

H

B

5

6

7

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

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	3/7/86	1:30 pm
" " "	3/26/86	1:30 pm



A M E N D M E N T

Offered in the HOUSE

By Martin

TO: HB 563

Page 1, line 7, after "Conduct" insert:

"and to reprimands of judges"

Page 1, after line 8, insert a new bill section to read:

"\* Section 1. AS 15.58.050 is amended to read:

Sec. 15.58.050. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFICERS. No later than 75 days before the state general election, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election. The statement shall reflect the evaluation of each justice or judge conducted by the judicial council according to law and shall contain a brief statement describing each reprimand received by the judge under AS 22.30.011 during the period covered in the evaluation. A statement may not exceed 600 words."

Renumber remaining bill section.

Page 1, line 13, delete "A" and insert:

"Except as provided in (h) of this section, a [A]"

Page 1, after line 13, insert a new bill section to read:

"\* Sec. 3. AS 22.30.011 is amended by adding a new subsection to read:

(h) If a judge reprimanded under this section seeks retention in office, the commission shall report to the judicial council for the statement filed by the judicial council under AS 15.58.050 the existence of public or private reprimands received by the judge since the appointment of the judge or since the last retention election of the judge."

*- delete private -*



# alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR  
Francis L. Bremson

NON-ATTORNEY MEMBERS  
Mary Jane Fate  
Hilbert J. Henricksen, M.D.  
Renee Murray

February 3, 1986

ATTORNEY MEMBERS  
James B. Bradley  
James D. Gilmore  
Barbara L. Schuhmann

CHAIRMAN, EX OFFICIO  
Jay Rabinowitz  
of Justice  
Sup. Court

Representative M. Mike Miller  
Chairman  
House Judiciary Committee  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811

Dear Representative Miller:

The Alaska Judicial Council and the Commission on Judicial Conduct, to assist the Judicial Council in its evaluation of judges up for retention, seek to amend Sec. 2. AS 22.30.011(f). The proposed amendment would allow private reprimands to be provided to the Judicial Council by the Commission on Judicial Conduct, enabling the Council to make informed recommendations on questions of judicial retention.

Proposed that Sec. 2. AS 22.30.011(f) be amended to read:

If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court and to the judicial council. A private reprimand is confidential.

Thank you for your assistance. If I can provide any additional information, please do not hesitate to write or call.

SINCERELY,

A handwritten signature in cursive script, appearing to read "Marla N. Greenstein".

MARLA N. GREENSTEIN  
STAFF ATTORNEY

MG/jz

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB563  
 Title : "An Act relating to the duties of  
 the Commission on Judicial Conduct"

Sponsor : The Judiciary Committee  
 Requestor : The Judicial Council & The Judicial  
 Date of Request : 2/3/86 Conduct Commission

**FISCAL DETAIL**

Agency Affected : \_\_\_\_\_  
 BRU : \_\_\_\_\_

Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

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

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

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

This bill has no fiscal impact, as it requires no additional operating expenditures, funding or positions.

Prepared by : Marla N. Greenstein Phone : (907) 279-2526  
 Division : Alaska Judicial Council Date : 3/3/86

Approved by Commissioner : Francis L. Bremson Date : 3/3/86  
 Agency : Alaska Judicial Council

Distribution (by Agency preparing fiscal note) :

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

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 322  
 Title: "...use of information from fingerprints of members..AK Bar Assoc.  
 Sponsor: House Judiciary  
 Requestor: House Judiciary  
 Date of Request: 5/1/85

FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Kathy Niles Phone: 465-4336  
 Division: Administrative Services Date: 5/1/85

Approved by Commissioner: [Signature] Date: 5/1/85  
 Agency: Public Safety

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

7/1/84

# MEMORANDUM

# State of Alaska

TO: Mike Miller, Chair  
House Judiciary Committee  
Alaska State Legislature

DATE: March 27, 1985

FILE NO: 377-033-85

TELEPHONE NO: 279-0428

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: HB 125

By:

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

Attached is a draft proposed committee substitute for consideration by the committee as requested.

LMO/mf

Attachment

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

Section by Section Analysis to Proposed  
Committee Substitute to HB 125

Prepared by: Department of Law  
Consumer Protection Section  
March 27, 1985

Section 1

New paragraphs (27) and (28)

These two paragraphs are additions to the "laundry list" in 45.50.471(b) of specifically enumerated "unfair or deceptive acts or practices." There is little doubt that violations of either statute referred to in paragraphs (27) and (28) would already be considered "unfair methods of competition and unfair or deceptive acts or practices" under AS 45.50.471(a) as both statutes were enacted to protect consumers. In other words, a violation of AS 45.45.105-110 (paragraph 27) or AS 45.45.120 (paragraph 28) would be a per se violation of AS 45.50.471(a). Nevertheless, it is clearer and provides better notice to the public and the business community to specifically reference the two statutes in paragraphs (27) and (28) in AS 45.50.471(b).

