

CS FOR HOUSE BILL NO. 393(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/8/02

Referred: Finance

Sponsor(s): REPRESENTATIVE STEVENS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to unfair and deceptive trade practices and to the sale of business**
2 **opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and**
3 **providing for an effective date."**

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

5 *** Section 1.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

6 (AAA) receipts of fees for registration and renewal of
7 registration for the sale of business opportunities under AS 45.66.040.

8 *** Sec. 2.** AS 45.50.471(b) is amended by adding a new paragraph to read:

9 (43) violating AS 45.66 (sale of business opportunities).

10 *** Sec. 3.** AS 45 is amended by adding a new chapter to read:

11 **Chapter 66. Sale of Business Opportunities.**

12 **Sec. 45.66.010. Registration required.** A person may not sell or offer to sell
13 a business opportunity unless the person is registered as a seller with the department at
14 least 30 days before the sale or offer to sell begins and has paid the fee required by

1 AS 45.66.040.

2 **Sec. 45.66.020. Registration procedure.** (a) To register under
3 AS 45.66.010, a person shall file with the department

4 (1) the disclosure statement required by AS 45.66.080 and any
5 advertising, pamphlets, brochures, or other materials to be used in the offering or
6 promoting of the business opportunity;

7 (2) the bond required by AS 45.66.060;

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

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

12 (5) a signed statement that the person has read and will comply with
13 this chapter and the regulations adopted under it;

14 (6) the fee required by AS 45.66.040; and

15 (7) other information requested by the department to evaluate whether
16 the person meets the requirements of this chapter.

17 (b) The department shall establish by regulation, the application forms for
18 registrations under this chapter. The application forms must require the submission of
19 the following information:

20 (1) the nature of the business opportunity and the method by which it
21 will be offered, advertised, or promoted;

22 (2) the identity and business practices of the person who will be the
23 seller, including information on a related person; and

24 (3) a disclosure of criminal convictions, civil judgments, orders,
25 consent decrees, and administrative determinations involving allegations of

26 (A) fraud, theft, embezzlement, fraudulent conversion,
27 misappropriation of property, the use of untrue or misleading representations in
28 an attempt to sell or dispose of real or personal property, violations of this
29 chapter, violations of AS 45.63 (telephonic solicitations), violations of
30 AS 45.68 (charitable solicitations), or unfair or deceptive business practices
31 under AS 45.50.471 - 45.50.561, or a substantially similar law of another

1 jurisdiction, by the person who will be the seller or by a related person; or

2 (B) a violation of securities or investment laws by the person
3 who will be the seller or by a related person.

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

8 (d) In this section, "related person" means an owner, employee, agent, or
9 officer of the business opportunity being sold, or a person affiliated with the person
10 who will be the seller of the business opportunity.

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

18 **Sec. 45.66.040. Registration and renewal fees.** (a) As part of the
19 registration procedure set out in AS 45.66.020(a), a person shall pay a nonrefundable
20 registration fee to the department. With a renewal application, the seller shall pay a
21 nonrefundable renewal fee. The department shall establish the amount of the
22 registration fee and the renewal fee by regulation.

23 (b) Under AS 37.05.146(b), registration and renewal fees collected under this
24 chapter shall be accounted for separately, and appropriations from the account are not
25 made from the unrestricted general fund.

26 **Sec. 45.66.050. Material changes in registration information.** If there is a
27 material change in the information provided under AS 45.66.020 or 45.66.030, the
28 seller shall, within 10 days after the change, file with the department a statement
29 describing the change on a form established by the department by regulation.

30 **Sec. 45.66.060. Surety bond required.** (a) A person registering as a seller
31 shall obtain a surety bond in the amount of \$75,000 issued by a surety company

1 authorized to do business in the state. The bond must be in favor of the state for the
 2 benefit of a buyer and must satisfy the conditions established by the department by
 3 regulation.

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

7 **Sec. 45.66.070. Location of offer and sale.** This chapter applies to a sale of,
 8 or an offer to sell, a business opportunity if

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

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

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

19 (2) the acceptance

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

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

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

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

29 **Sec. 45.66.080. Disclosure requirements.** (a) At least 10 days before a
 30 buyer signs the contract required by AS 45.66.090, or at least 10 days before receipt of
 31 any consideration by the seller, whichever event occurs first, the seller shall give the

1 buyer the written disclosure statement described in (b) of this section, require the
2 buyer to sign a receipt containing the buyer's name and the date on which the buyer
3 received the disclosure statement, and give the buyer the original receipt with the
4 buyer's original signature. The seller shall retain a copy of the receipt.

