

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 26, 2020

2:06 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Chuck Kopp
Representative Harriet Drummond
Representative Louise Stutes
Representative David Eastman

MEMBERS ABSENT

Representative Gabrielle LeDoux
Representative Laddie Shaw

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 124

"An Act relating to the recording of documents; relating to notaries and notarization, including notarial acts performed for remotely located individuals; and providing for an effective date."

- MOVED SSHB 124 OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 146

"An Act relating to an application for a license to operate as a dealer in motor vehicles; and requiring a dealer in motor vehicles to maintain liability and property insurance."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 124

SHORT TITLE: ELECTRONIC DOCUMENTS AND NOTARIZATION

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

04/05/19	(H)	READ THE FIRST TIME - REFERRALS
04/05/19	(H)	JUD, FIN
04/08/19	(H)	JUD WAIVED PUBLIC HEARING NOTICE, RULE 23(A) UC
04/12/19	(H)	JUD AT 1:00 PM GRUENBERG 120
04/12/19	(H)	Scheduled but Not Heard

04/15/19 (H) JUD AT 1:00 PM GRUENBERG 120
04/15/19 (H) Heard & Held
04/15/19 (H) MINUTE(JUD)
02/17/20 (H) SPONSOR SUBSTITUTE INTRODUCED
02/17/20 (H) READ THE FIRST TIME - REFERRALS
02/17/20 (H) JUD
02/21/20 (H) JUD AT 1:00 PM GRUENBERG 120
02/21/20 (H) -- MEETING CANCELED --
02/24/20 (H) JUD AT 1:00 PM GRUENBERG 120
02/24/20 (H) Heard & Held
02/24/20 (H) MINUTE(JUD)
02/26/20 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 146

SHORT TITLE: MOTOR VEHICLE DEALERS: APPLIC.; INSURANCE
SPONSOR(S): REPRESENTATIVE(S) CLAMAN

04/24/19 (H) READ THE FIRST TIME - REFERRALS
04/24/19 (H) JUD, L&C
05/06/19 (H) SPONSOR SUBSTITUTE INTRODUCED
05/06/19 (H) READ THE FIRST TIME - REFERRALS
05/06/19 (H) JUD, L&C
01/29/20 (H) JUD AT 1:30 PM GRUENBERG 120
01/29/20 (H) <Bill Hearing Canceled>
02/26/20 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

DAVID CLARK, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the CS for SSHB 146 on behalf of Representative Matt Claman, prime sponsor.

STEVE ALLWINE, President
Mendenhall Auto Center;
Board Member, Alaska Automobile Dealers Association (AADA);
Board Member, National Automobile Dealers Association (NADA)
Juneau, Alaska

POSITION STATEMENT: Offered testimony in support of SSHB 146.

MARCUS WAEHLER, President
Red White & Blue Auto Sales;
Board Member, Alaska Automobile Dealers Association (AADA)
Anchorage, Alaska

POSITION STATEMENT: Offered testimony in support of SSHB 146.

ACTION NARRATIVE

[2:06:44 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 2:06 p.m. Representatives Claman, Kopp, Drummond, and Stutes were present at the call to order. Representative Eastman arrived as the meeting was in progress.

HB 124-ELECTRONIC DOCUMENTS AND NOTARIZATION

[2:07:15 PM](#)

CHAIR CLAMAN announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 124, "An Act relating to the recording of documents; relating to notaries and notarization, including notarial acts performed for remotely located individuals; and providing for an effective date."

[2:07:26 PM](#)

CHAIR CLAMAN stated that his office had received three amendments to SSHB 124, submitted by Representative Eastman. Representative Eastman was not present to make a motion, and no other amendments were offered.

[2:08:10 PM](#)

REPRESENTATIVE KOPP moved to report SSHB 124 out of committee with individual recommendations and the accompanying fiscal notes.

[2:08:36 PM](#)

REPRESENTATIVE EASTMAN objected to the motion.

REPRESENTATIVE EASTMAN commented that his office had submitted three amendments that he was hoping would be considered by the committee.

