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STATE OF ALASKA
THE LEGISLATURE

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JUNEAU, ALASKA 99811
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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	3/11/85	1:30 pm
" "	3/25/85	1:30 pm

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

2/8/85

Date: 3-25-85

The Committee on JUDICIARY has had HB 148

"An Act creating a private cause of action relating to mobile home warranties; and transferring enforcement of mobile warranties."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 148 (JUD.) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

W. H. Will
Mr. [Signature]
[Signature]
William Taylor
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

W. H. Will
 CHAIRMAN

HB 148 FILE CONTENTS

*6/21/81
3/1/81
3/1/81*

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- Committee Staff
- 3) Overview -- The Mobile Home Warranty Act, By Consumer Protection Services, Dept. of Law
- 4) Sectional Analysis -- Committee Staff
- 5) Transmittal Letter -- Governor's Office
- 6) Fiscal Note -- Dept. of Law, Administrative Services Division
- 7) Fiscal Note -- Dept. of Commerce, Div. of Measurement Standards
- 8) Additional Background Information on Consumer Protection Section, Dept. of Law
 - a) Alaska Consumer Protection Laws
 - b) Consumer Info
 - c) Business Response Information
 - d) Consumer Complaint Form
 - e) Miscellaneous related materials -- Setting on Committee Table
- 9) Legislative Budget and Audit Report

AMENDMENT

IN THE JUDICIARY COMMITTEE

TO: HB 148

1. Add a new Section 1 as follows:

Section 1. AS 45.30.015 is amended to read as follows:

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.

Comment: These bonds are not only performance bonds, but payment bonds. Cf AS 36.25.010.

AMENDMENT

IN THE JUDICIARY COMMITTEE

TO: HB 148

1. Add a new Section reading as follows:

Sec. 45.30.018. PRIVATE CAUSE OF ACTION AGAINST BOND. (a)

A buyer who has a claim against the manufacturer of the buyer's mobile home for failure to fulfill the manufacturer's obligations under AS 45.30.011 may file an action upon the bond required by AS 45.30.015. The action must be filed in the superior court of the judicial district where venue lies.

(b) The remedy provided in 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.

2. Renumber Section 2 and Section 3.

3. Add new sections 4, 5 and 6 as follows:

Section 4. Section 1 of this act takes effect on the date specified in AS 01.10.070, unless a version of HB 115 or SB 125, relating to setting of venue by supreme court rule, is enacted by that date.

Section 5. Section 2 of this Act takes effect on the date specified in AS 01.10.070, if a version of HB 115 or SB 125, relating to setting of venue by supreme court rule, is enacted by that date.

Section 6. All other sections of this Act take effect on the date specified in AS 01.10.070.

AMENDMENT

IN THE JUDICIARY COMMITTEE

TO: HB 148

1. Add a new AS 45.30.01(b) as follows:

(b) Two copies of the complaint and the summons must be served by certified mail upon the attorney general at the time suit is filed. At the same time, \$5.00 must be paid to the attorney general, taxable as costs in the action. This service upon the attorney general shall constitute service on the surety. The attorney general shall transmit one copy of the complaint and summons to the surety within 72 hours after it has been received. The attorney general shall maintain a record, available for public inspection, of all suits commenced.

2. Renumber present subsection (b) as (c).

Comment: Cf AS 08.18.081

AMENDMENT

IN THE JUDICIARY COMMITTEE

TO: HB 148

Add a new AS 45.30.045 as follows:

Sec. 45.30.045 Surety's liability and right to cancel bond.

(a) The surety shall inform the attorney general in writing of

(i) all claims against the bond lodged directly with the surety,

and

(ii) all sums paid against the bond.

(b) The surety upon the bond is not liable in an aggregate amount in excess of that named in the bond, but in case claims pending at any one time exceed the amount of the bond, the claims shall be satisfied from the bond in the order in which claims were filed with the surety directly and complaints were filed against the bond in court.

(c) Nothing in this chapter impairs the right of a surety to cancel its bond for lawful reasons, however no cancellation shall extinguish the surety's liability on the bond for mobile homes previously delivered in the state.

Comment: Cf AS 08.18.081, AS 08.18.091

AMENDMENT

IN THE JUDICIARY COMMITTEE

TO: HB 148

Sec. ___ Add a new AS 45.50.471(b)(26), as follows:

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(26) failing to comply with AS 45.30. relating to mobile homes and mobile home parks.

AMENDMENT

IN THE JUDICIARY COMMITTEE

TO: HB 148

Change bill title according to any other amendments adopted.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

BILL SHEFFIELD, GOVERNOR

XX REPLY TO

1071 W 4th SUITE 110
ANCHORAGE ALASKA 99501
PHONE (907) 279-0428

1st NATIONAL CENTER
100 CUSHMAN, SUITE 400
FAIRBANKS ALASKA 99701
PHONE (907) 456-8588

S S FULLER BLDG
4th & HARRIS, SUITE 214
POUCH K
JUNEAU ALASKA 99811
PHONE (907) 465-3692

STATE COURTHOUSE, ROOM 26
P O BOX 671
VALDEZ ALASKA 99686
PHONE (907) 835-2462

March 22, 1985

Honorable M. Mike Miller
Chairman
House Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

Members of your committee expressed an interest in increasing the bond amount in AS 45.30.015 required of mobile home manufacturers whose homes are sold in Alaska.

We have researched the costs to the manufacturer if the bond amount were increased and have concluded that an increase from \$35,000 to \$100,000 would not significantly increase the cost to the manufacturer doing business in Alaska. This increase would, however, based on the information previously provided the committee concerning the average purchase prices of mobile homes in Alaska, offer additional protection to the Alaskan purchaser of a mobile home and to Alaskan mobile home dealers.

Following is a summary of the information we gathered on bond costs:

The cost for a bond pursuant to AS 45.30.015 would be between 1% - 2% of the face value annually -- but more likely about 1%. Thus, a \$100,000 bond would cost the manufacturer approximately \$1000 a year with an upper limit of \$2000 a year.

The addition in the statute of a private cause of action should not increase the cost of the bond.

The financial stability and net worth of a manufacturer might well determine the cost of a bond or even if the manufacturer can obtain a bond. A company's inability to obtain a bond would probably be a good indication of its reliability in fulfilling its bonded obligations according to one local insurance broker.

Our staff surveyed Insurance Company of North America, Corroon & Black and Rollins, Burdick & Hunter to obtain this information. As the information provided by each of these firm

Honorable M. Mike Miller

March 22, 1985
Page 2

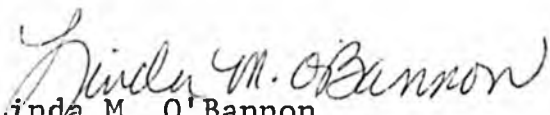
was consistent we believe it to be accurate.

We hope this information is helpful to the committee.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Linda M. O'Bannon
Assistant Attorney General
Chief, Consumer Protection
Section

LMO/ssr

cc: Rep. Don Clocksin
Rep. Max F. Gruenberg, Jr.
Rep. Fritz Pettyjohn
Rep. Randy Phillips
Rep. John Sund
Rep. Robin L. Taylor

Proposed Committee Substitute to HB 148 Version No. 1

HOUSE BILL NO. 148

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act transferring enforcement of the Mobile Home
Warranty Act"

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

* Section 1. AS 45.30.100(2) is amended to read:

(2) "department" means the Department of Law [COMMERCE AND
ECONOMIC DEVELOPMENT];

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

March 14, 1985

Honorable Mike N. Miller
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: HB 148

Dear Representative Miller:

There is some additional information I would like to share with the House Judiciary Committee concerning HB 148. I thank you for the opportunity to allow me and Rob Mintz to testify by teleconference on March 11.

We would respectfully request that the Committee consider this session at least passing the portion of HB 148 found in Section 2 of the current bill transferring the responsibility of enforcement of the Mobile Home Warranty Act from the Department of Commerce and Economic Development to the Department of Law. HB 148 was originally drafted in 1983 and introduced in the 13th legislature as SB 497.

The Division of Legislative Audit prepared a special report on the Department of Commerce and Economic Development, Division of Measurement Standards, on April 6, 1983. In that report Legislative Audit recommended the transfer of the responsibility to resolve warranty defects of mobile homes found at AS 45.30 from the Department of Commerce and Economic Development to the Department of Law. The audit reflected three reasons for the need for the transfer: (1) possible conflicts of interest involving the Department of Commerce Mobile Home Inspector; (2) possible failure of the Department of Commerce to carry out the duties of the Mobile Home Warranty Act and/or use of money appropriated for that purpose in other ways; and (3) the public's perception that the Consumer Protection Section of the Department of Law is the agency to contact concerning consumer complaints or problems relating to mobile homes.

A follow-up report was issued by the Division of Legislative Audit on June 4, 1984. That audit report provided:

BILL SHEFFIELD, GOVERNOR

XX REPLY TO

— 1031 W 4th, SUITE 110
ANCHORAGE, ALASKA 99501
PHONE (907) 279-0428

— 151 NATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS, ALASKA 99701
PHONE (907) 456-8598

— S S FULLER BLDG
4th & HARRIS, SUITE 214
POUCH K
JUNEAU, ALASKA 99811
PHONE (907) 465-3692

— STATE COURTHOUSE ROOM 26
P O BOX 671
VALDEZ, ALASKA 99586
PHONE (907) 835-2462

The 1983 audit of the Division recommended that the Mobile Home Warranty Program would be better served under the Consumer Protection Section of the Department of Law. The recommendation was made on the basis that the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and would therefore be best suited to administer the program. The Department of Commerce and Economic Development has entered into a Reimbursable Service Agreement with the Department of Law to transfer the program. Legislation to make the transfer permanent was introduced into the 1984 session of the legislature.

Further in the report is Legislative Audit's current position:

The Mobile Home Warranty Program is presently being administered by Consumer Protection through a Reimbursable Service Agreement with DMS. For fiscal year 1985, the program is budgeted within Consumer Protection.

During the 1984 legislative session, SB No. 497 was introduced to amend AS 45.30 by placing the responsibility for the program in the Department of Law. The bill was not passed by the 1984 legislature.

We recommend that the Department resubmit the proposed legislation change to the 1985 legislature. (Emphasis added) p. 10.

For your convenience I have attached a copy of the 1983 report and the 1984 follow-up report of the Division of Legislative Audit and have clipped and highlighted the relevant portions. Also for your convenience I have attached a copy of the Reimbursable Services Agreement between the Division of Measurement Standards, DCED, and the Consumer Protection Section of the Department of Law. Enclosed is a copy of the Fiscal Year 1985 budget relating to the inclusion of the Mobile Home Warranty Act Program within the Consumer Protection Section of the Department of Law.

We respectfully request that the House Judiciary Committee carefully consider enacting the suggestions of the

Division of Legislative Audit and transferring the responsibility for enforcement of AS 45.30 to the Department of Law. Some members of the Committee questioned whether it is urgent to amend AS 45.30 during this session. Even if the Committee should decide to defer action on other elements of the legislation, we believe it makes sense to act now on the simple, noncontroversial amendment transferring enforcement responsibility.

From a consumer viewpoint it would seem beneficial to alert the public that the actual enforcement of the Mobile Home Warranty Act now lies with the Department of Law. For instance, if a private attorney were advising mobile home owners, the attorney would no doubt look to the current statute and attempt to make contact with the Department of Commerce for additional information. It is difficult to justify the referral from one agency to another that is necessitated simply because the definition contained in AS 45.30.100 of "department" has not been changed by the legislature to the Department of Law.

This suggestion which would accomplish only the transfer is reflected in "Proposed Committee Substitute to HB 148 Version No. 1" which is enclosed.

PRIVATE CAUSE OF ACTION

For your convenience we have also enclosed Proposed Committee Substitute Version No. 2 which would provide for a private cause of action. We are very appreciative of the Committee members' comments in this area. The comments were most helpful to us in clarifying the mechanism of a private cause of action.

Before discussing the individual sections in the Proposed Committee Substitute No. 2, I'd like to set forth some of the reasons the Consumer Protection Section believes a private cause of action is needed. As previously stated in the Governor's transmittal letter to the Legislature, a private cause of action would promote government efficiency by encouraging private self-help, rather than reliance on government. In situations where a mobile home buyer believes that he or she has a valid claim against the bond but the state enforcing authority does not believe administrative action is warranted, it would provide a viable opportunity to recover for defects in a mobile home even if a manufacturer has declared bankruptcy, gone out of business, or is otherwise judgment proof.

