HB453

SB239

HB-453

ALASKA RETAIL ASSOCIATION, INC.
P.O. BOX 1727
ANCHORAGE, ALASKA

POSITION STATEMENT - NATIONAL CONSUMER ACT, H.B. 453

The Alaska Consumer Act, (H.B. 453 and S.B. 239) is modeled after the National Consumer Act (NCA). The NCA was promulgated by the National Consumer Law Center located at the Boston College Law School in Brighten, Massachusetts. The NCA is reputed to be the consumer movement "answer" to the Uniform Consumer Credit Code (UCCC), a statute drafted by the National Conference on Uniform State Laws and under consideration by this same committee as H.B. 174. The UCCC has been adopted in six states and has been introduced in several other states, including Hawaii and, of course, Alaska. The NCA has not been adopted by any state.

The Alaska Retail Association has already testified in support of the UCCC (H.B. 174). We are here today to register our opposition to the NCA (H.B. 453). Basically, we support the UCCC because we feel that it is a balanced piece of legislation which gives due consideration to the interests of consumers and to the need for regulation which will not substantially impede the operations of legitimate businesses. Furthermore, the remedies contained in the UCCC would add significant consumer protection not found in existing Alaska law. We oppose the NCA (H.B. 453) because, in our view, it fails to strike such a healthy balance and in fact, is extremely unrealistic in some of its proposals to correct alleged abuses.

The NCA (H.B. 453) would set up an elaborate administrative machinery with unprecedented powers to interfere in consumer transactions of every conceivable nature regardless of their significance. The NCA purports to cure every imaginable abuse against consumers and totally ignores the needs of legitimate business interests. The Alaska Retail Association certainly agrees that consumer abuses should be stopped and that those responsible should pay the penalty. However, the proposed Act simply would have a regressive effect upon Alaska's economy by overburdening and stifling legitimate business in this State. Moreover, considering only its credit features, we believe that rather than encouraging fair and economically sound consumer credit practices, the NCA (H.B. 453) could well result in limiting the availability of legitimate consumer credit in the State of Alaska.

At the outset, we think it is important to recognize that the UCCC (H.B. 174) and the NCA (H.B. 453) are considerably different in their scope. Unlike the UCCC, which deals only with consumer credit transactions, the NCA goes considerably beyond credit transactions and would also regulate many other types of consumer transactions, including cash sales. If enacted, the National Consumer Act, would also bring about substantial changes in many existing laws and, in fact, would substantially revise several Alaska laws just enacted after consideration in great detail by the 1970 Alaska Legislature. We believe that the UCCC is a more reasonable and well-balanced approach to consumer credit transactions. Presently existing federal and Alaskan laws more effectively and realistically cover the other areas which the NCA (H.B. 453) would seek to change.

This statement does not attempt to comment on each and every section of the NCA (H.B. 453). There are, however, a few sections of the Act on which we believe comment is appropriate to emphasize its short-sightedness and unfair aspects.

CONTRACT CANCELLATION:

The Act distinguishes between "inside" and "outside" consumer approval transactions. An "inside" consumer approval transaction means a sale made at the merchant's place of business for which the price is over $50, whether the sale is for cash or for credit. An "outside" consumer approval transaction is a sale in any amount, whether by cash or by credit, consummated outside of a merchant's place of business.

In both the "inside" and "outside" transaction, the sale is not final until certain conditions are satisfied. If it is an "outside" transaction, the consumer must send a notice, the notice to be provided by the merchant, within three days after receipt of the notice, stating that he is affirming the transaction. If the transaction is "inside," the consumer has three days to send a notice to the seller cancelling the transaction.

These provisions, we feel, are not in the best interests of either the consumer or the merchant. We question, for example, whether consumers want to have a duty imposed on them of sending an affirmation notice on every "outside" transaction, especially in cases where the sale is for cash. This does not mean that we are opposed to a three-day "cooling off" period when the sale occurs in the consumer's home, on the contrary, we support the provisions

of the UCCC which permit the consumer to send a cancellation notice to the seller within three days of the purchase as good protection to the consumer.

Under the provisions of the NCA (H.B. 453), there would no doubt be many instances in which the consumer has no desire to cancel the contract, but through simple oversight forgets to send the affirmation notice to the seller. The seller, thinking the consumer has cancelled the sale, sends someone to the consumer's home to pick up the goods. The consumer says it is all a mistake, that he forgot to send the notice and that he really wants the goods. But can the seller accept this explanation? Under other provisions of the Act, the consumer cannot waive his rights. Thus, even though he wants to affirm the contract, he cannot waive his right to get back his money and return the purchased property. No doubt the matter could be resolved by entering into a new contract, but this seems to be a burden that is neither satisfactory to the seller nor to the consumer. Surely it is not asking too much to require a consumer to send a cancellation notice if he desires to cancel the transaction. In this way consumers are protected and the many problems that would result from the provisions of the Act would be avoided.

