

**HOUSE BILL NO. 142**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAVIS, Croft

Introduced: 2/17/97

Referred: Labor and Commerce, Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the sale of new or used motor vehicles; relating to the  
2 confidentiality of certain information related to attorney general investigations of  
3 unlawful trade practices and antitrust activities; establishing additional unlawful  
4 trade practices; relating to the mail order catalog exemption from telephonic  
5 solicitation regulation; regulating the sale of business opportunities; amending  
6 Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective  
7 date."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 \* **Section 1.** AS 45.45.400(a) is amended to read:

10 (a) A person engaged in the business of selling used motor vehicles may not  
11 contract to sell, transfer, or assign a [THE OWNER'S TITLE OR INTEREST IN  
12 THE] used motor vehicle to a person who resides in an area subject to a state-  
13 approved emission inspection program established under AS 46.14.400 or 46.14.510

1 and who intends to use the vehicle in that area [,] unless, **before entering into the**  
 2 **contract, the person engaged in the business of selling used motor vehicles**

3 **(1) provides the prospective buyer, transferee, or assignee with a**  
 4 **valid copy of [THE VEHICLE HAS] a certificate of inspection [COMPLIANCE] or**  
 5 **noncompliance for the vehicle as required under the air pollution control requirements**  
 6 **applicable in that area; and**

7 **(2) obtains from the prospective buyer, transferee, assignee, or the**  
 8 **agent of the prospective buyer, transferee, or assignee, a signed, written**  
 9 **acknowledgment that the prospective buyer, transferee, or assignee, or the agent**  
 10 **of the prospective buyer, transferee, or assignee has received a copy of the**  
 11 **certificate of inspection or noncompliance as required by (1) of this subsection.**

12 \* **Sec. 2.** AS 45.50.471(b) is amended by adding new paragraphs to read:

13 (42) a person engaged in the business of selling new or used motor  
 14 vehicles failing to disclose in writing to a motor vehicle buyer, before a  
 15 contract for the sale is entered into, information that the seller knows or could  
 16 have known through the exercise of reasonable diligence on the accident  
 17 history of the vehicle and any safety problems with the vehicle;

18 (43) violating AS 45.66 (sales of business opportunities).

19 \* **Sec. 3.** AS 45.50.521(b) is amended to read:

20 (b) Subject to the provisions of AS 45.50.501(a), the attorney general may not  
 21 make public the name of a person alleged to have committed an act or practice  
 22 declared unlawful **by AS 45.50.471 - 45.50.561** [IN AS 45.50.471] during an  
 23 investigation conducted by the attorney general under AS 45.50.471 - 45.50.561, nor  
 24 are the records of investigation or intelligence information of the attorney general  
 25 obtained **or created in the course of the investigation** under AS 45.50.471 -  
 26 45.50.561 considered public records available for inspection **or copying under**  
 27 **AS 09.25.110 - 09.25.220** by the general public **at any time during or after the**  
 28 **investigation.** However, the attorney general is not prevented from issuing public  
 29 statements describing or warning of a course of conduct or a conspiracy that  
 30 constitutes or will constitute an unlawful act or practice, whether on a local, state,  
 31 regional, or national basis.

1 \* **Sec. 4.** AS 45.50.594 is amended by adding a new subsection to read:

2 (e) Testimony given under a demand, or a copy of the testimony, is subject to  
3 the same restrictions and prohibition against disclosure as is documentary material  
4 under AS 45.50.592(e).

5 \* **Sec. 5.** AS 45.50 is amended by adding a new section to read:

6 **Sec. 45.50.595. Confidentiality of investigatory records.** Investigation  
7 records obtained or created by the attorney general in the course of an investigation  
8 under AS 45.50.562 - 45.50.596 are not considered public records available for  
9 inspection or copying under AS 09.25.110 - 09.25.220 by the public at any time during  
10 or after the investigation. However, the attorney general may issue public statements  
11 describing or warning of a course of conduct or a conspiracy that constitutes or will  
12 constitute a violation of AS 45.50.562 - 45.50.596, whether on a local, state, regional,  
13 or national basis.

