

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

January 26, 2012

1:06 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Lance Pruitt, Vice Chair
Representative Eric Feige
Representative Max Gruenberg
Representative Pete Petersen

MEMBERS ABSENT

Representative Craig Johnson
Representative Cathy Engstrom Munoz

OTHER LEGISLATORS PRESENT

Representative Bill Thomas, Jr.

COMMITTEE CALENDAR

HOUSE BILL NO. 255

"An Act prohibiting the driver of a motor vehicle from reading or typing a text message or other nonvoice message or communication on a cellular telephone, computer, or personal data assistant while driving a motor vehicle."

- MOVED OUT OF COMMITTEE

HOUSE BILL NO. 235

"An Act relating to certain vehicles, including trailers; and relating to motor vehicle dealer advertising, motor vehicle dealer sales of used motor vehicles, motor vehicle sales contracts, motor vehicle service contracts, and motor vehicle sales financing."

- MOVED OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 255

SHORT TITLE: PROHIBIT DIALING OR TEXTING WHILE DRIVING

SPONSOR(S): REPRESENTATIVE(S) GARA, THOMAS, GATTO, P.WILSON, GRUENBERG, TUCK

01/17/12 (H) PREFILE RELEASED 1/6/12
01/17/12 (H) READ THE FIRST TIME - REFERRALS
01/17/12 (H) TRA, JUD, FIN
01/26/12 (H) TRA AT 1:00 PM CAPITOL 17

BILL: HB 235

SHORT TITLE: MOTOR VEHICLE TRANSACTIONS
SPONSOR(S): REPRESENTATIVE(S) THOMPSON

04/12/11 (H) READ THE FIRST TIME - REFERRALS
04/12/11 (H) TRA, L&C
01/26/12 (H) TRA AT 1:00 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 255 as a co-prime sponsor of the bill.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 255.

QUINLAN STEINER, Director
Central Office
Public Defender Agency
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 255.

KATE SAKEGAK
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 255.

REPRESENTATIVE STEVE THOMPSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 235 as prime sponsor of HB 235.

JANE PIERSON, Staff,
Representative Thompson

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented a section by section analysis of HB 235 on behalf of the prime sponsor.

STEVEN J. ALLWINE, President
Mendenhall Auto Center
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 235.

STEVE DELBIANCO, Executive Director
NetChoice
Washington, D.C.

POSITION STATEMENT: Testified and answered questions during the discussion HB 235.

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

POSITION STATEMENT: Testified during the discussion of HB 235.

GARY SLEEPER, Attorney
Jermain, Dunnagan, & Owens, PC
Anchorage Alaska

POSITION STATEMENT: Testified during the discussion of HB 235.

MARTIN MARTENSEN, President
Alaska Auto Dealers Association
Owner; Continental Auto Group
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 235.

ACTION NARRATIVE

[1:06:34 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:06 p.m. Representatives Feige, Gruenberg, Petersen, and Wilson were present at the call to order. Representative Pruitt arrived as the meeting was in progress.

HB 255-PROHIBIT DIALING OR TEXTING WHILE DRIVING

[1:06:46 PM](#)

CHAIR P. WILSON announced that the first order of business would be HOUSE BILL NO. 255, "An Act prohibiting the driver of a motor vehicle from reading or typing a text message or other nonvoice message or communication on a cellular telephone, computer, or personal data assistant while driving a motor vehicle."

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REPRESENTATIVE LES GARA, Alaska State Legislature, presented HB 255 on behalf of the six co-prime sponsors: Representatives Thomas, P. Wilson, Gruenberg, Tuck, Gatto, and himself. He stated, as many of you know, the legislature thought it had passed a bill a few years ago that prohibited watching videos and texting while driving. The aforementioned bill was not written as clearly as the courts would have liked and a number of judges have taken the position that the previous bill had not been intended to apply to texting. He reported that this case is currently on appeal to the Court of Appeals and the matter may go to the Alaska Supreme Court. He said the reason for the bill is to reinforce to the public that texting while driving is dangerous.

[1:08:06 PM](#)

REPRESENTATIVE GARA emphasized that members only need one fact. He said according to the National Conference of State Legislatures (NCSL), drivers who text while driving are 20 more times likely to have an accident than those who do not text. He informed members the woman who co-founded the organization, Mothers Against Drunk Driving (MADD), has now taken the issue of "texting while driving" on as seriously as she did the issue of drunk driving. He characterized this issue as the "new drunk driving" issue. He was unsure of the correlation between the dangers of drunk driving and driving while texting - whether it would be 20 times or 30 times riskier - but he assumed that texting presented a similar risk since the driver endangers the lives of other while engaging in this type of behavior. He said this is why he introduced HB 255 four other legislators decided to add on as co-prime sponsors of the bill.