Even more questionable is the right of the consumer to cancel "inside" transactions. In this regard, one glaring defect of the Act as it is presently drafted is the lack of any section dealing with what happens when the consumer cancels an "inside" transaction.

There is a section which provides that if the "outside" transaction is not affirmed, the seller must return the money received from the consumer at his home and pick up the purchased property. There is no similar provision dealing with the "inside" cancellation, unless the Act is to be interpreted in such a way that the same provision applies to both "inside" and "outside" transactions. If this is true, it would, we feel, impose a most unfair burden on the seller. It would mean that even though the transaction resulted from the consumer voluntarily going into the seller's place of business, the seller, upon cancellation, has a duty to seek out the consumer at his residence, return his money, and pick up the merchandise.

Perhaps even more important is the concept of allowing a person to cancel an "inside" transaction. Why, for example, should a person be able to buy an expensive dress at the seller's store, use it for one day, and then cancel the sale? The fact that the dress has been used would not seem to make any difference, since there are no provisions that the property must be returned in an unused or even satisfactory condition. Moreover, the seller will not be able to sell the dress as a new item again since the Act (and the existing Alaska Consumer Protection Act) also has provisions that make it unlawful to represent an item as new when it is used or secondhand.

It is well known that most reputable merchants will accept returned merchandise where it has not been used or damaged in any way by the customer. But, this Act would require the merchant to accept any returned merchandise if the transaction is cancelled

within three days, even if the merchandise has been used or damaged by the consumer.

The UCCC recognizes that the consumer currently has a need for a period of time within which to reflect and off-set the high pressure tactics of door to door salesmen. However, the NCA's method of dealing with the problem is a classic illustration of its many "overhill" features for the purported benefit of consumers. It is submitted that their method would substantially nullify the certainty of business transactions in the State of Alaska.

CREDITOR'S REMEDIES:

Another major area in which the Act is unrealistic and unfair to the merchant is that of creditor's remedies. The Act provides that a consumer is not in default until he misses three successive monthly payments. Moreover, if the seller has a security interest in the property, the consumer may surrender the property to the seller in full satisfaction of the obligation without regard to the condition or current value of the property in relation to the balance due. The seller is not entitled to any deficiency judgment if the unpaid balance is under $2,000. The seller may not repossess the property until after the three months have lapsed, and then only through a lengthy and costly court procedure.

The net effect of these provisions is that a person could buy a colored television set, not make any payments for three months, and then simply surrender the set to the seller in full satisfaction of his obligation. The seller could not take any steps during that

three months to obtain the property and must accept the property at the end of the three months, regardless of its condition. Moreover, the seller would be stuck with a used television set, which as previously indicated, could not be sold as a new item. Thus, the merchant has lost both his profit from the sale and the set from his inventory, while the consumer has had the use of the set for three months free of charge. How much must the retailer raise his prices to others to give the freeloader his color television? It is hard to know, but certainly some considerable amount.

MISCELLANEOUS PROVISIONS:

The above sections are by no means exhaustive of the unfair measures of this proposal. There are other provisions in the Act which if enacted would greatly disrupt modern consumer transactions.

The Act, for example, places a maximum rate on consumer credit transactions at 18% per annum. This rate while in conformity with the present rate on retail installment revolving accounts, would also be applicable to the small loan business. In setting this rate, the Act completely ignores the specific needs of the small loan industry and the rates that are required in order to allow the less credit worthy a legitimate source of money.

Another problem with the Act is its failure to seek exemption from Federal Truth in Lending as provided in Section 123 of the Federal Consumer Credit Protection Act. This means that all consumer credit transactions in Alaska would be subject to both Federal and State regulations, a situation that is obviously more confusing and complicated than if consumer credit transactions were regulated solely by local law.

It should also be pointed out that the Act goes well beyond existing Alaska law regarding unfair and deceptive trade practices. The 1970 Alaska Legislature devoted much time and effort to drafting and enacting a law that effectively and justly governs unfair trade practices. The Act would now displace this law with broader and vaguer terms that by their very lack of precision can accomplish little but to create problems of interpretation and, thus, of compliance for the honest merchant. In short, Alaska already has effective legislation dealing with deceptive and unfair trade practices and this law should not be replaced with the provisions in this Act.

A similar objection to the Act is the fact that it provides as a remedy for violation of the unfair and deceptive trade practices section, as well as for other violations of the Act, the unlimited private class action. Again, we would point out that the private class action as a consumer remedy is one which was carefully considered by the 1970 Alaska Legislature. Recognizing that such actions are often used to harass legitimate retailers without accomplishing much toward eliminating the unconscionable practices of a small percentage of businesses responsible for consumer abuses, the 1970 legislature wisely imposed reasonable restrictions on such actions.

