

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 142**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAVIS, Croft

Introduced: 4/8/97

Referred: Labor and Commerce, Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the sale or transfer of new or used motor vehicles; relating  
2 to the confidentiality of certain information related to attorney general  
3 investigations of unlawful trade practices and antitrust activities; establishing  
4 additional unlawful trade practices; relating to the exemptions 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 45.45 is amended by adding new sections to read:

13 **Article 7A. Disclosures in Motor Vehicle Sales and Transfers.**

14 **Sec. 45.45.450. Disclosure required.** (a) Before the delivery of the vehicle  
 15 to the motor vehicle dealer, a person who manufactures, imports, or distributes new  
 16 motor vehicles and who sells or transfers, in the person's capacity as a manufacturer,  
 17 importer, or distributor of new motor vehicles, a motor vehicle to a motor vehicle  
 18 dealer in this state shall notify the dealer of any material problems with a vehicle that  
 19 are known to, or that can with reasonable diligence be discovered by, the manufacturer,  
 20 importer, or distributor. This section does not apply unless the problem arose after the  
 21 manufacturing process was completed and before delivery of the vehicle to the dealer.

22 (b) Before a contract for the sale of a new or used motor vehicle is entered  
 23 into by the dealer in the dealer's capacity as a motor vehicle dealer, a motor vehicle  
 24 dealer shall disclose to a potential buyer any material problems with the vehicle that  
 25 are known to, or that can with reasonable diligence be discovered by, the dealer.

26 (c) The disclosures required by (a) and (b) of this section must be in writing.

27 **Sec. 45.45.455. Buyer's right to cancel after notice.** If a motor vehicle  
 28 dealer provides the notice required by AS 45.45.450(b) before entering into a contract  
 29 for the sale of a new motor vehicle, the buyer may cancel the purchase order or other  
 30 documentation of intent to enter into a contract to purchase the motor vehicle. If the  
 31 buyer cancels, the motor vehicle dealer shall refund to the buyer the full amount of

1 any deposit or other money paid by the buyer to purchase the motor vehicle.

2 **Sec. 45.45.460. Failure to give notice.** (a) If a motor vehicle dealer fails to  
3 provide the notice required under AS 45.45.450(b) before entering into a contract for  
4 the sale of a new or used motor vehicle, the buyer may obtain from the dealer a refund  
5 of the full amount paid by the buyer toward the purchase price of the vehicle, the  
6 amount allowed by the dealer for any trade-in, and the charges that are related to the  
7 transaction and incurred by the buyer, less the allowances allowed under (b) of this  
8 section and as adjusted by (c) of this section. In this subsection, "charges" includes  
9 license fees, registration fees, and similar governmental charges.

10 (b) The refund allowed under (a) of this section shall be reduced by

11 (1) an allowance for the buyer's use of the vehicle that exceeds 1,000  
12 miles for each month or part of a month that expires after the delivery of the vehicle  
13 to the buyer and before the buyer surrenders the vehicle to the seller to receive the  
14 refund; the allowance under this paragraph shall be calculated by dividing the excess  
15 mileage by 100,000 and multiplying the result by the purchase price; and

16 (2) a reasonable allowance for any damage that is sustained by the  
17 vehicle after the delivery of the vehicle to the buyer and before the buyer surrenders  
18 the vehicle to the seller to receive the refund and that is not attributable to normal  
19 wear on and use of the vehicle.

20 (c) If the buyer modifies the vehicle after delivery of the vehicle to the buyer,  
21 the refund allowed under (a) of this section must be

22 (1) reduced by the value of the modifications that decrease the market  
23 value of the vehicle; and

24 (2) increased by the value of the modifications that increase the market  
25 value of the vehicle.

26 **Sec. 45.45.470. Indemnification and hold harmless requirements.** (a) A  
27 person who manufactures, imports, or distributes new motor vehicles shall indemnify  
28 and hold harmless a motor vehicle dealer that obtains a motor vehicle from the  
29 manufacturer, importer, or distributor from and against any liability, including  
30 reasonable attorney fees, that

31 (1) the motor vehicle dealer has to the person who buys the motor

1 vehicle from the dealer;

2 (2) results from a material problem with the vehicle that the  
3 manufacturer, importer, or distributor knows of or can with reasonable diligence  
4 discover and that arose after the manufacturing process was completed and before  
5 delivery of the vehicle to the dealer; and

6 (3) was not disclosed to the dealer under AS 45.45.450 before delivery  
7 of the vehicle.