14 \* **Sec. 6.** AS 45.63.080(14) is repealed and reenacted to read:

15 (14) of property from a mail order catalog, if the person making the  
16 solicitation does not initiate contact with prospective customers by telephonic means,  
17 if contact by telephonic means is initiated by the prospective customer in response to  
18 the catalog, and if during the contact the person making the solicitation does not make  
19 a further solicitation; in this paragraph,

20 (A) "further solicitation" does not include providing the  
21 prospective customer with information about, or attempting to sell, another item  
22 included in the same mail order catalog that prompted the prospective  
23 customer's contact;

24 (B) "mail order catalog" means a publication that  
25 (i) is published one or more times a year;  
26 (ii) is delivered to prospective customers;  
27 (iii) describes or pictures the products, equipment, or  
28 supplies for sale and prominently provides the specific price of each;  
29 (iv) includes the business name, address, and telephone  
30 number of the person who owns and produces the publication;  
31 (v) includes instructions to prospective buyers on how

1 to order products from the publication;

2 (vi) includes 10 or more pages of written material and  
3 illustrations;

4 (vii) is distributed in this state; and

5 (viii) has an annual mail circulation of 10,000 or more  
6 copies.

7 \* **Sec. 7.** AS 45 is amended by adding a new chapter to read:

8 **Chapter 66. Sales of Business Opportunities.**

9 **Sec. 45.66.010. Registration required.** A seller may not sell or offer to sell  
10 a business opportunity unless the seller is registered with the department at least 30  
11 days before the seller's solicitation campaign begins.

12 **Sec. 45.66.020. Registration procedure.** (a) To register under AS 45.66.010,  
13 a seller shall file with the department

14 (1) the disclosure statement required by AS 45.66.070 and any  
15 advertising, pamphlets, brochures, or other materials to be used in the solicitation  
16 campaign;

17 (2) the bond required by AS 45.66.050;

18 (3) an irrevocable consent appointing the department as the seller's  
19 agent for the receipt of service of process in a court action or other proceeding against  
20 the seller, or the successor in interest of the seller, for a violation of this chapter;

21 (4) a completed application form that satisfies (b) of this section;

22 (5) a signed statement that the seller has read and will comply with this  
23 chapter and the regulations adopted under it; and

24 (6) other information requested by the department to evaluate whether  
25 the applicant meets the requirements of this chapter.

26 (b) The application form shall be established by the department by regulation  
27 and must contain information including

28 (1) the nature of the solicitation campaign;

29 (2) the identity and business practices of the seller, including  
30 information on the owners, employees, agents, officers, and other persons affiliated  
31 with the seller; and

1 (3) disclosures of criminal convictions, civil judgments, orders, consent  
2 decrees, or administrative determinations involving allegations of fraud, theft,  
3 embezzlement, fraudulent conversion, misappropriation of property, the use of untrue  
4 or misleading representations in an attempt to sell or dispose of real or personal  
5 property, violations of this chapter, violations of AS 45.63 (telephonic solicitations),  
6 violations of AS 45.68 (charitable solicitations), or unfair or deceptive business  
7 practices under AS 45.50.471 - 45.50.561, by the seller, including the owners,  
8 employees, agents, officers, and other persons affiliated with the seller.

9 (c) Registration under AS 45.66.010 or renewal under AS 45.66.030 is not  
10 complete until the seller receives an acknowledgment from the department that the  
11 seller has complied with (a) of this section or 45.66.030.

12 **Sec. 45.66.030. Renewal of registration.** If a solicitation campaign continues  
13 for more than one year from the date of department's acknowledgment of the initial  
14 registration under this chapter, a seller shall renew the registration each year that the  
15 solicitation campaign continues by filing before or on the anniversary date of the  
16 department's acknowledgment under AS 45.66.020(c) a renewal application on a form  
17 established by the department by regulation requesting information that is similar to  
18 the information required under AS 45.66.020.