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REPRESENTATIVE GARA described the drafting process taken and his intent to stay as true to the original bill as possible. He emphasized that numerous policy calls have been incorporated into the bill, which the co-prime sponsors do not want to see

changed. He reported a previous law already addresses other driver activities, such that drivers may not watch or operate a video screen while their vehicle is in motion. He acknowledged several approaches could have been taken when drafting this bill. The bill could have been modeled after the language used in current statutes for a person who is driving while intoxicated (DWI). Those statutes assume that a person sitting in the driver's seat with the key in the ignition [demonstrates the intent to drive]. However, he admitted he did not really have a problem with drivers viewing text messages while they are sitting in their vehicles in a parking lot. He also admitted it was impossible to draft the bill perfectly. He suggested the bill could be drafted in a way to cover almost all of the bad circumstances, or it could be drafted to cover all the bad circumstances, but in doing so might affect a few innocent people. Since 2009, the statutory language prohibiting texting refers to texting while the driver's vehicle is in motion. He described a scenario in which a driver may decide to check his phone while stopped at the beginning of a red light. The driver may just have received a text from his wife regarding child pick up arrangements. The driver [hears the phone beep], and since the light just changed knows he has another 30 seconds before the light will change to view the text message, and then look back at the light. He offered his belief this type of activity would not warrant jail time. He pointed out an exemption in the bill allows law enforcement, public safety officers, and firefighters to use equipment installed in their vehicles such as video screens, laptops, and communication devices necessary for their work. He said that the bill sponsors will work in the coming weeks to determine whether public safety agencies will need any additional exemptions.

1:11:05 PM

REPRESENTATIVE GARA reported that 35 states currently ban texting for all drivers. He said, "It's dangerous. It should be addressed." The Department of Public Safety (DPS) has always had [public service announcements] informing drivers they are not allowed to text while they drive. He expressed concern about sending the public mixed messages. He said the co-prime sponsors are hoping this bill will pass. He related his understanding that some contention may exist with respect to cell phone use in bills currently before the legislature so his intention is to let those bills proceed separately. He advised members of the desire to limit HB 255 to texting, which is something his original co-prime sponsor, Representative Thomas, and he had agreed to early on.

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REPRESENTATIVE GRUENBERG said he is only aware of one case that was held to the contrary. He asked whether the sponsor was aware of any other cases.

REPRESENTATIVE GARA related his understanding that a magistrate in Kenai has held the [2008] law does not cover texting. Additionally, a supervising judge in Fairbanks has indicated she would direct her magistrates to also issue the same ruling; however, her directive may be pending. He was unsure if any other cases have had favorable rulings, but he was aware that some drivers have signed plea agreements admitting to texting while driving. He said the district attorney's office has taken the position that the activity was intended to be illegal. He advised members that the cases are currently on appeal, and the Department of Law and Legislative Legal and Research Services ("Legislative Legal") is comfortable with the language.

[1:12:52 PM](#)

REPRESENTATIVE PETERSEN asked to place on the record that under this bill a driver could pull over and park in a parking lot or driveway and legally text; however, texting by the driver is illegal activity when the vehicle is in motion on the roadway.

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REPRESENTATIVE PRUITT also wanted to ensure the record is clear on HB 255 since issues have arisen with respect to a previous bill that passed the legislature [2008], but the legislative intent could not be determined. He asked for clarification that HB 255 would not apply to a person unlocking his/her cell phone.

REPRESENTATIVE GARA responded that this bill is very specific and does not regulate talking on cell phones so if HB 255 were to pass it would not be illegal for people to unlock their cell phone to make a phone call. He cautioned members of other bills currently before the legislature may apply to cell phone use and could impose restrictions if any of them passes the legislature.

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REPRESENTATIVE PRUITT related his understanding HB 255 would not apply to a driver dialing a number on a cell phone.

REPRESENTATIVE GARA agreed. He said that a driver could dial a number, press the answer button, and do anything else a person normally would do to talk on his/her cell phone. He reiterated that various proposals are before the legislature, but restricting phone use is not in HB 255.

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REPRESENTATIVE PRUITT pointed out that many smart phones have a global positioning system (GPS), such as MapQuest. He inquired as to whether people would be prohibited from using these types of systems.

REPRESENTATIVE GARA agreed MapQuest and GPS mapping would be allowed in HB 255, noting that the use of these types of systems was covered when the original bill, sponsored by Representatives Gruenberg and Gatto passed the legislature [in 2008.]

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REPRESENTATIVE GRUENBERG mentioned he has questions on the fiscal note.

[1:16:13 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), introduced herself.

[1:16:47 PM](#)

REPRESENTATIVE GRUENBERG referred to the fiscal notes from the Department of Law (DOL) and from the Public Defender Agency (PDA). He noted the fiscal note from the PDA was prepared by Quinlan Steiner, Public Defender. He referred to page 2, paragraph 2, of the fiscal note analysis and read, "In some communities where judicial officers have concluded that texting and driving is not covered by the current statute, District Attorneys are no longer pursuing charges for texting and driving". He stated he was not aware of the DOL's position. Instead, he understood that cases were being dismissed so they could be appealed. He further understood the DOL was pursuing this since the department's position is that the magistrate's decision in this instance is "wrong on the law." He inquired as to whether she was aware of any communities in which cases were not being pursued.

MS. CARPENETI answered she was unaware of any cases not being pursued. She related her understanding the DOL has been petitioning decisions by the magistrates and while the appeals are not automatic the DOL has asked that the matter of legality of the matter to be reviewed by the Court of Appeals. She agreed that the DOL's position has been that this conduct is covered by the statute originally passed in 2008.

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REPRESENTATIVE GRUENBERG said he simply has not been aware of this situation. He agreed that any decision not to prosecute would impact the fiscal note. Although the finance committee will consider fiscal impact, but he stated that he would appreciate confirmation as to whether the prosecutorial activity is happening. He said he strongly hoped that the DOL was pursuing these cases.

