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497

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: Jan. 9, 1984

(Revised for 1984 Session)

REQUEST

Bill/Resolution No.: _____
Title: "An Act relating to... mobile home warranties..."
Sponsor Sen. Rules/Governor
Requestor: Off. of Gov. - OMB
Date of Request: _____

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director
Division: Administrative Services Division

Phone: 465-3672

Date: 1-9-84

Approved by Commissioner: Norman G. Gorsuch
Agency: Department of Law

Date: 1-9-84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Dept. of Law

Fiscal Note
Analysis

January 8, 1984

This bill creates a private cause of action relating to mobile home warranties, and transfers responsibility for enforcement of mobile home warranties from the Department of Commerce and Economic Development to the Department of Law. A 1983 legislative audit report recommended transfer of the enforcement process to the Department of Law. The transfer of the existing mobile home warranty enforcement position, including funding, from the Department of Commerce and Economic Development to the Department of Law, is included in the adjusted base of the two department's FY 85 budget proposals. Consequently, enactment of this bill will not require additional funding nor will it cause a fiscal impact.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

70-2

Revision Date: _____

REQUEST
Bill/Resolution No.: _____
Title: _____
Sponsor: Rules Committee
Requestor: Governor
Date of Request: _____

FISCAL DETAIL Department of Commerce and
Agency Affected: Economic Development
Program Category Affected: Consumer Protection
Measurement Standards
BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
500 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Joseph L. Swanson Phone: 345-7750
Division: Measurement Standards Date: January 9, 1984

Approved by Commissioner: Richard A. Lyon Date: 1/20/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Dept of Commerce

12/1/83

Analysis

This bill will not have a fiscal impact on the Division of Measurement Standards. The funding and the position for the mobile home warranty program was transferred to the Department of Law in FY 83. All funds for the program have been deleted from the division's budget request for FY85 and have instead been placed in the budget request for the Department of Law.

SB 497

SB 497 STATES THAT A MOBILE HOME BUYER MAY FILE A CLAIM AGAINST THE MANUFACTURER'S POSTED BOND IF THE MANUFACTURER FAILS TO FULFILL ITS WARRANTY OBLIGATIONS. THIS CLAIM WILL BE FILED IN THE SUPERIOR COURTS.

THE RESPONSIBILITY OF ENFORCING MOBILE HOME WARRANTIES WILL BE TRANSFERRED FROM THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO THE DEPARTMENT OF LAW. THE 1983 LEGISLATIVE AUDIT OF THE DIVISION OF MEASUREMENT STANDARDS, DCED, STUDIED THIS ISSUE AND RECOMMENDED THIS TRANSFER. BOTH DEPARTMENTS HAVE AGREED THAT THIS IS A MORE EFFICIENT ENFORCEMENT PATTERN AS THE DEPARTMENT OF LAW, CONSUMER PROTECTION SECTION, ALREADY PROCESSES MOBILE HOME COMPLAINTS THAT FALL OUTSIDE THE WARRANTY ACT.

THIS LEGISLATION HAS A ZERO FISCAL NOTE AND HAS BEEN RECOMMENDED BY THE ADMINISTRATION. I URGE PASSAGE OF SB 497.

ADDITIONAL INFORMATION

1) THE MANUFACTURER'S BOND EQUALS \$35,000.

2) IN FY 84, DCED TRANSFERRED THE ONE MOBILE HOME INVESTIGATOR POSITION TO THE DEPARTMENT OF LAW THROUGH A REIMBURSABLE SERVICES AGREEMENT.

3) CURRENTLY, IF AN INDIVIDUAL HAS A PROBLEM WITH A MANUFACTURER REGARDING THE WARRANTY, THE BUYER MUST COMPLAIN TO CONSUMER PROTECTION. THE STATE THEN MUST DECIDE WHETHER TO SUE. THE BUYER CAN SUE DIRECTLY, BUT THE BOND CANNOT BE ATTACHED.

CURRENTLY, a consumer complains to consumer protection. The Dept acts as a mediator and in 40-43% of the cases, the consumer concerns are satisfy. The remaining cases are studied further AND the Dept may elect to get remedy with the posted bond. The consumer cannot attach the bond

UNDER PROPOSED LEGISLATION the consumer will have another option.

