

SB

1388

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FILE

SB 138

was referred to the
Senate Finance
Committee

No hearing was held
on this bill

This bill was scheduled to be
heard 4/30/05



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

SB 138 Motor Vehicle Dealer Sales Sponsor Statement

"An Act relating to a motor vehicle dealer's selling certain motor vehicles as new model motor vehicles or as new model motor vehicles having a manufacturer's warranty."

In 2004, the Alaska Legislature passed HB 272, an Act relating to certain amendments to Alaska's Auto Dealer Act. Section 10 of the bill required the Department of Law to:

1. monitor and investigate consumer and enforcement problems associated with AS 08.66.015 that relate to the sale of new or current model motor vehicles; and
2. report to the legislature on the consumer and enforcement problems identified under (1) and include recommendations for resolving the problems.

The Department of Law submitted the report to the Legislature in January of 2005. The report indicated that there were consumer protection problems relating to warranty and odometer issues, and that enforcement of 08.66.015 would be more effective if the current law were amended.

This bill would amend AS 08.66.015 (a) by deleting the phrase "current model" and add a definition of a "new vehicle" generally consistent with the Department's recommendation.



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: LABOR & COMMERCE
Current Version: SB 138
Contact: Jane Alberts, 465-4843

Fact Sheet for: Senate Bill 138

Short Title: MOTOR VEHICLE DEALER SALES

Summary:

- Amends language in AS 08.66.015 by deleting the phrase "current model" and adding the definition of "new vehicle" to the statute.

Benefits:

- Protects consumers who buy vehicles from independent auto brokers that were previously owned and may have had the odometer modified or replaced.
- Strengthens state's ability to enforce consumer complaints involving independent auto dealers.
- Ensures consumers will be protected on warranty issues when purchasing a new vehicle.

Background:

- In 2004, the legislature passed HB 272. The law amended the Auto Dealers Act to help protect consumers purchasing new and used vehicles. The law also required the Alaska Department of Law to update lawmakers on any enforcement issues. A recent Department of Law report asked lawmakers to amend the law by deleting the phrase "current model" and adding a definition for new vehicle." Consumers are purchasing vehicles from independent dealers that were called "new" when in fact they had been previously sold and/or had the odometer replaced or modified. This bill protects consumers by clearly defining the term "new vehicle."

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OFFICE OF THE ATTORNEY GENERAL

REPORT TO THE LEGISLATURE
REGARDING AMENDMENTS TO AS 08.66.015

January 13, 2005

Background

At the end of the 2004 regular legislative session, the Alaska Legislature passed HB 272, an Act relating to certain amendments to Alaska's Auto Dealer Act. Section 10 of the bill requires the Department of Law ("Department") to: (1) monitor and investigate consumer and enforcement problems associated with AS 08.66.015 that relate to the sale of new or current model motor vehicles;¹ and (2) report to the legislature on or before January 24, 2005, on the consumer and enforcement problems identified under (1) and include a recommendation for resolving the problems. This Report discusses these issues and proposes amendments to AS 08.66.015.

AS 08.66.015 reads in its entirety as follows:

Sec. 08.66.015. Sale of motor vehicle. (a) A person who does business as a dealer in the state may not offer to sell or sell a motor vehicle as a new or current model motor vehicle unless the motor vehicle retains the manufacturer's certificate of origin.

(b) A person who does business as a dealer in the state may not offer to sell or sell a motor vehicle as a new or current model motor vehicle having a manufacturer's warranty unless

(1) the dealer has a current sales and service agreement with the manufacturer and the agreement requires the dealer, upon demand of the motor vehicle buyer, to perform or arrange for, within a reasonable distance of the dealer's place of business in the state, the repair and replacement work required of the manufacturer under the warranty; or

(2) the dealer offers to give the buyer a rebate to cover the repair and replacement work that the dealer cannot perform or arrange for within a reasonable distance of the dealer's place of business.

Accordingly, AS 08.66.015(a) prohibits the sale of a new *or* current model motor vehicle unless the motor vehicle retains the manufacturer's statement of origin, referred to as the "MSO." An MSO is issued for every new vehicle when it leaves the factory. When the vehicle is sold to the first purchaser, the MSO is delivered to the Division of Motor Vehicles ("DMV") as part of the application for a new title. Once titled, the MSO for the vehicle is retained by the DMV. No used current model vehicle will have an MSO. Thus, AS 08.66.015 prohibits the sale of any used current model vehicle in Alaska by any auto dealer.

