

Introduced: 1/27/86
Referred: Judiciary

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

SENATE BILL NO. 363

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to Motion Picture Fair Competition."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is

9 (1) to establish fair and open procedures for bidding and
10 negotiation for the right to exhibit motion pictures in the state in order
11 to prevent unfair and deceptive acts or practices and unreasonable
12 restraints of trade in the business of motion picture distribution and
13 exhibition within the state;

14 (2) to promote fair and effective competition in that business;

15 (3) to prevent the award of motion picture licenses on other
16 than an individual, picture-by-picture, theatre-by-theatre basis;

17 (4) to promote the survival of small, independent exhibitors;

18 and

19 (5) to ensure that an exhibitor has the opportunity to view a
20 motion picture and know its contents before deciding to exhibit the motion
21 picture in the community.

22 * Sec. 2. AS 45 is amended by adding a new chapter to read:

23 CHAPTER 51. EXHIBITION OF MOTION PICTURES.

24 Sec. 45.51.010. PROHIBITED AND REQUIRED PRACTICES. (a) The
25 buying or selling of the right to exhibit a motion picture by blind
26 bidding or blind selling is prohibited in the state.

27 (b) Bids may not be returnable, negotiations for the licensing
28 or exhibition of a motion picture may not take place and a license
29 agreement and its terms may not be agreed upon for the exhibition of a

1 motion picture in the state before the motion picture has been trade
2 screened.

3 (c) A distributor shall provide reasonable and uniform written
4 notice to each exhibitor in the state at least 72 hours before a trade
5 screening.

6 Sec. 45.51.020. SOLICITATION OF BIDS. (a) When a bid is solici-
7 ited from exhibitors for the right to exhibit a motion picture in the
8 state,

9 (1) the invitation to bid shall specify

10 (A) whether the bid being solicited is a first, sec-
11 ond, or subsequent run;

12 (B) whether the run is an exclusive or nonexclusive
13 run and the geographic area for the run;

14 (C) the name of each exhibitor who is being solicited;

15 (D) the date and hour the invitation to bid expires;

16 and

17 (E) the time, date, and the address in the largest
18 city in the state where the bids will be opened;

19 (2) all bids shall be submitted in writing and shall be
20 opened at the same time and in the presence of the exhibitors who
21 submitted bids or their agents who attend the bid opening;

22 (3) immediately upon being opened, the bids shall be ex-
23 amined by the exhibitors who submitted bids or their agents who attend
24 the bid opening;

25 (4) within 10 business days after the bids are opened, the
26 distributor shall advise each exhibitor who submitted a bid

27 (A) of the name of the winning bidder; or

28 (B) that each bid submitted was unacceptable.

29 (b) Once bids are solicited under (a) of this section, the

1 distributor may license the motion picture only by bidding and may
2 solicit rebids only if each bid is unacceptable.

3 (c) The right to exhibit a motion picture for which bids were
4 solicited shall be awarded to the highest bid submitted unless all
5 bids are rejected.

6 (d) If an exhibitor notifies a distributor that it wishes to
7 submit bids for motion pictures released by the distributor in a
8 particular area of the state designated by the exhibitor, the exhibi-
9 tor and each competing exhibitor shall be solicited for bids for the
10 first or second run of each motion picture to be released by the
11 distributor in the designated area.

12 Sec. 45.51.030. REJECTION OF BIDS. The decision of a distribu-
13 tor that a bid is an unacceptable bid or is the highest bid is con-
14 clusive unless a reasonable person could not have made that judgment.

15 Sec. 45.51.040. VIOLATION. A person aggrieved by a violation
16 of this chapter may bring a civil action in superior court to enjoin
17 further violations and to recover damages.

18 Sec. 45.51.050. DAMAGES. (a) If an exhibitor establishes that
19 a violation of this chapter deprived it of a motion picture license
20 that it was otherwise entitled to, the exhibitor is entitled to the
21 greater of

22 (1) actual damages; or

23 (2) liquidated damages equivalent to 20 percent of the
24 gross box office receipts earned by the motion picture at the theatre
25 in which it was exhibited.

26 (b) In addition to other damages that may be awarded under (a)
27 of this section, if the violation of this chapter is determined to be
28 intentional, an aggrieved exhibitor may recover punitive damages
29 necessary to deter a similar violation in the future. Punitive

1 damages may be awarded under this subsection even if damages are not
2 awarded under (a) of this section.

3 Sec. 45.51.060. WAIVER. A purported waiver of rights estab-
4 lished by this chapter is void and unenforceable and this chapter
5 shall be liberally construed to achieve its purpose.

6 Sec. 45.51.100. DEFINITIONS. In this chapter

7 (1) "blind bidding" means an exhibitor's bid or negotiation
8 for or the exhibitor's offer or agreement to terms for the license to
9 exhibit a motion picture at a time either before the motion picture
10 has been trade screened in the state or before the motion picture has
11 been otherwise made available for viewing in the state by all exhibi-
12 tors;

13 (2) "blind selling" means the distributor's agreement to
14 license a motion picture before an exhibitor has been afforded an
15 opportunity to view the motion picture by trade screening;

16 (3) "buying" or "selling" of the right to exhibit a motion
17 picture means the licensing of a theatre to show the motion picture
18 for a specified number of days for a specified price;

19 (4) "distributor" means a person engaged in the business of
20 distributing more than one motion picture during a calendar year to
21 exhibitors by rental, sale, licensing, or other agreement;

22 (5) "highest bid" means a bid for the right to exhibit a
23 motion picture at a particular theatre at a particular time that would
24 probably generate greater film rental for the distributor than a
25 competing bid for the specific run bid;

26 (6) "motion picture" means a feature motion picture exceed-
27 ing 60 minutes in showing time;

28 (7) "run" means the continuous exhibition of a motion
29 picture in a defined geographic area for a specific period of time;

1 (8) "trade screening" means an exhibition of a motion
2 picture, before its release for public exhibition by a distributor;

3 (9) "unacceptable bid" means a bid that is inferior to the
4 lowest bid the distributor would accept for the same run of the same
5 picture in an area having a population equal to or greater than the
6 population of the area for which the inferior bid was made.