[2:08:52 PM](#)

CHAIR CLAMAN answered that the committee was noticed for 2:00 p.m. and Representative Eastman was not present at that time. He stated that the time for taking up amendments had come and gone.

REPRESENTATIVE EASTMAN maintained the objection.

[2:09:11 PM](#)

A roll call vote was taken. Representatives, Kopp, Drummond, Stutes, and Claman voted in favor of the motion to report SSHB 124 out of committee with individual recommendations and the accompanying fiscal notes. Representative Eastman voted against it. Therefore, SSHB 124 was reported from the House Judiciary Standing Committee by a vote of 4-1.

[2:09:42 PM](#)

The committee took an at-ease from 2:09 p.m. to 2:11 p.m.

HB 146-MOTOR VEHICLE DEALERS: APPLIC.; INSURANCE

[2:11:21 PM](#)

CHAIR CLAMAN announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 146, "An Act relating to an application for a license to operate as a dealer in motor vehicles; and requiring a dealer in motor vehicles to maintain liability and property insurance."

CHAIR CLAMAN passed the gavel to Representative Kopp for the duration of the presentation of SSHB 146.

[2:11:51 PM](#)

The committee took a brief at-ease at 2:11 p.m.

[2:11:55 PM](#)

REPRESENTATIVE KOPP announced that the bill's sponsor had prepared a committee substitute (CS) for SSHB 146.

[2:12:29 PM](#)

CHAIR CLAMAN, as prime sponsor, introduced the proposed CS for SSHB 146, Version 31-LS0818\S, Fisher, 2/19/20 (Version S). He stated that the purpose of Version S would be to improve consumer protections for those purchasing motor vehicles, by strengthening requirements for motor vehicle dealers. He said that under current law, biennial registration is required with an application to the [Division] of Motor Vehicles (DMV), a \$50

dollar registration fee, and a \$50,000 surety bond. Applicants are not required to furnish a certificate of liability insurance, and there is no requirement to list a telephone number on the initial application.

CHAIR CLAMAN expressed that the current requirements are lenient compared to other states; for example, he said that Oregon statute on motor vehicle dealership provides for the process of applying for an automobile dealer license, grounds for suspension and revocation of the license, and a full definition of illegal practices and associated penalties. He said that Delaware statutes require applicants to provide proof of the location of the business, and they identify grounds for license revocation. Texas statutes provide for automobile dealer licensure, maintenance processes, and detailed procedures for complaints, judicial review, and penalties.

CHAIR CLAMAN said that unlike these other states, there are no Alaska statutes providing for a grievance process, grounds for revocation, or proof of location. He said that these lenient requirements can make it easier for rogue applicants to become motor vehicle dealers and put consumers' safety and protection at risk. He proposed a couple of scenarios that could illustrate the need for the proposed changes. He said that when a dealer obtains a license he/she are qualified to purchase vehicles at dealer-only auctions at steep discounts, and "curbstoning" can occur when the dealer is not required to disclose the fact that he/she is a licensed car dealer or whether a vehicle has a reconstructed title or has known defects when selling a vehicle. If a vehicle is deemed to be a "personal vehicle" it is not subject to a routine safety inspection required under Alaska statutes. He explained that often in these situations, the title is not placed in the dealer's name, the contact information provided is not the dealer's information, or the transaction takes place in cash; this leaves very little information for a consumer to follow if issues arise.

CHAIR CLAMAN stated that the proposed legislation also seeks to provide better protection when a so-called "selling dealer" sells multiple vehicles to a "buying dealer" and receives payment but does not provide the titles. He explained that this occurs when the titles are held by the bank that provided a line of credit for purchasing the vehicles. The selling dealer intends to pay for the vehicles and get the titles but runs into financial problems with the bank and is unable to continue payments, resulting in the repossession of the vehicles from the

buying dealer. He said that the buying dealer has now lost the money and decides to seek recompense from the selling dealer's bond. The current bond requirement under state law is \$50,000, which has been in place for decades; depending on the type and quantity of vehicles this may only cover a fraction of what is lost and owed. He expressed that raising the bond requirement would strengthen protections in the event of problems that can arise.