MS. CARPENETI offered to research this and respond to the committee.

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QUINLAN STEINER Director, Central Office, Public Defender Agency, offered to respond to questions about the fiscal note. He related his understanding that Representative Gruenberg had questions on whether district attorneys were prosecuting cases in all communities. He reported that he obtained his information for the fiscal note analysis from the DOL's Deputy Attorney General Rick Svobodny. He advised committee members that the cases have not been pursued in all jurisdictions. He concluded that passing HB 255 would impact full prosecutions in all communities in the state with a district attorney's office.

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CHAIR P. WILSON asked for clarification on the impact of prosecution on the fiscal note.

MR. STEINER responded that as long as the cases involving texting while driving were being fully pursued and drivers were being arrested it wouldn't have a fiscal impact; however, it just depends on the assumptions. He described the assumptions, such as whether police were arresting for the texting while driving activity, if the district attorneys' offices were pursuing all cases, and also if the parties were being fully

prosecuted. He said when he prepared the fiscal note that he assumed the cases were not being prosecuted in all communities.

CHAIR P. WILSON said she would like a definite answer by the next committee.

MR. STEINER was unsure if he could provide that information definitively, but he offered to follow up with the DOL.

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REPRESENTATIVE GRUENBERG offered his belief that this is a policy question. He related his understanding that the cases involving texting while driving were being pursued until a decision had been issued by one judge. He surmised this has led to a hiatus, in which some communities may not be pursuing texting while driving cases. He acknowledged that the fiscal note is a matter for the finance committee to review; however, he wondered whether this situation was temporary, and if so, and how that may affect the fiscal impact.

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MR. STEINER offered to clarify with the Department of Law to be certain of the historical prosecution of these cases. He acknowledged the ambiguity this has created and agreed to follow up on it.

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KATE SAKEGAK, a Denali Montessori student, provided testimony on HB 255. She stated that driver distraction is biggest reason for vehicle accidents. She explained that drivers become distracted by their phone screen at the same time as the crash. She identified the reason that texting while driving causes distraction is that drivers can't focus on a small screen and at traffic while their vehicle is moving. She compared this to her own experience. She stated that her mother will not allow her to watch television while she is doing her homework since the television creates a distraction. Finally, she pointed out the safety of all is worth a small limit on personal freedom.

CHAIR P. WILSON thanked Ms. Sakegak for her testimony.

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REPRESENTATIVE PRUITT moved to report HB 255 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG objected for purpose of discussion. He suggested the committee make a recommendation rather than individual recommendations.

REPRESENTATIVE PRUITT restated his motion, including the recommendation of "do pass," as follows:

Representative Pruitt moved to report HB 255 out of committee with the recommendation of "do pass" and the accompanying fiscal notes. There being no further objection, HB 255 was reported from the House Transportation Standing Committee.

[1:28:27 PM](#)

HB 235-MOTOR VEHICLE TRANSACTIONS

CHAIR P. WILSON announced that the final order of business would be HOUSE BILL NO. 235, "An Act relating to certain vehicles, including trailers; and relating to motor vehicle dealer advertising, motor vehicle dealer sales of used motor vehicles, motor vehicle sales contracts, motor vehicle service contracts, and motor vehicle sales financing."

[1:28:59 PM](#)

REPRESENTATIVE STEVE THOMPSON, Alaska State Legislature, thanked members for the opportunity to present HB 235. This bill would update statutes AS 45.25.400 - AS 45.25.900, commonly known as the Alaska Auto Dealers Practices Act. The changes would clarify provisions concerning the advertising of new and used automobiles. These revisions should assist consumers in understanding auto comparison pricing and should eliminate ambiguities contained in the current statutes while assisting dealers in following state law.

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REPRESENTATIVE THOMPSON reported that this bill was drafted in conjunction with the Commercial/Fair Business Section of the Department of Law. He said, "Additionally, this bill should take care of the contentious issues of the "DOC" fees making the issue mute."

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JANE PIERSON, Staff, Representative Thompson, Alaska State Legislature, introduced herself. She turned to the sectional analysis of HB 235.

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MS. PIERSON read a sectional analysis of HB 235, as follows:

Section 1. Clarifies the "MSRP" shown on the federal Monroney sticker is the manufacturer's suggested retail price, and not the dealer's advertised price. Also clarifies what items are included by the manufacturer in arriving at MSRP as shown on the Monroney sticker, and allows dealers to advertise a savings or discount from the MSRP.

Section 2. Requires that the dealer's advertised price must include all dealer fees and costs except fees paid to a governmental agency such as taxes and licensing fees.

Section 3. Removes disclosure requirement regarding use of MSRP in advertising, and removes subsection dealing with price advertising that is covered in Section 1 to amendment to AS 45.25.400(b).

Section 4. Requires dealers use nationally recognized valuation publications (such as Kelly Blue Book or N.A.D.A. Official Used Car Guide) as the retail value when advertising comparative pricing for used cars. HB 235 requires that this pricing information be provided to consumers upon request.