The buyer can sue the manufacturer in superior court and recover against the \$35,000 bond.

Sec. 45.20.050. Liability of purchaser to person adjudged owner or entitled to possession. A purchaser of ore, who receives the notice provided for in this chapter, followed or preceded by the commencement of an action, as set out in this chapter, and who purchases or continues to purchase and receive ore taken from the mine, mining claim, or premises named in the notice, is liable and responsible for the value of it to the person who is ultimately adjudged to be the owner or entitled to the possession of it. (§ 29-4-5 ACLA 1949)

Chapter 30. Mobile Homes and Mobile Home Parks.

<p>Section</p> <p>10. [Repealed]</p> <p>11. Mobile home warranties</p> <p>15. Bonds</p> <p>20-30. [Repealed]</p> <p>40. Enforcement of compliance</p>	<p>Section</p> <p>50-60. [Repealed]</p> <p>70. Certain landlord-vendor agreements prohibited</p> <p>100. Definitions</p>
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Editor's note. — Section 1, ch. 80, SLA 1971 provides: "In order to safeguard life, health and property, and to promote the public welfare, construction standards of mobile homes in the state are hereby declared to be subject to regulation in the public interest."

Sec. 45.30.010. Mobile home standards.

Repealed by § 5 ch 104 SLA 1980.

Cross reference. — For current provisions concerning mobile home standards, see AS 45.30.011.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971; § 1, ch. 123, SLA 1972; §§ 1, 2, ch. 113, SLA 1974; § 107, ch. 218, SLA 1976.

Sec. 45.30.011. Mobile home warranties. (a) After August 27, 1980, a new mobile home sold by a mobile home dealer to a buyer is subject to a mobile home warranty. A mobile home warranty shall be set out in a separate written document entitled "Mobile Home Warranty" which shall be delivered to the buyer by the mobile home dealer at the time a contract of sale is signed. The warranty shall contain the name, address and telephone number of the mobile home manufacturer and the mobile home dealer and shall include at least the following provisions:

- (1) the mobile home is free from any substantial defects in materials and workmanship;
- (2) the manufacturer or dealer, or both, shall take appropriate action at the site of the mobile home to correct substantial defects in materials or workmanship which become evident within one year of the date of

delivery of the mobile home to the buyer if the buyer, or his transferee, gives written notice of the defect by registered or certified mail addressed to the business address of the manufacturer or dealer on a date which is not more than one year and ten days after date of delivery of the mobile home;

(3) the manufacturer and the dealer are jointly and severally liable to the buyer, or his transferee, for the fulfillment of the terms of warranty, and the buyer may notify the manufacturer or the dealer, or both, in the event action is required to correct substantial defects in materials or workmanship;

(4) the warranty is applicable to the mobile home structure, its plumbing, heating and electrical systems, and all appliances and equipment installed or included in the mobile home unit by the manufacturer or dealer; and

(5) notwithstanding separate warranties applicable to appliances contained within a mobile home unit issued by the manufacturers of the appliances, primary responsibility for appropriate corrective action under the warranty rests with the manufacturer and the dealer of the mobile home unit, and written notice of defects must be initially reported to them.

(b) The warranty provided under (a) of this section is in addition to and not in derogation of all other rights and remedies which a buyer may have under any other law or instrument.

(c) The manufacturer and the dealer may not require the buyer to waive his rights under (a) of this section. A waiver of rights required by a manufacturer or dealer is contrary to public policy and is unenforceable.

(d) A mobile home dealer shall display a notice of reasonable size stating the applicability of the warranty required by this section, and shall, upon request, provide a sample copy of the warranty. The notice shall be posted in each area in which purchase orders and sales contracts for mobile homes are written.

(e) The manufacturer shall compensate a mobile home dealer who incurs expenses as a result of warranty obligations for which the manufacturer is legally responsible or for obligations which the manufacturer imposes upon the dealer. A provision of contract which is contrary to this subsection is void as against public policy.

(f) In this section, a defect is "substantial" if it materially affects the fitness of the mobile home for occupancy or use by the buyer or his transferee. (§ 1 ch 104 SLA 1980)

Sec. 45.30.015. Bonds. (a) A manufacturer constructing mobile homes for sale in the state shall deposit a performance bond in the amount of \$35,000 with the department to assure compliance with the provisions of AS 45.30.011.