The Act would also substantially revise the present law under the Uniform Commercial Code in the area of warranties and representations. It is our feeling that the UCC, a statute that has been adopted by all but one of the 50 states, is an adequate statute as to the substance of consumer warranties. To the extent disclosure and minimum standards might be thougnt necessary, the NCA (H.B. 453)

offers little help. The Federal Congress, after several years of study appears on the verge of passing some such consumer warranty bill. It should be a good deal better, and probably would pre-empt some or all of any state effort.

Finally, we are also corcerned with the provisions of the Act which relate to credit reporting agencies. The Act goes well beyond the requirements of the Federal Fair Credit Reporting Act, which was implemented on April 25, 1971. A major difference is that the Act would require that derogatory information be deleted as obsolete after three years, while the Federal law sets the deletion period at seven years. This means that Alaska reporting agencies would be completely out of phase with the rest of the country. Consumer reporting agencies, by their very nature, are involved in interstate commerce and their contacts with agencies in other states are quite important. Should this Act be enacted, it would place Alaska consumer reporting agencies in the untenable position of reporting substandard information. This would affect the Alaska consumers' ability to obtain credit from national firms such as major oil companies and national credit card companies.

In summary, the NCA (H.B. 453) is not the type of legislation that is either necessary or proper for regulating consumer credit and consumer protection. The philosophy underlying the Act seems to be that all merchants are out to take advantage of the consumer, while consumers are always honest and always pay their bills. In fact, as we all know, neither side has a monopoly upon virtue. There are admittedly some unscrupulous merchants, but it is equally

true that there are a number of consumers who are not always honest and forthright in their commercial dealings. A law which purports to govern the area of consumer credit and protection must recognize the needs and problems of both the consumer and the merchant. The NCA (H.B. 453) certainly does not recognize the needs of the merchant, and it is questionnable whether in the long run it recognizes the needs of the average consumer since many of its provisions can only result in increasing the cost of goods to the consumer.

ALASKA RETAIL ASSOCIATION
P.O. BOX 1727
ANCHORAGE, ALASKA 99501

January 26, 1972

Honorable William Moran
Chairman
House Judiciary Committee
Alaska State House of Representatives
Juneau, Alaska 99801

Dear Mr. Moran:

Two acknowledged experts on the Uniform Consumer Credit Code have agreed to testify before the joint hearing which has been scheduled for Friday, January 28th. They are Mr. Richard Wheatley, former administrator of the Code in Oklahoma, and Mr. Neil Butler, Education Director of the National Conference of Commissioners on Uniform State Laws. Mr. Butler is also the former acting administrator of the Code in Colorado. We know that these gentlemen will be able to supply your committees with a great deal of valuable information on this comprehensive measure.

Subject to your approval, the Alaska Retail Association's portion of the testimony will be ordered in the following manner. Dean Ehrich -- To make a very brief introductory statement; Fred Eastaugh, who is a commissioner from Alaska -- To introduce Mr. Wheatley and Mr. Butler who will provide the bulk of our testimony and who will be available for specific questions by yourself and members of your committee.

We wish to thank you for this opportunity to comment on what we feel to be the best proposal ever drafted in the area of consumer credit. Passage would be of great benefit to all Alaskans.

Sincerely,

ALASKA RETAIL ASSOCIATION

Dean Ehrich
Legislative Agent

DE/kd

HB-453

JUDICIARY COMMITTEE
Pouch V
Juneau, Alaska 99801

January 26, 1972

Honorable Robert H. Ziegler, Sr.
Senate Judiciary Chairman
Pouch V - Capitol Building
Juneau, Alaska 99801

Re: HB 174 - Uniform Consumer Credit Code
HB 453 - Relating to Consumer Credit

Dear Senator Ziegler:

The House Commerce and Judiciary Committees are sponsoring a joint public hearing on House Bill 174 (Uniform Consumer Credit Code) and House Bill 453 (Relating to Consumer Credit). As the title of House Bill 174 suggests, it is the draft prepared by the National Conference of Commissioners on Uniform Laws. I have been informed that House Bill 453 was drafted at the Boston College Law Center pursuant to a grant from the Office of Economic Opportunity.

The hearings will be held in the House Conference Room, beginning at 1:30 p.m. on Friday, January 28, and will continue over into Saturday as need may require.

The National Conference has made available Neil Butler, Esquire, of Denver, Colorado, and Richard Wheatley, Esquire, of Stillwater, Oklahoma. I understand that those members of the bar are particularly qualified to discuss House Bill 174.

