

H B

236

Folta
4-27-83 ✓

Original sponsors: Lacher, Koponen
and Clocksin

Drafted, but never discussed

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 236 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing a definition for 'trade or
7 commerce' in the Unfair Trade Practice and Consumer
8 Protection Act; and providing for an effective date."

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

10 * Section 1. AS 45.50.561 is amended by adding a new paragraph to read:

11 (9) "trade or commerce" includes the advertising, offering
12 for sale, sale, barter, or distribution of any services or any prop-
13 erty, tangible or intangible, real, personal or mixed, and any other
14 article, commodity, or thing of value wherever situated, and includes
15 any trade or commerce directly or indirectly affecting the people of
16 this state.

17 * Sec. 2. Section 1 of this Act is retroactive to May 4, 1974.

18 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 236
 Title: A definition for "trade or commerce"
 Sponsor: Repr. Lacher
 Requestor: House Labor and Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Public Prot.
 BRU, Program of Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|------------------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: March 30, 1983
 Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: March 30, 1983
 Department: Department of Law

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor

Fiscal Note



ALASKA STATE LEGISLATURE - SENATE
COMMITTEE ON LABOR AND COMMERCE

TOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

OFFICIAL BUSINESS

MEMORANDUM

TO: Senator Jan Faiks, Chair
Senate Rules Committee

From: Senator Dick Eliason, Chair *Dick Eliason*
Senate Labor and Commerce Committee

Re: SB 432

Date: May 7, 1984

The following proposed amendment for SB 432 is intended to address a current gap in Alaska State Law. The Consumer Protection Agency had been in vigorous pursuit of cases of real estate fraud until the recent Alaska Supreme Court Decision of Brown v. State of Alaska, 12/3/82, which held that the Consumer Protection Act did not cover the sale of real property.

This amendment is very important because there are far too many "real property" transactions which could fall between the cracks if the Unfair Trade Practice Act cannot cover those transactions.

* Section 1. AS 45.50. is amended by adding a new paragraph to read:

(9) "trade or commerce" includes the advertising, offering for sale, sale, barter, or distribution of any services or any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

Enclosed you will find additional back-up information outlining the necessity of this amendment. I recommend that the Rules Committee consider amending SB 432 to include this proposal.

MEMORANDUM

State of Alaska

TO: Senate Labor & Commerce Committee DATE: April 21, 1983
Pouch V
Juneau, AK

FILE NO.

TELEPHONE NO: 279-0428

FROM: Connie J. Sipe
Assistant Attorney General
Chief, Consumer Protection Section
AGO/Anchorage

SUBJECT: House Bill 236

1. HISTORY. The Unfair Trade Practices and Consumer Protection Act (UTP&CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. Twenty-five non-exclusive examples are listed as particular types of prohibited acts. Last December, the Supreme Court held that the UTP&CPA is "directed at regulating practices relating to transactions involving consumer goods and services" and does not encompass the sale of real property. That case involved a major land development in the Matanuska Valley which was located in a flood plain, a fact well known to the developers but misrepresented to purchasers.

Following the Supreme Court decision, Representative Lacher, at the urging of Mat-Su Borough Attorney Steve Morrisett, introduced House Bill 236 (copy attached) adding a definition to the UTP&CPA defining "trade or commerce" to include real property and any commerce directly or indirectly affecting commerce in the state. (Previously we relied on case law definitions of "trade or commerce," as there was no definition in the statute.)

2. IMPORTANCE. There is great ambiguity as to how far the supreme court's exclusion of "real property" operates. Does it include condominiums, builder/developer sales of homes and lots, mobile homes, time shares (resorts), and tenant leasehold interests, or is it limited to raw land sales?

This office receives numerous telephone inquiries from the public concerning real estate. So far in FY 83 thirty-four consumer complaints have been filed in Anchorage in the areas of land development sales (including in-state lots, out-of-state lots, and time shares); real property (including houses and condominiums); and home construction. We have formally opened investigative files in FY 83 for fifteen "real property" transactions in those same categories. [I have not included mobile homes in these statistics, an industry in which we have had a large volume of complaints.]

