

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 16, 2006

1:34 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Ben Stevens
Senator Johnny Ellis
Senator Bettye Davis

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 272

"An Act relating to mortgage lenders and persons who engage in activities relating to mortgage lending; and providing for an effective date."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 307

"An Act relating to a fee provided for in the rental agreement for late payment of rent under the Uniform Residential Landlord and Tenant Act."

SCHEDULED BUT NOT HEARD

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."

MOVED SB 273 OUT OF COMMITTEE

SENATE BILL NO. 300

"An Act relating to the handling of negative equity in motor vehicle transactions."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

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

BILL: SB 300

SHORT TITLE: MOTOR VEHICLE NEGATIVE EQUITY

SPONSOR(s): SENATOR(s) SEEKINS

02/14/06 (S) READ THE FIRST TIME - REFERRALS
02/14/06 (S) TRA, L&C
02/23/06 (H) TRA AT 1:30 PM CAPITOL 17
02/23/06 (H) -- Meeting Canceled --
03/09/06 (S) TRA AT 1:30 PM BUTROVICH 205
03/09/06 (S) Moved SB 300 Out of Committee
03/09/06 (S) MINUTE(TRA)
03/10/06 (S) TRA RPT 2DP 1NR
03/10/06 (S) DP: HUGGINS, KOOKESH
03/10/06 (S) NR: FRENCH
03/16/06 (S) L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

RYAN MAKINSTER

Staff to Senator Cowdery

State Capital

Juneau AK

POSITION STATEMENT: Introduced SB 273 for the sponsor.

ED SNIFFEN, Assistant Attorney General

Division of Consumer Protection

Department of Law

PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Supported SB 273 and SB 300.

JOHN COOK, Legislative Director

Alaska Auto Dealers' Association

Aurora Motors

Fairbanks AK

POSITION STATEMENT: Supported SB 273.

BRIAN HOVE

Staff to Senator Seekins

State Capitol

Juneau AK

POSITION STATEMENT: Introduced SB 300 for the sponsor.

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [1:34:57 PM](#). Present at the call to order were Senators Bettye Davis, Johnny Ellis, Ben Stevens and Chair Con Bunde. The chair announced that SB 272 and SB 307 were postponed.

[1:36:13 PM](#)

SENATOR SEEKINS arrived.

SB 273-MOTOR VEHICLE SALES

CHAIR BUNDE announced SB 273 to be up for consideration.

RYAN MAKINSTER, staff to Senator Cowdery, sponsor of SB 273, explained that SB 273 addresses unintended consequences from a bill that was passed last year that prohibited new and used car dealers from selling new cars, but it went farther than that by prohibiting both groups from selling current-model used cars. A current-model used car could also fall in the current model year. Subsequently if the law was followed, a new or used car dealer would have to hold a returned car that has the current model year on their lot until it wasn't a current model any more. This does disservice to the dealers because they will have to hold a car that is losing value and a disservice to the consumer, because he doesn't get as broad a choice to pick from. Secondly, if he is a serviceman and gets shipped overseas and has to return a leased car, it would be difficult to turn it into a dealer knowing that the dealer has to hold it on his lot until it is not a current model.

He said this law is basically being overlooked and this bill changes languages so that current-model vehicles could be sold

by used and new car dealers. He said the Used Car Dealers Association supported it.

[1:40:23 PM](#)

ED SNIFFEN, Consumer Protection, Department of Law (DOL), said he has a large responsibility for regulating the care dealers in Alaska. He has been working on this issue for several years and the industry supports it. "It's something we need to do to allow us to enforce our laws - so we can sell these current-model used vehicles to consumers."

CHAIR BUNDE asked if he was comfortable with the bill from a consumer's point of view.

MR. SNIFFEN replied yes.

JOHN COOK, Used Car Dealers Association, supported SB 273 and the previous testimony. He thanked everyone who worked on it for over a year.

[1:44:32 PM](#)

SENATOR RALPH SEEKINS said this addresses part of his concerns, but it does not address dealers who commit black market fraud. However, he stated he supported the bill.

CHAIR BUNDE closed the public hearing.

SENATOR ELLIS moved to pass SB 273 from committee with individual recommendations and accompanying fiscal notes. Senators Davis, Ben Stevens, Seekins, Ellis and Chair Bunde voted yea; and SB 273 moved from committee.

SB 300-MOTOR VEHICLE NEGATIVE EQUITY

CHAIR BUNDE announced SB 300 to be up for consideration.

BRIAN HOVE, staff to Senator Seekins, sponsor of SB 300, said it updates the definition of "principal balance" found in the Alaska retail installment sales contract to accommodate the proper disclosure of negative equity. It clarifies how an incident of negative equity is handled within a lease arrangement and a contract.

He explained that previously, lending institutions required borrowers to participate financially in purchase transactions. Down payments of 25 percent were quite common and term loans were held for 36 months. But these guidelines have gone by the

wayside. Consumers have demanded lower payment loans with greater value. Now no and low down payment options are offered and the payment period has been lengthened. This phenomenon is particularly evident in retail auto sales where qualified buyers often opt for 100 percent financing over the longest possible term.