Another very important aspect of the private cause of action against the bond is one that was noted by Rep. Taylor. That is, in order to claim against the bond under the current statute the State must show in an administrative hearing that violations of the provisions of this chapter are "regular and recurring". AS 45.30.040(c)(2). In the instance where an individual consumer purchases a mobile home that has substantial warranty defects but there are no other such instances, the State would be very unlikely to take administrative action under AS 45.30.040 because of the difficulty of showing "regular and recurring" violations. The private cause of action would make it possible for that individual consumer to claim against the bond despite the State's inability to act.

As our February 4, 1984, report on the Mobile Home Warranty Act stated, many Alaskans are mobile home purchasers. There is no doubt that the purchase of a mobile home is the number one consumer purchase for the mobile home owner. One can't adequately describe in words or statistics the discomfort and dissatisfaction of a mobile home owner who must live each and every day in a defective mobile home with little legal recourse. To these individual mobile home purchasers this legislation would offer substantial benefits. If the Committee wishes to hear from consumers living in defective mobile homes, we would be happy to attempt to arrange for their testimony.

We have a video tape in our office of a mobile home purchaser describing serious defects in his mobile home. I played part of this video tape at the hearing on HB 148 before the House Labor and Commerce Committee. It vividly describes how serious the defects of a mobile home can be. If the Committee would like a viewing of this tape or portions of it, we would be more than willing to provide that for you.

Section by section analysis of the proposed Committee Substitute Version No. 2.

Section 1.

This proposed committee substitute would leave out the admittedly unnecessary venue language in the current HB 148 and substitute Rep. Gruenberg's suggested new AS 45.30.018. We would like to comment that there might be a potential for some confusion if SB 1, proposing changes to the jurisdictional limits of the district court, were adopted by the legislature. For instance, a mobile home owner might have a claim of less than \$25,000 and actually prefer to file in district rather than

superior court. We have left the action in superior court in this particular proposed committee substitute because we don't know the likelihood of passage in the House of what is now the committee substitute to SB 1. We have no objection to your allowing a filing in district court as well as superior court or otherwise conforming this bill to SB 1 if it passes.

Proposed new AS 45.30.018(b) was also suggested by Rep. Gruenberg. We are proposing two revisions to his suggested amendment. One would be to leave out the phrase "at the same time, \$5.00 must be paid to the attorney general, taxable as costs to the action." The reason we make this suggestion is that it is hoped that access to the bond by private parties would tend to encourage settlements and that the actual number of lawsuits that would be filed would be very few, perhaps ten or less per year. The amount of money collected would not be particularly beneficial as opposed to any extra administrative procedures that would be required to account for and deposit those funds.

We have also changed the phrase "within 72 hours" to "within 3 business days" for the attorney general to transmit one copy of the complaint and summons to the surety. We are proposing that period of time in order to account for any three-day State holiday. For example a complaint might be received late Friday afternoon prior to a three-day weekend and transmittal of the complaint and summons could not be made until after the 72-hour period. This would help to assure attorney general compliance with the law.

Section 2.

We are in support of Rep. Gruenberg's excellent suggested amendment adding a new AS 45.30.045. We have proposed some changes in the language which would make it clear that the State's administrative action would have priority over any other claims against the bond. We would want to avoid the situation where the State had started administrative action on behalf of several mobile home owners for "regular and recurrent" violations but would after expensive investigative and administrative procedures lose out because there had been a "race to the courthouse" by one of the consumers who would collect the entire bond. The purpose of the private cause of action is to provide a consumer remedy in that situation where the State either believes there have been no regular and recurrent violations or is not able to commit the resources to an administrative action to proceed against the bond. The private cause of action should not defeat the legislative purpose of the Mobile Home Warranty Act.

It is appropriate for the State to act in those multiple violations cases and in those cases the State should be allowed to distribute the proceeds of the bond to all of the injured mobile home owners pursuant to the present AS 45.30.040.

Rep. Gruenberg also suggested a change to AS 45.30.015 changing the reference currently in the statute of "performance bond" to "bond". While we really don't have any objection to this proposal I am not certain that it is necessary. I don't think it was intended that these be payment bonds such as are required in AS 36.25.010. Payment bonds traditionally have been aimed at ensuring that subcontractors on public contracting jobs as well as materialmen are paid. The purpose of AS 45.30 does not seem to be to ensure that anyone who takes part in the manufacture of a mobile home or provides a component part to the mobile home is covered by this bond. As I see it, the bond is for the benefit of the mobile home owners or the mobile home dealer who is injured by the failure of a mobile home manufacturer to comply with AS 45.30.011 or in other words, the manufacturer's warranty.

Section 3 is the previously mentioned transfer of responsibility from the Department of Commerce and Economic Development to the Department of Law.

Section 4

This provision was suggested by Rep. Gruenberg and we are very favorable to his suggestion.

Increase in the Bond Amount in AS 45.30.015

The Committee has expressed some interest in increasing the bond amount from \$35,000 to a higher figure. Obviously this increase in the bond amount would benefit those mobile home purchasers who have defects in their mobile homes. We would support an increase; perhaps a \$100,000 bond would be more in line with the current new mobile home prices as reflected in our February 4, 1984, report.

We will be researching the cost of surety bonds in various amounts and provide that information to you as soon as possible but certainly within four or five days.

More Extensive Revision of the Act

Another issue that was raised by some of the Committee members at the hearing on HB 148 was the possibility of the Department of Law suggesting more major revision to AS 45.30 next legislative session. Apparently some Committee members felt that there is no need to act on current proposed revision of AS 45.30 if more extensive revision would be recommended at a later date. We respectfully ask these Committee members to reconsider that position. It is anticipated that the recommended changes would not be as important to consumers as those in HB 148 but rather would be housekeeping/technical revisions rather than revisions that would be vital to consumer interests, as the transfer of responsibility to the Department of Law, the creation of a private cause of action and the possible increase to the bond amount would be. We are not offering such technical amendments at this time simply because we do not believe that we have the administrative expertise to suggest all possible revisions which would eliminate federal preemption problems of the act at this particular time. From the information provided you will note that the first time the section ever acquired a mobile home investigator was in July of 1983. That person was an investigator with the Department of Commerce but never worked in mobile home investigation prior to the time of transfer. The Consumer Protection Section of the Department of Law has only three attorneys (given the chief's administrative duties it is reduced to only about 2½ attorneys). At this point I have been employed with the Consumer Protection Section longer than the other two staff attorneys and I have only been employed here since September 1983. Prior to my assuming the chief post in September 1984 I never was assigned any mobile home work. The attorney who was assigned mobile home work, unfortunately after a long and serious illness, died while employed here. For a short time another attorney was hired on a temporary part-time basis who helped supervise the mobile home investigator. In late October 1984 another attorney joined the office who has been able to devote some time to the supervision of the mobile home program.

At present we are involved in a major investigation involving defects by one manufacturer in several consumers' mobile homes. We have employed an expert witness and expect to proceed to administrative hearing fairly soon in this case. We have, of course, negotiated informally numerous complaints as reflected in our report of February 4, 1985.

Coupled with the complexity of the law in the area of mobile home warranty and our still developing administrative expertise in this area, we do not feel that it would be

Honorable Mike M. Miller
HB 148

March 13, 1985
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beneficial to attempt such a technical amendment of the statute at the present time. We would, of course, make that attempt at your request as soon as possible, if you wish us to do so.

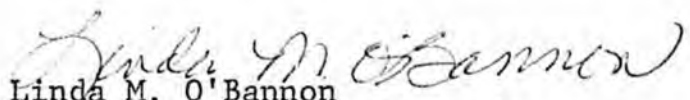
As we testified, most of the preemption problems in the present statute are those dealing with disclosure of warranty requirements in the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-3212. The intent of this explanation is not to make excuses, the intent of it is to assure the Committee that the staff of this section has a strong commitment to protection of mobile home purchasers; that we feel we are gaining administrative expertise in this area and while we may in the future suggest changes to AS 45.30, this should not be cause for the Committee not to consider these needed consumer protections at the most immediate date.

Thank you very much for the opportunity to comment. If we can be of any further assistance to the Committee, please advise us. I have copied each member of the Committee with the letter and the proposed committee substitutes but have not included all the other enclosures with their copies and assume you will make these materials available as necessary. Finally, I've enclosed an article from the March 1985 Senior Voice on consumer legislation that I've just received.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Linda M. O'Bannon
Assistant Attorney General
Chief, Consumer Protection
Section

LMO/ssr
Enc¹.

cc: Rep. Don Clocksin
Rep. Max F. Gruenberg, Jr.
Rep. Fritz Pettyjohn
Rep. Randy Phillips
Rep. John Sund
Rep. Robin L. Taylor

Proposed Committee Substitute to HB 148 Version No. 1

HOUSE BILL NO. 148

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act transferring enforcement of the Mobile Home
Warranty Act"

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

* Section 1. AS 45.30.100(2) is amended to read:

(2) "department" means the Department of Law [COMMERCE AND
ECONOMIC DEVELOPMENT];

Proposed Committee Substitute to HB 148 Version No. 2

HOUSE BILL NO. 148

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating a private cause of action relating to mobile home warranties; and transferring enforcement of mobile home warranties."

IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.30 is amended by adding a new section to read:

Sec. 45.30.018. PRIVATE CAUSE OF ACTION AGAINST BOND. (a) A buyer who has a claim against a manufacturer of the buyer's mobile home for failure to fulfill the manufacturer's obligations under AS 45.30.011 may file an action upon the bond required by AS 45.30.015. The action must be filed in the superior court of the judicial district where venue lies.

(b) Two copies of the complaint and the summons must be served by certified mail upon the attorney general at the time suit is filed. This service upon the attorney general shall constitute service on the

surety. The attorney general shall transmit one copy of the complaint and summons to the surety within three business days after it has been received. The attorney general shall maintain a record, available for public inspection, of all suits commenced.

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

* Sec. 2. AS 45.30 is amended by adding a new section to read:

Sec. 45.30.045. SURETY'S LIABILITY AND RIGHT TO CANCEL BOND.

(a) The surety shall inform the attorney general in writing of (1) all claims against the bond lodged directly with the surety, and (2) all sums paid against the bond.

(b) The surety upon the bond is not liable in an aggregate amount in excess of that named in the bond. If claims pending at any one time exceed the amount of the bond, the claims shall be satisfied from the bond in the order in which claims were filed with the surety directly and complaints were filed against the bond in court; provided that if a notice of violation has been issued to the manufacturer pursuant to AS 45.30.040, no private claim shall be satisfied from the bond until after distribution of proceeds is made pursuant to bond forfeiture under AS 45.30.040(c)(2) or until any administrative proceeding under AS 45.30.040 is otherwise concluded or withdrawn.

(c) Nothing in this chapter impairs the right of a surety to cancel its bond for lawful reasons; however, a cancellation does not extinguish the surety's liability on the bond for mobile homes previously delivered to buyers in the State.

* Sec. 3. AS 45.100(2) is amended to read:

(2) "department" means the Department of Law [COMMERCE AND ECONOMIC DEVELOPMENT];

* Sec. 4. AS 45.50.471(b) is amended by adding a new subsection to read:

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(26) failing to comply with AS 45.30 relating to mobile home warranties and mobile home parks.

Public push needed for consumer bills

Juneau 'bill' board

Bill	Sponsor	Status
House		
HB 52 - Kenai Pioneers' Home	Navarre	Introduced: 1/14/85 Referred to Fin.
HB 1, 4 -- Older Alaskans Commission	Rules Committee by request of governor	Introduced: 1/25/85 Referred to Senate SA
HB 190 - Senior citizen housing	M.M. Miller and others	Introduced: 2/13/85 Referred to CRA
HB 210 - Longevity Bonus program (annuity)	Taylor, Jenkins	Introduced: 2/18/85 Referred to SA
HB 212 - Longevity Bonus payments (public assistance)	Koponen and others	Introduced: 2/18/85 Referred to HESS
Senate		
SB 32 - Senior employment program	V. Fischer	Introduced: 1/14/85 Referred to SA
SB 55 - Social services fund	Josephson	Introduced: 1/15/85 Referred to HESS
CSSB 56 - Longevity Bonus Program (annuity)	Ray and others	Introduced: 1/15/85 Referred to Jud.
SB 113 -- State and municipal tax exemptions	Rules Committee by request of governor	Introduced: 1/30/85 Referred to Fin.
SB 117 - Alzheimer's disease diagnostic center and day care centers	V. Fischer, Josephson	Introduced: 2/1/85 Referred to HESS
SB 128 - Longevity Bonus payments (public assistance)	Halford and others	Introduced: 2/5/85 Referred to HESS
SB 137 - Senior citizen housing	Rodey and others	Introduced: 2/6/85 Referred to CRA
SB 140 - Rights of the terminally ill	Eliason and others	Introduced: 2/7/85 Referred to HESS
SB 149 - Social services appropriation for Anchorage	V. Fischer, Josephson	Introduced: 2/12/85 Referred to CRA
SB 160 - Kodiak Pioneers' Home	Zharoff	Introduced: 2/18/85 Referred to SA

CRA: Community & Regional Affairs Fin: Finance HES: Health, Education & Social Services
Jud: Judiciary LC: Labor & Commerce SA: State Affairs

by Rita R. Robison

Keeping utility bills down. Getting some money back for a faulty mobile home.