Many other states specifically include real property within the coverage of their Consumer Protection Acts. A

recent Colorado Supreme Court decision held that a builder/developer selling a home and a piece of property is subject to the jurisdiction of the Consumer Protection Act of that state, although a recent Massachusetts decision has ruled that landlord/tenant disputes are not within Consumer Protection jurisdiction.

It has always been this office's interpretation, prior to the supreme court opinion, that we do have jurisdiction over real property. Our act is a mini-Federal Trade Commission Act and real property has always been covered by the Federal Trade Commission. Hence, the recent decision alters our long standing practice and opens the door for the development of future case law further expanding the types of "real property" transactions which are not covered under the UTP&CPA or under any other Alaska statute.

3. PRIVATE CONSUMER RIGHTS. This bill affects not only public law enforcement against frauds involving real property, but also insures that individual consumers hurt in such transactions will continue to have the private cause of action set out in the Unfair Trade Practices Act, AS 45.50.531. This statutory private cause of action allows for up to triple damages and attorneys' fees for successful consumer plaintiffs bringing private suits against fraud.

4. ALASKA UNIFORM LAND SALES PRACTICES ACT. We understand that some developers may oppose this amendment because ALSPA (AS 34.55.004 et. seq.) governs misrepresentations and fraud in land transactions. It is true that ALSPA does cover some of these transactions; however, its coverage is severely limited. To begin with, ALSPA only covers formally subdivided, undeveloped land and would not cover un-subdivided or developed parcels, resulting in totally unregulated contractor/developer sales wherein a home is sold with land.

Also, ALSPA exempts land sellers from registration if less than 50 lots are sold in-state over 12 months, or less than 10 lots are sold out-of-state. We know of at least one State Trooper investigation wherein a developer is deliberately selling under 50 lots per year in order to escape scrutiny under ALSPA. This particular developer was previously registered under ALSPA and has chosen to let the registration lapse and sell only 48 lots per year.

5. DUPLICATION OF REGULATION. The Unfair Trade Practices Act coverage of real property does not duplicate other state regulation, such as the real estate licensing laws. Whenever a licensed real estate agent violates a real estate statute prohibiting fraud, that activity is exempt from the UTP&CP Act, by action of AS 45.50.485(1). The attorney general has usually interpreted this section (.485)

to exempt real estate brokers and agents from the direct jurisdiction of the UTP&CP Act. A licensed agent may become involved in an investigation under the UTP&CP Act when the realtor is part of, or witness to, land fraud by un-licensed, non-regulated individuals, such as a land developer.

6. SUMMARY. This amendment is very important because there are far too many "real property" transactions which could fall between the cracks if the UTP&CPA does not cover those transactions. The language on lines 15 and 16 of the bill focuses on the need to extend the Act to not only those activities which occur in-state but which "affect commerce in the state" even though they may happen elsewhere.

This language, combined with the real property coverage, is very important in the current time share resort sales programs sweeping the country. These programs (which are frequently sold through various deceptive advertising campaigns) offer a property interest in a piece of resort property for a number of weeks per year; for instance, two weeks a year in a Hawaii condominium.

The suggested definition of "trade or commerce" would not only get us over the hurdle of a challenge to the attorney general filing a real property case, but would also bolster our jurisdictional claim in a challenge of our long arm jurisdiction against an out-of-state business.

CJS/aw



Matanuska-Susitna Borough

BOX 8, PALMER, ALASKA 99645 • PHONE 745-3288-1

BOROUGH ATTORNEY'S OFFICE

February 8, 1983

The Honorable Barbara Lacher
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Barbara:

The recent Supreme Court decision of Brown v. State of Alaska, Opinion No. 2591 (December 3, 1982) effectively limits the Unfair Trade Practices and Consumer Protection Act by excluding real estate development transactions.