(b) A manufacturer who discontinues construction of mobile homes for sale in the state shall maintain a performance bond in the required

amount for a period of 24 months after the date the last mobile home was delivered to a buyer in the state. (§ 1 ch 104 SLA 1980)

Sec. 45.30.020. Duties of department.

Repealed by § 5 ch 123 SLA 1972.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971.

Sec. 45.30.030. Administration.

Repealed by § 5 ch 123 SLA 1972 and § 5 ch 104 SLA 1980.

Cross reference. — For current provisions concerning deposit of performance bonds, see AS 45.30.015. derived from § 2, ch. 80, SLA 1971; §§ 2, 5, ch. 123, SLA 1972; §§ 3, 4, ch. 114, SLA 1974.

Editor's note. — The repealed section

Sec. 45.30.040. Enforcement of compliance. (a) A department inspector shall give written notice to the owner, dealer or manufacturer of a mobile home of each violation of AS 45.30.011. The notice of violation shall accurately describe the violation and give specific reference to the section and paragraph of the statutes.

(b) Repealed by § 5 ch 104 SLA 1980.

(c) Whenever it determines that there may be a violation of the provisions of this chapter by a manufacturer or dealer of mobile homes, the department may give notice of hearing and, within 30 days after giving notice, hold a hearing to determine whether there has been a violation. After notice and hearing,

(1) if the department finds that there has been a violation of the provisions of this chapter, the department may issue an order directing that the person who is violating the provision cure the violation in a reasonable time and in a reasonable manner;

(2) if the department determines that violations of the provisions of this chapter are regular and recurring, it may require forfeiture of the bond to the benefit of the state and arrange for distribution of the proceeds of the bond to the mobile home owners injured by the activities of the dealer or manufacturer, or to mobile home dealers injured by the activities of the manufacturer.

(d) The provisions of AS 44.62.330 — 44.62.630 apply to a hearing held under (c) of this section. (§ 2 ch 80 SLA 1971; am § 3 ch 123 SLA 1972; am § 5 ch 114 SLA 1974; am §§ 2, 3, 5 ch 104 SLA 1980)

Effect of amendment. — The 1980 amendment, in subsection (a), inserted "dealer" preceding "or manufacturer" near the beginning of the first sentence, substituted "AS 45.30.011" for "the regulations adopted under AS 45.30.010"

at the end of the first sentence, and substituted "statutes" for "regulations" at the end of the second sentence; repealed subsection (b); and added subsections (c) and (d).

Sec. 45.30.050. Penalty.

Repealed by § 5 ch 104 SLA 1980.

Cross reference. — For current provisions concerning forfeiture of bond, see AS 45.30.040.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971; § 4, ch. 123, SLA 1972; § 6, ch. 114, SLA 1974.

Sec. 45.30.060. Definitions.

Repealed by § 5 ch 123 SLA 1972.

Cross reference. — For current provisions concerning definitions, see AS 45.30.100.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971.

Sec. 45.30.070. Certain landlord-vendor agreements prohibited. A vendor of mobile homes may not require as a condition of sale that a purchaser locate the mobile home in a particular mobile home park or in one of a particular group of mobile home parks. (§ 6 ch 138 SLA 1976)

Sec. 45.30.100. Definitions. In this chapter,

- (1) "buyer" means a person who purchases a mobile home for his personal use and not for purposes of resale;
- (2) "department" means the Department of Commerce and Economic Development;
- (3) "mobile home" means a vehicle designed and equipped for human habitation, and which may be drawn by a motor vehicle only when authorized by permit. (§ 4 ch 104 SLA 1980)

Editor's note. — This section derives from AS 45.30.061 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Chapter 45. Trade Practices.

Article

- 1. Interest (§§ 45.45.010 — 45.45.070)
- 2. Collection of Advance Interest (§§ 45.45.080 — 45.45.090)
- 3. Merchandise (§§ 45.45.100 — 45.45.110)
- 4. Funerals (§ 45.45.120)
- 5. Regulation of Motor Vehicle Repairs (§§ 45.45.130 — 45.45.240)
- 10. Miscellaneous (§ 45.45.900)

Article 1. Interest.