8 (b) Notwithstanding AS 45.45.490, in (a) of this section, "material problem"  
9 means a defect or condition that makes the vehicle unsafe to operate or any damage  
10 suffered by the vehicle.

11 **Sec. 45.45.480. Effect of provisions.** (a) Nothing in AS 45.45.450 -  
12 45.45.490 permits a motor vehicle dealer to respond to the inquiry of a buyer in an  
13 untrue or misleading manner.

14 (b) Nothing in AS 45.45.455 or 45.45.460 limits any other right or remedy  
15 available at common law or under other state statutes.

16 **Sec. 45.45.490. Definitions.** In AS 45.45.450 - 45.45.490,

17 (1) "material problem" means a defect or condition that makes the  
18 vehicle unsafe to operate or material damage sustained by the motor vehicle; in this  
19 paragraph, "material damage" means damage

20 (A) that is not repaired, except for normal wear and tear if the  
21 motor vehicle sold or transferred is a used motor vehicle;

22 (B) that is repaired by or on behalf of a person who  
23 manufactures, imports, or distributes new motor vehicles, or by or on behalf of  
24 a motor vehicle dealer, if the repair cost, including parts and labor calculated  
25 at the repairer's retail charge, exceeds \$300, or \$100 when the repair is touch-  
26 up paint applied to correct exterior paint damage; damage to tires, glass,  
27 bumpers, and audio equipment in the dashboard are not included when  
28 determining the cost of the repair if the tires, glass, bumpers, and audio  
29 equipment are replaced by identical manufacturer's original equipment;

30 (C) to a motor vehicle's frame, drive train, or suspension,  
31 regardless of the value of the damage and notwithstanding (A) and (B)

1 of this paragraph;

2 (2) "motor vehicle dealer" means a person who engages in the business  
3 of selling new or used motor vehicles, but does not include a person who  
4 manufactures, imports, or distributes new motor vehicles;

5 (3) "person who manufactures, imports, or distributes new motor  
6 vehicles" means a person who engages in the business of selling or transferring new  
7 motor vehicles to a motor vehicle dealer for resale.

8 \* **Sec. 3.** AS 45.50.471(b) is amended by adding new paragraphs to read:

9 (42) violating AS 45.45.450 - 45.45.490 (motor vehicle sales  
10 disclosures);

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

12 \* **Sec. 4.** AS 45.50.521(b) is amended to read:

13 (b) Subject to the provisions of AS 45.50.501(a), the attorney general may not  
14 make public the name of a person alleged to have committed an act or practice  
15 declared unlawful by AS 45.50.471 - 45.50.561 [IN AS 45.50.471] during **and after**  
16 an investigation conducted by the attorney general under AS 45.50.471 - 45.50.561,  
17 nor are the records of investigation or intelligence information of the attorney general  
18 obtained **or created in the course of the investigation** under AS 45.50.471 -  
19 45.50.561 considered public records available for inspection **or copying under**  
20 **AS 09.25.110 - 09.25.220** by the general public **at any time during or after the**  
21 **investigation**. However, the attorney general is not prevented from issuing public  
22 statements describing or warning of a course of conduct or a conspiracy that  
23 constitutes or will constitute an unlawful act or practice, whether on a local, state,  
24 regional, or national basis.

25 \* **Sec. 5.** AS 45.50.594 is amended by adding a new subsection to read:

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

29 \* **Sec. 6.** AS 45.50 is amended by adding a new section to read:

30 **Sec. 45.50.595. Confidentiality of investigatory records.** Investigation  
31 records obtained or created by the attorney general in the course of an investigation

1 under AS 45.50.562 - 45.50.596 are not considered public records available for  
2 inspection or copying under AS 09.25.110 - 09.25.220 by the public at any time during  
3 or after the investigation. However, the attorney general may issue public statements  
4 describing or warning of a course of conduct or a conspiracy that constitutes or will  
5 constitute a violation of AS 45.50.562 - 45.50.596, whether on a local, state, regional,  
6 or national basis.