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MS. PIERSON continued the sectional analysis, by reading the following [original punctuation provided]:

Section 5. Removes section now covered in Section 2 amendment to 45.25.440; allows dealer to make vehicle identification information available in the advertisement or at the dealership - this resolves the problem of impossible to read small print on television advertising; and renumbers sections of

45.25.460(a). (This renumbering requires the amendment in Section 8)

Section 6. Changes the word "verified" to "signed" so the information provided by an individual to a dealer need not be notarized.

Section 7. Allows a dealer to have a vehicle on the sales lot and show it to customers prior to having all required paper work, but prohibits sale of the vehicle until the dealer has all required paperwork in its possession.

Section 8. Conforms AS 45.25.520 with renumbering in Section 5.

Section 9. Clarifies that the sales contract will be void if the dealer or the financing institution changes terms of a separate agreement relative to financing.

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MS. PIERSON continued the sectional analysis, by reading the following [original punctuation provided]:

Section 10. Provides for responsibility of a buyer to return a vehicle if financing is not approved and the responsibility of dealer to return a trade-in delivered to the dealer.

Section 11. Establishes responsibility of a buyer to return a vehicle if the financing is denied as a result of intentional misrepresentation in the credit application, including mileage fee if over 100 miles are put on the vehicle and responsibility for damage to the vehicle, parking tickets, towing fees, storage fees, impound fees, and other similar charges incurred by the buyer while the vehicle was in possession of buyer.

Section 12. Removes unnecessary and impractical obligation imposed on dealers relating to service contracts.

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MS. PIERSON continued the sectional analysis, by reading the following [original punctuation provided]:

Section 13. Provides that changes affect contracts entered into on or after the effective date of the act and provides definitions for terms used in several sections.

For Section 7 - Motor vehicle is defined in 45.25.590(3) "motor vehicle," notwithstanding the definition of "motor vehicle" in AS 45.25.990, means a vehicle, including a trailer, that is required to be registered under AS 28.10, but does not include a motorcycle.

For Section 12, Service contract is defined in 45.25.990 (18) "service contract" means an optional agreement that is separate from a contract for the sale of a motor vehicle and that covers certain repair or maintenance functions beyond coverage provided by a warranty.

For Section Sections 9, 10, 11, and 12, Motor vehicle is defined in 45.25.990 (12) "motor vehicle" means a motor vehicle that is required to be registered under AS 28.10, but does not include a motor home, a recreational vehicle, or a motorcycle; in this paragraph,

(A) "all-terrain vehicle" has the meaning given in AS 45.27.390;

(B) "recreational vehicle" includes an all-terrain vehicle and a snow machine;

(C) "snow machine" has the meaning given in AS 45.27.390.

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REPRESENTATIVE FEIGE referred to page 1, lines 11-12 of HB 245 and asked for clarification as to why this language is being deleted.

MS. PIERSON noted that Mr. Sniffen, Department of Law was on line to answer questions.

REPRESENTATIVE GRUENBERG related he has some questions and potential amendments he may offer, but he first wanted to hear public testimony.

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STEVEN J. ALLWINE, President, Mendenhall Auto Group, stated he has been an automobile dealer in Alaska for about 25 years. He offered his strong support for the bill. He said he has been involved with this issue from the beginning and expressed a willingness to provide clarification on any provisions in the bill. He explained that the industry reached the point at which it needed to identify in statute what was functional what was not - some provisions were simply a waste of time or tended to make things murky. He related that years ago some changes to statute were adopted with a specific intent, but over time these statutes have been unintentionally interpreted in some other way. He suggested that this bill should provide some clarity.

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REPRESENTATIVE FEIGE referred to page 1, line 12, of HB 245 to the language being deleted, "AND MINUS ALL MANUFACTURER DISCOUNT AND SAVINGS." He asked for clarification on the deleted language.

MR. ALLWINE answered that this information is information already contained on the manufacturer's sticker, which is also known as the Monroney sticker. He referred to page 1, line 10, of the bill. He said that the key language is the manufacturer's suggested retail price must reference the final price listed by the manufacturer. In certain circumstances the manufacturer will choose to package certain options and provide a discount. He highlighted that this specific discount would be disclosed on the Monroney sticker.

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STEVE DELBIANCO, Executive Director, NetChoice, explained NetChoice as a trade association of e-commerce that for over a decade NetChoice has been an advocacy organization for the Internet, dedicated to supporting online commerce and consumer choice. He related that NetChoice also has supported updates to states' consumer protection laws, such as this bill, in order to give consumers greater confidence and trust in the information and for on-line commerce. His organization also promotes innovation that helps to improve the on-line industry, such as helping on-line travel agents reduce costs and to give consumers more choices. NetChoice helps provide ticket markets to serve sports and concert fans. He stated that NetChoice supports HB 235 since the bill will empower consumers to have pricing

information that is comparable across competitors and will eliminate any surprises with respect to the final vehicle price. He pointed out the change related to what dealers must include in manufacturer's suggested retail price (MSRP) or list price will help consumers identify the final MSRP across the board. He related that this provision is in line with many other states. This bill carries standardization further so that consumers can identify the final price - the MSRP - as the basis for savings vis-a-vis advertised price comparisons. He emphasized support for proposed Section 5, since it will make it harder for any dealer to "bait and switch" by drawing buyers into a showroom to see a car that's not really there. He concluded by comparing this bill to [a federal bill] that recently passed with respect to airline tickets. Travel agents must now disclose a complete and comparable price on any airline tickets, including that all government required fees and tax requirements must be included, as well as baggage fees. These new federal rules are similar to the ones in this bill, which are designed to give consumers more complete and clear information to allow them to compare prices and know what is included in the final ticket price. He thanked members of the committee and offered NetChoice's support for the bill.