CHAIR CLAMAN summarized that the purpose of Version S is to establish a more rigorous application process in the interest of transparency and to reduce the potential for harm, through increased bond amounts, mandatory insurance, and additional disclosures that will hold automobile dealers more accountable as business owners than under current statutes.

[2:16:11 PM](#)

DAVID CLARK, Staff, Representative Matt Claman, Alaska State Legislature, presented the CS for SSHB 124 on behalf of Representative Matt Claman, prime sponsor. He expressed that Version S would strengthen automobile consumer protections by requiring potential automobile dealers to follow a strengthened application process.

MR. CLARK said that Section 1 of Version S would amend AS 08.66.030, by requiring: An applicant to provide a working telephone number for the business listed on the application; a written statement affirming that no person holding a 5 percent or greater interest in the business has been convicted of a felony involving fraud, embezzlement, or misappropriation of property during the five years preceding the initial application date; a statement acknowledging that the applicant has reviewed the requirements for workers' compensation insurance if it is applicable; and a copy of the liability policy certificate of insurance, further detailed in Section 3.

MR. CLARK stated that Section 2 of Version S would raise the current bond amount required of auto dealer applicants, as outlined in AS 08.66.060(a), from \$50,000 to \$100,000. Section 3 of the proposed legislation would add a new section to AS 08.66 requiring dealers to maintain liability insurance of not less than \$50,000 for property damage, \$100,000 for injury to a single person, and \$200,000 to more than one person.

[2:18:24 PM](#)

REPRESENTATIVE KOPP passed the gavel back to Chair Claman.

2:18:40 PM

REPRESENTATIVE KOPP moved to adopt the proposed CS for HB 282, Version 31-LS0818\S, Fisher, 2/19/20, as a work draft. There being no objection, Version S was before the committee.

2:19:03 PM

CHAIR CLAMAN opened public testimony on SSHB 146.

2:19:11 PM

STEVE ALLWINE, President, Mendenhall Auto Center; Board Member, Alaska Automobile Dealers Association (AADA); Board Member, National Automobile Dealers Association (NADA), offered testimony in support of SSHB 146. He explained that he is a member of the NADA and represents that association on the board of AADA. He said that his wife and he own five different franchises in their community and serve a lot of people in Southeast Alaska.

MR. ALLWINE expressed that he has experienced recurring consumer related issues due to the current regulations. He said that in the automobile industry in Alaska it is easy for someone to acquire a dealer's license. He expressed that the hope is that the proposed legislation would "stiffen that up a little bit." He remarked candidly that the proposed legislation would not answer all the questions regarding current concerns. He pointed out that a specific benefit of the proposed legislation is that it would make the dealer's license a little more difficult to get, which would narrow the bandwidth for those people who are securing dealers' licenses in order to have access to closed dealers' auctions. He said that those auctions involve banks, insurance companies, and other automobile dealers. He explained that if he had a car inventoried on the ground for 90 to 120 days, and for whatever reason he was unable to sell the car, he would take the car to a dealer auction, turn it back into cash, and go find something he could make some money on.

MR. ALLWINE explained that the other side of that would be if he took a vehicle in on trade and it needed a new transmission or engine, and he didn't want to invest the time into it, it might go to the auction. He said that all those vehicles, including those that are totaled and rebuilt and those that are totaled and not reconstructed, tend to go through dealer-only auctions.

He said that the problem arises because it is so easy to get a dealer's license, access the vehicles at dealers' auctions, and sell the product with known defects on the Internet, via Craigslist, as an individual and not a dealer. He expressed that given the amount of recalls regarding airbags and other safety issues, the implications of the problems for consumers are significant in those scenarios. He expressed that that is one of the things that he is hoping to stop and is the reason he is speaking in support of SSHB 146.