The Brown case involved alleged fraudulent misrepresentations to purchasers of lots in Windsong Subdivision in the Matanuska-Susitna Borough, that flooding possibilities were remote and that flood and mortgage insurance was available. Purchasers were given the second page of the Windsong Subdivision plat, but they never received the first page, which had a flood warning notation placed on it by the Platting Board. Although the Army Corps of Engineers concluded that the subdivision was in a high-hazard area, the developer represented that experts, including the Corps, had concluded the possibility of flooding was remote.

The Supreme Court ruled that the scope of the Unfair Trade Practices Act did not include the sale of real property. The decision was based on statutory interpretation. The Court noted that, unlike certain other states, Alaska did not have a definition of "trade or commerce" which includes real property. It noted that none of the list of prohibited acts in A.S. 45.50.471 mentions real property. Without clear legislative direction, the Court declined to apply the Act to real property transaction.

This does not entirely eliminate remedies for a purchaser of a lot based on fraudulent misrepresentations. The Uniform Land Sales Practices Act, A.S. 34.55.004--34.55.046 provides for individual relief. However, in the Brown case, the Court found that the State could not sue the developer directly for fraud, but had to bring suit as representative of defrauded consumers, "in the nature of a class action." This requires costly and time-consuming steps to assure individual notices to all consumers, who then may be treated as parties in the lawsuit.

Common law fraud is also a basis for suit. However, this does not provide for the clear authority of the Attorney General to prosecute fraudulent land developers and obtain injunctive relief in the manner provided by the Unfair Trade Practices Act.

The result of the Brown decision may be to eliminate any easy remedy to a homeowner who purchases a home based on knowing, fraudulent misrepresentations. The Consumer Protection Division of the Department of Law has declined to pursue a recent case in this Borough involving possible fraud in the sale of homes to consumers in this Borough. Although sympathetic, that office indicated that the problems created by the Brown decision would make it inadvisable to use its scarce legal resources on such a problem.

The attached bill has been drafted to rectify this problem. It includes a definition for "trade or commerce" similar to that in the Massachusetts consumer act of similar nature. The bill was prepared after consultation with Connie Sipe at the State Consumer Protection Division, who provided valuable comment. The bill, as proposed, would provide the legislative direction which the Supreme Court has found to be absent.

I would be happy to discuss this matter further at your convenience.

Sincerely,



Steven H. Morrisett
Borough Attorney

er

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
PO BOX 478
PALMER, ALASKA 99645
(907) 376-4215



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

MEMORANDUM

TO: Senator Eliason

FROM: REPRESENTATIVE BARBARA LACHER *BL*

SUBJECT: HB 236

DATE: April 12, 1983

House Bill 236 was introduced to address a current gap in Alaska State Law. The Consumer Protection Agency has been in vigorous pursuit of cases of real estate fraud until the recent Alaska Supreme Court decision of Crown v. State of Alaska [5006/5107] which favored a fraudulent developer due to an unclear definition of "trade or commerce" in the Statutes.

HB 236 amends this gap in the Statutes to protect the citizens of the state from further cases of fraud in their lifetime home investments.

This legislation passed all House Committees of referral with all Representatives recommending "do pass" and passed the House Floor with unanimous consent.

I urge your support of this worthy legislation.

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

MEMORANDUM

TO: Senator Richard Eliason
Chairman, Senate Labor & Commerce

FROM: Representative Barb Lacher *BL*

DATE: February 22, 1984

RE: HB 236

Dear Richard,

HB 236, an Act providing a definition for "trade or commerce" in the Unfair Trade Practice and Consumer Protection Act is currently awaiting action in the Senate Labor & Commerce committee. I respectfully request that a hearing be scheduled for this bill. Thank you.

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
FISHERIES SUB-COMMITTEE



P.O. BOX 143
SITKA, ALASKA 99835
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

MEMORANDUM

TO: Representative Barb Lacher

FROM: Senator Dick Eliason, Chair
Senate Labor and Commerce

DATE: March 15, 1984

RE: HB 236

In response to your concern regarding HB 236, I want to let you know that this bill is now incorporated into SB 488, relating to unfair trade practice. Introduced on 2/13/84, this bill cleans up existing statutes and clarifies business/consumer relationships. It is also supported by the Administration.