Norm Banfield will be leaving for Europe this weekend. As a courtesy to him, Jay Kerttula and I have agreed to convene our respective committees immediately upon adjournment of the House on Thursday, January 27. It is my understanding that Mr. Banfield wishes to testify in favor of House Bill 174 and in opposition to House Bill 453. We hope to have Mr. Banfield's testimony taken also in the House Conference Room.

On the assumption that the Senate Commerce and Judiciary Committees will have some bill under consideration pursuant to House action, Mr. Kerttula and I invite the attendance and participation of your committee members at the above session. We also request that you make the fact of such hearings known to other members of the Senate by announcement on the floor.

In the interest of time, I am designating a copy of this letter for Senator Rattig. I hope he will not be offended that I have not written to him separately.

Sincerely,

William J. Moran
Chairman

cc: Honorable Ron Rattig
Senate Commerce Chairman

Pouch V
Juneau, Alaska 99801

January 21, 1972

Richard Wheatley, Esquire
University Bank
Post Office Box 1067
Stillwater, Oklahoma 74074

Re: HB 174 - Uniform Consumer Credit Code
HB 453 - Relating to Consumer Transactions

Dear Mr. Wheatley:

This letter will confirm our telegraphic invitation and request of this date for your appearance before a joint meeting of the House Commerce and Judiciary Committees of the Alaska Legislature on January 28 and 29 to testify and otherwise participate in the consideration of the above-named bills, now before the House Commerce Committee. Both bills have a second referral to the House Judiciary Committee. HB 174 is the Uniform Consumer Credit Code as prepared by the National Conference of Commissioners on Uniform State Laws; HB 453 is a proposal in the same area of legislative concern which was prepared at the Boston College Law Center pursuant, as we understand, to a grant from the Office of Economic Opportunity. Copies of both bills are enclosed.

The joint meeting will convene at 1:30 p.m. on January 28 in the House Conference Room, Second Floor, Capitol Building, and will continue into the following day as may be required. Because of the interest in the subject, as well as its complicated nature, a second day of testimony will undoubtedly be necessary. (Norman C. Banfield, Esquire, of the Juneau Bar, will appear on January 27 to permit him to meet a commitment elsewhere; a sponsor of HB 453 has requested that witnesses for his bill also be heard approximately one week later.) All members of the Legislature will be invited to attend and to participate in the hearings. The Senate Commerce and Judiciary Committees will undoubtedly be present.

We are grateful to you for your willingness to participate in these important hearings and to give us the benefit of your expertise; we are grateful to the National Conference for their support of your attendance; and, we are grateful to Frederick O. Bestaugh, Esquire, Alaska's Commissioner to the Conference, for his, as always, generous assistance.

Please let us know if we can be of help with respect to your accommodations or other amenities while you are in Juneau. Our addresses are as above; we can be reached telephonically at (AC 907) 586-5260 (Chief Clerk); 586-6814 (Commerce); or 586-6795 (Judiciary). Please note that Juneau is on Pacific Standard Time, that is, Oklahoma is two hours earlier.

Please again accept our thanks for your kind assistance.

Sincerely,

William J. Moran
Chairman, Judiciary Committee

Jalmar M. Kerttula
Chairman, Commerce Committee

Enclosures - Copies of HB 174
and HB 453

cc: Frederick O. Eastaugh, Esquire
Post Office Box 1211
Juneau, Alaska 99801

WJM:JMK:mm

January 18, 1972

Norman C. Banfield, Esquire
Faulkner, Banfield, Boochever
& Doogan, Attorneys
Suite 201 - 311 Franklin Street
Juneau, Alaska 99801

Re: SB 42 - Amending Retail Installment Sales Act
SB 242 - Interest on Loans
HB 174 - Uniform Consumer Credit Code
HB 453 - Consumer Transactions

Dear Norm:

Confirming our conversation today concerning your letter to me of January 10, it is my intention to delay further action on SB 242 and SB 42 pending consideration of HB 174 and HB 453. The latter two bills are scheduled for joint public hearing before the House Commerce and Judiciary Committees on January 28, at 1:30 p.m., in the House Conference Room. It is expected that these hearings may continue into January 29. I know also that Representative Farrell, co-sponsor of HB 453, may request that additional hearings be held the following week, probably on February 4.

Mr. Kerttula is agreeable to hearing you on HB 174 and HB 453 a bit earlier to accommodate your departure from Alaska. Since the present plan is not to have a calendar on Thursdays, a meeting with you immediately on adjournment on January 27 seems the most promising. I should think that you could conclude your presentation by noon that day. Please let me know.

Sincerely,

William J. Moran

cc: Rep. Kerttula
Rep. Farrell
Mr. Eastaugh