

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

February 9, 2006

1:41 p.m.

MEMBERS PRESENT

Representative Jim Elkins, Co-Chair
Representative Carl Gatto, Co-Chair
Representative Mark Neuman
Representative Bill Thomas
Representative Mary Kapsner
Representative Woodie Salmon

MEMBERS ABSENT

Representative Vic Kohring

COMMITTEE CALENDAR

HOUSE BILL NO. 383

"An Act limiting motor vehicle dealer charges for fees and costs; relating to the disclosures required for certain motor vehicle transactions; and requiring consumers to be informed of finance charges paid to a motor vehicle dealer by a financing institution on the sale of a used motor vehicle."

- MOVED CSHB 383(TRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 383

SHORT TITLE: MOTOR VEHICLE TRANSACTIONS

SPONSOR(S): REPRESENTATIVE(S) GARA

01/20/06	(H)	READ THE FIRST TIME - REFERRALS
01/20/06	(H)	TRA, STA
02/07/06	(H)	TRA AT 1:30 PM CAPITOL 17
02/07/06	(H)	-- Meeting Canceled --
02/09/06	(H)	TRA AT 1:30 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 383 as sponsor.

JIM ARPINO

Affordable Used Cars

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HR 383.

JOHN COOK, General Manager

Aurora Motors

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HR 383.

ED SNIFFEN, Assistant Attorney General

Commercial/Fair Business Section

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HR 383.

CAROL LYBERGER

Lyberger Car and Truck Sales

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HR 383.

CAROLYN ALLEN, Business Development Director

Auto Service Company

Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HR 383.

ACTION NARRATIVE

CO-CHAIR CARL GATTO called the House Transportation Standing Committee meeting to order at [1:41:36 PM](#). Representatives Neuman, Kapsner, Gatto, Elkins, and Thomas were present at the call to order. Representative Salmon arrived as the meeting was in progress.

HB 383-MOTOR VEHICLE TRANSACTIONS

CO-CHAIR GATTO announced that the only order of business would be HOUSE BILL NO. 383, "An Act limiting motor vehicle dealer charges for fees and costs; relating to the disclosures required for certain motor vehicle transactions; and requiring consumers to be informed of finance charges paid to a motor vehicle dealer by a financing institution on the sale of a used motor vehicle."

CO-CHAIR ELKINS moved to adopt the proposed committee substitute (CS) for HB 383, Version 24-LS1287\S, Bannister, 2/3/06, as a

working document. Hearing no objections, Version S was before the committee.

REPRESENTATIVE GARA said HB 383 solves two problems that exist in some used car business practices. He noted that it was thought that the legislature had addressed one of the problems in 2002. He explained that consumers are often charged a documentation fee on top of an agreed sales prices. The fee is called "doc" and some consumers are led to believe it is a government fee, but it is a profit to the dealer of \$200 to \$250. He noted that a used car dealer can charge any price for a car, but "we don't want consumers to believe that they are paying a fee that is required when it's not required." Part one of HB 383 addresses the "doc" fee issue by requiring that the negotiated or advertised price be inclusive of all fees, except for government fees.

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REPRESENTATIVE GARA said there are a number of used car dealers that don't do that any more, but some do. The other issue is the dealer reserve fee for loans on cars through the car dealership. The dealership may charge a higher interest rate to the consumer than the dealership is getting from a bank. "Many consumers believe that that's the rate that's being offered by the bank, but, in fact, in many cases, the bank would offer a lower rate, and the dealer is keeping a portion of that percentage," he stated. Representative Gara said dealers can do that but consumers should be informed. He noted that the original version of HB 383 was more stringent by making the dealer tell the consumer how much the fee differed, but the CS simply requires the dealer to notify the consumer that the dealer is "keeping a portion and they don't have to say what that portion is."

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REPRESENTATIVE GARA said HB 383 is about full disclosure--just informing consumers that certain fees are being charged. He added that neither parts of the bill prevent dealers from charging whatever they want as a sales price. He said there was a case in Anchorage where a consumer bought a \$23,000 car and was told she was being offered a 5.9 percent loan from Denali Alaska Credit Union. As it turned out, there was evidence that the bank had offered the dealer the loan for 4.5 percent. The dealer didn't tell the buyer and kept the difference. He said the legislation just lets the consumer know if the dealer is

keeping a portion. The consumer might not get a better deal on his or her own, or a consumer might choose to pay the higher loan rate out of convenience, "but we want to give the consumer information because they do believe when they see the bank's name next to the loan interest rate, that that's what the bank is charging."