There are a variety of circumstances under which an auto dealer may come into possession of a used current model vehicle. It may be purchased at an auction, from a rental fleet, from an individual consumer, or taken on trade. Regardless of how the vehicle is obtained, AS 08.66.015 prohibits all Alaska auto dealers from selling used current model vehicles.

Legislative History of AS 08.66.015

When enacting AS 08.66.015, the 1993 legislature did not discuss, and was likely not aware of, the result this language would have on the sale of used current model vehicles. AS 08.66.015 was added as part of a comprehensive bill (Senate Bill 105, and concurrent House Bill 164) aimed at regulating auto brokers. According to the bill's sponsor, Senator Robin Taylor, an auto broker operating in Southeast Alaska sold cars to several consumers then went out of business. Some consumers did not get the car they thought they purchased, did not receive titles, and had warranty problems. The auto broker was gone, and these consumers had no recourse.

In response to these problems, AS 08.66 was amended to define a "buyers agent" and regulate the conduct of these agents doing business in Alaska. A new section was added to AS 45.45 (now in AS 08.66) to require that buyer's agents obtain a license just like an auto dealer, and follow certain practices. Only limited discussion about the sale of "new or current model" vehicles occurred in the House Judiciary committee. Joe Ambrose, aid to Senator Taylor, testified the bill would prevent a car from being sold as new if it had been sold before. This was important, according to Mr. Ambrose, for warranty reasons. In this same

committee, Mr. Steve Allwine, representing the Alaska Auto Dealers Association, testified that customers sometimes bought cars that were supposed to be new, but in fact were used, resulting in warranty problems. The nature of the "warranty problems" mentioned by Messrs. Ambrose and Allwine is not discussed in the legislative history anywhere.

The only other consideration in SB 105 of current model vehicles is found in a proposed definition of "current model motor vehicle." These vehicles were defined as "a motor vehicle that is the current model made by the manufacturer and that has been sold one or more times before the dealer proposes to sell it." This definition no longer appears in the statute.

The Departments understanding of this history is that AS 08.66.015 was primarily aimed at stopping auto brokers from selling cars to consumers unless they were licensed as auto dealers. The restriction on selling new or current model motor vehicles was part of this effort, and was not intended to restrict legitimate car dealers from selling used current model motor vehicles. Instead, it appears the 1993 legislature intended to stop auto brokers from selling used current model vehicles as "new" vehicles if the vehicle had in fact been sold at least once before.

Concerns raised by the AADA

Representatives of the Alaska Auto Dealers Association ("AADA") have raised several concerns with the purchase and resale of used current model vehicles. Many of these vehicles are obtained from Canadian auto dealers through "straw" purchasers and importers who immediately sell them to Alaska dealers for resale to the public. There is no question that auto manufacturers in the U.S. and Canada universally agree that its dealers are prohibited, under existing franchise agreements, from selling vehicles for the purpose of export to another country. There is nothing illegal about these restrictions. Unfortunately, manufacturers have had difficulties in stopping this practice because Canadian dealers are often unaware that some sales result in the immediate export of the vehicle.

Regardless of the method, in most circumstances there appears to be an illegitimate transaction somewhere in the chain of events that results in a low mileage, used current model vehicle making its way to Alaska, even though the actual importation may be legal.

The AADA believes this practice results in unfair competition between franchised dealers and used car dealers. Franchised dealers not only invest significant amounts of time and money in their facilities, but are also required to

provide training to its employees, maintain service facilities, and are responsible for the vehicle after it is sold. The majority of used car dealers are not burdened with these requirements. Regardless of the impacts on franchised auto dealers, *the fact remains that existing law already prohibits the sale of used current model vehicles.*

Concerns Raised by the IADA

The Alaska Independent Auto Dealers Association ("IADA") is concerned about any restriction on the sale of used vehicles, regardless of whether the vehicle is a current model. Most IADA members express the belief that a vehicle is either new or used, and current model vehicles should not be treated differently. A vehicle is "used" once it has been title to the first purchaser and loses its MSO. Thus the IADA believes that used auto dealers should be allowed to sell any used vehicle. The problem addressed by AS 08.66.015 associated with transient "brokers" is not a concern for legitimate, licensed used car dealers in Alaska.