19 **Sec. 45.66.040. Material changes in registration information.** If there is  
20 a material change in the information provided under AS 45.66.020 or 45.66.030, the  
21 seller shall, within 10 days of the change, file with the department a statement  
22 describing the change on a form established by the department by regulation.

23 **Sec. 45.66.050. Surety bond required.** (a) A seller shall obtain a surety  
24 bond in the amount of \$75,000 issued by a surety company authorized to do business  
25 in the state. The bond must be in favor of the state for the benefit of a buyer and  
26 must satisfy the conditions established by the department by regulation.

27 (b) If the department finds that the amount of the bond set by (a) of this  
28 section is insufficient to protect the public interest, the department may by regulation  
29 increase the amount of the bond.

30 **Sec. 45.66.060. Location of offer and sale.** This chapter applies to a sale of  
31 or offer to sell a business opportunity if

1 (1) the offer, regardless of whether either party is then present in this  
 2 state, originates in this state, or is directed by the offeror to this state and received at  
 3 the place to which the offer is directed, including a post office box; this paragraph  
 4 does not include an offer that

5 (A) appears in a bona fide newspaper or other publication of  
 6 general circulation that is not published in this state or that is published in this  
 7 state but more than two-thirds of its circulation was outside this state during  
 8 the 12 months preceding the offer; or

9 (B) is made on a radio or television program that originates  
 10 outside this state and is received in this state;

11 (2) the acceptance

12 (A) has not been previously communicated, orally or in writing,  
 13 to the offeror outside this state;

14 (B) is communicated to the offeror in this state, regardless of  
 15 whether the seller or buyer is then present in this state, and the offeree  
 16 reasonably believes that the offeror is located in this state; and

17 (C) is received at the place to which it was directed, including  
 18 a post office box; or

19 (3) the buyer is domiciled in this state and the business opportunity is  
 20 or will be operated in this state.

21 **Sec. 45.66.070. Disclosure requirements.** (a) At least 10 days before the  
 22 buyer signs the contract, or at least 10 days before receipt of any consideration by the  
 23 seller, whichever event occurs first, the seller shall give the buyer the written  
 24 disclosure statement described in (b) of this section, require the buyer to sign a receipt  
 25 containing the buyer's name and the date when the buyer received the disclosure  
 26 statement, and give the buyer the original receipt with the buyer's original signature.  
 27 The seller shall retain a copy of the receipt.

28 (b) The department shall specify by regulation the form and content of the  
 29 disclosure statement required by (a) of this section, including

30 (1) the seller's name, type of business organization, address, and name  
 31 of any parent or affiliated company related to the transaction;

1 (2) the names, addresses, and other relevant information regarding the  
2 owners, officers, directors, and other persons responsible for the seller's business  
3 activities related to the contract;

4 (3) the business history of the seller and the seller's representatives and  
5 the background of the seller and the seller's representatives that relates to business  
6 opportunities;

7 (4) the total contract amount to be paid by the buyer and the schedule  
8 of payments;

9 (5) the financial condition of the seller, including audits and recent  
10 income statements;

11 (6) a complete description of the services that the seller will perform  
12 for the buyer, including training;

13 (7) the history of the seller's registration or attempted registration in  
14 this or another state as a seller of business opportunities;

15 (8) a history of civil actions, criminal actions, and consumer protection  
16 complaints brought against the seller or its representatives related to the sale of  
17 business opportunities and the resolution of the actions and complaints;

18 (9) identification of any bankruptcy actions filed in court by the seller  
19 and the resolution of the actions;

20 (10) a statement adopted by the department by regulation to alert the  
21 public about the legal requirements for a sale of business opportunities if the  
22 department determines the statement is reasonable and necessary;

23 (11) if the seller makes a statement about potential earnings that can  
24 be made through a business opportunity, the basis for the statement and the economic  
25 risks associated with the business opportunity;

26 (12) the rights and obligations of the seller and buyer regarding  
27 termination of the contract, including the rights arising out of the bond required by  
28 AS 45.66.050; and

29 (13) any additional information that the department determines by  
30 regulation is reasonable and in the public interest for the seller to provide in order to  
31 make a complete disclosure concerning the contract.