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CO-CHAIR GATTO said when he gets a loan from a car dealer, he assumes the loan is from the dealer, not the bank.

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REPRESENTATIVE GARA said he thinks that consumers aren't reading the contract that closely, but if the contract has a bank's name associated with the interest rate, the consumer will likely think that's what the bank is actually charging. It is important for the consumer to know that the dealer is getting a cut, he said.

CO-CHAIR ELKINS surmised that the banks have gone to the dealer and negotiated the rate. He questioned if the consumer would get the same rate that a dealer has negotiated.

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REPRESENTATIVE GARA said there might be some banks that offer their lowest rate to a dealer. He said if a consumer knows that the dealer is getting a better rate, that person might call his or her bank to find a lower rate. "We are not requiring that the consumer do anything, but we're giving the consumer a heads up that maybe they might be able to negotiate a lower rate on their own. Just a percentage can mean an extra thousand dollars over the course of a loan," he said. It is substantial money to people living on the margins, and they are the ones more likely to buy a used car, he stated.

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REPRESENTATIVE THOMAS said he always goes to the bank before he shops for a car. The dealer often has lower rates and he said he doesn't mind if the dealer gets a cut. He said it depends on the price of the vehicle.

REPRESENTATIVE GARA said it is wise to do that, but you would not be harmed if the contract provided that information. It is

the free market, and the more information people have, the more fair it is to everybody, he added. By leaving out the information the dealer is hiding something from the consumer. The consumer may not get a lower rate, but full disclosure is fair. "The people who get harmed the most when they buy cars in Anchorage are people from outside of Anchorage who come in. So they're not going to have cut a deal with their local bank; they might not have a local bank." He said a car dealer told him that dealers love it when people from the Bush buy a car because it is easier to mark up the price.

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REPRESENTATIVE THOMAS said he never bought a vehicle in Anchorage. He said dealers "show you the interest rates," and he doesn't know how much more upfront it can be. He noted that he calls his bank but finds it is cheaper to get a loan through a dealer.

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REPRESENTATIVE GARA said if you give consumers the information that the interest rates are inflated, it arms them with information to negotiate a lower rate.

REPRESENTATIVE NEUMAN said there is a certain amount of credit that a dealer gets. He asked if the car dealer has the fiduciary responsibility if payments are late. He also asked if the consumer fills out bank paperwork.

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REPRESENTATIVE GARA said he didn't know whose paperwork is filled out but neither the bank nor the dealer discloses the facts, the way the law is written now.

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REPRESENTATIVE NEUMAN asked again about the fiduciary responsible. He suggested the dealership gets a better interest rate because of the volume and the credit rating it has. He said when he was younger he might not have inquired with his bank, but he has learned a few things. But who is responsible for the bills if the buyer doesn't pay? he asked.

REPRESENTATIVE GARA said it is case by case. But it is not good policy to let a consumer be misled. "Why would you not want to

give the consumer true information?" He said even if you are a wise consumer, "I guarantee you there are used car dealers out there who are implying to the customer that that's the bank's rate."

CO-CHAIR GATTO said he believes in the free market. Supermarkets mark up milk only a few cents, but candies and magazines are marked up quite a bit. "Should I require the supermarket to say 'there is a big mark up on this stuff'?"

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REPRESENTATIVE GARA said sometimes the public demands fair-pricing rules when some members of an industry have not dealt fairly with consumers, like insurance rates, but grocery items are not regulated because of competition and because the public can identify high prices. It is undeniable that some dealers are not truthful with customers, he said. "We all know this goes on." He said on the "doc" fee issue, "we know that some dealers...are convincing somebody from the Bush that a 'doc' fee is a government fee, when it's not, and that the bank interest rate is the one that's being charged, when, in fact, it is not." He said there is a level of abuse that requires this scrutiny.

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CO-CHAIR GATTO asked if insurance companies should disclose that a better insurance rate is available somewhere else instead of having the government regulate the rates.

REPRESENTATIVE GARA said he doesn't know the best way to regulate the insurance industry, but the best way for car purchases is to give consumers full information.

CO-CHAIR GATTO explained Representative Gara's point by saying that a consumer would not want to buy groceries at a stated price and then have a doc fee added on during check-out.

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CO-CHAIR ELKINS asked if dealers charge simple interest or discount interest. That knowledge is truth in lending, he said.

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REPRESENTATIVE GARA said he does not know, but he sees it as annual percentage rates, not the type of interest.

CO-CHAIR ELKINS said we are talking about truth here. He said he sold cars in the 1960s. We need to know what kind of interest it is, he stated.