If any problems arise with the final passing of SB 488, the Senate Labor and Commerce Committee will reconsider HB 236. For your information, the Committee will be hearing SB 488 in the near future.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 4, 1983

SUBJECT: Definition of "trade or commerce" in Unfair
Trade Practice and Consumer Protection Act
(HB 236)

TO: Representative Barbara Lacher

FROM: Richard C. Folta
Legislative Counsel

Following is the sectional analysis you requested for
HB 236.

Section 1 of the above referenced bill provides for a definition of "trade and commerce" for the Consumer Protection Act, AS 45.50.471 - 45.50.561. The provision is identical to the statutory provisions of the State of Massachusetts, and includes the words "real property". On December 3, 1982, the Alaska Supreme Court in Alaska v. Brown, No. 2591, held that the Consumer Protection Act did not cover the sale of real property. HB 236 will provide for real property transaction remedies.

The definition of "trade and commerce" will not include strictly private transactions. In defining the words "trade and commerce" it was intended to clarify the scope of the words rather than expanding the coverage of the Consumer Protection Act. The relief provided under the Consumer Protection Act is in addition to, not an alternative to, tort and contract remedies. Like the Alaska Uniform Land Sales Practice Act (AS 34.55.004 - 34.55.046) the Consumer Protection Act provides for filing of class actions by the Alaska Attorney General.

Section 2 of the bill provides for an immediate effective date.

RCF:ljb
13/012

Sectional Analysis

MEMORANDUM

State of Alaska

TO: Senate Labor & Commerce Committee DATE: April 21, 1983
Pouch V
Juneau, AK FILE NO.
TELEPHONE NO: 279-0428

FROM: Connie J. Sipe SUBJECT: House Bill 236
Assistant Attorney General
Chief, Consumer Protection Section
AGO/Anchorage

1. HISTORY. The Unfair Trade Practices and Consumer Protection Act (UTP&CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. Twenty-five non-exclusive examples are listed as particular types of prohibited acts. Last December, the Supreme Court held that the UTP&CPA is "directed at regulating practices relating to transactions involving consumer goods and services" and does not encompass the sale of real property. That case involved a major land development in the Matanuska Valley which was located in a flood plain, a fact well known to the developers but misrepresented to purchasers.

Following the Supreme Court decision, Representative Lacher, at the urging of Mat-Su Borough Attorney Steve Morrisett, introduced House Bill 236 (copy attached) adding a definition to the UTP&CPA defining "trade or commerce" to include real property and any commerce directly or indirectly affecting commerce in the state. (Previously we relied on case law definitions of "trade or commerce," as there was no definition in the statute.)

2. IMPORTANCE. There is great ambiguity as to how far the supreme court's exclusion of "real property" operates. Does it include condominiums, builder/developer sales of homes and lots, mobile homes, time shares (resorts), and tenant leasehold interests, or is it limited to raw land sales?

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Many other states specifically include real property within the coverage of their Consumer Protection Acts. A

Letter of Support

recent Colorado Supreme Court decision held that a builder/developer selling a home and a piece of property is subject to the jurisdiction of the Consumer Protection Act of that state, although a recent Massachusetts decision has ruled that landlord/tenant disputes are not within Consumer Protection jurisdiction.

It has always been this office's interpretation, prior to the supreme court opinion, that we do have jurisdiction over real property. Our act is a mini-Federal Trade Commission Act and real property has always been covered by the Federal Trade Commission. Hence, the recent decision alters our long standing practice and opens the door for the development of future case law further expanding the types of "real property" transactions which are not covered under the UTP&CPA or under any other Alaska statute.

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Also, ALSPA exempts land sellers from registration if less than 50 lots are sold in-state over 12 months, or less than 10 lots are sold out-of-state. We know of at least one State Trooper investigation wherein a developer is deliberately selling under 50 lots per year in order to escape scrutiny under ALSPA. This particular developer was previously registered under ALSPA and has chosen to let the registration lapse and sell only 48 lots per year.

