

**SB**

**273**



SENATOR  
JOHN J. COWDERY

Anchorage

Committees

Chair: Rules  
Chair: World Trade &  
State/Federal Relations  
Vice-Chair: Transportation  
Legislative Council



Senate

January – May:  
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Senator\_John\_Cowdery@legis.state.ak.us

## Sponsor Statement

### Senate Bill 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."**

In 2004, HB 272, an Act relating to certain amendments to Alaska's Auto Dealer Act was enacted and became law. Part of this Act directed the Department of Law to submit a report to the Legislature in January 2005 outlining any consumer or enforcement problems associated with AS 08.66.015.

This bill adopts language that addresses the recognized consumer protection and enforcement problems and is consistent with the changes proposed by the Department of Law.

This bill amends current law by deleting the phrase "current model" from AS 08.66.015(a) and adds a section (b) which requires the auto dealers to have a current sales and service agreement with a manufacturer to sell or attempt to sell a car as new. The removal of "current model" is important because with the language left as is, legitimate dealers are unable to sell used vehicle that are still a current year vehicle. For example, a 2006 Ford F-150, that is used cannot be sold by a used car dealer or manufacturer's franchise until the new model vehicles are released later this year. This act also repeals AS 08.66.015(b), which created a situation in which a used, current model vehicle with a warranty, could only be sold by Manufacturer's franchise dealers, effectively barring used car dealers from selling used automobiles that are less than a year old.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK MURKOWSKI, GOVERNOR

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February 21, 2006

The Honorable John Cowdery  
Chair  
Senate Transportation Committee  
State Capitol, Room 101  
MS 3100  
Juneau, AK 99801-1182

Re: SB 273; Sale of Current Model Motor Vehicles

Dear Senator Cowdery;

The Department of Law ("department") has reviewed SB 273. This bill resolves the current enforcement dilemma of AS 08.66.015(a). This statute makes it illegal for any car dealer to sell a current model used vehicle. By removing the restrictive language "current model" from the statute, any motor vehicle dealer will be allowed to sell a used current model vehicle so long as the vehicle is not represented to be "new."

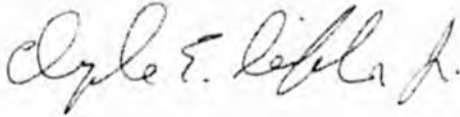
In its current form, AS 08.66.015 is impractical to enforce because it prohibits the sale of used current model vehicles. Thus, a dealer would either refuse to purchase (or take on trade) any current model vehicle, or be forced to "warehouse" the vehicle until it was no longer the current model year. SB 273 will fix this problem.

Please let me know if you have any questions.

Sincerely,

DAVID W. MÁRQUEZ  
ATTORNEY GENERAL

By:

  
Clyde E. Sniffen, Jr.  
Assistant Attorney General

CES/sjm

**Alaska Auto Dealers Association  
5001 Old Seward Highway  
Anchorage, AK 99503**

March 24, 2006

Re: Support of SB 273

Dear House Member:

The Alaska Auto Dealers Association Board of Directors unanimously adopted a resolution supporting SB 273 on February 15, 2006. SB 273 will be beneficial to new car dealers, used car dealers and, most importantly, the consumer. Both I and Assistant Attorney General Mr. Ed Sniffen testified in support of this bill in the Senate Labor and Commerce Committee.

The bill cleans up some unintended consequences from a bill passed in 2004. Under the current statute, a dealer is not allowed to take a current model vehicle on trade unless they hold a franchise for the trade in. For example, we are a GMC dealer and are currently selling 2007 GMC Yukons. The 2008 model will not come out until August of 2007. If a customer wanted to trade that vehicle in at any other new or used dealership other than a GMC dealer, they could do so but the dealer would not be allowed to sell the trade in until August of 2007, when the vehicle is no longer "current model". Obviously, this scenario is detrimental to the dealer and consumer who will be penalized monetarily if the dealer can not sell the trade in for eighteen months.

Fortunately, Assistant Attorney General Mr. Sniffen realizes that this law is harmful to all parties and it is not enforced. However, dealers are technically in violation of the law if they take a current model vehicle on trade and the current statute could be enforced tomorrow were it not for the wisdom of Mr. Sniffen.

The AADA supports passage of this bill as we do not want our members to remain in a position of "technically" violating the law and we believe the economic benefits are positive to consumers and dealers.

Please feel free to contact via email or phone at 459-7087 should you have any questions regarding this matter.