REPRESENTATIVE GARA said if there is a way to be more honest to the consumer, he would support that.

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REPRESENTATIVE KAPSNER said that not only are people from the villages without banks more vulnerable, but single women tend to be at a disadvantage as well.

REPRESENTATIVE GARA said he thinks he has seen studies that suggest that car dealers are able to take advantage of women more easily, but he is not sure of those dynamics.

REPRESENTATIVE KAPSNER said she has heard that women are charged a higher "doc" fee than men.

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CO-CHAIR GATTO said he bought a car last year and the negotiated fee was listed in one place and then in bold letters it said "documentation fees: \$200". He requested that the \$200 be deducted and the dealer said it can't be done. Co-Chair Gatto said he was under the impression that the dealer could not do anything about the fee. The dealer made it seem like an authorized government fee. The dealer told him, "I can't do anything about it." He said the bill is about deceit; we need to be more open and honest. He said he has a little more trouble with the interest provision of the bill. It is not deceitful if the consumer knows that the loan is through the car dealer. It is reasonable to tell consumers they might be able to find a lower rate, putting the onus on the buyer to shop around.

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REPRESENTATIVE NEUMAN said he is confused on "doc" fees; "I don't think I really have a problem of saying that they have to have 'doc' fees, but then Representative Gatto just said that normally they are there but they can't get out of them. So I am not clear on that one yet." Does the bill just require a statement that there is a "doc" fee? He asked.

REPRESENTATIVE GARA said the bill says the price quoted should be the price charged. The advertised price, the negotiated price, and the price "they write on that little piece of paper when they're doing that little paper-handing thing to you that they do at car dealers," is the price they must charge. People don't know what the "doc" fee is, he said, and they think it is a government fee or that it is non-negotiable, which is false.

REPRESENTATIVE NEUMAN said he doesn't think he has a problem with the "doc" fee provision, but he is troubled with the interest rate provision. He said Representative Gara said he is not supportive of the government telling a business what to charge, but, "is this bill trying to say that...the car dealer should say, 'well I can give it to you at 5 percent, but I can get it at 4 percent because I do a lot of volume and have a better credit rating?'" He asked if the bill requires the dealer to provide the interest at the lower rate.

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REPRESENTATIVE GARA said the law will not tell dealers what to charge; they can charge whatever is negotiated. But if the dealers are keeping a cut and indicating that the rate is a bank rate, the consumer should be able to know. Car dealers may worry that by telling consumers they may be able to get a lower rate elsewhere, they might walk off the car lot.

CO-CHAIR ELKINS said he has seen a dealer giving a potential buyer a gallon of ice cream in August so the buyer would go home instead of driving around looking for a better deal.

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REPRESENTATIVE SALMON said he goes to the bank before buying a car, so at the car lot he has that information. A loan depends on a person's credit rating. There are too many hidden costs, and consumers should be told the full costs, he stated. Car dealers are pretty shifty, he said. The bill provides the truth, he noted, and credit ratings should be included.

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JIM ARPINO, Affordable Used Cars, said he is a board member of the Alaska Dealers Association, and the information in front of the committee is not the whole story. The people who come into his dealership are more educated because of books and the Internet. Many are more informed than the committee members, he

added. The bill is disturbing because it singles out used car dealers. He said "doc" fees are charged on new cars, boats, snow machines, RVs, and mortgage loans. He said in all of those businesses, there are agreements between banks and dealers whereby certain proceeds are kept for doing the paperwork.

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CO-CHAIR ELKINS asked if the interest charged today is simple.

MR. ARPINO said yes.

REPRESENTATIVE SALMON asked him to explain credit ratings.

MR. ARPINO deferred to someone in that business.

REPRESENTATIVE KAPSNER asked if all dealers use "doc" fees and dealer reserve fees.

MR. ARPINO said some dealerships don't have "doc" fees. He said he just bought a snow machine and paid a "doc" fee, and he was not told it was a government fee. He said if the committee takes on used car dealers, it will have to look at all the businesses that operate in the exact same fashion. He gave the example of a loan origination fee when buying a house.

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CO-CHAIR GATTO asked what the fee was for the snow machine.

MR. ARPINO said it was \$99.00.

REPRESENTATIVE NEUMAN asked how dealers present the loan payment information to customers.

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MR. ARPINO said the dealer goes over the prices including extended service contracts and popular add-ons. The dealer presents the amount that will be financed and the interest rates and payments. He said these discussions take place in the finance department. He explained that the last thing that comes out is the payment, and if everything is acceptable to the buyer and the seller, the consumer signs on the dotted line and 99.99 percent are happy customers. He said more legislation will not help the consumer.