2:22:16 PM

MARCUS WAEHLER, President, Red White & Blue Auto Sales; Board Member, Alaska Automobile Dealers Association (AADA), offered testimony in support of SSHB 146. He expressed that in the past four to five years he has noticed a significant uptick in the number of dealers attending dealers' auctions who do not have stores where they sell vehicles. He explained that what has been happening, which can be seen on Craigslist daily, is an individual will buy vehicles at a dealer auction as a dealer, get on Craigslist and post "outrageous stories" in order to sell the car as a private seller to the public. He explained that in these situations, there is no reconditioning done to the vehicles and no disclosure of known defects.

MR. WAEHLER expressed that the current dealer's licensing process allows for anyone to get a dealer's license for a simple \$550 bond and a \$50 registration fee, creating the opportunity for operating in a "bad manner." As an example, he said that an 81-year-old woman came into his dealership approximately 2 weeks prior to purchase a vehicle; she wanted to trade-in a 2008 Subaru Tribeca. He explained that when a vehicle runs through a dealership auction, he has a program that has a guidebook and history reports, which get saved to his phone. He said that he noticed this trade-in was already saved in his phone; it had been run through an auction approximately two months prior. He said that he took the car in for an inspection prior to resale, and the check-engine lightbulb had been removed, the airbag sensors had been cut, and the safety systems had been disabled on the car. He stated that she had unwittingly purchased this vehicle from a "private party," who was in fact a predatory dealer who had sold the car for twice what it was worth. He expressed that situations like this happen repeatedly in his marketplace, and if dealer licensing requirements were strengthened it would protect the citizens of Alaska from predatory dealers.

2:25:41 PM

REPRESENTATIVE KOPP remarked that it sounded to him like there is a significant issue of consumer protection, as well as market competitiveness to bear in mind. He said that if he understands the proposed legislation correctly, an entity could have a dealer's license if it would provide workers' compensation insurance for its employees, maintain a significant liability policy on its vehicles in the case of an accident on a test drive, and maintain some type of bond. He remarked that it was obvious that the proposed legislation would raise the bond because "\$50,000 could be one car today." He asked whether these minimal hurdle requirements would make it harder for an "overnight shop" to be set up and make for a fair and even playing field in industry competition.

MR. WAEHLER replied that a private party is required to have proof of insurance when purchasing from a dealership in order to have a vehicle's registration and title switched over to his/her name. He said that a current quote indicated that a \$50,000 bond could be purchased for \$364, and a \$250,000 bond for \$1770; he expressed that this is hardly an impediment to becoming an active dealer in the used car sales market. In response to a follow up question from Chair Claman he said that a quote for a \$100,000 bond was for a little over \$700.

MR. WAEHLER said that the attorney for his dealership, Gary, had represented a few dealers in the past year-and-a-half who had gone out of business. He said that these dealers had flooring lines with banks that loaned them money to purchase vehicles; in exchange the banks would give the titles for the vehicles after they are paid off. He said that these dealers were selling vehicles to the public, and not long afterwards the dealers filed for bankruptcy; the consumers never received titles to the vehicles because technically the banks still owned the vehicles. He said that the consumers then went after the bonds of these dealers, but the \$50,000 bond requirement only covered a couple of vehicles at today's market prices, and there were dozens of cars that needed to be covered by the bonds.

2:29:21 PM

REPRESENTATIVE KOPP asked what protects the consumer in a situation where a dealer fails to pay off a vehicle and the consumer trades the vehicle in, only to find out that there is still a loan on the vehicle.

MR. WAEHLER replied that his understanding is that in lieu of other assets, the consumer would hire an attorney and the bond would be the last recourse for getting back his/her money for a vehicle he/she had purchased. He said that normally this happens in a situation where the dealer bought the vehicle from a dealer auction, paid for it with proceeds from the bank which were loaned in exchange for the title, and the dealer then sells the vehicle to a consumer from the public; the consumer never receives the title for the vehicle or transfer of ownership, and that person is out the money he/she paid for the vehicle.

REPRESENTATIVE KOPP asked how long the \$50,000 bond has "been on the books."