Sincerely,

Jon Cook  
Legislative Director

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 273  
 S) Publish Date: 3/3/06

Revision Date/Time (Note if correction): 2/28/06/ 11:24 a.m. Dept. Affected: Administration  
 Title: An Act relating to a motor vehicle dealer's selling RDU: Division of Motor Vehicles  
 Component: Motor Vehicles  
 Sponsor: Senator Cowdery  
 Requester: (S)TRA Component No.: 2348

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends legislation 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.

This bill will not have a fiscal impact on the Division of Motor Vehicles.

Prepared by: Duane Bannock, Director Phone (907) 269-5008  
 Division: Motor Vehicles Date/Time 2/28/06 11:24 a.m.  
 Approved by: Mike Tibbles, Deputy Commissioner Date 2/28/2006  
 Agency: Administration

**adn.com**

Anchorage Daily News

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**Buyer sues dealer over finance charges****Dealership offered woman higher loan rate, kept part as profit**

By PAULA DOBBYN

Anchorage Daily News

*(Published: October 9, 2005)*

Erica Hobson bought her dream pickup truck at the right price. Or so she thought.

But the Anchorage woman is in court now, trying to end a practice that the Consumer Federation of America estimates costs car buyers nationwide hundreds of millions of dollars in extra finance costs. Hobson's experience is a cautionary tale for anyone planning to buy a car.

Hobson, 27, spotted a shiny Toyota Tacoma pickup in a Midtown Anchorage dealer's lot during her lunch hour. Later that day in June 2004, she test-drove the used silver-colored truck, made a down payment, signed loan papers for \$23,797 and drove the vehicle home.

"I was really excited," Hobson recalled. "I thought, 'I'll have this Toyota for the next 15 years.' "

Her elation turned to disbelief when Hobson's brother inspected the 2003 truck a week later. The professional auto painter noticed tell-tale signs that the truck had been wrecked: He noticed it had been repainted and parts had been replaced.

Hobson, a paralegal, is suing the dealer, Lithia of Anchorage, for triple damages, which her attorney estimated at \$99,265.68.

Lithia's attorney, June Rohlf, would not comment, saying the company does not discuss pending litigation. In court filings, Lithia acknowledged selling Hobson a vehicle that had sustained damage without revealing that to her. But the company did not engage in deceptive practices or intend to mislead Hobson about the car, Rohlf said in court papers.

The lawsuit has evolved from a case about failure to disclose damage to a vehicle to one that takes on a widespread but little known aspect of auto financing. Hobson claims that Lithia deceived her about the loan interest rate for which she qualified, raising her monthly loan payments and giving Lithia a secret extra payment.

If Hobson wins, she hopes her case will end in Alaska a practice among car dealers and banks called "dealer reserve." It's a practice that can add hundreds, or thousands, of dollars in hidden costs to car buyers.

"You go into these dealerships thinking you can trust that what they represent to you is accurate. While you might expect to dicker, you come to find out that the system is designed to take advantage of you any way it can," Hobson said recently.

Dealers say there's nothing illegal about padding a little extra on to the interest rate. It's a way of compensating themselves for arranging the financing, saving people time and sometimes securing the customer a better rate than they could have gotten on their own.

Consumer interest groups like Public Citizen say hogwash.

<http://www.adn.com/news/alaska/v-printer/story/7065773p-6970498c.html>

10/11/2005



Erica Hobson's lawsuit against Lithia of Anchorage began after her brother noticed signs that her truck had been wrecked before, a fact that wasn't made known to her. (Photo by BILL ROTH / Anchorage Daily News)

"Car-dealer fraud is plaguing our country. The tactics being used are so bad that even informed consumers who do their homework are being taken for hundreds, and often thousands, of dollars," said Public Citizen when it issued a 2003 report titled "Rip-off Nation: Auto Dealers' Swindling of America."

## THE DEAL

Hobson says her experience has taught her that financing terms on car loans are just as negotiable as the sales price, and that by getting buyers to accept higher interest rates dealers can boost their profits.

But that knowledge came painfully.

Lithia quoted Hobson three different interest rates before she agreed to accept the lowest one offered: 5.95 percent.

The loan came from Denali Alaskan Federal Credit Union.

But 5.95 percent wasn't the lowest interest rate that Denali said Hobson qualified for. Denali quoted to Lithia a rate of 4.5 percent, according to court filings.