Consumer Impacts

It is unclear whether consumers would be adversely impacted if the Department began enforcing AS 08.66.015 to prohibit the sale of used current model vehicles. These vehicles have the appearance of new vehicles with very low mileage when, in fact, they are used. This has significant consequences. Alaska's lemon law, for example, does not apply to used vehicles. Some manufacturers are not honoring warranties on vehicles originally manufactured for sale in Canada or another country. Nearly all odometers must be changed before importation, and the Department is aware that not all odometer swaps are performed in accordance with federal requirements.

Some auto dealers offer after-market service contracts to consumers for vehicles that are not covered by a manufacturer's warranty. The viability of some after-market service contracts has been recently called into question. National Warranty Insurance Company ("NWIC") was a large Risk Retention Group ("RRG") that offered service contracts called "Smart Choice" contracts. Several Alaska used car dealers sold these contracts with used vehicles. NWIC went into "provisional liquidation" in 2003. Most consumers who purchased contracts from NWIC will not receive the benefit of the contract (repairs will not be paid for), and will not get a refund of the cost of the contract. NWIC was formed under the laws of the Cayman Islands, and the liquidation proceeding will be governed by Cayman Island law. There is some concern that consumers who purchase used

current model vehicles with these kinds of service contracts will not understand the risks associated with them.

Alaska law requires that every motor vehicle dealer disclose, in writing, whether a motor vehicle was originally manufactured for sale in Canada or a foreign country, whether the warranty provisions of AS 45.45.300 - 45.45.36 (the lemon law) apply, and whether the vehicle is subject to the manufacturer's warranty. AS 45.25.465. These disclosures provide important information to the consumer, and address many of the issues surrounding the enactment of AS 08.66.015.

The Department has received several consumer complaints relating to the purchase of a used current model vehicle. Nearly all of these complaints relate to warranty and odometer issues. These complaints allege that franchised auto dealers refuse to honor warranties for used current model vehicles imported from Canada. One consumer complained, for example, that Chrysler refused to repair an odometer cluster because the cluster was replaced with an after-market cluster during the importation process. Most manufacturers will not perform warranty work on after-market parts. The "big three" American auto makers (Chrysler, Ford, and GM) are aware of this issue, and are taking varying steps to address this. These types of complaints have slowed significantly in the past six months.

The majority of other consumer complaints allege that adequate disclosures were not made when the vehicle was purchased. Some consumers allege they were not told the vehicle was imported (i.e. from Canada), or that factory warranties will not apply.

Recommendations

There are several approaches to resolving the issues presented by AS 08.66.015(a). The decision on how to resolve the concerns expressed above are largely policy questions to be decided by the legislature. AS 08.66.015 in its current form, however, should be amended or repealed. The Department recommends that the legislature consider one of the following.

Proposal 1: Remove the phrase "current model" from AS 08.66.015(a) and (b).

This proposal would remove the term "current model" from AS 08.66.015 so that a dealer could not sell a vehicle as "new" unless the vehicle has an MSO,

but allows any dealer to sell a used vehicle of any kind, including current model vehicles. This proposal leaves the issue of how to deal with "undesirable" sales of used current model vehicles to the manufactures and its dealers.

Proposal 2: Remove the phrase "current model" from AS 08.66.015(a) and (b) and add a definition of "new vehicle" to accomplish the goals of the legislature.

This option is a compromise that addresses most of the concerns raised by the new and used car dealers in Alaska. The State of Washington has adopted this approach. This proposal removes the phrase "current model" from AS 08.66.015(a) and (b), then defines "new vehicle" in a way that protects franchised car dealers from the practices described above.

New language would then be added that defines a used vehicle. The Department proposes adoption of the Washington definition, which is:

"A used vehicle is a vehicle that either (1) has been operated to the extent that its odometer registers 3,000 miles or more; or (2) titled or registered to a purchaser for a period of 90 days or more."