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REPRESENTATIVE PRUITT related his understanding that out of state dealers also advertise in Alaska. He asked how this compares to other states' laws and whether dealers in the Lower 48 would have an advantage. He offered his belief that Alaska's rules have obscured and limited our dealers from being as clear to the customers as he would like.

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MR. DELBIANCO related his understanding that Alaska's regulations, which require comparable and clear pricing, would also apply to any motor vehicle dealer who advertises vehicles for sale in Alaska. He reiterated that all dealers are subject to these statutes no matter where the dealer is located. He said he certainly hoped that was the case since Alaska consumers should not be subject to differences standards of comparability and clarity, just because they happened to use a newspaper, magazine, or website from out of state.

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MR. ALLWINE, in response to a question by Representative Gruenberg, answered that a Juneau resident buying a car is subject to a sales tax.

MR. DELBIANCO, in response to a question by Representative Gruenberg, answered that the sales tax on motor vehicles is not assessed on the place of purchase, but depends on the place where the title for the vehicle is obtained. He offered his belief that sales tax is handled differently for motor vehicles than it is for other tangible property due to the requirement to obtain a title for motor vehicles.

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MR. ALLWINE agreed that is normally the case, except in the City and Borough of Juneau. He explained that a mechanism does not exist within Alaska to allow the CBJ to collect sales tax on a vehicle purchased from another state or location, including Anchorage. He mentioned that Anchorage dealers are not subject to sales tax. He related that people may purchase their vehicle in Anchorage, but the Division of Motor Vehicles (DMV) would not collect sales tax on behalf of the CBJ if these vehicles are registered in Juneau. He agreed with Mr. Delbianco with the process he described as being accurate and true in the State of Washington.

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REPRESENTATIVE GRUENBERG asked him to estimate the percentage of advantage out of state dealers would receive when selling vehicles to Juneau residents.

MR. ALLWINE answered that sales tax on motor vehicles is capped at \$375. In further response to Representative Gruenberg, he explained that sales tax rate for motor vehicles valued at up to \$7,500 would be assessed at 5 percent, with a \$375 maximum sales tax on vehicles valued at over \$7,500.

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CHAIR P. WILSON asked him to estimate the value of the sales tax if the legislature were to attempt to provide a remedy for sales tax collection on. She related her understanding that one obstacle is the DMV would need to collect sales tax it does not currently collect on behalf of communities.

MR. ALLWINE identified this as an issue does not pertain to the bill; however, he is very excited to contemplate it. He predicted that the potential income for cities and boroughs in Alaska would be significant. He did not recall that anyone has studied the matter. He has observed, from his experience as an auto dealer in Juneau, that a significant number of vehicles are registered but are not operated in Juneau. He surmised that a large number of these vehicles are exported, but the motor vehicle must be titled to do so legally. He suggested that if one were to ask DMV's representatives what their observations were on this matter, they would indicate that a significant number of titles, registrations, and plates are sent to a trailer park in town, but the vehicles are not physically located in Juneau. He characterized this issue as being similar to counterfeiting and exporting vehicles illegally so addressing the sales tax issue would stop these practices.

1:50:59 PM

REPRESENTATIVE GRUENBERG pointed out that NetChoice is an Internet business might be able to clarify pricing differences and the effect of Internet purchases on local brick and mortar businesses.

MR. DELBIANCO responded that NetChoice is a trade association, and not an Internet seller organization, although many of their members are Internet sellers. He recalled earlier testimony that the DMV would be responsible for assessing the applicable local sale tax at the time a motor vehicle is titled. He referred catalog sales for merchandise other than motor vehicles and when a customer purchases a product, such as a new coat from an on-line vendor, the vendor is not required to collect and remit any sales tax. He acknowledged that the vendor would pay a use tax, which is applicable in most states; however, the business would pay the use tax since individual consumers rarely pay use taxes on merchandise. Some may claim this creates an unfair advantage since it would be six percent less for a local resident to buy a snow shovel from an on-line merchant than from a local one; however, the downside to consumers is that they must wait several days to receive the on-line item plus pay shipping charges, which is more costly to Alaskans than sales tax. Therefore, there is rarely a price difference significant enough for sales tax to swap shipping costs on an item. Additionally, the Internet has also given brick and mortar businesses in Alaska the means to survive and compete with large box chain stores by allowing them to sell specialty items around the world. He reiterated that small Main Street businesses all

around the country have turned to the Internet and e-commerce to reach customers with somewhat unique products, which has become Main Street's way of competing with catalog and Internet stores.

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REPRESENTATIVE GRUENBERG agreed that the Internet could technically allow the local person to compete, yet it would still bring about competitive disadvantages to local customers. He pointed out transportation costs for a large truck would be expensive, but would be minimal for a diamond ring. He concluded that high value small volume goods would have a disparate effect, depending on the industry.