"At no time did Lithia advise plaintiff that Denali had offered a 4.5 percent interest rate on the loan, or that Lithia was going to or did increase the loan interest rate an additional 1.45 percent in order to earn a 'dealer reserve' payment from Denali," Hobson's attorneys said in court papers.

By signing up for the 5.95 percent interest rate, Hobson in effect agreed to pay an extra \$1,100 over the life of her six-year loan.

Denali paid Lithia \$836.64 for signing up Hobson at the higher interest rate, according to paperwork Hobson's lawyers acquired through legal discovery.

In her answer to Hobson's complaint, Rohlf defended the practice of dealer reserves.

"Many courts that have considered this issue agree that there is nothing illegal, deceptive or unfair about 'dealer reserve' practices, and that there is no obligation to disclose the information to customers," Rohlf wrote in court papers.

All financial institutions that work with car dealerships use dealer reserves, said Denali Alaskan spokesman Keith Fernandez on Friday.

While people can generally get better rates if they come into a branch and arrange financing themselves, Denali Alaskan "does view indirect lending as a service to members who don't want to run back and forth between the institution and a dealer to buy a car," Fernandez said.

Several spokespersons for Alaska banks and credit unions said their businesses no longer engage in dealer reserves or never did.

## THE WAY IT WORKS

Lawyers and consumer advocates who have studied auto-lending practices say the dealer reserve formula is fairly standard and goes something like this:

Car dealers and lenders form alliances. The bank or credit union agrees to buy car loans from the dealer at a range of interest rates based on the purchaser's creditworthiness. The lowest one the car buyer qualifies for is called the "buy rate."

If the loan is made at the buy rate, the dealer doesn't get any commission.

However, if the dealer gets the purchaser to accept a higher interest rate, the difference between the buy rate and the agreed-on rate is called the spread premium. This premium -- which critics call a kickback and others call a reserve -- is usually split between the car dealer and the lender. Usually the dealer gets a bigger slice, according to consumer advocates.

Dealers rarely disclose this arrangement because they are not required to do so, critics say.

"These hidden finance kickbacks typically add at least \$1,000 to the cost of an auto loan, and are costing consumers as much as one billion dollars annually," Stephen Brobeck, executive director of the Consumer Federation of America, said last year when his organization issued a report on the subject.

## IS IT FAIR?

Dealers generally say the reserves they receive are payment for a useful service they provide to customers. They save people the hassle of finding their own financing. They complete a lot of paperwork so all people have to do is sign on the bottom line.

Because of their relationships with lenders, dealers also say they can often get loans for people who otherwise wouldn't qualify, or they can get them better interest rates.

"A lot of times it's not a bad thing because with our buying power we can often get a cheaper interest rate," said Calvin Worthington Jr. of Worthington Ford, a large auto dealer in Anchorage. "We often know about bank specials that are published only to dealers and are not made known to the general public."

But dealers clearly feel under attack by recent high-profile media coverage about dealer reserves, namely "60 Minutes" and "Dateline" pieces.

"Dealer financing is getting a bad rap. A recent wave of negative media reports has focused attention on vocal critics of dealer markups who have called for legislation that would impose either a flat fee or a cap on dealer compensation for obtaining credit for car buyers," said Charley Smith, chairman of the National Automobile Dealers Association, in a speech last year.

Smith said dealers shouldn't hide under their desks but respond by educating people about auto financing, he said. The association's board voted to support disclosing to customers that the finance rate is negotiable and that the dealer may retain part of the finance charges as compensation for helping the buyer secure a loan.

## SEEKING RELIEF

Consumer education by auto dealers is fine, but Hobson wants relief for what she went through.

She continues to drive a pickup that was wrecked and worries about her safety if she gets into a crash. If she tried to sell it and properly disclosed the previous damage, Hobson estimates she could get barely half of what she paid for it.

Besides getting her money back and possibly damages, Hobson really wants other people to avoid her experience.

One of her attorneys, Chris Bataille, said Alaska's consumer protection law is strong and that bodes well for his client.

"Our understanding of the law is that businesses shouldn't engage in practices that mislead consumers," Bataille said.

Lithia's attorney said in court papers that nothing misleading took place and that Hobson was not required to accept the 5.95 percent interest rate if she didn't want to.

Trial is scheduled for Nov. 28.

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Daily News reporter Paula Dobbyn can be reached at [pdobbyn@adn.com](mailto:pdobbyn@adn.com) or 257-4317.

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