7 \* **Sec. 7.** AS 45.63.080(14) is repealed and reenacted to read:

8 (14) of property from a mail order catalog, if the person making the  
9 solicitation does not initiate contact with prospective customers by telephonic means,  
10 if contact by telephonic means is initiated by the prospective customer in response to  
11 the catalog, and if during the contact the person making the solicitation does not make  
12 a further solicitation; in this paragraph,

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

17 (B) "mail order catalog" means a publication that  
18 (i) is published one or more times a year;  
19 (ii) is delivered to prospective customers;  
20 (iii) describes or pictures the products, equipment, or  
21 supplies for sale and prominently provides the specific price of each;  
22 (iv) includes the business name, address, and telephone  
23 number of the person who owns and produces the publication;  
24 (v) includes instructions to prospective buyers on how  
25 to order products from the publication;  
26 (vi) includes 10 or more pages of written material and  
27 illustrations;  
28 (vii) is distributed in this state; and  
29 (viii) has an annual mail circulation of 10,000 or more  
30 copies.

31 \* **Sec. 8.** AS 45 is amended by adding a new chapter to read:

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

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

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

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

10                                  (2) the bond required by AS 45.66.050;

11                                  (3) an irrevocable consent appointing the department as the seller's  
12 agent for the receipt of service of process in a court action or other proceeding against  
13 the seller, or the successor in interest of the seller, for a violation of AS 45.66.010 -  
14 45.66.400;

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

16                                  (5) a signed statement that the seller has read and will comply with  
17 AS 45.66.010 - 45.66.400 and the regulations adopted under it; and

18                                  (6) other information requested by the department to evaluate whether  
19 the applicant meets the requirements of AS 45.66.010 - 45.66.400.

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

22                                   (1) the nature of the solicitation campaign;

23                                   (2) the identity and business practices of the seller, including  
24 information on the owners, employees, agents, officers, and other persons affiliated  
25 with the seller; and

26                                   (3) disclosures of criminal convictions, civil judgments, orders, consent  
27 decrees, or administrative determinations involving allegations of fraud, theft,  
28 embezzlement, fraudulent conversion, misappropriation of property, the use of untrue  
29 or misleading representations in an attempt to sell or dispose of real or personal  
30 property, violations of AS 45.66.010 - 45.66.400, violations of AS 45.63 (telephonic  
31 solicitations), violations of AS 45.68 (charitable solicitations), or unfair or deceptive

1 business practices under AS 45.50.471 - 45.50.561, by the seller, including the  
2 owners, employees, agents, officers, and other persons affiliated with the seller.

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

6 **Sec. 45.66.030. Renewal of registration.** If a solicitation campaign continues  
7 for more than one year from the date of department's acknowledgment of the initial  
8 registration under AS 45.66.010 - 45.66.400, a seller shall renew the registration each  
9 year that the solicitation campaign continues by filing before or on the anniversary date  
10 of the department's acknowledgment under AS 45.66.020(c) a renewal application on  
11 a form established by the department by regulation requesting information that is  
12 similar to the information required under AS 45.66.020.

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

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

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

24 **Sec. 45.66.060. Location of offer and sale.** AS 45.66.010 - 45.66.400 apply  
25 to a sale of or offer to sell a business opportunity if

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

30 (A) appears in a bona fide newspaper or other publication of  
31 general circulation that is not published in this state or that is published in this

1 state but more than two-thirds of its circulation was outside this state during  
2 the 12 months preceding the offer; or

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

5 (2) the acceptance

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

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

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

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

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

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

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

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

29 (3) the business history of the seller and the seller's representatives and  
30 the background of the seller and the seller's representatives that relates to business  
31 opportunities;

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

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

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

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

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

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

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

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

20 (12) the rights and obligations of the seller and buyer regarding  
21 termination of the contract, including the rights arising out of the bond required by  
22 AS 45.66.050; and

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

26 **Sec. 45.66.080. Written contract required.** (a) In addition to the other  
27 requirements of AS 45.66.010 - 45.66.400, a person may not contract to sell a business  
28 opportunity unless the contract is in writing and the seller gives a copy of the contract  
29 to the buyer when the buyer signs the contract.

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

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

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

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

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

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

11 (6) a complete description of any representation made by the seller that  
12 implies in any manner that the buyer's initial payment is protected from loss, including  
13 a representation that the seller

14 (A) may repurchase either all or a part of what the seller is  
15 selling to the buyer;

16 (B) may at some future time pay the buyer the difference  
17 between the initial payment and the amount that has been earned under the  
18 business opportunity;

19 (C) may in the ordinary course of business buy from the buyer  
20 items made, produced, fabricated, grown, bred, modified, or developed by the  
21 buyer using all or part of the products, equipment, supplies, or services that  
22 were initially sold or leased to the buyer by the seller; or

23 (D) or a person to whom the seller will refer the buyer, may in  
24 the ordinary course of business sell, lease, or distribute the items the buyer has  
25 for sale or lease.