Receiving interest payments on utility deposits.

Helps like these would be available for consumers if over a dozen bills filed in the Alaska State Legislature pass this session.

Especially important to seniors is legislation that would establish an Office of Public Utility Consumer Representation.

The office would argue on behalf of residential consumers when rate increases are proposed by telephone, natural gas or electric utilities.

The office will help seniors because it will keep utility bills down, said Rep. Don Clocksin, D-Anchorage. "It's just that simple."

Utilities often spend thousands of dollars arguing rate increase cases before the Alaska Public Utilities Commission, Clocksin said. Consumers are often unrepresented.

Another consumer bill would allow mobile home owners to file a claim in court against the manufacturer's bond if they have been unable to get problems resolved.

Brad Parker, investigator for the Attorney General's Office, said seniors have had difficulties with mobile homes, especially in the Anchorage area.

Getting a remedy from a dealer or manufacturer can be complex because neither party may take responsibility and the manufacturer is located in the lower 48, said Parker.

And, he added, the federal government does not allow states to require stricter standards for mobile home construction, so no cold weather requirements can be mandated for Alaska.

Alaska's environment causes extra problems with attic condensation, heavy snowfalls and shifting ground, Parker said.

A third consumer measure before lawmakers would require public utilities to pay interest on deposits retained for more than a year.

Do consumer bills have a good chance of passage this session?

"Whether or not they pass depends on whether or not Alaskans care," said Clocksin.

"Consumers have to decide on what they want and insist that it be passed," he said.

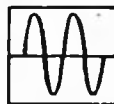
Clocksin suggests consumers write letters to legislators on issues that concern them.

Maureen Kennedy, executive director of the Alaska Public Interest Research Group (AKPIRG), agrees legislators need to hear from consumers.

"Consumers have not been as able to effectively lobby as oil, and the utility lobby or other business interests," Kennedy said. "We must rely on a grassroots effort to get the message loud and clear to the legislature."

Other consumer bills before lawmakers would:

- allow conversion of mobile home parks to a condominium arrangement;
- require disclosures prior to the purchase of condominiums and other commonly owned property;
- require drivers to carry motor vehicle liability insurance;
- clarify procedures used under the Alaska Unfair Trade Practices and Consumer Protection Act;
- require Alaskans to wear seat belts in autos;
- regulate the sale of timeshare programs for residential property in Alaska; and
- strengthen the enforcement of laws related to construction contractors.



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BUDGET REQUEST UNIT (BRU): OFFICE OF CONSUMER PROTECTION	
PROGRAM: CONSUMER PROTECTION	CATEGORY:
AGENCY: DEPARTMENT OF LAW	DIVISION: CIVIL
NAME/POSITION OF BRU MANAGER: CONNIE J. SIPE, ASSISTANT ATTORNEY GENERAL	PHONE: 279-0428
NAME/POSITION OF AGENCY CONTACT: RICHARD I. PEGUES, DIRECTOR, ADMINISTRATIVE SERVICES DIV., DEPT. OF LAW	PHONE: 465-3672
LIST STATUTORY/REGULATORY BASIS FOR SERVICES PROVIDED (I.E., ALASKA STATUTE, ALASKA ADMINISTRATIVE CODE, OR FEDERAL REGISTER):	
AS 44.23.023 "Duties of the Department of Law" AS 45.50.471-.561 "Unfair Trade Practices and Consumer Protection Act" AS 45.130-24 "Regulation of Motor Vehicle Repairs" AS 45.30.011-.100 "Mobile Homes and Mobile Home Parks"	
NOTE SIGNIFICANT CHANGES IN BRU RESPONSIBILITIES FROM FY 84 (E.G., NEW PROGRAMS):	
Transfer of statutory enforcement duties relative to mobile home warranties. Already in FY84, BRU performed duties pursuant to an RSA. (Note that FY85 transfer of 1 position to BRU represents less than 1/2 the resources originally granted by 1980 Legislature to Department of Commerce for enforcement of Mobile Home Warranty Act.)	
SIGNATURE OF BRU MANAGER: <i>Connie J. Sipe</i>	DATE: <i>October 16, 1983</i>

B-1 BRU
COVER
PAGE

AGENCY DEPARTMENT OF LAW
PROGRAM CONSUMER PROTECTION
BRU OFFICE OF CONSUMER PROTECTION

FY85

Page 1 of 1
Revised Date



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 30, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

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 1933 legislative audit of the division of measure-

ment standards, DCED, studied this issue and recommended
The Department [of Commerce and Economic
Development] should seek legislation to
transfer the mobile home warranty enforce-
ment 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,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

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, was accomplished July 1, 1984. Consequently, enactment of this bill will not require additional funding nor will it cause a fiscal impact.

Revision Date: _____

REQUEST

Bill/Resolution No.: _____
Title: "An Act relating to...
mobile home warranties..."
Sponsor: House Rules/Governor
Requestor: Ofc. of Gov. - OMB
Date of Request: 12/10/84

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 85	FY 86	FY 87	FY 88	FY 89	FY 90
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)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Richard I. Pezues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 12/10/84
 Approved by Commissioner: Richard O. Pezues / FAR Date: 12/10/84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

Revision Date: December 3, 1984

REQUEST

Bill/Resolution No.: _____
Title: Relating to Mobile Home
Warranties

Sponsor: _____
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Protection

BRU, Program or Subprogram(s) Affected: _____
Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0				

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	0	0				

ANALYSIS: Attach a separate page if necessary



Prepared By: Joe Swanson
Division: Measurement Standards

Phone: 345-7750

Date: 12/1/84

Approved by Commissioner: Richard A. Lyon
Agency: Commerce and Economic Development

Date: 12.5.84

Distribution (by Agency preparing fiscal note):

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

7/1/84

THE MOBILE HOME WARRANTY ACT
AND CONSUMER PROBLEMS WITH MOBILE HOMES

A Report by the Consumer Protection Section,
Department of Law,
February 4, 1984

Introduction

Mobile homes have become a major housing alternative for Alaskans, one which often involves considerable expense. Ranging in price from \$10,000 to well over \$100,000 (not including land), mobile homes in the state sold for an average of \$40,263 in mid-1984, as reported by the Alaska Housing Finance Corporation. Often mobile homes are purchased by consumers who lack the income needed for conventional housing and who are less able to protect themselves from defective products and unfair sales techniques. Yet unlike conventional housing, mobile home construction is not subject to regulation or inspection by local or state authorities, nor is the sale of mobile homes subject to professional licensing requirements.

Apart from the Department of Law's general enforcement powers against unfair or deceptive trade practices, state efforts to prevent and remedy the widespread problems confronted by mobile home purchasers rest solely on the mobile home warranty act, AS 45.30. The Consumer Protection Section's recent experience in administering this act shows that defects in mobile homes and consumers' problems in obtaining corrective action continue to be frequent occurrences and continue to demand significant efforts on the part of the section.

Background of the Mobile Home Warranty Law

In 1980, the Legislature acted to ensure that consumers receive adequate warranty protection when they purchase mobile homes. (Ch. 104, SLA 1980, amending AS 45.30.) This statute requires new mobile homes to be covered by a one-year written warranty against substantial defects in materials and workmanship. One important provision of the mandated warranty is that the dealer and manufacturer are each fully responsible for correcting defects, so that the consumer is not shuttled back and forth with no one taking responsibility. Another important provision is that the warranty must cover not only the structure of the mobile home but also all mechanical systems, equipment, and appliances included when it is sold.

The statute also establishes a method to enforce compliance. Written notices of violations may be issued by a

state inspector, and the enforcement agency may hold administrative hearings on alleged violations. When it is determined, following such a hearing, that a dealer or manufacturer has violated a provision of the law, the violator may be ordered to take corrective action. Moreover, in appropriate cases the manufacturer's \$35,000 performance bond may be forfeited and the proceeds distributed to the injured parties.

The 1980 mobile home legislation did more than establish state warranty requirements; it also repealed existing portions of AS 45.30 which regulated mobile home construction standards. The reason for this repeal was not, it must be emphasized, a belief that such regulation was unnecessary. Rather, it was simply a matter of federal preemption. In 1976 the U.S. Department of Housing and Urban Development (HUD) had taken over the regulation of mobile home construction throughout the country. This meant the preemption of Alaska's construction standards program.

The HUD program, however, did not come close to eliminating many kinds of serious problems that frequently afflict purchasers of mobile homes. As pointed out in a 1980 Federal Trade Commission study of mobile home warranty problems, the scope of the HUD standards is limited and the agency's remedial powers when defects occur are "severely circumscribed." The construction standards, which cover only basic components and focus on safety concerns, do not protect consumers from defects in appliances, cabinetry, carpeting, ceiling tile or wall paneling, floor coverings, and so on; nor do they address damage occurring during transportation or set up. Equally important, inspection is required of a mobile home only once -- at any point -- during the manufacturing process, so that defects may readily occur which are not detected. Indeed, HUD has acknowledged that "no mobile home is completely without failures to conform to the Federal standards." Finally, once a mobile home has been purchased by a consumer, the only defects which HUD can require the manufacturer to correct are those which present an unreasonable risk of injury or death.

Thus, when the Alaska Legislature passed its mobile home warranty act, joining seventeen other states at that time with similar legislation, it did so in recognition of the need to fill a major gap in the legal protection provided to consumers. The House committee which recommended passage of the act had before it a report from the Attorney General's Consumer Protection Section analyzing complaints within the past two years from some 68 consumers having problems with mobile homes. In addition to multitudinous defects reported in interior construction, exterior construction, plumbing, appliances, electrical systems, and plumbing systems, a common thread running through the consumers'

experience was a lack of response from dealers and manufacturers to their complaints. Long delays in merely getting someone to look at the problem were common, and in many cases the defects remained uncorrected even after repeated attempts at repair. Experience since that time amply demonstrates the continuing importance of the warranty law.

Recent Consumer Protection Section
Experience with Mobile Home Problems

Since the enforcement of the mobile home warranty act was administratively transferred to the Consumer Protection Section in May of 1983, the section has handled 65 complaints and has responded to over 96 inquiries and requests for assistance. Although most consumer mobile home complaints involve several individual problems that the consumer has experienced, the major focus of complaints received during the past year and a half may be summarized as follows:

1. Defects in materials and workmanship	27%
2. Misrepresentative sales techniques	46%
3. Shoddy repair services	16%
4. Mobile home park and other problems	11%

Specific mobile home related complaints include but are not limited to the following:

1. Doors and windows that will not open or close properly.
2. Cracked sinks and bathtubs.
3. Overly expensive to operate or inadequate heating systems.
4. Excessively high interior humidity
5. Buckling walls and separating components.
6. Misrepresentations about the ability to qualify for a loan, or about the outcome or penalty resulting from not qualifying for or not obtaining a loan to purchase a mobile home.
7. Settling of mobile homes resulting from inadequate or improper setup procedures.
8. Numerous failed attempts to repair mobile home defects by unqualified service persons.
9. Misrepresentations of the authority of a salesperson.
10. Failure to deliver title.

Although a report regarding consumer problems with their mobile homes must be brief, because as one consumer wrote to Consumer Protection just last week "there isn't enough paper in Alaska to state the dissatisfaction we've experienced," a few specific examples will help provide a clear understanding of the seriousness of consumer mobile home problems.

During the past year, three purchasers of a particular brand of mobile home complained to the Consumer Protection Section that the roofs on the mobile homes were leaking severely and that they had been unable to obtain a remedy from either the manufacturer or dealer. The consumer found that the dealer had "disappeared" and the manufacturer's response was that the consumers needed to shovel their roofs more adequately in the winter time (despite the dealer's original claim that their roofs were specially designed for "Alaska conditions"). Yet only a minor amount of snow had accumulated on them, and moreover the manufacturer's own "homeowners manual" stated that the roofs should not be climbed or walked on. Although the manufacturer's warranty had expired on two of the mobile homes, through mediation and negotiation the Consumer Protection Section obtained for the consumers new roofs and a one year warranty from the manufacturer that the structure of the roof would remain free from defects.