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REPRESENTATIVE NEUMAN asked if current law requires dealers to give full disclosure of everything that the consumer pays.

MR. ARPINO said yes, there are good laws, but every time a constituent of a legislator has a problem, "that person wants to bring it up in law." He said the Department of Law can protect consumers but the consumer also needs to know how to buy things.

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JOHN COOK, General Manager, Aurora Motors and Legislative Director of the Alaska Automobile Dealers Association, said the bill targets the car industry only, and other business charge a "doc" fee, so it is not equitable. He added that the advertised price of a car must include everything except licensing fees. Regarding finance charges, the bill only looks at used car dealers, and there are many that provide the disclosure voluntarily, he noted. He said other businesses receive dealer reserves, including electronic stores and furniture stores, and the bill doesn't require them to provide full disclosure. He noted the cut the bank gets on mortgage rates, which represent larger transactions. He referred to Co-Chair Gatto's example, and said that anyone who represents the "doc" fee as a mandatory charge or a government fee or is non-negotiable is in violation of current law. He said dealers are under a high degree of scrutiny from the attorney general's office. There is also quite a bit of competition, so consumers can shop for the best deal they can get. Most car dealerships are family-run businesses, and can't operate in a way that is not fair or they will go out of business.

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CO-CHAIR GATTO said he will try to recover the money he was illegally charged.

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ED SNIFFEN, Assistant Attorney General, Commercial/Fair Business Section, Department of Law, said he is one of the authors of the statute that is being amended by HB 383. He said being armed with information prior to visiting a car dealership is terrific, but the statute is aimed at consumers who do not have that information. Uneducated consumers will be protected by the hold-back portion of the bill. Negotiating the price for a car

is unique and not done for milk, he said, and it is a very big deal for consumers because the price of cars is high. He said it is normally the second largest purchase consumers make in their entire lives. The process can be intimidating, he added.

MR. SNIFFEN said when a seller goes back into some room and comes back and says, "good news, I can finance you for this much money," the perception of the consumer is that that is the rate he or she can get. The process does make the consumer believe that the rate the dealer can give is the rate the consumer can get. He said the previous testifiers are reputable dealers. Other industries are regulated in different ways, and one can't compare other industries with the automobile industry. Dealers get interest rates from the bank, then the dealer is free to charge whatever they want, and he is not sure that freedom or flexibility is true for other industries. The negotiation process is so unique, he said. The federal Truth in Lending Act deals with a finance charge, not interest. It does not matter what kind of interest, what matters is that the dealer is holding back something and making a profit, he said.

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MR. SNIFFEN said there is no fiduciary relationship between the dealer and the customer. He said most Alaskan car dealers are reputable, "but if they can tweak more money out of you..." He suggested not relying on car dealers to look out for the best interest of consumers because of their profit motive. In dealing with deceptive dealers, it is difficult for the state to enforce anything that is not in writing, he said.

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MR. SNIFFEN said some dealers make "doc" fees look like government fees and some don't. The laws target the dealers who are less than honest. The language in statute requires the "doc" fee to be included in the advertised price, he said, but as soon as a price is negotiated, the "doc" fee will get added back in, "and it was never our intent to have that be the case, so I think changing that would fix that loophole."

CO-CHAIR GATTO asked if the bill refers only to used vehicles.

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MR. SNIFFEN said it would apply only to used vehicles, but there is no reason to not include all motor vehicles.

CO-CHAIR GATTO said he will amend the title of the bill to delete the word "used".

CAROL LYBERGER, Lyberger Car and Truck Sales, said the auto industry is very well regulated. She added that Wells Fargo's contract states that the seller may receive a part of the finance charge, and she gave other examples of such disclosures.

CO-CHAIR GATTO asked if the bill would negatively affect the ability to sell cars or is simply redundant to what is done now.

MS. LYBERGER said it would be redundant and would not affect her ability to sell cars.

CO-CHAIR GATTO said there is a substantial stack of paper to sign when buying a car, and he asked if buyers read them all.

MS. LYBERGER said most legitimate dealers have good finance staff who can explain the finance charge, and the consumer pays a lot of attention to those charges.

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CO-CHAIR GATTO spoke of extending the contract to make lower monthly payments.

MS. LYBERGER said the salesperson does not talk about finance.

CO-CHAIR GATTO asked if the salesperson only gives the negotiated price and doesn't talk about financing or "doc" fees.