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

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

30 **Sec. 45.66.090. Restrictions on down payments.** (a) A seller may not  
31 require a buyer to pay as a down payment more than 20 percent of the initial payment

1 unless the excess above the 20 percent is placed in an escrow account that meets the  
2 requirements of AS 45.66.100.

3 (b) In this section, "down payment" means that portion of the initial payment  
4 that the buyer is obligated to pay to the seller before or at the time the products,  
5 equipment, supplies, or services are delivered, but does not include any amount that  
6 is financed by or for which financing is to be obtained by the seller or that results  
7 from financing that the seller assists the buyer to obtain.

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

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

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

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

17 (3) the escrow account number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **Sec. 45.66.130. Prohibited representations.** (a) The seller may not state that

1 the seller is registered under AS 45.66.010 - 45.66.400 unless the seller has complied  
2 with the registration requirements of AS 45.66.010 - 45.66.400.

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

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

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

11 **Sec. 45.66.140. Untrue statements or omissions.** A person may not, in  
12 connection with a sale of or offer to sell a business opportunity subject to registration  
13 under AS 45.66.010 - 45.66.400, directly or indirectly make an untrue statement of  
14 material fact in the registration information required under AS 45.66.020 - 45.66.040  
15 or in other written or oral communications, including the disclosure required under  
16 AS 45.66.070 and advertising, related to the sale or offer, or omit to state a material  
17 fact necessary, in light of the circumstances under which it is made, to avoid a  
18 statement being misleading.

19 **Sec. 45.66.150. Unwarranted conclusions.** (a) Acknowledgment of  
20 registration by the department under AS 45.66.030 does not constitute a finding by  
21 the department that a document filed with the department under AS 45.66.010 -  
22 45.66.400 is true, complete, or not misleading.

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

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

29 **Sec. 45.66.160. Waiver prohibited and void.** A seller may not request or  
30 obtain from a buyer a waiver of the rights or defenses of the buyer under  
31 AS 45.66.010 - 45.66.400. A waiver of the rights or defenses of the buyer under

1 AS 45.66.010 - 45.66.400 is void.

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

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

7 **Sec. 45.66.180. Public records.** Except for testimony and records related to  
8 an investigation by the department under AS 45.66.010 - 45.66.400, the registration  
9 application form, registration renewal form, disclosure statement, bond, contract, and  
10 other documents required to be prepared or filed with the department under  
11 AS 45.66.010 - 45.66.400, including a document created or obtained by the department  
12 under AS 45.66.190, are public records available for public inspection and copying  
13 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 AS 45.66.010 - 45.66.400 or the  
21 regulations adopted under AS 45.66.010 - 45.66.400;

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 AS 45.66.010 - 45.66.400,  
9 violations of AS 45.63 (telephonic solicitations), violations of AS 45.68  
10 (charitable solicitations), or an unfair trade practice prohibited by  
11 AS 45.50.471 - 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 AS 45.66.010 - 45.66.400;

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.** AS 45.66.010 - 45.66.400 do not apply to a sale  
9 or offer 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, including a nonprofit sale;

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) by an executor, an administrator, a marshal, a receiver, a trustee in  
19 bankruptcy, or a guardian or conservator, or under a judicial sale;

20           (6) a security regulated under AS 45.55 or a security that is exempted  
21 by AS 45.55.900 from regulation under AS 45.55;

22           (7) if the sale or offer is by a person registered with the United States  
23 Securities and Exchange Commission when acting within the scope of the person's  
24 Securities and Exchange Commission license;

25           (8) a business opportunity where the buyer is

26           (A) a bank, savings and loan association, trust company,  
27 insurance company, credit union, or investment company under 15 U.S.C. 80a-  
28 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,  
29 or other financial institution or institutional buyer; or

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

1 (9) a business opportunity that involves a marketing plan made in  
2 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051  
3 - 1127 (Lanham Act) if the seller has a minimum net worth of \$1,000,000 as  
4 determined on the basis of the seller's most recent audited financial statement prepared  
5 within 13 months of the first offer to sell in this state; net worth may be determined  
6 on a consolidated basis if one person owns at least 80 percent of the seller and that  
7 one person expressly guarantees the obligations of the seller that arise under the sale  
8 or offer claimed to be exempt under this paragraph; or

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

12 **Sec. 45.66.220. Coordination with other laws.** (a) The rights and remedies  
13 in AS 45.66.010 - 45.66.400 are in addition to other legal rights and remedies available  
14 to a buyer or the department.