After resolution of the complaints one of the consumers confided that had the problem not been resolved he would have had to leave his home. It should be pointed out that since February of 1984, 56 mobile homes purchased between 1980 and 1984 were repossessed. According to AHFC personnel many of these homes were abandoned by their owners. With a 17% increase in the cost of a new mobile home between 1983 and 1985 and a slight decrease in the average monthly income of a new mobile home purchaser during the same period, it has become increasingly difficult for mobile home consumers to bear the burden of major defects such as these.

Many consumer complaints have involved the formation of large amounts of condensation on interior surfaces of their mobile homes. In many instances this leads to wet and ruined walls and carpets; in one case a consumer reported mushrooms growing on the floor. Homes inspected by this section have been found to possess warped ceilings, floors and walls. In some cases permanent fixtures such as bathtubs and toilet bowls have begun to sink through the floors. Often manufacturers respond to these problems with allegations that the consumer is improperly ventilating or utilizing the mobile home.

In other recent complaints consumers stated that they ordered mobile homes with particular features and amenities to be included by the manufacturer. They found, however, that when the mobile homes arrived many of these features were not included with the homes. Although the purchase agreements clearly stated that these items would be included, the dealer claimed that the consumer had agreed to accept the home without them. One consumer stated that the dealer kept telling him that he would "take care of it"; the outcome is pending. Consumer Protection records show

that many consumers are promised features or amenities with their mobile homes and then find those features missing upon delivery. They also find that the homes are many times improperly installed and in fact the homes themselves have been damaged in transit or were not properly constructed in the first place.

During the past two and one half years the Consumer Protection Section has recovered over \$132,000 for consumers who experienced defects in their mobile homes or mobile home transactions.

INTRODUCTION OF BILLS (House)(cont'd)

HB 146 (cont'd)

disability. Applicants would be required to establish proof of permanent disability and the need for specialized housing. Does not provide for an effective date (takes effect 90 days after Governor signs bill).

Introduced January 30 and referred to the House Special Committee on State Loans, Health, Education & Social Services, then Finance.

Division of
EEO
(creation)

HOUSE BILL NO. 147, by the Rules Committee by Request of the Governor. Creates a Division of Equal Employment Opportunity within the Department of Administration (see Governor's message). No effective date (takes effect 90 days after Governor signs bill).

Introduced January 30 and referred to State Affairs and Finance.

In his letter transmitting the bill to the House, Governor Sheffield stated:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill creating a division of equal employment opportunity in the Department of Administration. This bill will provide the division with statutory responsibility for equal employment opportunity that will transcend administrations and provide continuity in equal employment opportunity within the executive branch of state government.

The bill establishes the division of equal employment opportunity by adding AS 44.21.450 -- 44.21.485 to AS 44.21, relating to the Department of Administration. The division's powers and duties, which include advising and consulting with other departments and divisions about equal employment opportunity, affirmative action, and recruitment matters, are set out in AS 44.21.460. Most significantly, the division is under a mandate to develop an affirmative action plan for the executive branch of state government. To be submitted to the governor on an annual basis. The plan becomes effective once signed by the governor, and the head of each executive agency or department must report to the division about activities undertaken to implement the plan. The division reports annually to the governor and legislature on the plan's content and implementation. AS 44.21.470.

The bill requires the division to conduct an impartial investigation of every complaint of employment discrimination in the executive branch of state government. The division will work with the complainant and the agency involved to informally resolve the complaint. AS 44.21.475. Another feature of the bill is that it gives the division access to all records necessary to carry out its functions, although information that is confidential under AS 39.25.080 or other statutes may not be made public. AS 44.21.480.

Mobile Home
Warranties
(enforcement/
self-help)

HOUSE BILL NO. 148, by the Rules Committee by Request of the Governor. Increases governmental efficiency in enforcement of mobile home warranties and encourages consumer self-help (see Governor's letter). No effective date (takes effect 90 days after Governor signs bill).

Introduced January 30 and referred to Labor & Commerce and Judiciary.

page 192

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.

INTRODUCTION OF BILLS (House)(cont'd)

HB 148, (cont'd)

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 45.30.311, 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.

Locks & Keys
(misuse of)

HOUSE BILL NO. 149, by the Rules Committee by Request of the Governor. Adds new sections to criminal code relating to the unlawful use of locking devices (see accompanying letter). No effective date (takes effect 90 days after Governor signs bill).

Introduced January 30 and referred to Judiciary.

In his letter transmitting the bill to the House, Governor Sheffield stated:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to locksmiths.

This bill provides two degrees of criminal penalties for unlawful use of locking devices. The first degree crime is aimed primarily at locksmiths, but it also covers anyone who sells, repairs, or installs a locking device, including someone who sells a vehicle or a building but keeps a key. Class C felony penalties are imposed upon someone in this category who uses or discloses information, or provides a device, including a key, knowing that it will permit unauthorized access to the locked place. The bill thus recognizes that people who provide locks have a fiduciary relationship with those who rely upon them for security, and that someone who helps an unauthorized person gain access to a home or business is as culpable as the burglar himself.

The crime of unlawful use of locking devices in the second degree is aimed at prohibiting the practice of unauthorized duplication of keys marked with the words "do not duplicate." Class A misdemeanor penalties are provided.

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Committee Staff

DATE: February 7, 1985

SUBJECT: Overview, HB 148: Mobile Home Warranties

On Thursday, February 7, 1985, the House Labor and Commerce Committee meets in Room 102 of the Capitol Building on House Bill 148: "An Act creating a private cause of action relating to mobile home warranties; and transferring enforcement of mobile warranties."

To understand the bill better, one should look at section 2 first. This bill transfers the responsibilities for the enforcement of the Mobile Homes Warranty Law from the Department of Commerce, Division of Weights and Measures, to the Department of Law. The Dept. of C & ED does not have the administrative and legal mechanisms in place to easily enforce the law in this area, while the Consumer Protection Section in the Department of Law already has the procedures set up to hold hearings, investigate, and go to court, since they are already processing other consumer complaints, including mobile home complaints that fall outside the Warranty Act.

In actuality, this transfer of responsibility and activity for enforcement took place over 18 months ago, and appears to be working successfully, so the legislature is being asked in this bill to give authorization to that transfer. The transfer was initiated in 1983 in a Legislative Budget and Audit report that recommended it take place; and so a support position was transferred on an RSA to do this.

After 18 months of work, the Consumer Protection Section of the Department of Law is just now getting a thorough grasp of the problems and needs in the area of mobile home warranties. Specifically, as the Governor's transmittal letter points out, the Section is sometimes not able to pursue a formal action adequately, because of either limited resources or because the case appears to be weak legally. This gets into section 1 of the bill.

Under current law, the buyer has no further means of pursuing the matter through the state system and has to resort to a private suit in court. Since the manufacturers are located outside of the state, it is prohibitively expensive for a private citizen to pursue such a case.

This bill would give the buyer the extra recourse of recovering all or part of his losses by filing an action against the \$25,000 bond that is required of all mobile home manufacturers in Alaska. If the court found in favor of the buyer, the money would be taken from the manufacturers bond, which the manufacturer would then have to replace in order to continue being bonded so he could operate in Alaska. Without this option in place, the state is currently running the risk of liability in a law suit.

SECTIONAL ANALYSIS OF HB 148: "An Act creating a private cause of action relating to mobile home warranties; and transferring enforcement of mobile warranties," by Rules Committee at request of Governor; analysis by Committee Staff--February 7, 1985.

Section 1(a) A mobile home buyer may file an action upon the bond that is required in Alaskan law of all mobile home manufacturers, if the manufacturer fails to fulfill any of the warranty obligations that are listed in the statutes.

Since mobile home manufacturers are all headquartered out of state, the place where a legal action is filed is spelled out for greater clarity.

(b) The above new addition to the law does not exclude the buyer from also pursuing the problem legally through all other avenues currently available to him.

Section 2 Transfers the jurisdiction of all activity under Chapter 30 (The Mobile Homes and Mobile Home Parks) from the Department of Commerce & ED to the Dept. of Law.

other provisions of law. This subsection does not create a new cause of action against a dealer or repairing agent who sells or attempts to repair a motor vehicle found to be nonconforming under this section.

(j) A manufacturer or distributor of motor vehicles who authorizes the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership facilities within the state that are able to perform the service and make the repairs required by the manufacturer's express warranty and by this section.

(k) A manufacturer or distributor who accepts the return of a nonconforming motor vehicle under (b) of this section shall reimburse the owner for any reasonable cost incurred in shipping the vehicle to and from the nearest authorized facility for warranty service and repair of a nonconformity that causes the return of the vehicle.

(l) If a manufacturer or distributor has established an informal dispute settlement procedure that substantially complies with the requirements of 16 C.F.R. 703, as that section may be amended, or if the manufacturer or distributor, after receipt of notice required by (c) of this section, offers in writing to participate in an arbitration or mediation process with the owner and the arbitration or mediation decision is binding on the manufacturer or distributor but not on the owner, and if the informal dispute settlement or arbitration or mediation process is approved by the attorney general, the provisions of (b) of this section concerning refund or replacement or (k) of this section concerning shipping costs do not apply to an owner who has not first resorted to the informal dispute settlement procedure or arbitration or mediation process.

(m) In this section,

(1) "dealer" means a person who has obtained a franchise from, or is authorized by, a motor vehicle manufacturer to engage in

AN ACT

Relating to motor vehicle warranties.

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor vehicle does not conform to an express warranty that is applicable to it and the owner of the vehicle reports the defect or condition to the manufacturer of the vehicle or to the manufacturer's or distributor's dealer during the term of the warranty, the manufacturer, distributor, dealer, or a repairing agent shall make the necessary repairs to conform the vehicle to the express warranty.

(b) If during the term of the express warranty or within one year from the date of delivery of the motor vehicle to the original owner, whichever period terminates first, the manufacturer, distributor, dealer, or repairing agent is unable to conform the motor vehicle to an applicable express warranty after a reasonable number of attempts, the manufacturer or distributor shall accept the return of the nonconforming motor vehicle, and, at the owner's option, shall replace the nonconforming vehicle with a new, comparable vehicle or shall refund the full purchase price to the owner less a reasonable allowance for the use of the motor vehicle from the time it was delivered to the original owner. A refund under this subsection shall be made to a lienholder of record, if any, and the owner, as their interests may appear.

(c) In order to claim a refund or replacement under (b) of this section, the owner shall give written notice by certified mail to the manufacturer and its dealer or repairing agent at any time before 60 days have elapsed after the expiration of the express warranty or the one-year period after the date of delivery of the motor vehicle to the original owner, whichever period terminates first (1) stating that the vehicle has a nonconformity; (2) providing a reasonable description of the nonconformity; (3) stating that the manufacturer, distributor, dealer, or repairing agent has made a reasonable number of attempts to conform the vehicle; and (4) stating that the owner demands a refund or replacement vehicle to be delivered on the 60th day after the mailing of the written notice. Within 30 days after receiving the notice required by this subsection the manufacturer may make a final attempt to conform the vehicle before a refund or replacement is made under (b) of this section.

(d) An owner may not receive a refund or replacement under this section if the manufacturer or distributor shows that the nonconformity complained of

(1) does not substantially impair either the use or the market value of the motor vehicle; or

(2) is the result of

(A) alteration of the motor vehicle by the owner or a person other than a dealer or repairing agent that is not authorized by the manufacturer or distributor; or

(B) abuse or neglect by the owner or a person other than the dealer or repairing agent.

(e) A presumption that a reasonable number of attempts have been made to conform a motor vehicle under an applicable express warranty is established if:

(1) the same nonconformity has been subject to repair three or more times by the manufacturer, distributor, dealer, or repairing agent during the term of the express warranty or the one-year period after delivery of the motor vehicle to the original owner, whichever period terminates first, but the nonconformity continues to exist; or

(2) the vehicle is out of service for repair for a total of 30 or more business days during the express warranty term or the one-year period referred to in (1) of this subsection, whichever period terminates first; any period of time that repairs are not performed for reasons that are beyond the control of the manufacturer, distributor, dealer, or repairing agent is excluded from the 30-day time period referred to in this paragraph.