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

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

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

12 (3) the business history of the seller and the seller's representatives and
13 the background of the seller and the seller's representatives that relates to business
14 opportunities;

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

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

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

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

23 (8) a history of civil actions, criminal actions, and consumer protection
24 complaints as described in AS 45.66.020(b)(3) brought against the seller or the seller's
25 representatives related to the sale of business opportunities and the resolution of the
26 actions and complaints in this state or another jurisdiction;

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

29 (10) if the seller makes a statement about potential earnings that can be
30 made through a business opportunity, the basis for the statement and the economic
31 risks associated with the business opportunity;

1 (11) the rights and obligations of the seller and buyer regarding
 2 termination of the contract, including the rights arising out of the bond required by
 3 AS 45.66.060; and

4 (12) any additional information that the department determines by
 5 regulation is reasonable and in the public interest for the seller to provide in order to
 6 make a complete disclosure concerning the contract.

7 **Sec. 45.66.090. Written contract required.** (a) In addition to the other
 8 requirements of this chapter, a person may not contract to sell a business opportunity
 9 unless the contract is in writing and the seller gives a copy of the contract to the buyer
 10 when the buyer signs the contract.

11 (b) The department shall establish by regulation the content and format of the
 12 information that must be contained in the contract. At a minimum, the contract must
 13 contain

14 (1) the payment terms, including any escrow account required under
 15 AS 45.66.100;

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

19 (3) a statement of the form of the seller's business organization;

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

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

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

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

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

31 **Sec. 45.66.100. Restrictions on down payments.** (a) A seller may not

1 require a buyer to pay as a down payment more than 20 percent of the initial payment
 2 unless the excess above the 20 percent is placed in an escrow account that meets the
 3 requirements of AS 45.66.110.

4 (b) In this section,

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

10 (2) "initial payment" means

11 (A) the total amount that a buyer is obligated to pay under the
 12 terms of the contract before or at the time the equipment, supplies, products, or
 13 services are delivered or within six months after the buyer commences
 14 operation of the business opportunity; or

15 (B) the entire sale price if the contract sets out a specific total
 16 sale price for the purchase of the business opportunity and the total price is to
 17 be paid partially as a down payment and then in specific monthly payments or
 18 a subsequent lump sum payment.

19 **Sec. 45.66.110. Escrow account requirements.** (a) The holder of an escrow
 20 account required by AS 45.66.100 must be a person who is independent from the
 21 seller, and the escrow account holder may not make direct disbursements from the
 22 escrow account except as provided in (c) and (d) of this section.

23 (b) A seller who establishes an escrow account required by AS 45.66.100 shall
 24 provide to the escrow account holder a copy of the signed contract between the buyer
 25 and the seller. The seller shall promptly report to the department the following
 26 information:

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

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

30 (3) the escrow account number.

31 (c) Except as provided in (d) of this section or under AS 45.66.120, money

1 placed in an escrow account required by AS 45.66.100 may not be released until 30
2 days have passed since the buyer signed the contract and the buyer notifies the escrow
3 account holder in writing that the products, equipment, supplies, or services required
4 by the contract have been delivered within the time set in the contract between the
5 buyer and seller. The buyer shall notify the escrow account holder of a timely
6 delivery within 10 business days after delivery.

7 (d) Upon notification by the buyer that the contract has been cancelled under
8 AS 45.66.130, the escrow account holder shall release the money held in the escrow
9 account to the buyer.

10 **Sec. 45.66.120. Actions for claims against escrow account.** (a) A buyer
11 who has a claim against an escrow account required by AS 45.66.100 may bring a
12 civil action against the seller or escrow account holder to recover money from the
13 escrow account.

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

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

21 (d) The escrow account holder is not liable for the amount by which claims or
22 damages caused by the seller exceed the amount of the escrow account.

23 **Sec. 45.66.130. Cancellation of contract.** (a) A buyer may cancel a contract
24 for any reason if the buyer gives notice of the cancellation to the seller within 30 days
25 after signing the contract.

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

28 (1) failed to comply with AS 45.66.080 or 45.66.090;

29 (2) used untrue, misleading, incomplete, or deceptive statements in any
30 aspect of advertising, promoting, selling, or offering to sell a business opportunity;

31 (3) fails, within 30 days after the delivery date specified in the

1 contract, to deliver the products, equipment, supplies, or services required under the
 2 contract to begin substantial operation of the business to be started under the contract;
 3 or

4 (4) fails to provide a location for the business to be started under the
 5 contract if the contract requires the seller to provide a location.