1           **Sec. 45.66.080. Written contract required.** (a) In addition to the other  
 2 requirements of this chapter, a person may not contract to sell a business opportunity  
 3 unless the contract is in writing and the seller gives a copy of the contract to the buyer  
 4 when the buyer signs the contract.

5           (b) The department shall establish by regulation the content and format of the  
 6 information that must be contained in the contract, including

7                   (1) the payment terms, including any escrow account required under  
 8 AS 45.66.090;

9                   (2) name, address, and telephone number of the seller, the seller's  
 10 agent, and each supplier of products, equipment, or supplies that the seller is to deliver  
 11 to the buyer;

12                   (3) the form of the seller's business organization;

13                   (4) a description of services, including any training services, that the  
 14 seller is to provide to the buyer;

15                   (5) the delivery date of the product, equipment, or supplies being sold  
 16 or leased;

17                   (6) if the seller has represented that there is a buy-back agreement for  
 18 the business opportunity or that payments are protected or secured, a complete  
 19 description of those provisions;

20                   (7) a statement of buyer's right to cancel, the circumstances when  
 21 cancellation is authorized, and the procedure for cancellation and refunds; and

22                   (8) any other terms that the department determines are necessary to  
 23 protect the public interest.

24           **Sec. 45.66.090. Restrictions on down payments.** (a) A seller may not  
 25 require a buyer to pay as a down payment more than 20 percent of the initial payment  
 26 unless the excess above the 20 percent is placed in an escrow account that meets the  
 27 requirements of AS 45.66.100.

28           (b) In this section,

29                   (1) "down payment" means that portion of the initial payment that the  
 30 buyer is obligated to pay to the seller before or at the time the products, equipment,  
 31 supplies, or services are delivered, but does not include any amount that is financed

1 by or for which financing is to be obtained by the seller or that results from financing  
2 that the seller assists the buyer to obtain;

3 (2) "initial payment" means the total amount a buyer is obligated to pay  
4 under the terms of the contract before or at the time the equipment, supplies, products,  
5 or services are delivered or within six months of the buyer commencing operation of  
6 the business opportunity, except that, if the contract sets out a specific total sale price  
7 for the purchase of the business opportunity and the total price is to be paid partially  
8 as a down payment and then in specific monthly payments or a subsequent lump sum  
9 payment, "initial payment" means the entire total sale price.

10 **Sec. 45.66.100. Escrow account requirements.** (a) The holder of an escrow  
11 account required by AS 45.66.090 must be a person who is independent from the  
12 seller, and the seller may not make direct disbursements from the escrow account  
13 except as provided in (c) of this section.

14 (b) A seller who establishes an escrow account required by AS 45.66.090 shall  
15 promptly report to the department the following information:

16 (1) the name and address of the escrow account holder;

17 (2) the name and address of the financial institution, including the  
18 branch, where the escrow account is located; and

19 (3) the escrow account number.

20 (c) Except as provided under AS 45.66.110, money placed in an escrow  
21 account required by AS 45.66.090 may not be released until the buyer notifies the  
22 escrow holder in writing that the products, equipment, supplies, or services required  
23 by the contract have been delivered within the time set in the contract between the  
24 buyer and seller. The buyer shall timely notify the escrow holder of deliveries in a  
25 timely manner and may not unreasonably withhold the notification.

26 **Sec. 45.66.110. Actions for claims against escrow account.** (a) A buyer  
27 who has a claim against an escrow account required by AS 45.66.090 may bring a  
28 civil action against the seller or escrow account holder to recover money from the  
29 escrow account.

30 (b) Upon the filing of an action brought under this section, the clerk of the  
31 court shall mail a copy of the complaint to the attorney general and, upon entry of an

1 order or judgment in the action, shall mail a copy of the order or judgment to the  
2 attorney general.

3 (c) A person may not begin an action under this section more than two years  
4 after the person discovers or reasonably should have discovered the basis for the claim.