(f) A manufacturer whose vehicles are sold in the state through an authorized dealer shall provide its dealer or repairing agent with any part necessary to make a repair of a nonconformity covered under an express warranty, as soon as possible, without additional charge for freight or handling, if the part is not in the dealer's or agent's inventory when the nonconforming vehicle is brought to the dealer or repairing agent for repair.

(g) A manufacturer or distributor who fails to refund the full purchase price of a motor vehicle or replace the motor vehicle when there is a requirement to do so under this section is presumed to have committed an unfair trade practice under AS 45.50.471.

(h) A motor vehicle returned under (b) of this section may not be resold by the manufacturer or distributor in the state unless full disclosure of the reason for the return is made to the prospective buyer before the resale is concluded.

(i) The provisions of this section do not limit other rights and remedies that may be available to the owner of a motor vehicle under

(e) No shop may alter a customer's motor vehicle with intent to create a condition requiring repairs. (§ 1 ch 146 SLA 1976)

Sec. 45.45.210. Disclosure of regulation. The following statement shall be conspicuously printed, either on the invoice or on another form given to every customer for whom the shop performs repairs:

"Motor vehicle repair trade practices are regulated by Alaska statutes 45.45.130 — 45.45.240 administered by the consumer protection section, Alaska department of law." (§ 1 ch 146 SLA 1976)

Sec. 45.45.220. Records. A shop shall maintain repair records and invoices for parts purchased by the shop. The records shall be available for reasonable inspection by the attorney general or other persons acting at his request and shall be retained for at least two years. (§ 1 ch 146 SLA 1976)

Sec. 45.45.240. Definitions. In §§ 130 — 240 of this chapter

(1) "customer" includes a person authorized by the customer to act on the customer's behalf;

(2) "motor vehicle" or "vehicle" means a motor vehicle as defined in AS 28.35.260 which is required to be registered under AS 28.10, or with a governmental agency of another jurisdiction performing a similar function;

(3) "motor vehicle repair shop" or "shop" means an individual, corporation, partnership, or other form of business organization engaged in the motor vehicle repair business and includes owners, officers, directors, agents, employees, and representatives but excludes the following:

(A) a shop engaged solely in the business of repairing the motor vehicles of a single commercial, industrial or governmental establishment, or of two or more of these establishments which are related by common ownership or corporation affiliation;

(B) a person repairing his own or a family member's motor vehicle;

(4) "repair" or "repairs" means the improvement, adjustment, replacement, examination, diagnosis, maintenance, servicing, removal or installation of any component or part of a motor vehicle, but does not include towing or the supply of motor fuel to a motor vehicle. (§ 1 ch 146 SLA 1976; am § 21 ch 144 SLA 1977)

Effect of amendment. — The 1977 amendment in paragraph (2), substituted "AS 28.35.260" for "AS 28.10.650," "under AS 28.10" for "with the Department of Public Safety under AS 28.10.040," and "jurisdiction" for "state."

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the retail sale and warranty repair of the manufacturer's new motor vehicles in the state;

(2) "distributor" means a person who is authorized by a manufacturer to engage in the wholesale distribution of the manufacturer's new motor vehicles in the state;

(3) "express warranty" or "warranty" means an express written warranty provided by the manufacturer of a new motor vehicle;

(4) "full purchase price" means the total price paid for a motor vehicle by the original owner, including costs added to the retail price, such as original registration fees, transportation fees, dealer preparation, and dealer installed options.

(5) "manufacturer" means a person who by labor transforms raw materials and component parts into motor vehicles for wholesale or retail sale;

(6) "motor vehicle" or "vehicle" means a land vehicle having four or more wheels, that is self-propelled by a motor, is normally used for personal, family, or household purposes, and is required to be registered under AS 28.10; but does not include a tractor, farm vehicle, or a vehicle designed primarily for off-road use;

(7) "nonconformity" means a defect or condition in a motor vehicle caused by a manufacturer, distributor, dealer or repairing agent that substantially impairs the use or market value of a vehicle;

(8) "owner" means a purchaser, other than for resale, of a new motor vehicle, and a person to whom ownership of the motor vehicle is transferred in conformity with AS 28;

(9) "reasonable allowance" means an amount attributable to an owner's use of a motor vehicle; a "reasonable allowance" may not exceed an amount equal to the depreciation in value of the vehicle for

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the period during which the vehicle is owned by the owner, calculated by a straight line depreciation method over seven years, plus an amount equal to the depreciation in value of the vehicle that is caused by

- (A) any neglect or abuse of the vehicle;
- (B) body damage not caused by a motor vehicle.

(10) "repairing agent" means a person who has been specifically authorized by a motor vehicle manufacturer or distributor to perform warranty repairs in the state on one or more of the manufacturer's or distributor's motor vehicles;

(11) "substantially impairs the market value" means a nonconformity that substantially decreases the dollar value of a vehicle to the owner when compared to the dollar value of a similar vehicle that does not have the nonconformity;

(12) "substantially impairs the use" means a nonconformity that prevents a motor vehicle from being operated or makes the vehicle unsafe to operate.

(d) A written authorization under (a) or (b) of this section shall be made on the repair order or on the invoice when a repair order is not requested and shall specify newly authorized repairs, as well as the newly authorized repair price estimate. If an authorization under (a) or (b) of this section is received orally, the shop shall specify on the repair order or invoice newly authorized repairs, as well as the newly authorized repair price estimate. It shall also specify the date and time of authorization, and the person and telephone number called. (§ 1 ch 146 SLA 1976)

Sec. 45.45.180. Return of parts. Parts from a customer's motor vehicle which are replaced by the shop shall be returned to the customer if they are requested by the customer at the time the repair order is taken. However, parts which must be returned to the manufacturer because of a warranty or exchange agreement need not be returned to the customer upon request but shall instead be made available for the customer's inspection when the customer retakes possession of his motor vehicle. (§ 1 ch 146 SLA 1976)

Sec. 45.45.190. Invoice. The shop shall provide every customer, at the time the customer retakes possession of his motor vehicle, with a copy of a dated invoice detailing the costs of all parts and labor involved in the repair, and identifying all parts replacements as being either new, used, rebuilt or reconditioned. (§ 1 ch 146 SLA 1976)

Sec. 45.45.200. Prohibited practices. (a) No shop may misrepresent, directly or by implication,

- (1) the cost of repairs authorized by the customer;
- (2) the terms or conditions of a warranty or service agreement;
- (3) that repairs are necessary;
- (4) that repairs have been made; or
- (5) that the motor vehicle is in a dangerous condition, or that the customer's continued use of the motor vehicle will be hazardous to persons or harmful to the motor vehicle.

(b) No shop may collect or attempt to collect for

- (1) repairs not authorized either orally or in writing by the customer;
- (2) repairs which the shop knew or reasonably ought to have known to be unnecessary; or
- (3) repairs which have not been made.

(c) No shop which is also a warrantor or a party to a service agreement may refuse to repair a motor vehicle in accordance with the terms and conditions of the warranty or service agreement.

(d) No shop may fail to return a customer's motor vehicle because the customer has refused to pay for unauthorized repairs, or because the customer has refused to pay repair charges in excess of the price authorized under §§ 130 — 147 of this chapter, if the customer pays the authorized price for the authorized repairs.

Sec. 45.45.150. Notice to customer. The shop shall post a conspicuously located and easily readable sign which states:

"You are entitled to a price estimate for the repairs you authorize if you request the estimate before the repairs are begun. This price estimate will not be exceeded if the motor vehicle is delivered to the shop within five days. After the motor vehicle is delivered to the shop the repair price may be less than the estimate but will not exceed the estimate without your permission. Your signature on the repair order will indicate your authorization of repairs at the price estimated.

You are entitled to the return of any or all replaced parts, except parts which must be returned to a manufacturer because of warranty and/or exchange agreement, if you request the parts at the time your order is taken. Those parts which must be returned to the manufacturer will be made available for inspection to you when you pick up your vehicle if you request the parts at the time your repair order is taken." (§ 1 ch 146 SLA 1976)

Sec. 45.45.160. Charges. No shop may charge for making a repair price estimate unless, before making the estimate, the shop discloses to the customer the amount of the charge, or, if the amount cannot be determined, the basis on which the charge will be calculated. No shop may impose, or threaten to impose, a charge which is clearly excessive in relation to the work involved in making the price estimate. (§ 1 ch 146 SLA 1976)

Sec. 45.45.170. Authorization to proceed with repairs. (a) If the shop has given the customer an estimate and the price for the authorized repairs will exceed the estimate, the shop shall call the customer before continuing with the repairs and shall provide the customer with a new, good faith estimate of the repair price. The shop may not then continue with the repairs until it receives the customer's written or oral authorization to do so.

(b) Before undertaking repairs other than those previously authorized by the customer, the shop shall call the customer and provide him with a description of the proposed additional repairs, together with a good faith estimate of the price for the repairs. The shop may not then undertake the additional repairs until it receives the customer's written or oral authorization to do so.

(c) If the shop does not receive the customer's authorization to proceed with the repairs under (a) or (b) of this section, the shop shall either agree to perform the repairs at the original estimated price or provide for the customer to retake possession of the vehicle in at least as good condition as it was delivered to the shop and notify the customer accordingly.

Article 5. Alaska Gasoline Products Leasing Act.

Section	Section
800. Disclosures to be made by distributors and refiners before conclusion of agreement	825. Right of first refusal of surviving spouse
810. Violations	830. Court to determine fair market value when parties cannot agree
820. Obligation of distributor to repurchase upon termination, etc., of agreement	840. Definitions
	850. Short title

Cross reference. — For provision that failure to comply with the terms of this article constitutes an unfair method of competition, see AS 45.50.471(b)(25).

Effective date of article. — Section 4, ch. 234, SLA 1976, provides: "This Act takes effect July 1, 1976."

Editor's note. — Section 1, ch. 234, SLA 1976, effective July 1, 1976, provides:

" Findings of the legislature. The legislature finds and declares that since the distribution and sales, through lease agreements, of gasoline in the state vitally affect the economy of the state, the public interest, welfare, and transportation, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining to leasing."

Sec. 45.50.800. Disclosures to be made by distributors and refiners before conclusion of agreement. Before entry into a lease agreement, a refiner or distributor shall disclose to the dealer facts which would reasonably be considered material to the dealer's decision to enter into the lease. These facts shall include, but not be limited to,

(1) ownership of property of the retail outlet;

(2) if the real property is not owned by a refiner or distributor, then the nature of the relationship between the real property owner and the refiner or distributor and the length of the underlying lease (if applicable);

(3) the last known addresses of dealers operating the retail outlet for the last five years;

(4) the gasoline gallonage history, if any, of the station for the last five years;

(5) any sales goals or quotas the refiners or distributors intend to apply to the station;

(6) the nearest gasoline outlet owned, controlled or operated by the refiner or distributor and any plans the distributor or refiner has to open new retail outlets within the trade area of the retail outlet; and

(7) any plans the refiner or distributor has for the future of the subject retail outlet. (§ 2 ch 234 SLA 1976)

Sec. 45.50.810. Violations. (a) No person shall, directly or indirectly, through officers, employees or agents,

(1) require the dealer at the time of entering into the lease agreement to relieve any person from liability imposed by §§ 800 -- 850 of this chapter;

(2) require the dealer to agree to waive his right to a jury trial or any right of counterclaim he may have;

(3) restrict or inhibit directly or indirectly the right of free association for any lawful purpose of the dealer;

(4) except as to the initial inventory, require a dealer to purchase or otherwise lease goods or services of a refiner or distributor or from an approved source of supply unless and to the extent that the refiner or distributor satisfies the burden of proving that such restricted purchasing agreements are reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition; in determining whether a requirement to purchase is lawful, the court shall be guided by the decisions of the courts of the United States in interpreting and applying the antitrust laws and the Federal Trade Commission Act of the United States;

(5) impose unreasonable standards of performance on the dealer;

(6) require a dealer to participate financially in the use of any premium coupon or giveaway or rebate in the operation of the business; however, a distributor may require the dealer to distribute premiums, coupons or giveaways to customers which are provided to the dealer at the expense of the refiner or distributor or when the promotion is self-liquidating; or

(7) fail to deal with the dealer in good faith;

(8) require the dealer to keep his retail outlet open for business more than 12 consecutive hours a day or more than six days a week; however, this paragraph shall not be construed to prevent a retail outlet from being open when required to be open to conform to a state or federal law or regulation;

(9) require a dealer to purchase or rent a product or service for more than a fair and reasonable price.