6 (c) If provided by mail, the buyer's notice of cancellation is effective when it
 7 is deposited in the mail properly addressed to the seller with postage prepaid.

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

11 (e) Within 15 days after the date the buyer gives a notice of cancellation under
 12 this section, the seller shall refund to the buyer any payments, including payments for
 13 shipping costs, made by the buyer and terminate all financial obligations of the buyer
 14 under the contract. Within five days after receiving the refund, the buyer shall make
 15 available to the seller, at a reasonable time and place, any products, equipment, or
 16 supplies delivered by the seller.

17 **Sec. 45.66.140. Prohibited representations.** (a) A person may not state that
 18 the person is registered as a seller under this chapter unless the person has complied
 19 with the registration or renewal requirements, as applicable, of this chapter.

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

23 (c) A seller may not make, or cause to be made, a representation that is
 24 inconsistent with AS 45.66.160.

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

28 **Sec. 45.66.150. Untrue statements or omissions.** A person may not, in
 29 connection with a sale of or an offer to sell a business opportunity subject to
 30 registration under this chapter, directly or indirectly make an untrue statement of
 31 material fact in the registration information required in or under AS 45.66.020 -

1 45.66.050 or in other written or oral communications, including the disclosure
2 required by AS 45.66.080 and in advertising related to the sale or offer, or omit to
3 state a material fact necessary, in light of the circumstances under which it is made, to
4 avoid a statement being misleading.

5 **Sec. 45.66.160. Unwarranted conclusions.** (a) Acknowledgment of
6 registration by the department under AS 45.66.020(c) does not constitute a finding by
7 the department that a document filed with the department under this chapter is true,
8 complete, or not misleading.

9 (b) Acknowledgment of registration by the department under AS 45.66.020(c)
10 does not mean that the department has evaluated the merits or qualifications of the
11 seller or business opportunity, or that the department recommends or approves a seller
12 or the business opportunity.

13 (c) Availability of an exemption under AS 45.66.220 for a seller does not
14 mean that the department recommends or approves the seller or the business
15 opportunity.

16 **Sec. 45.66.170. Waiver prohibited and void.** A seller may not request or
17 obtain from a buyer a waiver of the rights or defenses of the buyer under this chapter.
18 A waiver of the rights or defenses of the buyer under this chapter is void.

19 **Sec. 45.66.180. Seller's records and files.** (a) A seller shall maintain a
20 complete set of records relating to the advertising and promotion of the seller's
21 business opportunity for five years and allow the department to inspect and copy them
22 during reasonable business hours.

23 (b) A seller shall keep all documents relating to a contract entered into by the
24 seller for five years after the date the contract is entered into.

25 **Sec. 45.66.190. Public records.** Except for testimony and records related to
26 an investigation by the department under this chapter, the registration application
27 form, registration renewal form, disclosure statement, bond, contract, and other
28 documents required to be prepared or filed with the department under this chapter,
29 including a document created or obtained by the department under AS 45.66.200, are
30 public records available for public inspection and copying under AS 40.25.110 -
31 40.25.220.

Sec. 45.66.200. Denial, suspension, or revocation of registration. (a)

Subject to the other requirements of this section and after reviewing a response submitted by the person under (b) of this section, the department may issue an order denying, suspending, or revoking a registration or renewal of a registration made by a person under AS 45.66.010 - 45.66.030, or prohibiting a person from selling or offering to sell business opportunities, if the department finds that

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

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

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

(4) the person failed to file a document, information, fee, or bond required by AS 45.66.010 - 45.66.060;

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

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

(A) has been convicted of

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

(ii) violations under this chapter, violations of AS 45.63 (telephonic solicitations), violations of AS 45.68 (charitable solicitations), or an unfair trade practice prohibited by AS 45.50.471 - 45.50.561, or a substantially similar law of another jurisdiction; or

(iii) a violation of securities or investment laws;

(B) is subject to a final order or judgment against the person in

1 a civil or administrative action, including a stipulated order or judgment, if the
2 complaint or petition in the action alleged acts constituting

3 (i) a violation of this chapter or a substantially similar
4 law of another jurisdiction;

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

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

9 (iv) the use of unfair trade practices under
10 AS 45.50.471 - 45.50.561 or a substantially similar law of another
11 jurisdiction;

12 (v) a violation of AS 45.63 or AS 45.68, or a
13 substantially similar law of another jurisdiction; or

14 (vi) a violation of securities or investment laws;

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

18 (b) Before issuing an order to a person under (a) of this section, the
19 department shall send by certified mail to the address set out in the person's
20 registration or renewal of registration a notice of intent to issue the order. In the
21 notice, the department shall provide the facts supporting the denial, suspension, or
22 revocation of the registration or renewal of the registration. The person may respond
23 to the notice by submitting a statement signed under penalty of perjury by the person
24 or by an owner or officer of the person.