5 (d) In an action brought under this section, the court may award the prevailing  
6 party all or a portion of the actual costs and attorney fees incurred by the party.

7 (e) The escrow holder is not liable for the amount by which claims or damages  
8 caused by the seller exceed the amount of the escrow account.

9 **Sec. 45.66.120. Cancellation of contract.** (a) A buyer may cancel a contract  
10 for any reason if the buyer gives notice of the cancellation to the seller within 30 days  
11 after signing the contract.

12 (b) In addition to the right to cancel under (a) of this section, a buyer may  
13 cancel the contract at any time if the seller

14 (1) fails to comply with AS 45.66.070 or 45.66.080;

15 (2) uses untrue, misleading, incomplete, or deceptive statements in the  
16 solicitation campaign;

17 (3) fails, within 30 days of the delivery date specified in the contract,  
18 to deliver the products, equipment, supplies, or services required under the contract to  
19 begin substantial operation of the business to be started under the contract; or

20 (4) fails, contrary to the contract, to provide a location for the business  
21 to be started under the contract.

22 (c) If provided by mail, the notice of cancellation is effective when it is  
23 deposited in the mail properly addressed to the seller with postage prepaid.

24 (d) The notice of cancellation is not required to have a particular form. The  
25 notice is sufficient if it indicates in writing the intention of the buyer not to be bound  
26 by the contract.

27 (e) Within 15 days after the date the buyer gives a notice of cancellation under  
28 this section, the seller must tender to the buyer any payments, including payments for  
29 shipping costs, made by the buyer and terminate all financial obligations of the buyer  
30 under the contract. Within five days of refund, the buyer shall make available to the  
31 seller, at a reasonable time and place, any products, equipment, or supplies delivered

1 by the seller.

2 **Sec. 45.66.130. Prohibited representations.** (a) The seller may not state that  
3 the seller is registered under this chapter unless the seller has complied with the  
4 registration requirements of this chapter.

5 (b) Unless the seller is asked for the information by the buyer, a seller may  
6 not state or imply that the seller has a license, consent, or other form of permission  
7 from the state to sell business opportunities in this state.

8 (c) A seller may not make, or cause to be made, a representation that is  
9 inconsistent with AS 45.66.150.

10 (d) A seller may not state or imply that the seller's compliance with the laws  
11 of this state or a municipality constitutes approval or endorsement of the seller by the  
12 state or municipality.

13 **Sec. 45.66.140. Untrue statements or omissions.** A person may not, in  
14 connection with a sale of or offer to sell a business opportunity subject to registration  
15 under this chapter, directly or indirectly make an untrue statement of material fact in  
16 the registration information required under AS 45.66.020 - 45.66.040 or in other  
17 written or oral communications, including the disclosure required under AS 45.66.070  
18 and advertising, related to the sale or offer, or omit to state a material fact necessary,  
19 in light of the circumstances under which it is made, to avoid a statement being  
20 misleading.

21 **Sec. 45.66.150. Unwarranted conclusions.** (a) Acknowledgment of  
22 registration by the department under AS 45.66.030 does not constitute a finding by  
23 the department that a document filed with the department under this chapter is true,  
24 complete, or not misleading.

25 (b) Acknowledgment of registration by the department under AS 45.66.030  
26 does not mean that the department has passed in any way on the merits or  
27 qualifications of the seller or business opportunity, or that the department recommends  
28 or approves a seller.

29 (c) Availability of an exemption under AS 45.66.210 for a seller does not  
30 mean that the state recommends or approves the seller.

31 **Sec. 45.66.160. Waiver prohibited and void.** A seller may not request or

1 obtain from a buyer a waiver of the rights or defenses of the buyer under this chapter.  
2 A waiver of the rights or defenses of the buyer under this chapter is void.

3 **Sec. 45.66.170. Seller's records and files.** (a) A seller shall maintain a  
4 complete set of records of the solicitation campaigns of the seller and allow the  
5 department to inspect and copy them during reasonable business hours.

6 (b) A seller shall keep all documents relating to a contract entered into by the  
7 seller for four years after the date the contract is entered into.