[2:31:00 PM](#)

MR. ALLWINE answered that he thinks the \$50,000 bond requirement has been around since he was born in 1953; he expressed that it has not changed in "decades and decades," but the value of vehicles has changed significantly.

REPRESENTATIVE KOPP asked whether \$100,000 would be too low of a bond requirement and whether something twice that would create outrage in the industry.

[2:31:55 PM](#)

CHAIR CLAMAN responded that the original version of the proposed legislation had a \$250,000 bond requirement, but some questions arose comparing the requirement to other states and \$100,000 was the highest of any state, currently. He said that economically, the case for a \$250,000 bond is very sound, but the notion was that Alaska would be putting in a bond requirement that is two-and-a-half times higher than any other state. He said that he thinks the bond provides more financial security when someone isn't paid what he/she is owed, but the other key feature for consumer protection is adding the liability insurance requirement. He explained that in the situation in which the car was knowingly sold without airbags, unbeknownst to the buyer, the liability insurance would provide coverage for the nondisclosure of the airbags. Similarly, if an individual were test driving a car at a car lot without personal insurance, the liability insurance requirement would cover that as well.

[2:33:31 PM](#)

REPRESENTATIVE KOPP asked whether there were any provisions in the proposed legislation that the AADA did not support.

[2:33:48 PM](#)

MR. ALLWINE replied that the AADA voted on the proposed legislation and was in support of it; he said it has been talked about since 2011. He explained that he is a new vehicle retailer, and Mr. Waehler was a used vehicle retailer, and the proposed legislation was brought to their attention in 2011 by a used vehicle retailer who had submitted a letter of support for the proposed legislation, Carol Lyberger. He said that the used vehicle retailers had recognized this was becoming an issue, and the bill sponsor's guidance and assistance had helped to finally have the proposed legislation where it is currently. He expressed that this would not be self-serving legislation, he said that there is no desire to deprive anyone of making a living as an automobile dealer. He said that 99 percent of the automobile retailers in the state are family businesses, even the publicly held company was a family business.

[2:35:26 PM](#)

CHAIR CLAMAN, after ascertaining that there was no one else who wished to testify, closed public testimony on SSHB 146.

[2:35:44 PM](#)

REPRESENTATIVE DRUMMOND remarked that the list of state bond requirements [hard copy included in the committee packet] showed only eight states, including Alaska, and she asked whether the other 42 states have requirements for this type of dealer's license.

CHAIR CLAMAN replied that his office could provide a list of all 50 states' bond requirements before the next hearing. In response to a follow up question, he replied that he distinctly remembers more states than Hawaii as having a \$100,000 bond requirement.

[2:37:33 PM](#)

REPRESENTATIVE EASTMAN asked what impact the proposed legislation would have as a barrier of entry for someone trying to enter the automobile dealer profession.

CHAIR CLAMAN replied that there would be two potential barriers of entry: First, if the individual attempting to enter has a felony conviction from the narrow list of felonies included in the proposed legislation and has more than a 5 percent interest in the business; this provision was taken from statute relating to hearing aid dealers and is a narrower provision. Second, there would potentially be the economic barriers to entry of an insurance and bond requirement, which would cost money to have in place in order to acquire the dealer's license. He expressed that the main changes from existing statute to the proposed legislation are the narrow felony provision, the doubled bond requirement, which equates to approximately \$360, and the insurance requirement.

REPRESENTATIVE EASTMAN asked whether an individual hoping to become an automobile dealer would be able to use his/her personal telephone or cell phone number to meet the telephone number requirement, as the language in the proposed legislation reads "of the business".

CHAIR CLAMAN replied that the purpose of the telephone requirement is for a consumer with an issue to be able to reach the dealer, and in this modern age he expressed that he hoped the dealer would list the phone he/she answers the most frequently, which is most likely his/her personal cell phone.

[2:40:14 PM](#)

CHAIR CLAMAN announced that SSHB 146 would be held over for further review.

[2:40:42 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:41 p.m.