25 **Sec. 45.66.210. Criminal penalties.** (a) A seller who recklessly violates
26 AS 45.66.010 - 45.66.060, 45.66.080 - 45.66.110, or 45.66.150 is guilty of a class C
27 felony.

28 (b) A seller who recklessly violates AS 45.66.130(e), 45.66.140, or 45.66.170
29 is guilty of a class A misdemeanor.

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

1 (d) In this section, "recklessly" has the meaning given in AS 11.81.900.

2 **Sec. 45.66.220. Exemptions.** This chapter does not apply to a sale of or an
3 offer to sell

4 (1) a business opportunity if the total amount of the payments to be
5 made by the buyer under the contract is less than \$250;

6 (2) a franchise under 16 C.F.R. 436;

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

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

12 (5) sales demonstration equipment, materials, or samples for use in
13 sales demonstrations and not for resale, or product inventory sold to the buyer at a
14 bona fide wholesale price;

15 (6) a business opportunity by an executor, an administrator, a marshal,
16 a receiver, a trustee in bankruptcy, or a guardian or conservator, or under a judicial
17 sale;

18 (7) a security registered under AS 45.55 or a security that is exempted
19 by AS 45.55.900 from registration under AS 45.55;

20 (8) a business opportunity if the sale or offer is made by a person
21 registered with the United States Securities and Exchange Commission when acting
22 within the scope of the person's Securities and Exchange Commission license or by a
23 person registered by the state under AS 45.55 when acting within the scope of
24 registration;

25 (9) a business opportunity by an issuer, or a subsidiary of an issuer, of
26 a class of securities that is

27 (A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of
28 1934); and

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

1 (10) a business opportunity in which the buyer is

2 (A) a bank, savings and loan association, trust company,
3 insurance company, credit union, or investment company under 15 U.S.C. 80a-
4 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,
5 or other financial institution or institutional buyer; or

6 (B) a broker-dealer registered under AS 45.55;

7 (11) a business opportunity that involves a marketing plan made in
8 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051
9 - 1127 (Trademark Act of 1946) if the seller has a minimum net worth of \$1,000,000
10 as determined on the basis of the seller's most recent audited financial statement
11 prepared within 13 months of the first offer to sell in this state; net worth may be
12 determined on a consolidated basis if one person owns at least 80 percent of the seller
13 and that one person expressly guarantees the obligations of the seller that arise under
14 the sale or offer claimed to be exempt under this paragraph; or

15 (12) a business opportunity in which either the seller or the buyer is
16 licensed as a real estate broker, associate real estate broker, or real estate salesperson
17 under AS 08.88 and the sale or offer is regulated by AS 08.88.

18 **Sec. 45.66.230. Coordination with other laws.** (a) The rights and remedies
19 in this chapter are in addition to other legal rights and remedies available to a buyer or
20 the department.

21 (b) To the extent of the conflict, the provisions of this chapter govern if a sale
22 or an offer to sell a business opportunity is regulated by this chapter and by AS 45.63
23 (telephonic solicitations), by AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29
24 (Uniform Commercial Code), or by another law, and it is not possible to comply with
25 or to apply both this chapter and the other law.

26 **Sec. 45.66.240. Regulations.** The department may adopt regulations under
27 AS 44.62 (Administrative Procedure Act) to carry out the purposes of this chapter.