8 **Sec. 45.66.180. Public records.** Except for testimony and records related to  
9 an investigation by the department under this chapter, the registration application form,  
10 registration renewal form, disclosure statement, bond, contract, and other documents  
11 required to be prepared or filed with the department under this chapter, including a  
12 document created or obtained by the department under AS 45.66.190, are public  
13 records available for public inspection and copying under AS 09.25.110 - 09.25.220.

14 **Sec. 45.66.190. Denial, suspension, or revocation of registration.** (a)  
15 Subject to the other requirements of this section and after reviewing a response  
16 submitted by the person under (b) of this section, the department may issue an order  
17 denying, suspending, or revoking a registration made by a person under AS 45.66.010  
18 - 45.66.030, or prohibiting a person from selling or offering to sell business  
19 opportunities if the department finds that

20 (1) the person failed to comply with this chapter or the regulations  
21 adopted under this chapter;

22 (2) the sale of or offer to sell would constitute, or has constituted, a  
23 misrepresentation of, deceit of, or fraud on the buyer;

24 (3) the nature of the person's business enterprise or method of business,  
25 or the nature or methods of the business opportunity includes activities that are illegal  
26 where performed;

27 (4) the person failed to file a document or information required by  
28 AS 45.66.020 - 45.66.040;

29 (5) the literature or advertising of the person, or of another person  
30 recommended by the person, is misleading, incorrect, materially incomplete, or  
31 deceptive;

1 (6) a person identified in the registration represents an unreasonable  
2 risk to the public interest and

3 (A) has been convicted of

4 (i) a felony or misdemeanor involving fraud, theft,  
5 embezzlement, fraudulent conversion, misappropriation of property, or  
6 the use of untrue or misleading representations in the sale of or offer to  
7 sell or otherwise dispose of real or personal property; or

8 (ii) violations under this chapter, violations of AS 45.63  
9 (telephonic solicitations), violations of AS 45.68 (charitable  
10 solicitations), or an unfair trade practice prohibited by AS 45.50.471 -  
11 45.50.561;

12 (B) is subject to a final order or judgment against the person in  
13 a civil or administrative action, including a stipulated order or judgment, if the  
14 complaint or petition in the action alleged acts constituting

15 (i) a violation of this chapter;

16 (ii) fraud, theft, embezzlement, fraudulent conversion,  
17 or misappropriation of real or personal property;

18 (iii) the use of untrue or misleading representations in  
19 an offer to sell or dispose of real or personal property;

20 (iv) the use of unfair trade practices under AS 45.50.471  
21 - 45.50.561; or

22 (v) a violation of AS 45.63 or AS 45.68; or

23 (C) is subject to an injunction relating to business activity if the  
24 injunction resulted from an action brought by a federal, state, or local public  
25 agency, including an action related to an occupational license under AS 08.

26 (b) Before issuing an order to a person under (a) of this section, the  
27 department shall send by certified mail to the address set out in the person's  
28 registration a notice of intent to issue the order. In the notice, the department shall  
29 provide the facts supporting the denial, suspension, or revocation of the registration.  
30 The person may respond to the notice by submitting a statement signed under penalty  
31 of perjury by an owner or officer of the person.

1           **Sec. 45.66.200. Criminal penalties.** (a) A seller who recklessly violates  
2 AS 45.66.010 - 45.66.050, 45.66.070 - 45.66.100, or 45.66.140 is guilty of a class C  
3 felony.

4           (b) A seller who recklessly violates AS 45.66.120(e), 45.66.130, or 45.66.160  
5 is guilty of a class A misdemeanor.

6           (c) Each violation is a separate offense and a prosecution or conviction for one  
7 of the offenses does not bar prosecution or conviction of another offense.