MR. DELBIANCO agreed in some instances the sales tax for consumers in Alaska would exceed the extra shipping cost they pay. However, Virginians who purchased whale bone jewelry from Alaskan artists would not pay any sales tax. He concluded that the Internet ends up being the means for availability of specialty items to people from all over the country. An Alaskan merchant also would not have to figure out the sales tax regimes nationwide.

[1:57:06 PM](#)

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), provided a brief history with his involvement with the development of HB 235. He said he worked with dealers on most of the changes incorporated into HB 235. He reported that this statute was first enacted in 1992, amended in 2004, and dealers and the department have now had significant experience with this type of activity. The changes incorporated in HB 235 help to clarify the intent of the enabling legislation. This bill makes it much easier for consumers and auto dealers, in that it helps to streamline the process and make transactions clear to the public. He described some substantive provisions in HB 235, including a provision which allows motor vehicle dealers to make price comparison advertisements for used vehicles, not currently allowable in statute. He offered that by requiring price comparisons be made only to a nationally recognized pricing source, such as the Kelley blue book, helps avoid consumer deception or harm by giving consumers a standard on which to base their decisions. One provision allows motor vehicle dealers to advertise free merchandise with the sale of a motor vehicle. He pointed out similar advertising for goods such as furniture, spas, or

produce that advertise free goods with sales. He concluded that the statutory restrictions seemed to single out auto dealers, which is one reason to remove the restriction.

2:00:30 PM

REPRESENTATIVE GRUENBERG referred to page 1, lines 9-10, of HB 235, which would delete "advertised" and add "manufacturer's suggested retail price or list." He expressed concern that a manufacturer's suggested retail price (MSRP), as listed on the Monroney sticker, identifies a specific price for the vehicle, yet the vehicle might be advertised at a lower price. He asked whether a dealer is required to stick to the advertised price, and if so, if that may mislead people who may think they are getting a better deal on a vehicle than they actually will get.

MR. SNIFFEN answered that the specific changes on page 1, lines 9-13, removes the advertised price and inserts the MSRP, which flows with the language on page 1, lines 6-8, in subsection (b). This subsection identifies when a dealer may use the MSRP term. He explained that Section 1 attempts to describe what the MSRP must include. He understood the concern that by removing the word "advertised" a situation may occur where a dealer has a Monroney sticker on car, but might argue that the Monroney sticker price is not the advertised price. He understood the concern, but he was unsure any real consumer harm would occur, except that the dealer might be able to add a dealer preparation fee to the price if the Monroney sticker price is not the same as the advertised price.

REPRESENTATIVE GRUENBERG said he was now a little more confused.

2:03:06 PM

REPRESENTATIVE PRUITT offered to clarify. He explained that an auto dealer who advertises on television or in a newspaper would still need to hold the vehicle stocking number for the individual item advertised. He referred to page 3, 15-19 of HB 245 and read, "unless the vehicle identification number, vehicle stocking number, or license number is disclosed in the advertisement or made available by the dealer on request of a retail buyer." He emphasized that the dealer would have to provide documentation to identify the specific vehicle being advertised, even if the advertised price is not on actual Monroney sticker.

2:04:17 PM

The committee took a brief at-ease.

2:04:33 PM

REPRESENTATIVE GRUENBERG agreed, conceptually, with Representative Pruitt's explanation; however, he expressed concern that a dealer may disclose a truck's serial number in a television advertisement; however, consumers may not be able to clearly capture the detailed serial number as it is rattled off. Since it's possible the consumer may not be able to identify the specific vehicle, it would seem better to have the advertised price listed on the vehicle itself. He reiterated that otherwise consumers may not know for certain which vehicle is the advertised vehicle.

2:05:56 PM

REPRESENTATIVE PRUITT related his understanding that a dealer might show a specific 2012 Ford Explorer in a television ad, but consumers may think all of the 2012 Ford Explorers in stock are for sale at the specific price. He agreed the dealer would still need to be able to identify the specific vehicle to consumers advertised to prevent a "bait and switch" from happening.

REPRESENTATIVE GRUENBERG and Representative Pruitt asked Mr. Sniffen to respond.

2:07:36 PM

MR. SNIFFEN agreed with Representative Pruitt's example. He did not think the provision on page 1 would address the instance on whether a consumer could link and identify a specific vehicle to an advertisement. He offered his belief that those issues are covered in other parts of the bill. He agreed that the dealer must be able to provide satisfactory documentation for consumers for a specific vehicle advertised at a specific price. He assured members if it came to his attention that a dealer consistently advertised vehicles at one price, but told prospective buyers the sale vehicle had already been sold and directed the prospective buyer to a more expensive one - a "bait and switch" tactic - that he would require the dealer to document the advertised vehicle. Thus, a dealer would need to provide proof that he/she sold the specific vehicle, during the advertisement period, at the specified price. He offered that he has not seen this type of issues arise during his 12 years

working in consumer protection; however, he suggested that HB 235 would address this type of issue.