In addition, an exemption should be added for any vehicle purchased or leased by a bona fide retail purchaser/lessee who purchases or leases the vehicle for the purpose of using it rather than for resale. Washington uses the following language in its exemption:

"The requirements of this section will not apply if a bona fide retail purchaser/lessee sells, trades, or otherwise disposes of the vehicle prior to its having met these requirements. A "bona fide retail purchaser/lessee" is one who purchases or leases a vehicle for the purpose of using it, rather than for the purpose of resale or lease."

This option would allow the acquisition and sale of used current model vehicles with any number of miles so long as the vehicle was obtained from a bona fide retail purchaser/lessee as defined above. Thus, an ordinary consumer who purchases or leases a new vehicle for the purpose of using it could still sell the vehicle regardless of the mileage or title requirements, and Alaska auto dealers can resell it. Otherwise, a vehicle will be considered "new" (and subject to the

requirements of AS 08.66.015(a) and (b)) and can not be sold as "used" until it has at least 3,000 miles on the odometer, or it has been titled for at least 3 months.

Conclusion

The Department recommends the legislature consider amendments to AS 08.66.015 to correct the current problems associated with the sale of used "current model" vehicles. Either of the two proposals set out above will accomplish this goal. The Department is available to assist in drafting any proposed amendments to the statute.

Please contact Assistant Attorney General Ed Sniffen with any questions.
269-5200; ed_sniffen@law.state.ak.us.

1 A vehicle is a "current model" vehicle if it is still within the same year as currently offered new vehicles of the same model. For example, a 2005 Ford F-150 pickup truck is a current model vehicle so long as the 2006 F-150's are not available to the public. As soon as the 2006 model F-150's are available, the 2005 year is no longer the "current model" year.

Ivy Frye

From: Mmartensen@aol.com
Sent: Tuesday, April 26, 2005 2:23 PM
To: Sen. Lyda Green
Subject: (no subject)

Dear Senator Green,

My name is Marten Martensen, I am with the Continental Auto Group in Anchorage. Continental Auto is a new and used car full service auto dealership that has been in business since 1971. The Alaska Auto Dealers Association, myself included visited Juneau earlier this month to speak to legislatures about legislative issues affecting Alaskan car dealers. Unfortunately I wasn't able to meet you personally but I did meet a number of your colleagues. One of the issues that we are facing is SB 138. I would like to ask for your support in passing SB138. As it now stands we need to make changes to the existing law, we have the support of Asst. Attorney General Sniffen and have worked diligently to make the necessary changes.

I thank you for your consideration, if there is anything I can do for you please do not hesitate to contact me.

Sincerely,

Marten Martensen
Continental Auto Group



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Via email

4/25/05

Senator Lyda Green
Alaska State Legislature
Senate Finance Committee

Re: SB 138 MOTOR VEHICLE DEALER SALES

Dear Senator Lyda Green,

On Friday, April 22, 2005, the Labor and Commerce Committee passed and referred to your Finance Committee SB138. This bill cleans up language in the existing statute that is badly needed to more clearly define a new motor vehicle, which is very important to our industry. As you are aware, we are making a huge investment in our business with the new facility. I don't know if you've been by the site recently, but it is really coming together. We anticipate a late July or early August opening and will let you know when that is so you can attend our Grand Opening. I respectfully urge your expedient passage of this bill through your committee. Thank you for your attention to this bill.

Sincerely,

Diana Pfeiffer, President

Alaska Sales and Service-Anchorage and Wasilla

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/8/05

FURTHER: Finance

Date of 5-Day Notice: 3/10/05
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/22/05

Labor and Commerce Committee considered SENATE BILL NO. 138

SB 138 MOTOR VEHICLE DEALER SALES

"An Act relating to a motor vehicle dealer's selling certain motor vehicles as new model motor vehicles or as new model motor vehicles having a manufacturer's warranty."

and recommends:

- be replaced with _____ CS SB 138 (Lee)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DRED	3/14/05			✓	1
ADM	3/15/05			✓	2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Davis	<i>Bettye Davis</i>	X			
Ellis	<i>[Signature]</i>			X	
Seelkins	<i>Joseph Seelkins</i>	✓			
B. Stevens	<i>[Signature]</i>	X			
CHAIR:	<i>[Signature]</i>	✓			