Section

- 10. Legal rate of interest
- 20. Higher rate of interest prohibited
- 30. Action for recovery of double amount of usurious interest paid
- 40. Usurious rate as working forfeiture of

Section

- 50. Recovery by assignee of usurious contract of amount paid by him
- 60. Contract not usurious because of agreement to pay taxes
- 70. Enforcement of contracts entered into

SB 497 TITLE & SPONSOR SUMMARY

16:46 6/04/84 PAGE 1 OF 3

RENDED TITLE:

AN ACT CREATING A PRIVATE CAUSE OF ACTION RELATING TO MOBILE HOME WARRANTIES; AND TRANSFERRING ENFORCEMENT OF MOBILE WARRANTIES

PRIME SPONSOR: SENATE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 5/23/84 IN (H) JUDICIARY

SB 497 SENATE ACTION

16:46 6/04/84 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/14/84	01	2076	FIRST READING -- COMMITTEE REPORTS
02/14/84	02	2077	ZERO F/NOTE W/ANALYSIS
02/14/84	03	2077	GOV TRANSMITTAL LETTER
04/09/84	04	2666	LAC -- DP04
04/26/84	05	2631	JUD -- DP04
05/22/84	06	3197	RLS -- OTHER05 TAKEN UP IMMEDIATELY
05/22/84	07	3197	SECOND READING
05/22/84	08	3197	ADVANCED TO 3RD READING BY UNAN CONSENT
05/22/84	09	3198	THIRD READING
05/22/84	10	3198	PASSED BY DIV 17-00-01

*** ** ** *** ** *

SB 497 HOUSE ACTION

16:46 6/04/84 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
05/23/84	11	3980	FIRST READING -- COMMITTEE REPORTS JUDICIARY RULES

*** ** ** *** ** *

COMMITTEE REPORT

SENATE

FURTHER:

JUDICIARY

2/14/34

Date

4/5/34

Mr. President

The Committee on LABOR AND COMMERCE considered SB 497

creating a private cause of action relative to mobile home warranties and transferring enforcement of mobile warranties.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

[Handwritten signatures]

[Blank lines for signatures]

[Handwritten signature]

Chairman

[Handwritten signature]

Chairman recommendation



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

SB497

February 13, 1984

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to mobile home warranties. This bill increases government efficiency in enforcement of mobile home warranties, and encourages private consumer self-help.

The bill has two main components: (1) the creation of a private cause of action in a mobile home buyer against the manufacturer's bond, which AS 45.30.015 requires be posted with the state; and (2) a transfer of warranty enforcement authority from the Department of Commerce and Economic Development (DCED) to the Department of Law.

With regard to the first of the components, it is the understanding of both DCED and the Department of Law that, when the mobile home warranty statute, AS 45.30.011, took effect in 1980, a private buyer injured by a manufacturer who sold a defective home to a buyer in this state would be allowed to make a claim against the bond under AS 45.30.040. However, that statute only provided a procedure for the consumer to petition the state to take administrative action against the bond. Experience in the last few years has shown that a buyer may believe that he or she has a valid claim against the bond in a case in which the state enforcing authority does not agree that administrative action is warranted. Providing a clear, private cause of action against the bond may relieve a burden on the government by reducing the number of administrative hearings, and insure that an individual can choose to enforce his or her own rights, whether or not a state agency agrees with the individual.

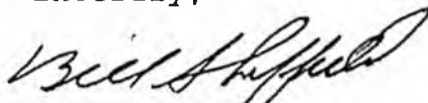
The second component of the bill is a transfer of the warranty enforcement powers from DCED to the Department of Law. The April 1983 legislative audit of the division of measurement standards, DCED, studied this issue and recommended

The Department of Commerce and Economic Development should seek legislation to transfer the mobile home warranty enforcement program to the Consumer Protection Section of the Department of Law.

Both departments have agreed that this is a more efficient enforcement pattern, as the Department of Law, consumer protection section, already processes mobile home complaints that fall outside the warranty Act, as well as those that may duplicate warranty Act enforcement by DCED. In FY 84, DCED transferred the one mobile home investigator position to the Department of Law through a reimbursable services agreement.

The bill promotes government efficiency by encouraging private self-help, rather than reliance on government. I feel that it will have the support of both industry and consumers. I urge your affirmative action on this measure.

Sincerely,



Bill Sheffield
Governor