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6. SUMMARY. This amendment is very important because there are far too many "real property" transactions which could fall between the cracks if the UTP&CPA does not cover those transactions. The language on lines 15 and 16 of the bill focuses on the need to extend the Act to not only those activities which occur in-state but which "affect commerce in the state" even though they may happen elsewhere.

This language, combined with the real property coverage, is very important in the current time share resort sales programs sweeping the country. These programs (which are frequently sold through various deceptive advertising campaigns) offer a property interest in a piece of resort property for a number of weeks per year; for instance, two weeks a year in a Hawaii condominium.

The suggested definition of "trade or commerce" would not only get us over the hurdle of a challenge to the attorney general filing a real property case, but would also bolster our jurisdictional claim in a challenge of our long arm jurisdiction against an out-of-state business.

CJS/aw



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-32201

BOROUGH ATTORNEY'S OFFICE

February 8, 1983

The Honorable Barbara Lacher
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Barbara:

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The Brown case involved alleged fraudulent misrepresentations to purchasers of lots in Windsong Subdivision in the Matanuska-Susitna Borough, that flooding possibilities were remote and that flood and mortgage insurance was available. Purchasers were given the second page of the Windsong Subdivision plat, but they never received the first page, which had a flood warning notation placed on it by the Platting Board. Although the Army Corps of Engineers concluded that the subdivision was in a high-hazard area, the developer represented that experts, including the Corps, had concluded the possibility of flooding was remote.

The Supreme Court ruled that the scope of the Unfair Trade Practices Act did not include the sale of real property. The decision was based on statutory interpretation. The Court noted that, unlike certain other states, Alaska did not have a definition of "trade or commerce" which includes real property. It noted that none of the list of prohibited acts in A.S. 45.50.471 mentions real property. Without clear legislative direction, the Court declined to apply the Act to real property transaction.

This does not entirely eliminate remedies for a purchaser of a lot based on fraudulent misrepresentations. The Uniform Land Sales Practices Act, A.S. 34.55.004--34.55.046 provides for individual relief. However, in the Brown case, the Court found that the State could not sue the developer directly for fraud, but had to bring suit as representative of defrauded consumers, "in the nature of a class action." This requires costly and time-consuming steps to assure individual notices to all consumers, who then may be treated as parties in the lawsuit.

Background Letter

Common law fraud is also a basis for suit. However, this does not provide for the clear authority of the Attorney General to prosecute fraudulent land developers and obtain injunctive relief in the manner provided by the Unfair Trade Practices Act.

The result of the Brown decision may be to eliminate any easy remedy to a homeowner who purchases a home based on knowing, fraudulent misrepresentations. The Consumer Protection Division of the Department of Law has declined to pursue a recent case in this Borough involving possible fraud in the sale of homes to consumers in this Borough. Although sympathetic, that office indicated that the problems created by the Brown decision would make it inadvisable to use its scarce legal resources on such a problem.

The attached bill has been drafted to rectify this problem. It includes a definition for "trade or commerce" similar to that in the Massachusetts consumer act of similar nature. The bill was prepared after consultation with Connie Sipe at the State Consumer Protection Division, who provided valuable comment. The bill, as proposed, would provide the legislative direction which the Supreme Court has found to be absent.

I would be happy to discuss this matter further at your convenience.

Sincerely,



Steven H. Morrisett
Borough Attorney

er

MEMORANDUM

State of Alaska

TO: Honorable Dick Eliason
Chairman
Senate Labor & Commerce Committee
Alaska State Legislature

DATE: April 22, 1983


FILE NO:

TELEPHONE NO: 465-3600

FROM: ATTN: Sheila Peterson
Researcher

SUBJECT: Attached proposed
SCSHB 236 (L&C) --
defining "trade or
commerce"

Norman C. Gorsuch
Attorney General

By: 
Connie J. Sipe
Assistant Attorney General
Anchorage

Sheila, while I was drafting the retroactivity clause, Art Peterson advised that I also submit a suggested committee report on this Act and its retrospective effect. Since I had to return to Anchorage this p.m., I am taking the liberty of sending you this draft report, without our having had a chance to discuss it. Please call me in Anchorage, 279-0428 if you have any questions.