8           **Sec. 45.66.210. Exemptions.** This chapter does not apply to a sale or offer  
9 to sell

10           (1) if the total amount of the payments to be made by the buyer under  
11 the contract is less than \$200;

12           (2) a franchise under 16 CFR 436, as amended from time to time;

13           (3) an ongoing business operated by the seller that is to be sold in its  
14 entirety;

15           (4) a business opportunity to an ongoing business if the seller will  
16 provide products, equipment, supplies, or services that are to be sold by the buyer in  
17 connection with the buyer's ongoing business;

18           (5) a nonprofit sale of sales demonstration equipment, materials, or  
19 samples for use in making sales and not for resale, or of product inventory sold to the  
20 buyer at a bona fide wholesale price;

21           (6) by an executor, an administrator, a marshal, a receiver, a trustee in  
22 bankruptcy, or a guardian or conservator, or under a judicial sale;

23           (7) a security regulated under AS 45.55 or a security that is exempted  
24 by AS 45.55.900 from regulation under AS 45.55;

25           (8) if the sale or offer is by a person registered with the United States  
26 Securities and Exchange Commission when acting within the scope of the person's  
27 Securities and Exchange Commission license;

28           (9) by an issuer, or a subsidiary of an issuer, of a class of securities  
29 that is

30                           (A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act  
31 of 1934); and

1 (B) either registered under 15 U.S.C. 78a - 78lll (Securities  
2 Exchange Act of 1934) or exempt from registration under 15 U.S.C.  
3 78l(g)(2)(A) - (C) or (E) - (H);

4 (10) a business opportunity where the buyer is

5 (A) a bank, savings and loan association, trust company,  
6 insurance company, credit union, or investment company under 15 U.S.C. 80a-  
7 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,  
8 or other financial institution or institutional buyer; or

9 (B) a dealer registered under AS 45.55 (Alaska Securities Act  
10 of 1959) if the buyer is acting for itself or in a fiduciary capacity;

11 (11) a business opportunity that involves a marketing plan made in  
12 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051  
13 - 1127 (Lanham Act) if the seller has a minimum net worth of \$1,000,000 as  
14 determined on the basis of the seller's most recent audited financial statement prepared  
15 within 13 months of the first offer to sell in this state; net worth may be determined  
16 on a consolidated basis if one person owns at least 80 percent of the seller and that  
17 one person expressly guarantees the obligations of the seller that arise under the sale  
18 or offer claimed to be exempt under this paragraph; or

19 (12) in which either the seller or the buyer is licensed as a real estate  
20 broker, associate real estate broker, or real estate sales person under AS 08.88 and the  
21 sale or offer is regulated by AS 08.88.

22 **Sec. 45.66.220. Coordination with other laws.** (a) The rights and remedies  
23 in this chapter are in addition to other legal rights and remedies available to a buyer  
24 or the department.

25 (b) To the extent of the conflict, the provisions of this chapter govern if a sale  
26 or offer to sell a business opportunity is regulated by this chapter and by AS 45.63  
27 (telephonic solicitations), by AS 45.01 - AS 45.09, AS 45.12 and AS 45.14 (Uniform  
28 Commercial Code), or by another law, and it is not possible to comply with or to  
29 apply both this chapter and the other law.

30 **Sec. 45.66.230. Regulations.** The department may adopt regulations under  
31 AS 44.62 (Administrative Procedure Act) to implement or interpret this chapter.

1           **Sec. 45.66.900. Definitions.** In this chapter, unless the context indicates  
2 otherwise,

3           (1) "advertising" means a circular, prospectus, advertisement, or other  
4 material or a communication by radio, television, pictures, or similar means used in  
5 connection with a sale of or offer to sell a business opportunity;

6           (2) "business opportunity" means an express or implied arrangement  
7 under which the seller or a person recommended by the seller will provide to the buyer  
8 products, equipment, supplies, or services enabling the buyer to start a business and  
9 in which the seller

10                   (A) or a person recommended by the seller, will provide or  
11 assist the buyer in finding locations for the use or operation of vending  
12 machines, racks, display cases, or other similar devices on premises that are not  
13 owned or leased by the buyer or seller;

14                   (B) or a person recommended by the seller, will provide or  
15 assist the buyer in finding outlets or accounts for the buyer's products or  
16 services;