2:09:15 PM

GARY SLEEPER, Attorney, Jermain, Dunnagan, & Owens, PC, related he is speaking on behalf of the Automobile Dealers Association. He related he has also worked with Mr. Sniffen, DOL, on this issue. In response to earlier question as to the reason to delete manufacturer's discounts, he explained the MSRP or the Monroney sticker is prepared by the manufacturers and placed on the vehicle at the time of manufacture. He reported that some manufacturers' discounts and savings, such as rebates or cash backs, can be offered after the MSRP is produced. He referred to earlier discussion, with respect to the deleted language in Section 1. He related his understanding that this language change would more correctly describe the MSRP. He recalled an earlier discussion related to comparison advertising on used cars. He pointed out that dealers have sought for years to have the ability to advertise discounts on used cars, which is not allowed under current law. He related a scenario in which a dealer has a convertible advertised for \$20,000, but the dealer is prohibited by law to advertise the vehicle at \$15,000 in the event the car didn't sell during the summer. He related an actual event in which a large franchised dealer had an inventory of used cars. The dealer wanted to liquidate his used car inventory to obtain cash and also advertise his price as exactly the price he paid for the vehicles. Even though this would have resulted in substantial savings for the buyer, after consulting with the DOL, Mr. Sniffen could not find a way for the dealer to advertise the discount under the existing statute. While this bill would not change that situation, the proposed change will help consumers. The dealer could indicate the asking price and consumers can compare the vehicle's price to the Blue Book price for comparison. He concluded that this provision will be beneficial to dealers and consumers.

2:12:38 PM

MR. SLEEPER turned to the issue of advertising free merchandise. He explained that current law prohibits the dealer from adjusting a vehicle's price to cover the cost of free merchandise. Thus, a dealer could not adjust a vehicle's price to cover the cost of the trip offered, such as when a dealer offers an airline ticket to Seattle with purchase of a vehicle. He also explained the reason for the proposed deletion of advertised price in Section 1, that the language was changed in

order to differentiate between the dealer's advertised price and the MSRP. He offered his belief that change would make the rest of the statutes consistent. He then summarized proposed Section 2, noting that a motor vehicle dealer's advertised price must include all fees including dock fees, which are not fees that are included in the MSRP. He recapped that deleting the word "advertised" has the effect of making the statute clearer and helps to distinguish a dealer's price from the MSRP. He characterized this as the only intent of that provision.

2:14:04 PM

REPRESENTATIVE GRUENBERG expressed concern that auto dealers cannot advertise discounts on used cars, such as the aforementioned scenario. He related in such an instance a dealer wanted to offer discounts on a large number of cars that had not been sold during the summer months. The dealer simply wanted to let potential consumers know of that the cars were on sale, but the law did not allow him to do so. He asked for clarification as to the reason for the restriction in advertising used vehicles and how the law should be changed to allow this type of advertising. He said it appeared that letting consumers know a special sales price would be beneficial to consumers.

MR. SLEEPER responded that the reason a used car dealer cannot advertise a price reduction is because the statutes do not allow comparison advertising at all. He said, "It's absolutely prohibited." He provided an example, that under current law a sticker that reads, \$19,999, cannot be adjusted to show a reduced price of \$15,999. One solution would be to allow comparison advertising. He pointed out the concern that consumers and Mr. Sniffen would have is the concern that dealers may advertise false savings. He related a scenario in which in which a dealer places a car on the lot and advertise it for at \$2,999, and three days later reduces it to \$1,999, and announces the savings of \$1,000 to consumers. He reiterated that the goal is to prevent advertising false savings. He offered that this type of conduct is already prohibited under the Alaska Unfair Trade Practices statute. He stated that the current statute addresses this by providing a blanket prohibition against any type of comparison advertising. He said it's conceivable that the legislature could change current law to allow dealers to show comparison advertising and rely on consumer protection contained in the Unfair Trade Practices Act. He concluded that the approach this bill takes is to provide a compromise by

giving consumers a reference price to easily access to eliminate the issue of false savings.

REPRESENTATIVE GRUENBERG offered to work on this issue separately to solve a problem yet not permit deceptive practices. He inquired as to whether language Mr. Sniffen thought language could be developed to do so.

[2:17:59 PM](#)

MR. SNIFFEN commented. He related that for the past ten years he has worked to seek a remedy in statute, but the matter is a complicated one. He acknowledged that fictitious pricing is difficult to enforce. He described the situation he has observed in furniture stores where furniture is continually on sale. He related that furniture sales' regulations require furniture must be listed at a certain price for at least six months. He explained that furniture stores can reduce prices after the store attempts to sell the furniture in good faith for at least a six month period. The store could then show the price was originally \$8,000, but the price has been reduced to \$6,000. He described cases in which furniture dealers would receive a large shipment of furniture, list it with high prices, store it in a corner and six months later would move the furniture to the front of the store. The store would show the original price, plus the reduced price, which is essentially the price that the furniture should initially have been set. He explained the problems associated with used auto prices. The department has considered requiring the dealer to advertise a vehicle - clearly and conspicuously - for a certain period of times, such as 60 days, after which time the dealer could reduce the price. However, with a small enforcement staff, it is difficult for the DOL to enforce whether the dealer followed the timeline and if a car was listed for 60 days or only for 5 days. He characterized this as a tricky scenario. Thus, the compromise in the bill allows used car dealers to at least reference a nationally available pricing with some legitimacy. He reiterated that consumers could compare pricing on a new car to the MSRP, which is consistent nationwide. The bill would allow used auto dealers to use the Kelley Blue Book for consumers to identify comparison prices. He expressed a willingness to consider another way for fair price comparison.