The proposed committee substitute and committee report are attached.

CJS/jb

cc w/enc.: Representative Barbara Lacher
ATTN: Sara Robinson

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907.465.3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 28, 1983

SUBJECT: Retroactive provision
(SCSHB 236 (L&C))

TO: Senator Richard I. Eliason

FROM: Richard C. Folta 
Legislative Counsel

The Senate Committee Substitute for HB 236 request provides for a retroactive section. Based on the rationale of State v. Brown, Op. No. 2591 (1982), it is our opinion that the retroactive provision is likely to be held unconstitutional. Regardless of the merits of that case, the Court decided that real property fraud was not covered by the Consumer Protection Act. The passage of SCSHB 236 will create a change in the law affecting substantive rights of parties which may not be retrospectively applied. Matanuska Maid, Inc. v. State, 620 P.2d 182 (1980).

RCF:ljb
17/001

Re: Retroactive clause

MEMORANDUM

State of Alaska

TO: Honorable Dick Eliason
Chairman
Senate Labor & Commerce Committee
Alaska State Legislature

DATE: Apr: *Rm*
FILE NO: *417*
TELEPHONE NO: 465

FROM: ATTN: Sheila Peterson
Researcher

SUBJECT: Attached
SCSHB 236 (L&C) --
defining "trade or
commerce"

Norman C. Gorsuch
Attorney General

By: *[Signature]*
Connie J. Sipe
Assistant Attorney General
Anchorage

Sheila, while I was drafting the retroactivity clause, Art Peterson advised that I also submit a suggested committee report on this Act and its retrospective effect. Since I had to return to Anchorage this p.m., I am taking the liberty of sending you this draft report, without our having had a chance to discuss it. Please call me in Anchorage, 279-0428 if you have any questions.

The proposed committee substitute and committee report are attached.

CJS/jb

cc w/enc.: Representative Barbara Lacher
ATTN: Sara Robinson

DRAFT

LABOR AND COMMERCE
COMMITTEE REPORT

The Senate Labor and Commerce Committee, having considered HB 236 and the testimony of the Department of Law in support of that bill, ~~the committee~~ is offering a committee substitute that provides for retroactive application of the definition contained in HB 236. When the 1974 Alaska Legislature enacted the Unfair Trade Practices and Consumer Protection Act, it indicated, at AS 45.50.545, "Interpretation," a strong intent that the UTP&CP Act was to be interpreted in accordance with decades of federal court decisions regarding the Federal Trade Commission Act. Since the "trade or commerce" clause of that federal Act had been interpreted to include transactions in real property, the Alaska Legislature apparently meant to include real property within the scope of the parallel Alaska Act.

However, in a case decided in December of 1982, the Supreme Court of Alaska announced a contrary interpretation, finding that, since much of the Alaska Act deals with "consumer goods and services," real property is not included in the type of "trade or commerce" covered by the Act. To the extent that the court's decision interpreted original legislative intent, this committee thinks that the court made an incorrect decision. The committee believes that the attached committee substitute cures

whatever defect or omission in the original Act the court may have relied upon in reaching that decision.

The committee also finds that it is necessary to protect the public interest by clarifying that real property has always been included in the coverage of the UTP&CP Act, since its passage in 1974. The committee substitute includes a retroactivity provision in order to insure that the public interest in enforcement against real property frauds which may have occurred before the enactment of this amendment will not be thwarted by the supreme court's decision. (However, it is not the committee's intent that the state re-prosecute the parties involved in the case already decided by the supreme court. The intent behind the retroactivity clause is only to avoid future challenges to the applicability of the UTP&CP Act to real property frauds which may have occurred before enactment of this amendment.)

Based on these considerations, this committee supports not only the intent of the original House Bill 236, but also the inclusion of a retroactivity clause. This clause makes this remedial legislation retroactive to the effective date of the original UTP&CP Act, May 4, 1974.

Dick Eliason
Chairman