28 **Sec. 45.66.900. Definitions.** In this chapter, unless the context indicates
29 otherwise,

30 (1) "advertising" means a circular, a prospectus, an advertisement, or
31 other material or a communication by radio, television, pictures, or similar means used

1 in connection with a sale of or an offer to sell a business opportunity;

2 (2) "business opportunity" means an arrangement under which the
3 seller or a person recommended by the seller will provide to the buyer products,
4 equipment, supplies, or services enabling the buyer to start a business and under which
5 one or more of the following occurs or is to occur:

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

10 (B) the seller or a person recommended by the seller will
11 provide or assist the buyer in finding outlets or accounts for the buyer's
12 products or services;

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

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

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

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

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

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

- 1 (4) "contract" means an agreement relating to a business opportunity;
- 2 (5) "department" means the Department of Law;
- 3 (6) "equipment" includes machines, electrical devices, video or audio
4 devices, computer devices, molds, display racks, vending machines, coin-operated
5 game machines, machines that dispense products, and display units of all kinds;
- 6 (7) "marketing plan" means advice or training provided to the buyer by
7 the seller or a person recommended by the seller pertaining to the sale of products,
8 equipment, supplies, or services;
- 9 (8) "offer" or "offer to sell" means an attempt to sell a business
10 opportunity;
- 11 (9) "product" includes a tangible chattel, including food or living
12 animals, that the buyer intends to
- 13 (A) sell or lease;
- 14 (B) use to perform a service;
- 15 (C) resell or offer to resell to the seller; or
- 16 (D) provide or offer to provide to the seller, or to another
17 person whom the seller suggests the buyer contact, so that the seller or the
18 other person may assist the buyer, either directly or indirectly, to distribute,
19 sell, lease, or otherwise dispose of a product;
- 20 (10) "sale," regarding the sale of a business opportunity, means a
21 contract to sell, lease, or otherwise dispose of the business opportunity or an interest in
22 the business opportunity for value;
- 23 (11) "securities or investment laws" means AS 45.55 (Alaska
24 Securities Act) or a substantially similar statute of another jurisdiction, 15 U.S.C. 77a -
25 77b (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78ll (Securities Exchange
26 Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of
27 1940/Investment Advisers Act of 1940);
- 28 (12) "sell," regarding the selling of a business opportunity, means to
29 sell, lease, or otherwise dispose of the business opportunity or an interest in the
30 business opportunity for value;
- 31 (13) "seller" means a person, or the person's agent, who sells or offers

1 to sell a business opportunity;

2 (14) "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 (15) "supplies" includes materials used to produce, grow, breed,
6 fabricate, modify, develop, or make a product or other item.

7 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **INDIRECT COURT RULE AMENDMENTS.** The provisions of AS 45.66.120(b),
10 enacted by sec. 3 of this Act, have the effect of changing

11 (1) Rule 4, Alaska Rules of Civil Procedure, by requiring the clerk of the court
12 to mail a copy of the complaint to the attorney general when an action is filed under
13 AS 45.66.120, enacted by sec. 3 of this Act; and

14 (2) Rule 73, Alaska Rules of Civil Procedure, by requiring the clerk of the
15 court to mail a copy of an order or judgment in an action under AS 45.66.120, enacted by
16 sec. 3 of this Act, to the attorney general.

17 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 **TRANSITION: REGISTRATION REGARDING EXISTING ACTIVITIES.** (a)
20 Notwithstanding the registration requirements of AS 45.66.010 - 45.66.900, enacted by sec. 3
21 of this Act, a person who, on the day before the effective date of sec. 3 of this Act, is selling
22 or offering to sell a business opportunity may continue to sell or offer to sell a business
23 opportunity until the 45th day after the effective date of sec. 3 of this Act without being
24 registered as a seller under AS 45.66.010, enacted by sec. 3 of this Act. Beginning on the
25 46th day after the effective date of sec. 3 of this Act, a person described in this subsection
26 shall be registered as a seller under AS 45.66.010 in order to continue selling or offering to
27 sell a business opportunity.

28 (b) In this section,

29 (1) "business opportunity" has the meaning given in AS 45.66.900, enacted by
30 sec. 3 of this Act;

31 (2) "offer to sell" has the meaning given in AS 45.66.900, enacted by sec. 3 of

1 this Act;

2 (3) "sell" has the meaning given in AS 45.66.900, enacted by sec. 3 of this
3 Act;

4 (4) "seller" has the meaning given in AS 45.66.900, enacted by sec. 3 of this
5 Act.

6 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 **TRANSITION: REGULATIONS.** The Department of Law may proceed to adopt
9 regulations to implement AS 45.66.010 - 45.66.900, enacted by sec. 3 of this Act. The
10 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
11 effective date of sec. 3 of this Act.

12 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **CONDITIONAL EFFECT.** AS 45.66.120(b), enacted by sec. 3 of this Act, takes
15 effect only if sec. 4 of this Act receives the two-thirds majority vote of each house required by
16 art. IV, sec. 15, Constitution of the State of Alaska.

17 * **Sec. 8.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

18 * **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2002.