[2:20:52 PM](#)

REPRESENTATIVE FEIGE referred to page 1, line 11, of HB 235 to the Monroney sticker. He asked what information is on the sticker, and whether options, including accessories, are listed.

MR. SLEEPER identified the Monroney sticker as a sticker required by federal law, which is required to show all accessories and options added to the vehicle by the manufacturer. It does not show anything added by the dealer. He agreed that the language [on page 1, lines 9-13], the Monroney sticker, includes accessories and options; however he said he did not think the language needed further clarification.

[2:22:50 PM](#)

REPRESENTATIVE GRUENBERG referred to Section 3 of HB 235. He asked why the bill would remove language that requires dealers to clearly disclose the MSRP and the language in paragraph 5, since these provisions include important protections to the consumer.

MR. SNIFFEN asked for clarification on the question.

REPRESENTATIVE GRUENBERG restated his question.

[2:24:17 PM](#)

MR. SNIFFEN offered his belief that Section 3 is deleted since it essentially prohibits the motor vehicle dealer from making the price comparison. In doing so, this would allow price comparisons for a new vehicle. He referred to page 2, to lines 22-25 of HB 235, which would not allow a price comparison for vehicles unless that price is fully disclosed on the MSRP. He admitted he did not recall whether Section 3 of the bill does this, but he recalled one section of the bill deals with price comparisons generally and prohibits any price comparison except for new vehicles.

[2:25:14 PM](#)

REPRESENTATIVE GRUENBERG referred to page 2, line 14, of proposed AS 45.25.450 (b) of Section 3. He related his understanding that this subsection would only apply to price comparisons for new motor vehicles and not to used motor vehicles.

MR. SNIFFEN agreed. He explained the effect of removing the language on page 2, lines 22-29 of the bill. He said that

deleting paragraph 4, would mean that dealers would not need to put a disclaimer in an advertisement that essentially indicates there may not have been other vehicles sold at the MSRP price. He suggested that this language was originally in the statutes to avoid a situation in which consumers thought numerous Ford Explorers were being sold at the MSRP, so when the dealer discounted the MSRP price, the consumers were led to believe they were saving a lot of money by not paying the MSRP. He pointed out consumers were typically savvy about what the MSRP represents so it did not seem reasonable to require dealers to pay for the extra space in advertisement to state this disclaimer. He concluded that the language did not add any significant consumer protection.

[2:27:28 PM](#)

MR. SLEEPER asked to further comment. He explained that as Mr. Sniffen pointed out, Section 3 of the bill would allow dealers to advertise that they are selling below the MSRP. Under current law, if a dealer advertises a new vehicle for \$3,000 below MSRP, the dealer would be in violation of the law since dealers cannot offer discounts. Dealers are also not allowed to make any representation in their ads that suggest a consumer would save money by paying less than the price listed on the MSRP. He highlighted that dealers have been hamstrung and have not been able to figure out how to let consumers know of real savings. He described an instance in which the MSRP is \$21,900, but the dealer wants to reduce the price by \$1,500. He said some dealers simply advertise that the vehicle is "\$1,500 off" the MSRP. He said this situation just did not make sense and in fact has impaired dealers' ability to show the price calculation for the advertised price. He summarized that proposed Section 3 would eliminate the prohibition and allow dealers to advertise with more clarity. It would allow dealers to let consumers know when vehicles are on sale so they can take advantage of the savings. He characterized the changes as similar to ones that allow comparison advertising on new cars.

[2:30:08 PM](#)

MARTIN MARTENSEN, President, Alaska Auto Dealers Association; Owner, Continental Auto Group, stated that he often feels the need for clarification from Mr. Sniffen prior to running an ad to be sure the advertisement is within the law. He expressed his gratitude for the good relationship with Mr. Sniffen and the DOL's consumer protection staff. He acknowledged that sometimes Mr. Sniffen has deterred them from advertising in a certain way

since the advertising would fall in a "gray" area of the law. He related that purpose of this bill is to remove the gray area and allow dealers to operate within the law and also allow the Department of Law to enforce the statute in a clear and consistent manner.

[2:31:51 PM](#)

REPRESENTATIVE PETERSEN asked for clarification between the term discount and rebate.

MR. SLEEPER answered that the terms are technical ones. He related that the term rebate is a term used to describe cash given back, which is only offered by manufactures and is defined in statute. He explained that a discount would be savings offered by the local dealer and represents a reduction from the MSRP and is not offered by the manufacturer.

[2:33:05 PM](#)

CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on HB 235.

[2:33:33 PM](#)

REPRESENTATIVE GRUENBERG expressed concern about another phrase. He asked if he could have copies of a proposed amendment distributed, although he was uncertain he would offer any amendment.

[The amendment was not offered.]

[2:34:41 PM](#)

The committee took an at-ease from 2:34 p.m. to 2:36 p.m.

REPRESENTATIVE THOMPSON urged members to pass HB 235. He explained that this bill would assist help protect consumers and would also help dealers adhere to state law. He urged members to support the bill and advance it its next committee of referral.

[2:36:48 PM](#)

REPRESENTATIVE GRUENBERG thanked the parties that worked on this bill. He thanked people who testified and helped clarify the issues.

[2:37:33 PM](#)

REPRESENTATIVE PRUITT moved to report HB 235 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 235 was reported from the House Transportation Standing Committee.

[2:38:13 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:38 p.m.