(b) No refiner or distributor may, directly or indirectly, through any officer, agent or employee, terminate, cancel or fail to renew a dealer lease without first giving written notice setting out all of the reasons for the termination or cancellation or intent not to renew to the dealer at least 45 days in advance of the termination, cancellation or failure to renew except

(1) when the alleged grounds are voluntary abandonment by the dealer of the lessee relationship, then the above notice may be given five days in advance of the termination, cancellation or failure to renew;

(2) when the alleged grounds are the conviction of the dealer in a court of competent jurisdiction of a felony;

(3) when the lease specifically establishes a period of notice of less than 45 days in which either party may terminate the lease.

(ii) services of funeral director and staff;

(1) outer interment receptacles (if outer interment receptacles are sold, a notation that a separate outer interment receptacle price list will be provided before any sales presentation for such items is made);

(2) the price of each supplemental item of service or merchandise;

(3) the amount involved for each of the items for which money will be advanced; an item for which money is advanced shall be charged in the same amount as the cost to the person making the advance;

(4) the method of payment;

(5) the fee for counseling, consulting, or arranging for future services relating to the disposition of a dead human body (5 2 ch 197 SLA 1976)

Article 5. Regulation of Motor Vehicle Repairs.

Section	Section
130. Repair order	190. Invoice
140. Repair price information	200. Prohibited practices
150. Notice to customer	210. Disclosure of regulation
160. Charges	220. Records
170. Authorization to proceed with repairs	240. Definitions
180. Return of parts	

Effective date of article. — Section 3, ch. 146, SLA 1976, provides: "This Act takes effect on January 1, 1977."

Sec. 45.45.130. Repair order. Upon request of the customer and before the commencement of repairs, the shop shall provide the customer with a copy of a dated repair order legibly describing the repairs to be performed. The shop shall record the odometer reading of the customer's motor vehicle on the repair order, and shall sign the customer's copy. (§ 1 ch 146 SLA 1976)

Sec. 45.45.140. Repair price information. Upon request of the customer and before the commencement of repairs, the shop shall provide the customer with a price estimate for the repairs. The repair price estimate shall be made in good faith by the shop and may not be exceeded except for good cause and no additional charges may be incurred over the price estimate without approval of the customer. Nothing in this section may be construed as requiring a shop to provide a price estimate if the shop does not agree to perform the requested repairs. (§ 1 ch 146 SLA 1976)

Sec. 45.45.110. Definitions. In AS 45.45.100 and 45.45.105

(1) "merchandise" means personal property capable of manual delivery which is produced, displayed, held or offered for sale by a manufacturer, distributor or merchant.

(2) "merchant" means an owner or operator of a place of business used for displaying, holding or selling personal property capable of manual delivery, and the agent, consignee, employee, lessee, or officer of such an owner or operator.

(3) "premises" means an establishment or part of one in which merchandise is displayed, held or offered for sale. (§ 1 ch 4 SLA 1957; am § 2 ch 39 SLA 1969)

Effect of amendment. — The 1969 amendment substituted "§§ 100 and 105" for "§ 100" near the beginning of the section, inserted "produced" and "manufacturer, distributor or" in paragraph (1), and in paragraph (2) inserted the language between "operator" and "and the agent," inserted "such" preceding "an owner," and deleted "of any merchant's premises" formerly appearing at the end of the paragraph.

Legislative committee report. — For report on ch. 39, SLA 1969 (CSHB 14 am S), see 1969 House Journal, p. 164.

Article 4. Funerals.

Section

120. Disclosure of costs

Effective date of article. — Section 5, ch. 197, SLA 1976, provides: "This Act takes effect January 1, 1977."

Sec. 45.45.120. Disclosure of costs. Every person performing or arranging for services or providing merchandise relating to the disposition of a dead human body shall give to the person arranging for the disposition at the time the arrangements are completed and before the time of rendering the service or providing the merchandise a written statement showing, to the extent then reasonably ascertainable,

(1) the price and what is included with specific prices for at least each of the following:

(A) transfer of remains to funeral home;

(B) embalming;

(C) use of facilities for viewing;

(D) use of facilities for funeral service;

(E) caskets (with a notation that a separate casket price list will be provided before any sales presentation for caskets is made);

(F) hearse;

(G) limousine;

(c) Except as provided in (d) of this section, no refiner or distributor may terminate, cancel or fail to renew a dealer lease without good cause. Good cause shall include without limitation:

(1) the failure of a dealer to comply with the lawful material provisions of a lease between the distributor or refiner and the dealer and to cure each default after being given written notice and a reasonable opportunity to cure the default;

(2) an adjudication that the dealer is a bankrupt or insolvent or if he makes an assignment for the benefit of creditors or a similar disposition of assets of franchise business or voluntarily abandons the business or is convicted of or pleads guilty or no contest to a charge of violating any law relating to any business;

(3) the good faith business decision of the lessor that he no longer requires a retail outlet at that location for the marketing of gasoline; and

(4) the dealer's failure to sign the new agreement if at the time of renewal of the lease the distributor or refiner and the dealer cannot agree upon new terms and the terms offered by the refiner or distributor do not violate any other laws of the State of Alaska or of the United States and the terms are essentially the same as those offered to other dealers in similar retail outlets and do not discriminate against the subject dealer.

(d) A refiner or distributor shall be permitted to provide in the lease for its termination without cause during a reasonable trial period, not to exceed one year, if the dealer involved has not already been a dealer of a refiner or distributor for that period of time.

(e) No refiner or distributor may engage in price discrimination between dealers if the effect of the discrimination may be substantially to lessen competition unless that discrimination is based upon quantity purchased or transportation costs or capital investment of the dealer. Nothing in this section prevents a refiner or distributor from offering a lower price or furnishing a service or facility to a dealer when the offer is made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by that competitor. (§ 2 ch 234 SLA 1976)

Sec. 45.50.820. Obligation of distributor to repurchase upon termination, etc., of agreement. If the refiner or distributor terminates, cancels or fails to renew under § 810(c)(1), (2), or (3) of this chapter or for any good cause other than under § 810(c)(4) of this chapter, he shall compensate the dealer for the fair market value of the business, excluding goodwill. Refiners or distributors terminating, cancelling, or failing to renew under § 810(c)(4) of this chapter shall compensate the dealer for the fair market value of the business, including goodwill. Valuation other than goodwill shall include the fair market value of the dealer's inventory supplies, equipment and furnishings purchased from the refiner or distributor exclusive of personalized materials which have

no value to the refiner or distributor and inventory supplies, equipment and furnishings not reasonably required in the conduct of the business. Compensation shall be made within 60 days from the date of termination unless it is necessary that a lawsuit be filed under § 830 of this chapter or the dealer fails to comply with the bulk sales provisions of AS 45.05.510 et seq. The refiner or distributor may offset against accounts owed by the dealer under this section any amount owed by the dealer to the refiner or distributor. (§ 2 ch 234 SLA 1976)

Sec. 45.50.825. Right of first refusal of surviving spouse. Unless provided otherwise by the lease, upon the death of the lessee the lease shall terminate and the surviving spouse shall have the right of first refusal of the new lease if the surviving spouse has been an active participant in the business and is qualified. (§ 2 ch 234 SLA 1976)

Sec. 45.50.830. Court to determine fair market value when parties cannot agree. If under § 820 of this chapter the distributor or refiner has good cause and the distributor or refiner and the dealer cannot agree on the fair market value of the business, then either party may initiate an action in the superior court where the retail outlet exists. Reasonable attorney fees and the appraiser fees shall be awarded to the dealer if the amount awarded to the dealer by the jury or the court is 10 per cent higher than the final offer, if any, made by the refiner or distributor before the filing of the lawsuit. If the amount awarded to the dealer by the jury or the court is 10 per cent lower than the final offer, if any, made by the refiner or distributor before the filing of the lawsuit, reasonable attorney fees and the appraiser fees shall be awarded to the refiner or distributor. (§ 2 ch 234 SLA 1976)

Sec. 45.50.840. Definitions. In §§ 800 — 830 of this chapter, unless the context otherwise requires,

(1) "refiner" is a company, corporation or individual who owns or controls, or controls through a substantially owned subsidiary, partnership, or joint venture, a refinery used for the production of gasoline, diesel or other motor vehicle fuels;

(2) "distributor" means any person or corporation other than a refiner engaged in the sale, assignment, or distribution of gasoline to four or more dealer-operated retail outlets;

(3) "gasoline" means all products commonly or commercially known or sold as gasoline;

(4) "dealer" means a person primarily engaged in the sale of gasoline to the motoring public through a retail outlet leased from the refiner or distributor or its agent by the person and operated by the person;

(5) "lease" means an oral or written contract or agreement or series of agreements, either express or implied, in which the dealer is required directly or indirectly to purchase 50 per cent or more of his supply of gasoline from a distributor or refiner and in which the dealer is granted

(9) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault or columbarium, used or intended to be used for the interment of human remains.

(§ 2 ch 246 SLA 1970; am § 10 ch 53 SLA 1974; am § 2 ch 138 SLA 1974; am 13 ch 107 SLA 1984)

Sec. 45.02.350. Sale by door-to-door solicitation. (a) A contract for the purchase of goods or services in the amount of \$10 or more from a person soliciting a door-to-door sale shall require, as a condition of taking effect, that the purchaser may revoke his offer to buy within five business days of entering into the contract, and that the seller, at the time of the sale, give the purchaser written notice of his right to revoke. Revocation is effective either upon the tender of the rejected goods to the seller or his agent, or upon the posting of a registered letter (marked Deliver to Addressee Only, Return Receipt) of rejection to the seller or his agent.

(b) The cost of returning rejected goods shall be borne by the seller.

(c) A "door-to-door sale" occurs when the seller, or his representative, personally solicits the sale and the purchaser's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction

(1) made under prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.

(2) in which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer;

(3) conducted and consummated entirely by mail.

(4) in which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property.

(5) conducted at the purchaser's place of business.

(d) As used in (c) of this section, "personally" means in person or by telephone. (§ 1 ch 54 SLA 1970; am §§ 2, 3 ch 183 SLA 1975)

Article 3. Merchandise.

Sec. 45.45.105. Unsolicited merchandise. (a) No person may offer merchandise for sale, in any manner, when the offer includes the voluntary and unsolicited sending of merchandise not actually ordered or requested by the recipient, either orally or in writing.

(b) Unsolicited merchandise received shall be considered an unconditional gift to the recipient who may use or dispose of it in any manner he sees fit without obligation to the sender. (§ 1 ch 39 SLA 1969)

Effect of amendments. — The 1974 amendment inserted "or by imprisonment for not more than one year or by both" in subsection (c).

The 1978 amendment, effective January 1, 1980, repealed subsection (c), which contained a penalty for conduct declared unlawful by AS 45.50.471.

Sec. 15.50.561. Definitions. In §§ 471 — 561 of this chapter

(1) "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

(3) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;

(4) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard;

(5) "chain distributor scheme" means a sales device whereby a person, upon condition that he make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(6) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(7) "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

(8) "fresh" means a condition of food which has never been frozen. (§ 2 ch 246 SLA 1970; am § 10 ch 53 SLA 1974; am § 2 ch 138 SLA 1974)

Effect of amendments. The first 1974 amendment added paragraphs (5) — (7). The second 1974 amendment added paragraph (8).

authority to occupy premises owned, leased or in any way controlled, directly or indirectly, by the refiner or distributor. (§ 2 ch 234 SLA 1976)

Sec. 15.50.850. Short title. Sections 800 — 850 of this chapter may be cited as the Alaska Gasoline Products Leasing Act. (§ 2 ch 234 SLA 1976)

CHAPTER 5. RETAIL ADVERTISING

Section

- 10. Statement of purpose
- 20. Advertisement of price reductions from former price
- 30. Price comparisons
- 40. Availability of advertised merchandise
- 50. Advertising reductions on items in a group
- 900. Definitions

9 AAC 05.010. STATEMENT OF PURPOSE.

Secs. 20 — 900 of this chapter interpret the terms "unfair methods of competition" and "unfair or deceptive acts or practices" as those phrases apply to the public advertisement and in-store presentation of retail goods and services. Secs. 20 — 900 of this chapter are intended to clarify the law applicable to major areas of deceptive advertising practices, but are not intended in any way to limit the application of the Unfair Trade Practices Act, AS 45.50.471 — 45.50.561, to other deceptive practices, not specifically dealt with in this chapter. (Eff. 4/6/80, Reg. 74)

Authority: AS 45.50.471
AS 45.50.491

9 AAC 05.020. ADVERTISEMENT OF PRICE REDUCTIONS FROM FORMER PRICE. (a)

It is an unfair or deceptive act or practice for any seller to advertise merchandise using words such as "sale," "now on sale," "reduced," "special," or other language indicating a reduction in price, if the seller

(1) advertises the existence of a reduced price which is not a materially significant reduction from the seller's regular price for the merchandise; or

(2) fails to disclose the period of time during which the advertised price will be effective if the time period is less than four days from the date of the advertisement; or

(3) uses a general headline or lead-in for advertised items indicating price reductions when any of the advertised items are not offered at a reduced price, unless the seller discloses in the advertisement which items are not offered at a reduced price or which items are offered at a reduced price.