The mathematical effect of this strategy is simple. The point in time at which the vehicle's market value exceeds the outstanding balance on the underlying loan occurs much later than it otherwise would. Until this point is reached, the owner's equity position is commonly known as upside down or negative. In other words, the value of the vehicle is not yet sufficient to completely repay the outstanding balance on the loan.

As a result, when the owner wants to trade for a different vehicle, the dealer has to figure out some way to accommodate the loan payoff in the trade-in. At one time it was common practice in some states to simply inflate the price of the car to be purchased enough to permit an allowance for the trade-in that would cover the amount owed. The negative equity disappears. This method solved the equity problem, but failed to adequately describe the transaction mathematically. So, over time this practice fell into disfavor and today it is more common that new vehicles are sold at non-negotiable prices - such as factory incentive programs.

Furthermore, the Federal Reserve Board provided guidance on this issue through revisions made to Regulations M and Z. These regs control the manner in which lease and credit transactions respectively are disclosed. Regulation M was revised to provide a dedicated disclosure line on the lease agreement in cases where a prior loan or lease balance - negative equity - is rolled into the new lease transaction.

Revisions made to reg Z altered the definition of "down payment" thereby solving the negative equity issue as it pertains to a loan transaction.

MR. HOVE said that the vast majority of banks and credit unions are federally regulated. He continued to explain:

Therefore they follow federal disclosure laws. State laws do not come into play. However, acceptance companies, like GMAC, Ford Motor Credit and others are required to follow both state and federal laws. The dual adherence requirement has effectively created a disparity in the manner in which loan and lease transactions are disclosed in cases involving negative equity here in Alaska. So, the bottom line is that while federal law has been revised to accommodate this situation, our state law has not. SB 300 resolves this disparity by updating the definition of "principal balance" as it pertains to the state's disclosure requirements for retail sales contracts found in Chapter 10, Title 45. Furthermore the bill adds corresponding language to Chapter 25 pertaining to the handling of negative equity with respect to lease agreements. These modifications bring state and federal law back into alignment.

CHAIR BUNDE asked if this language is based on federal regulations.

MR. HOVE replied that the banks, credit unions and acceptance companies are the typical financial options - for purchasing new vehicles, for instance. Banks and credit unions are required to follow federal law. Acceptance companies like GMAC and Fort Motor Credit and other are required to follow not only federal, but also state, law. The feds have accommodated this situation through Regulations M and Z for the banks and credit unions. The acceptance companies have not been accommodated. This is what SB 300 does.

SENATOR SEEKINS expanded that the state's law has a grey area as to whether or not disclosures that are required under federal law meet our own statutes. SB 300 brings state law into alignment with federal law for acceptance companies.

[1:52:36 PM](#)

CHAIR BUNDE asked how the process would work.

SENATOR SEEKINS explained with an example of a person who wants to trade in his car and owes more than it's worth - a situation that is called upside down. It's not an uncommon occurrence.

CHAIR BUNDE asked how he would start his new loan.

SENATOR SEEKINS explained that it is included on the financing on the new vehicle. The credit decision is made based on the customer's ability to pay, not necessarily the purchase price of the car they are buying. If this is done, it has to be fully disclosed in the deal.

CHAIR BUNDE asked if a vehicle was, in fact, being financed twice.

SENATOR SEEKINS replied, "In effect - part of it, yes they do."

CHAIR BUNDE asked if the full costs have to be disclosed as with consumer loans.

SENATOR SEEKINS replied, "Yes, absolutely."

[1:58:26 PM](#)

SENATOR SEEKINS said that finance companies really frown on inflating the purchase price of a vehicle (MSRP) to cover what is still owing on the trade-in.

[1:58:54 PM](#)

ED SNIFFEN, Assistant Attorney General, Division of Consumer Protection, Department of Law (DOL), said he views this as a consumer protection issue in terms of a consumer knowing how much money it is costing him to borrow money to finance these transactions.

Currently, he explained, two things happen. One is the dealer loans money to pay off the car and that transaction separately requires all kinds of disclosures under the Regulation V, the federal Truth In Lending Act. If a dealer wants to sell that customer another vehicle and loan him money to do that, he makes him a second loan. The disclosures for that may be under the state's Retail Installment Sales Act, the Consumer Leasing Act or the Truth In Lending Act, depending on how the financing happened. This bill allows the dealerships to follow the federal model, which says you can take the first loan and wrap it into the loan for the new vehicle and do one disclosure that explains the finance charge, cost of credit, etc. This language is consistent with federal law; it won't have any adverse impacts on consumers.

CHAIR BUNDE quipped that there is no regulation to put on the forms saying that a fool and their money are soon parted.

[2:01:45 PM](#)

SENATOR SEEKINS said someone suggested a modification saying that AS 45.10.030 needs a clarification to make its language consistent with this bill. That statute says the retail installment contract must contain the names of the seller, the buyer, etc. etc. It also must contain the following items - and it was suggested to add any other charges including: "the amount, if any, that the seller agrees to pay to discharge an outstanding obligation of the buyer on an existing motor vehicle agreement loan installment or sales contract or lease." That would be compatible with the intent of SB 300.

CHAIR BUNDE said he would hold bill for the amendment to be added to a CS. He thought that would be easier for the committee.

SENATOR SEEKINS agreed.

There being no further business to come before the committee, he adjourned the meeting at [2:06:01 PM](#).