15 (b) To the extent of the conflict, the provisions of AS 45.66.010 - 45.66.400  
16 govern if a sale or offer to sell a business opportunity is regulated by AS 45.66.010 -  
17 45.66.400 and by AS 45.63 (telephonic solicitations), by AS 45.01 - AS 45.09,  
18 AS 45.12 and AS 45.14 (Uniform Commercial Code), or by another law, and it is not  
19 possible to comply with or to apply both AS 45.66.010 - 45.66.400 and the other law.

20 **Sec. 45.66.230. Regulations.** The department may adopt regulations under  
21 AS 44.62 (Administrative Procedure Act) to implement or interpret AS 45.66.010 -  
22 45.66.400.

23 **Sec. 45.66.400. Definitions.** In AS 45.66.010 - 45.66.400, unless the context  
24 indicates otherwise,

25 (1) "advertising" means a circular, prospectus, advertisement, or other  
26 material or a communication by radio, television, pictures, telephone, facsimile  
27 machine, electronic communication between electronic computing devices, or similar  
28 means used in connection with a sale of or offer to sell a business opportunity;

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

1 in which the seller

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

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

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

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

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

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

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

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

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

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

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

31 (7) "initial payment" means the total amount a buyer is obligated to pay

1 under the terms of the contract before or at the time the equipment, supplies, products,  
2 or services are delivered or within six months of the buyer commencing operation of  
3 the business opportunity, except that, if the contract sets out a specific total sale price  
4 for the purchase of the business opportunity and the total price is to be paid partially  
5 as a down payment and then in specific monthly payments or a subsequent lump sum  
6 payment, "initial payment" means the entire total sale price; "initial payment" does not  
7 include the amount paid for a nonprofit sale;

8 (8) "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 (9) "nonprofit sale" means a sale of items that are sales demonstration  
12 equipment, materials, or samples to be used for making sales and not for resale if the  
13 total price for the items is less than \$200 and the seller does not make a profit on the  
14 sale;

15 (10) "offer" or "offer to sell" means an attempt to sell or otherwise  
16 dispose of a business opportunity for value;

17 (11) "product" includes a tangible chattel, including food or living  
18 animals, that the buyer intends to

19 (A) sell or lease;

20 (B) use to perform a service;

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

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

26 (12) "recklessly" has the meaning given in AS 11.81.900;

27 (13) "sale" means a contract to sell, lease, or otherwise dispose of a  
28 business opportunity or an interest in a business opportunity for value;

29 (14) "sell" means to sell, lease, or otherwise dispose of a business  
30 opportunity or an interest in a business opportunity for value;

31 (15) "seller" means a person, or the person's agent, who sells, leases,

1 offers to sell, offers to lease, or otherwise disposes of a business opportunity;

2 (16) "services" includes assistance, guidance, direction, work, labor, or  
3 other act that may be provided by the seller in the initiation or maintenance of a  
4 business;

5 (17) "solicitation campaign" means the sale of, or the offer to sell, a  
6 business opportunity;

7 (18) "supplies" includes materials used to produce, grow, breed,  
8 fabricate, modify, develop, or make a product or other item.

9 \* **Sec. 9.** AS 45.63.080(3) is repealed.

10 \* **Sec. 10.** COURT RULES. AS 45.66.110(b), enacted by sec. 8 of this Act, changes

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

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

17 \* **Sec. 11.** REGULATIONS. The Department of Law may proceed to adopt regulations  
18 that it has authority to adopt for or under secs. 1 - 8 of this Act. The regulations take effect  
19 under AS 44.62 (Administrative Procedure Act), but not before the effective dates of secs. 1 -  
20 8 of this Act.

21 \* **Sec. 12.** AS 45.66.110(b), enacted by sec. 8 of this Act, takes effect only if sec. 10 of  
22 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,  
23 Constitution of the State of Alaska.

24 \* **Sec. 13.** Sections 1 - 10 of this Act take effect July 1, 1997.

25 \* **Sec. 14.** Section 11 of this Act takes effect immediately under AS 01.10.070(c).