17                   (C) or a person specified by the seller, will purchase any or all  
18 products made, produced, fabricated, grown, bred, or modified by the buyer;

19                   (D) or a person specified by the seller, will buy back or is likely  
20 to buy back any products made, produced, fabricated, grown, bred, or modified  
21 by the buyer using, in whole or in part, the product, supplies, equipment, or  
22 services that were initially sold or offered for sale to the buyer by the seller;

23                   (E) makes an oral or a written representation that the buyer will  
24 derive income from the business that will exceed the price paid to the seller  
25 and the representation would cause a reasonable person in the buyer's position  
26 to believe the income is assured;

27                   (F) will refund all or part of the price paid to the seller, or  
28 repurchase some or all of the products, equipment, or supplies provided by the  
29 seller or a person recommended by the seller, if the buyer is dissatisfied with  
30 the business; or

31                   (G) will provide the buyer with a marketing plan;

1 (3) "buyer" means a person who is solicited to become obligated or  
2 does become obligated on a contract;

3 (4) "contract" means an agreement relating to a business opportunity;

4 (5) "department" means the Department of Law;

5 (6) "equipment" includes machines, electrical devices, video or audio  
6 devices, computer devices, molds, display racks, vending machines, coin operated  
7 game machines, machines that dispense products, and display units of all kinds;

8 (7) "marketing plan" means advice or training provided to the buyer by  
9 the seller or a person recommended by the seller pertaining to the sale of products,  
10 equipment, supplies, or services;

11 (8) "offer" or "offer to sell" means an attempt to sell or otherwise  
12 dispose of a business opportunity for value;

13 (9) "product" includes a tangible chattel, including food or living  
14 animals, that the buyer intends to

15 (A) sell or lease;

16 (B) use to perform a service;

17 (C) resell or offer to resell to the seller; or

18 (D ) provide or offer to provide to the seller, or to another  
19 person whom the seller suggests the buyer contact, so that the seller or the  
20 other person may assist either directly or indirectly the buyer to distribute, sell,  
21 lease, or otherwise dispose of a product;

22 (10) "recklessly" has the meaning given in AS 11.81.900;

23 (11) "sale" means a contract to sell, lease, or otherwise dispose of a  
24 business opportunity or an interest in a business opportunity for value;

25 (12) "sell" means to sell, lease, or otherwise dispose of a business  
26 opportunity or an interest in a business opportunity for value;

27 (13) "seller" means a person, or the person's agent, who sells, leases,  
28 offers to sell, offers to lease, or otherwise disposes of a business opportunity;

29 (14) "services" includes assistance, guidance, direction, work, labor, or  
30 other act that may be provided by the seller in the initiation or maintenance of a  
31 business;

1 (15) "solicitation campaign" means the sale of, or the offer to sell, a  
2 business opportunity;

3 (16) "supplies" includes materials used to produce, grow, breed,  
4 fabricate, modify, develop, or make a product or other item.

5 \* **Sec. 8** COURT RULES. AS 45.66.110(b), enacted by sec. 7 of this Act, changes

6 (1) Rule 4, Alaska Rules of Civil Procedure, by requiring the clerk of  
7 the court to mail a copy of the complaint to the attorney general when an action is  
8 filed under AS 45.66.110;

9 (2) Rule 73, Alaska Rules of Civil Procedure, by requiring the clerk of  
10 the court to mail a copy of an order or judgment in an action under AS 45.66.110 to  
11 the attorney general.

12 \* **Sec. 9.** REGULATIONS. The Department of Law may proceed to adopt regulations  
13 that it has authority to adopt for or under secs. 1 - 7 of this Act. The regulations take effect  
14 under AS 44.62 (Administrative Procedure Act), but not before the effective dates of secs. 1 -  
15 7 of this Act.

16 \* **Sec. 10.** AS 45.66.110(b), enacted by sec. 7 of this Act, takes effect only if sec. 8 of this  
17 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,  
18 Constitution of the State of Alaska.

19 \* **Sec. 11.** Sections 1 - 7 of this Act take effect July 1, 1997.

20 \* **Sec. 12.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).