(b) It is an unfair or deceptive act or practice for any seller to advertise merchandise for sale under special circumstances using phrases such as "selling out," or "going out of business," unless the retail outlet is in fact going out of business, and the advertised merchandise is permanently reduced in price to clear the merchandise.

(c) It is an unfair or deceptive act or practice for any seller to advertise merchandise for sale under special circumstances using phrases such as "must be sacrificed," unless the merchandise so advertised is permanently reduced in price to clear the merchandise.

(d) It is an unfair or deceptive act or practice for a seller to advertise the same merchandise as being "on sale" or reduced from the seller's regular price if, in fact, the "on sale" price is the price for which the goods are actually sold for more than six months out of any 12-month period, or, in the case of seasonal merchandise, for more than one-half of the time it is offered by the seller unless the price is permanently reduced to clear the merchandise. An advertisement in which the seller discloses

indebtedness of the buyer, the note, instrument or evidence of indebtedness shall have printed on its face the words "consumer paper," and the note, instrument or evidence of indebtedness with the words "consumer paper" printed on it is not a negotiable instrument within the meaning of Uniform Commercial Code (AS 45.05).

(b) Notwithstanding the absence of such a notice on a note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. An agreement to the contrary has no effect in limiting the rights of a consumer.

(c) The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. (§ 2 ch 246 SLA 1970)

Cross reference. — As to form of negotiable instruments, see AS 45.05.252.

Sec. 45.50.542. Waiver. A waiver by a consumer of the provisions of §§ 471 — 561 of this chapter is contrary to public policy and is unenforceable and void. (§ 7 ch 53 SLA 1974)

Sec. 45.50.545. Interpretation. In interpreting § 471 of this chapter due consideration and great weight should be given the interpretations of sec. 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) made by the Federal Trade Commission and the federal courts. (§ 8 ch 53 SLA 1974)

Sec. 45.50.551. Penalties. (a) A person who violates the terms of an injunction or restraining order issued under § 501 of this chapter shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and the cause shall be continued, and in these cases the attorney general acting in the name of the state may petition for recovery of the penalties.

(b) In an action brought under § 501 of this chapter, if the court finds that a person is using or has used an act or practice declared unlawful by § 471 of this chapter, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than \$5,000 per violation.

(c) [Effective until January 1, 1980] A person who engages in a course of conduct declared unlawful by § 471 of this chapter is, upon conviction, punishable by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both, but this subsection does not limit any other provision of §§ 471 — 561 of this chapter.

(c) [Effective January 1, 1980] Repealed by § 21 ch 166 SLA 1978. (§ 2 ch 246 SLA 1970; am § 9 ch 53 SLA 1974; am § 21 ch 166 SLA 1978)

and in all cases the court may provide equitable relief it considers necessary or proper.

(b) A person entitled to bring an action under this section may, after investigation by and approval of the attorney general, if the unlawful act or practice has caused similar injury to numerous other persons similarly situated and if he adequately represents the similarly situated persons, bring an action on behalf of himself and other similarly injured and situated persons to recover actual damages. A person planning to bring an action under this subsection shall first submit to the attorney general a copy of his proposed complaint, and he may not file the complaint in court without the attorney general's approval. In an action brought under this subsection, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(c) Upon commencement of an action brought under this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of an order or judgment in the action, shall mail a copy of the order or judgment to the attorney general.

(d) In an action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney fees and costs.

(e) A permanent injunction or final judgment against a person against whom an action was initiated under § 501 of this chapter is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by § 471 of this chapter.

(f) No person may commence an action under this section more than two years after he discovers or reasonably should have discovered that his loss resulted from an act or practice declared unlawful by § 471 of this chapter.

(g) If the court finds for the defendant in an action brought under this section, it may award the defendant an amount equal to the actual costs and attorney fees he incurred in his defense.

(h) Manufacturers or suppliers of merchandise, the fault of which is the basis for the action under this chapter, are liable for the damages assessed to or suffered by retailers charged under this chapter. (§ 2 ch 246 S.L.A. 1970; am § 1 ch 225 S.L.A. 1976)

Effect of amendment. — The 1976 amendment deleted the former fourth sentence of subsection (b), which read "Also, in an action brought under this subsection the plaintiff shall post bond of not less than \$5,000 and which is sufficient to cover costs and attorney fees which may be awarded under (g) of this section."

Sec. 45.50.541. Nonnegotiability of consumer paper. (a) If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of

the last date or period of time when the seller's regular price was in effect meets the requirements of this section. (Eff. 4/6/80, Reg. 74; am 7/26/80, Reg. 75)

Authority: AS 45.50.471(a)
AS 45.50.471(b)(10)(11)(12)
AS 45.50.491

9 AAC 05.030. PRICE COMPARISONS. It is an unfair or deceptive act or practice for any seller to advertise a price comparison

(1) which is based on any price other than the seller's own regular price, unless the seller discloses the nature and source of the referenced comparison price, such as "manufacturer's list price" or "comparable retail value." If the reference price is not a usual or customary retail price in the trade area, the seller may use the reference price if the seller discloses the location where it is a usual or customary retail price, such as "Seattle price"; or

(2) which is based on the difference between the price of a system, set, or group of items and the price of the items purchased separately, unless the seller in good faith has offered for sale the separate items at the referenced comparison price in the recent, regular course of business or unless the items are customarily sold as separate items; or

(3) which is based on words such as "wholesale," "at cost," "factory price," or similar words unless the price is in fact no greater than normal wholesale cost, including actual freight cost if paid by the seller; or

(4) which is based upon a comparison of price with the price of merchandise materially different in composition, grade or quality, style or design, model, name or brand, kind or variety, or service and performance characteristics, unless the general nature of the differences is disclosed in the advertisement. (Eff. 4/6/80, Reg. 74; am 7/26/80, Reg. 75)

Authority: AS 45.50.471(a)
AS 45.50.471(b)(10)
AS 45.50.491

9 AAC 05.040. AVAILABILITY OF ADVERTISED MERCHANDISE. (a) It is an unfair or deceptive act or practice for any seller to advertise merchandise for sale at a stated price, if the seller

(1) does not have the merchandise readily available at or below the advertised price in quantities normally sufficient to meet a reasonably expected public demand during the effective period of the advertised price, unless the seller is able to demonstrate that it ordered sufficient quantities of the advertised merchandise in adequate time for delivery; or

(2) fails to disclose in the advertisement all reasonably foreseeable exceptions, limitations and restrictions with respect to the availability of the merchandise, including but not limited to quantities of advertised merchandise available, quantities of advertised merchandise which may be purchased by an individual consumer, limitations on availability at individual stores in a chain, and limitations as to the length of the sale; or

(3) uses any text, statements, illustrations, drawings, or photographs in advertisements which do not fairly describe or depict or which are not representative of the advertised merchandise.

(b) The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of an act or practice declared to be unlawful by § 471 of this chapter. (§ 2 ch 246 SLA 1970)

Sec. 45.50.511. Assurances of voluntary compliance. In the administration of §§ 471 — 561 of this chapter, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be violative of §§ 471 — 561 of this chapter from a person who has engaged or was about to engage in such an act or practice. Such an assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has his principal place of business in Alaska. Such an assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under § 501 of this chapter. (§ 2 ch 246 SLA 1970)

Sec. 45.50.521. When information and evidence confidential and nonadmissible. (a) Repealed by § 6 ch 53 SLA 1974.

(b) Subject to the provisions of § 501(a) of this chapter, the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in § 471 of this chapter during an investigation conducted by him under §§ 471 — 561 of this chapter, nor are the records of investigation or intelligence information of the attorney general obtained under §§ 471 — 561 of this chapter considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy which constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis. (§ 2 ch 246 SLA 1970; am § 6 ch 53 SLA 1974)

Effect of amendment. — The 1974 amendment repealed subsection (a).

Sec. 45.50.531. Private and class actions. (a) A person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of another person's act or practice declared unlawful by § 471 of this chapter, may bring a civil action in the judicial district in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or \$200, whichever is greater. The jury or, if the action is tried without a jury, the judge may, in cases of wilful violation, award up to three times the actual damages sustained,

Sec. 45.50.491. Regulations. The attorney general, in accordance with the Administrative Procedure Act (AS 44.62), may adopt regulations interpreting and forms necessary for administering the provisions of §§ 471 — 561 of this chapter. (§ 2 ch 246 SLA 1970; am § 4 ch 53 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "attorney general" for "commissioner of commerce."

Sec. 45.50.495. Investigative power of attorney general. (a) If the attorney general has cause to believe that a person has engaged in, is engaging in or about to engage in, a deceptive trade practice under § 471 of this chapter, he may

(1) request the person to file a statement or report in writing, under oath, on forms prescribed by him, setting out all facts and circumstances concerning the sale or advertisement of property by the person, and other information considered necessary;

(2) examine under oath any person in connection with the sale or advertisement of property;

(3) examine property or sample of the property, record, book, document, account or paper that he considers necessary;

(4) make true copies of records, books, documents, accounts, or papers examined under (3) of this subsection which may be offered in evidence in place of the originals in actions brought under §§ 471 — 561 of this chapter; and

(5) under an order of the superior court, impound samples of property which are material to his investigation and retain the sample until proceedings undertaken under §§ 471 — 561 of this chapter are completed.

(b) The attorney general, in addition to other powers conferred on him by this section, may issue subpoenas to require the attendance of witnesses or the production of documents or other physical evidence, administer oaths, and conduct hearings to aid an investigation or inquiry. Service of an order or subpoena shall be made in the same manner as a summons in a civil action in the superior court. (§ 5 ch 53 SLA 1974)

Sec. 45.50.501. Restraining prohibited acts. (a) When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in § 471 of this chapter, and that proceedings would be in the public interest, he may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. The action may be brought in the superior court in the judicial district in which the person resides or is doing business or has his principal place of business in Alaska, or, with the consent of the parties, in any other judicial district in the state.

(b) It is an unfair or deceptive act or practice for any seller to advertise merchandise when the merchandise is not immediately available in the trade area unless the advertisement discloses that the item is not available in the trade area and, if not available, that shipping and handling costs are extra if they are not included in the price advertised. A catalog which gives tables for calculating shipping and handling costs meets the requirements of this section. (Eff. 4/16/80, Reg. 74; am 7/26/80, Reg. 75)

Authority: AS 45.50.471(a)

AS 45.50.471(b)(4)(6)(8)(9)

(11)(12)

AS 45.50.491

9 AAC 05.050. ADVERTISING REDUCTIONS ON ITEMS IN A GROUP. It is an unfair or deceptive act or practice for any seller to advertise price reductions on a group of differently priced items using phrases such as "as low as" or "up to 50 percent off" which merely identify the lowest reduced price in the group or the highest percentage or amount of price reduction in the group, if the lowest price or the highest percentage or amount of price reduction is not reasonably representative of a substantial number of the varied items in the group. Advertisements are presumed to meet the requirements of this section when the seller

(1) discloses in what way the items advertised at the lowest price or the greatest price reduction are not representative of the varied items in the group, such as by stating what portion of the total group of items are at the lowest price or subject to the greatest price reduction; or

(2) discloses both the highest and lowest reductions in prices for the advertised group; or

(3) states accurately that the prices of a group of items are reduced by a uniform amount or percentage, such as "all sofas 30 percent off." (Eff. 4/6/80, Reg. 74)

Authority: AS 45.50.471(a)

AS 45.50.471(b)(11)

AS 45.50.491

9 AAC 05.900. DEFINITIONS. In this chapter

(1) "advertising" (including the terms "advertisement" and "advertise") includes the attempt directly or indirectly through publication, dissemination, solicitation, endorsement or circulation, display, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce a person to enter or not enter into an obligation or acquire title or any other interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "disclose" means that the statement, representation, or term is presented clearly and conspicuously in the size, sound, color, or other contrasting manner that an ordinary person would readily observe it considering the circumstances, manner, and mode of presentation;

(3) "merchandise" means goods or services or a combination of goods and services;

(4) "person" includes a corporation, company, partnership, firm, association, institution, organization, business trust, or society, as well as a natural person;

(5) "price comparison" means the comparison in any advertisement of the seller's current price for merchandise with any other price or statement of value for the merchandise or the making of other claims of price reduction or savings with respect to that merchandise in comparison to other merchandise;

(6) "regular price" means the actual, good faith price at which the seller openly and actively offered the merchandise to the public on a regular basis, for a reasonable period of time in the recent, regular course of the seller's business. In determining whether merchandise was openly and actively offered, whether a

January 1, 1977, added paragraph (23) of subsection (b).