MS. LYBERGER said her vehicles have the price on the car, and the sales person writes up the description of the vehicle and the price, and then the buyer goes to the sales manager.

CO-CHAIR GATTO asked if her prices are non-negotiable.

MS. LYBERGER said there is always negotiating.

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CO-CHAIR ELKINS asked about dealers without a finance department.

MS. LYBERGER said all dealerships she knows of have one.

CAROLYN ALLEN, Business Development Director, Auto Service Company, Fairbanks, said her concerns are the same as the other dealers that testified. She said she sells both new and used cars so she is opposed to the suggested amendment.

CO-CHAIR GATTO said a motor vehicle can be a lawn mower, and he wondered if a motor vehicle should be defined.

MR. SNIFFEN said the term is defined in the bill appropriately.

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REPRESENTATIVE NEUMAN said snowmobiles are required to be registered with the Department of Motor Vehicles.

MR. SNIFFEN said he does not have a copy of the statute, but the term is already defined, and by changing the definition the bill may inadvertently implicate other statutes.

CO-CHAIR GATTO suggested defining motor vehicles as being primarily used on highways.

MR. SNIFFEN said the definition addresses that, and changing the definition will affect more than desired. He said he will have to look at it, but he believes the definition just covers cars, trucks and motor homes, and he is not sure if it applies to snow machines and all-terrain vehicles.

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REPRESENTATIVE SALMON suggested adding the words "new and" to the bill.

MR. SNIFFEN said it was better to delete the term "used".

REPRESENTATIVE SALMON said the word "used" is used on page 2 as well as the title.

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REPRESENTATIVE SALMON offered to adopt Conceptual Amendment 1 to delete the term "used" from the bill in order to include new cars in the legislation.

REPRESENTATIVE NEUMAN objected for purposes of discussion.

MR. SNIFFEN said new car dealers are faced with the same issues, and there is no reason to exclude new vehicles.

CO-CHAIR GATTO said he agrees.

REPRESENTATIVE NEUMAN withdrew his objection. Hearing no further objections, Conceptual Amendment 1 carried.

REPRESENTATIVE KAPSNER offered Amendment 2, as follows [original punctuation provided]:

Page 2, lines 23-29

Delete all material.

Insert:

"(f) In addition to the other requirements of this section, if a motor vehicle dealer arranges financing for a proposed buyer, the dealer must disclose in writing, and before the sale is finalized:

(1) whether the interest rate quoted to the proposed buyer is different than the interest rate charged to the dealer, and

(2) the interest rate quoted to the buyer may not be the lowest interest rate available."

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CO-CHAIR GATTO said he objected because the existing language is better and not as specific.

REPRESENTATIVE KAPSNER said she wants Mr. Sniffen to discuss her amendment, and she thinks it makes the bill clearer.

CO-CHAIR GATTO described Amendment 2 to Mr. Sniffen.

REPRESENTATIVE GARA said Mr. Sniffen worked on the amendment.

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MR. SNIFFEN said he remembers his intent for writing Amendment 2. It was to clarify the legislation, but the current language accomplishes what the bill is after. He said he was just trying to clean it up and make it easier to follow.

CO-CHAIR GATTO said he maintains his objection because he is concerned that it doesn't say anything different.

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REPRESENTATIVE GARA said Amendment 2 would add that "the dealer would have to disclose if they were taking a cut, whereas the CS doesn't have that part."

CO-CHAIR GATTO noted that the CS requires dealers to advise that the interest rate may be different, and [Amendment 2] requires dealers to say it is different. He maintained his objection based on his support for the "free market system."

MR. SNIFFEN said his intent with Amendment 2 was to have dealers only disclose the difference in interest rates if there is a difference. He said the current version of the bill requires a disclosure whether there is a difference or not, he said, and why should a dealer disclose it if they are not taking a cut? So if the dealer is offering the same rate as the bank, there is no obligation to disclose anything, he said. That is why he thinks the language does the job, he said, but he is not wed to either version.

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A roll call vote was taken. Representatives Kapsner, Salmon, and Elkins voted in favor of Amendment 2. Representatives Gatto and Neuman voted against it. Therefore, Amendment 2 passed by a vote of 3-2.

REPRESENTATIVE KAPSNER moved to report CS HB 383, version 24-LS1287\S, Bannister, 2/3/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes. Hearing no objection, CSHB 383 (TRA) passed out of the House Transportation Standing Committee.

ADJOURNMENT

3:05:35 PM

There being no further business, the House Transportation Standing Committee meeting was adjourned at 3:05 p.m.