014 would make this the date for the next audit; however, the legislature may request an audit at any time.

[3:48:59 PM](#)

MS. DAVIDSON, in response to a question, said that the fees for licensure are "always controversial." She stated that if boards or commissions are in a deficit, it would take four to six years to come out of deficit. She explained that currently board expenses are consistent, with the exception of investigations, which are a "wild card." Some boards, she said, prefer to have a financial "cushion" to cover these costs. She stated that when Legislative Audit looked at the BEO, it had recently increased its fees and had not been running a deficit. She said that this is the reason for recommending the fees be lowered; however, an intermediate assessment will be done at the next renewal period.

[3:50:31 PM](#)

REPRESENTATIVE KOTT moved to report CSSB 255(FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 255(FIN) was reported from the House Labor and Commerce Standing Committee.

[3:50:45 PM](#)

SB 273-MOTOR VEHICLE SALES

3:50:55 PM

CHAIR ANDERSON announced that the next order of business would be SENATE BILL NO. 273, "An Act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties."

3:51:12 PM

RYAN MAKINSTER, Staff to Senator John Cowdery, Alaska State Legislature, sponsor, explained that SB 273 corrects a problem in AS 08.66.015, which resulted from changes made in 2004. He said that the Department of Law (DOL) was directed to submit a report to the legislature outlining any consumer or enforcement problems associated with the aforementioned changes. He stated that in its report to the legislature, the department concluded that the 2004 change in statutory language was not needed and instead created a problem for consumers and used car dealers. He said that currently, it is illegal to sell a current model used vehicle.

3:53:57 PM

MR. MAKINSTER noted letters of support from the Alaska Auto Dealers Association and the Department of Law. He said that during the previous legislative session, two bills were introduced in an attempt to deal with this issue; however, the language became complicated, and as a result, the current legislation was introduced. He added that this legislation was introduced at the recommendation of the department.

REPRESENTATIVE LEDOUX asked why, if the problem resulted from legislation that was not needed, the sponsor does not repeal the statute.

MR. MAKINSTER replied that the department requested that this portion be removed in order to enforce the law.

CHAIR ANDERSON clarified that there are portions of the aforementioned statute that are needed.

REPRESENTATIVE LYNN asked if the bill addresses warranty issues with Canadian vehicles.

MR. MAKINSTER replied no. He stated that, according to the department, this has not been a large concern. He noted that there are other issues regarding warranties, which fall under the "advertising [provision]."

[3:57:41 PM](#)

CHAIR ANDERSON commented that these issues were addressed previously, along with the issue of recertifying Canadian vehicles with fewer than 2,000 miles as a new vehicle.

MR. MAKINSTER agreed, adding that there are many issues in this area; however, SB 273 does not deal with these.

[3:58:16 PM](#)

REPRESENTATIVE LYNN commented that disclosure [of a used vehicle] was part of the problem.

[3:58:52 PM](#)

REPRESENTATIVE CRAWFORD noted that [AS 08.66.015(b)] is repealed. He quoted from AS 08.66.015(b), which reads:

(b) A person who does business as a dealer in the state may not offer to sell or sell a motor vehicle as a new or current model motor vehicle having a manufacturer's warranty unless

(1) the dealer has a current sales and service agreement with the manufacturer and the agreement requires the dealer, upon demand of the motor vehicle buyer, to perform or arrange for, within a reasonable distance of the dealer's place of business in the state, the repair and replacement work required of the manufacturer under the warranty; or

(2) the dealer offers to give the buyer a rebate to cover the repair and replacement work that the dealer cannot perform or arrange for within a reasonable distance of the dealer's place of business.

REPRESENTATIVE CRAWFORD opined that removal of this section would result in less consumer protection.

[3:59:49 PM](#)

MR. MAKINSTER replied that this section is part of the problematic language. He explained that if a car dealer is selling a vehicle with a manufacturer's warranty, the contract requires that the car dealer perform the services as stated in AS 08.66.015(b). He stated that this section was written for dealers selling a service contract as a manufacturers warranty; however, this did not address the problem.

4:00:56 PM

MR. MAKINSTER went on to say that the current language is "redundant." In addition, he said, current model vehicles have a manufacturer's warranty that travels with the vehicle, regardless of where it is sold. He stated that if the statute is left as it is, only dealers that hold an agreement with the manufacturer would be able to sell current model used vehicles.

4:02:01 PM

MR. MAKINSTER, in response to a question, stated that under current law, used car dealerships are unable to sell a current model used car.

4:03:21 PM

MR. MAKINSTER, in response to additional questions, explained that according to the manufacturers warranty, [the car dealership which holds a contract with the manufacturer] is required to perform service or pay to have the service performed. He stated that [AS 08.66.015(b)] merely reiterates this.

REPRESENTATIVE GUTTENBERG remarked that if the dealership were to burn down, for example, the consumer would not be able to receive warranty work. He surmised, then, that this would place the burden on the consumer. He opined that it would be more difficult for the consumer to request payment than for the dealership. In addition, he said that if this is currently in statute, he does not see a reason to repeal it.

MR. MAKINSTER replied that if something were to happen to the dealership, the consumer would simply go to the closest dealership.

CHAIR ANDERSON read an example from the letter of support from the Alaska Auto Dealers Association, which reads in part [original punctuation provided]:

For example, we are a GMC dealer and are currently selling 2007 GMC Yukon's. The 2008 model will not come out until August of 2007. If a customer wanted to trade that vehicle in at any other new or used dealership other than a GMC dealer, they could do so, but the dealer would not be allowed to sell the trade in until August of 2007, when the vehicle is no longer "current model". Obviously, this scenario is detrimental to the dealer and consumer who will be penalized monetarily if the dealer can not sell the trade in for eighteen months.

[4:08:46 PM](#)

MR. MAKINSTER, in response to a question, stated that [10-30] current model vehicles are returned [annually] per dealership, and this is overlooked. He said that if the violations were enforced, the penalty would be up to \$5,000 per violation. He opined that this cost would be passed on to the consumer. Therefore, this legislation would help the consumer [by removing the aforementioned language]. In regard to an earlier comment, he reiterated that if left in, subsection (b) would limit current model used car sales to new car dealerships, as used car dealerships do not meet the current statutory requirements.

[4:10:22 PM](#)

REPRESENTATIVE CRAWFORD replied that the operative word is "or," and added that this "seems to be a reasonable safeguard" which will enable the consumer to receive warranty work.

CHAIR ANDERSON informed the committee that the bill will be held over, as further clarification is needed.

REPRESENTATIVE GUTTENBERG said that while he understands the intent of the bill, he is concerned with removing [subsection (b)]

[4:11:21 PM](#)

REPRESENTATIVE LEDOUX agreed with this concern.

CHAIR ANDERSON opined that there is a misunderstanding, and suggested that the [department] testify at the next hearing.

MR. MAKINSTER noted that the language came from the department.

4:11:56 PM

REPRESENTATIVE KOTT asked why there is not an immediate effective date, if the statute is not currently being enforced.

MR. MAKINSTER replied that the department would be able to answer this question [at the next committee hearing].

[SB 273 was held over.]

4:12:35 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:12:46 PM.