The second 1976 amendment, effective January 1, 1977, added paragraph (24) of subsection (b).

The third 1976 amendment, effective July 1, 1976, added paragraph (25) of subsection (b).

The 1978 amendment, effective January 1, 1980, repealed subsection (d), which read "When a person is tried under the criminal provisions of this chapter for engaging in an unlawful act or practice under this chapter, it must be shown that he acted knowingly and with intent."

July 1, 1976, provides: "Findings of the legislature. The legislature finds and declares that since the distribution and sales, through lease agreements, of gasoline in the state vitally affect the economy of the state, the public interest, welfare, and transportation, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining to leasing."

Legislative committee report. — For report on ch. 246, SLA 1970 (FCCS 2d HCS CSSB 252), see 1970 House Journal, p. 1546; 1970 House Journal Supplement No. 10; 1970 Senate Journal, p. 1295.

Sec. 45.50.472. Junk telephone calls. (a) Making a junk telephone call without the prior written consent of the person called is unlawful.

(b) In this section "junk telephone call" means a telephone call made for the purpose of advertising through the use of a recorded advertisement.

(c) The provisions of AS 45.50.481 — 45.50.561 apply to this section. (§ 1 ch 17 SLA 1978)

Sec. 45.50.481. Exemptions. Nothing in §§ 471 — 561 of this chapter applies to

(1) an act or transaction regulated under laws administered by the state, by any regulatory board or commission, or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in § 471 of this chapter;

(2) an act done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement or did not have a direct financial interest in the sale or distribution of the advertised product or service;

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or any regulations promulgated under authority of those chapters. (§ 2 ch 246 SLA 1970; am §§ 2, 3 ch 53 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "regulated" for "permitted" in paragraph (1), added the language beginning "unless the law regulating the act or transaction" to the end of that paragraph, and added paragraph (3).

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of his estate; upon demand by the person on whose behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to him; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of the Alaska Gasoline Products Leasing Act (AS 45.50.800 — 45.50.850).

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) [Effective until January 1, 1980] When a person is tried under the criminal provisions of this chapter for engaging in an unlawful act or practice under this chapter, it must be shown that he acted knowingly and with intent.

(d) [Effective January 1, 1980] Repealed by § 21 ch 166 SLA 1978. (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1974; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 3 ch 197 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978)

Effect of amendments. — The first 1974 amendment rewrote this section.

The second 1974 amendment added paragraph (21) of subsection (b).

The 1975 amendment added paragraph (22) of subsection (b).

The first 1976 amendment, effective

Editor's note. — The paragraph added to subsection (b) by § 3, ch. 197, SLA 1976, was designated paragraph (23) in the act. The paragraph added to subsection (b) by § 3, ch. 234, SLA 1976, was designated paragraph (22) in the act.

Section 1, ch. 234, SLA 1976, effective

period of time was reasonable, or whether a price was in good faith, the following factors will be considered: the particular merchandise or industry, the season, the number sold at the higher price, shelf life, and other material factors. If a seller has openly and actively offered a good faith price for the 14 selling days immediately before a price reduction, it will be presumed that the higher price was offered for a reasonable period of time in the recent, regular course of business. A seller may use a shorter period of time to establish a regular price, but the seller will then have the burden of showing that the shorter time was reasonable and that the higher price was a good faith price;

(7) "seller" means any person who offers merchandise for retail sale;

(8) "trade area" means the geographic area where the seller does business as determined by the location of the media in which the advertisement is published and the predominant location of the residences of those customers to whom the advertisements are directed or to whom the seller mails advertisements. (Eff. 4/6/80, Reg. 74; am 7/26/80, Reg. 75)

Authority: AS 45.50.471
AS 45.50.491
AS 45.50.516

Editor's Note: For definitions in addition to those in this section (9 AAC 05.900), see AS 15.50.561.

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting out the name and address of the seller and the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS ~~45.45.130~~, /AS 45.02.350

(23) failing to comply with AS 45.45.130 — 45.45.240;

Article 4. Unfair Trade Practices and Consumer Protection.

Section	Section
471. Unlawful acts and practices	521. When information and evidence confidential and nonadmissible
472. Junk telephone calls	531. Private and class actions
481. Exemptions	541. Nonnegotiability of consumer paper
491. Regulations	542. Waiver
495. Investigative power of attorney general	545. Interpretation
501. Restraining prohibited acts	551. Penalties
511. Assurances of voluntary compliance	561. Definitions

Repeal of former article. — Section 1, ch. 246, S.L.A. 1970, repealed former Article 4, entitled "False or Misleading Advertising." The former article consisted of §§ 45.50.470 — 45.50.510 and derived from ch. 86, S.L.A. 1961.

Sec. 45.50.471. Unlawful acts and practices. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;



Location of Consumer Protection Offices:

Anchorage

1031 W. 4th Avenue, Suite 110
Anchorage, AK 99501
279-0428

Fairbanks

1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
456-8588

Juneau

S.S. Fuller Bldg.
4th & Harris, Suite 214
Pouch K
Juneau, AK 99811
465-3692

Valdez

P.O. Box 671
Valdez, AK 99686
835-2462

ALASKA CONSUMER PROTECTION LAWS

Unfair Trade Practices and Consumer Protection Act -- AS 45.50.471-45.50.561	1
Five Day Cooling Off - Sale by door-to-door solicitation -- AS 45.02.350	10
Unordered Merchandise --- AS 45.45.105-AS 45.45.110	10
Funeral Disclosure -- AS 45.45.120	11
Automobile Repair Act -- AS 45.45.130 AS 45.45.240	12
Motor Vehicle Warranties Act-AS 45.45.300	16
Alaska Gasoline Products Leasing Act -- AS 45.50.800-45.50.850	22
Retail Advertising Regulations 9 AAC 05.010-9 AAC 05.900	26

CONSUMER INFO

CONSUMER PROTECTION SECTION

The Consumer Protection Section of the Attorney General's office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to handle consumer complaints.

WHY WE NEED YOUR COMPLAINT IN WRITING

Consumer Protection is here to serve you. We can do a better job and process your complaint faster if you help us. We need to have your complaint in writing because written complaints help you give us all the details we need and help us work faster than with initial interviews. (We can handle several complaints in the time it takes to do an interview, and somebody still has to write out all the details.) If we need more details after reading your complaint, we will contact you.

If you aren't sure whether you have a complaint, go ahead and fill out one of our complaint forms anyway. If you don't have a complaint, we will contact you promptly. Usually you do have a complaint or you wouldn't be here.

WHAT WE DO WITH YOUR COMPLAINT

A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We send the business a letter and a copy of your complaint, asking them to tell their side of the story. When we get their reply, we will contact you for your comments or to tell you about any proposed settlement offer from the business. Much of the time, this process yields satisfactory results.

If there is no voluntary offer of settlement or the proposed settlement is not acceptable to you, you must then proceed privately through the Small Claims Court or a private attorney. The state can only take formal action when there is a serious indication of deceptive practices in violation of law. The fact that we do not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential; we do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

YOU SHOULD REALIZE THAT:

- 1 THE CONSUMER PROTECTION OFFICE CANNOT ACT AS YOUR ATTORNEY. WHEN THE ATTORNEY GENERAL SUES A BUSINESS, HE SUES FOR THE STATE--TO STOP THE PRACTICE AND COLLECT FINES.
- 2 THE COMPLAINT HANDLING PROCESS USUALLY TAKES AT LEAST SIXTY (60) DAYS.
- 3 IT IS NOT POSSIBLE FOR THE STATE TO SUE EVERY TIME A CONSUMER IS TREATED UNFAIRLY OR EVEN DEFRAUDED. THE STATE CAN ONLY ACT IN THE GENERAL PUBLIC INTEREST.
- 4 EVEN THOUGH YOU FILE A CONSUMER COMPLAINT WITH OUR OFFICE YOU MAY ALSO WANT TO CONSULT A PRIVATE ATTORNEY, OR THE LEGAL SERVICES ATTORNEY, OR FILE A CLAIM IN SMALL CLAIMS COURT AT THE SAME TIME.

BUSINESS RESPONSE INFORMATION

Consumer Protection Section

The Consumer Protection Section of the Attorney General's Office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to handle consumer complaints.

Consumer Complaints

Any consumer who believes that he/she has been subjected to an unfair or deceptive trade practice may file a complaint with this state office. A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We do not attempt to prejudge the merits of complaints by either refusing to handle some complaints or by assuming that one or the other side is "right." It would be impossible, as well as unfair, to make any assumptions on so little information. We do screen complaints to verify that we have jurisdiction to handle the subject matter of the complaint.

The Complaint Resolution Process

Our complaint handling process is informal and relies upon cooperation from all parties. Whenever a consumer files a complaint against you, we will send the complaint to you as a respondent. By doing so, we are requesting your cooperation in clarifying the situation and resolving the problem. We cannot force you as a respondent to offer a settlement, nor can we force a settlement on either party.

We recognize that there are two sides to every story, and we listen to both sides. We know that sometimes consumer complaints are inaccurate or unreasonable. The fact that both sides may be angry does not make either one of them "right."

By our mediation efforts, we hope to give both sides to a consumer complaint a chance to better understand each other and, once understood, resolve their problem. Much of the time, this process yields satisfactory results for both sides.

How to Respond to a Complaint

We request that you respond, in writing, to the complaint. Written responses help you give us all the details we need, avoid misunderstandings, and help us work faster. (We can handle several matters in the time it takes to do an interview, and somebody still has to write all the details.)

ANCHORAGE

1031 W. 4th
Suite 110
Anchorage, AK
99501
279-0428

FAIRBANKS

1st National Center
100 Cushman, Ste.400
Fairbanks, AK
99701
456-8588

JUNEAU

S.S. Fuller Bldg.
4th & Harris, Ste.214
Pouch K
Juneau, AK 99811
465-3692

VALDEZ

P. O. Box 671
Valdez, AK
99686
835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME Last First M.I.			2. TODAY'S DATE		
3. MAILING ADDRESS			CITY	STATE	ZIP CODE
4. HOME ADDRESS (if different)			CITY	STATE	ZIP CODE
5. HOME TELEPHONE NO.			6. BUSINESS TELEPHONE NO.		
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT.			NAME OF SALESPERSON:		
8. COMPANY'S ADDRESS.			CITY	STATE	ZIP CODE
9. COMPANY'S TELEPHONE NO.			10. DATE OF TRANSACTION		
11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO					
12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?					
13. WAS A WRITTEN CONTRACT SIGNED? <input type="checkbox"/> YES <input type="checkbox"/> NO					
14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? <input type="checkbox"/> YES <input type="checkbox"/> NO			15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED.		
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? <input type="checkbox"/> YES <input type="checkbox"/> NO			17. IF YES, NAME OF ATTORNEY.		
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? <input type="checkbox"/> YES <input type="checkbox"/> NO			19. IF YES, NAME COURT OR AGENCY.		

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	DID YOU RECEIVE IT?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	DID YOU RECEIVE IT?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
DID COSTS EXCEED WRITTEN ESTIMATE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
			DID YOU RECEIVE IT?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year Make Model V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

To enable both this office and the consumer to better understand your position, we ask that you investigate the complaint; for instance, talk to the employees involved and check your business records. We request that you respond with a discussion of the facts of this complaint and any figures that might be necessary to better understand the situation. Often, it is important to include a statement of your standard business procedure so that there is a context in which to view this particular complaint. Finally, please include a statement of your position on this consumer complaint, as well as any suggestions or plans you may have for resolving this matter.

What Happens When Mediation Fails

If mediation fails (or if you fail to respond), we will review the information we obtained to determine whether or not there is a pattern or serious indication of deceptive practices which justifies formal action by the state. Formal actions include conducting a formal investigation or, in the face of serious violations of the law, filing a lawsuit seeking an injunction to stop the disputed practice and to seek restitution for consumers and civil penalties.

If we determine that formal state action is not appropriate, we will usually advise consumers that they have the right to proceed privately through small claims court or a private attorney if they so choose. The fact that the state does not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential. We do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

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