Paragraph (27)

The unordered merchandise provisions, AS 45.45.105-110, were clearly enacted to protect consumers from the unfair business practice of mailing or delivering unordered merchandise to a consumer then demanding payment for that merchandise. AS 45.45.110 provides that "unsolicited merchandise received shall be considered an unconditional gift to the recipient." The enactment of this statute and similar ones in other states greatly reduced this type of consumer fraud for the obvious reason if a consumer can keep the unordered merchandise or throw it in the trash, without owing anything the the merchant - most businesses aren't going to send or deliver unordered merchandise. The practice has not totally disappeared and some consumers spend time and money in an attempt to return unordered merchandise and stop fraudulent billings for the merchandise.

Paragraph (28)

It is already the informal opinion of the Attorney General that violation of AS 45.45.120 with respect to disclosure of funeral costs is an unfair or deceptive act or practice pursuant to AS 45.50.471(a). AS 45.45.120 was enacted to protect consumers in perhaps the most vulnerable time of arranging for the funeral of loved ones. The Funeral Disclosure Act merely requires written disclosures of the itemized costs of specific funeral services listed in the act before the time of rendering the service or providing the merchandise.

## Section 2

Section 2 of the bill would clear up an area of ongoing confusion regarding what types of business activities are exempt from the UTP Act under AS 45.50.481(1). This paragraph is in need of amendment because it has been a source of continued controversy due to its "double-negative" language, and because of its (arguable) potential to exempt almost all commercial activities from the UTP Act. Under AS 45.50.481(1), as amended by this bill, the UTP Act would not apply to acts or transactions which are regulated by other laws, only if the other law: (1) prohibits the same type of unlawful practices, (2) does not exempt from regulation the very person who is committing a prohibited act or practice, (3) provides a private cause of action for injured consumer or competitor victims, and (4) provides the state with adequate means to compel compliance with the statute and to recover restitution for injured parties, in the public interest.

This amended exemption section recognizes that while government should not duplicate regulatory efforts, the state also should not exempt a licensed professional or tradesperson from the standard of honest conduct that governs unlicensed, unregulated vendors of a different type of goods or services. It also recognizes that activity should not be exempt from the UTP Act merely because the activity constitutes a crime.

This amendment does not cause "double regulation" of licensed professions or occupations, but rather acknowledges that "regulation" through licensure or certification by a board or commission is not the same type of public law enforcement protection as that provided in the UTP Act. Although some boards have power to prohibit a licensed professional from repeating unlawful practices in the future, most boards do not have authority to order, grant, or even seek restitution for members of the public who were injured by the licensee.

An example of the current confusion that could occur in AS 45.50.481(1) would be that an argument could be made that Barbers and Hairdressers whose professions are regulated in AS 08.13.010-220 are exempt from the UTP Act. The licensing statute does not, however, address any consumer remedies or any enforcement of fraudulent business activities. Thus, a hairdresser could consistently advertise \$15 hair cut prices, but charge each customer in the shop \$25 yet refuse to cooperate in any enforcement efforts under the UTP Act because s/he is "regulated" under the licensing statutes. There are no provisions in the UTP Act that would attempt to regulate the quality of service

of the hairdresser but the UTP Act does prohibit dishonesty, misrepresentations and fraud in business and provides consumer remedies.

This section of the bill would ensure that both private injuries and injuries to the public interest can be corrected, but it does not set up a new "regulatory" scheme.

### Sections 3 - 6. Private and Class Actions for Consumers and Businesses

#### Section 3

Section 3 of the bill amends AS 45.5.531(a) and expands the private and class actions that may be brought by individual members of the public. The new language in subsection (a) makes it clear that any person who purchases or leases any item of value in trade or commerce for use and not for resale (not merely the traditional household or family consumer buying goods or services), may bring a private cause of action against a party who uses an unfair trade practice which harms the purchaser or lessee. Thus a business concern buying airline tickets for employees, or a village corporation buying office photocopier supplies as well as the individual who purchases an automobile for personal use would have UTP Act protection. Another amendment to subsection 531(a) deletes the existing clause specifying in which judicial district the injured person must sue. The general venue laws and rules would apply.

#### Section 4

Section 4 of the bill amends the private class action portion of the UTP Act (AS 45.50.531(b)) to eliminate the requirement that an injured person wishing to bring a class action on behalf of himself and other similarly situated persons is required first to get the approval of the attorney general. Such a prerequisite is an unfair and perhaps unconstitutional barrier to a private party's right to seek redress from the courts.

#### Section 5

Section 5 of the bill amends AS 45.50.531(h), which allows Alaska merchants who are found liable for damages in a court action under the Act to seek redress in turn from their manufacturer or supplier of merchandise. The bill amends this provision to enable a retailer also to seek redress from the manufacturer or supplier when the retailer satisfies a customer's claim without legal action. The retailer must give reasonable

notice and an opportunity to satisfy the customer's claim to the manufacturer or supplier, but if the manufacturer or supplier does not do so, the retailer would have a private cause of action to recover the cost of satisfying the customer.

#### Section 6

Section 6 of the bill amends AS 45.50.531 in a very important way by adding a new provision that a business that is injured by a competitor who commits an unfair or deceptive trade practice has a private cause of action against the competitor. This cause of action may be inferred in the current UTP Act, but, in order to enhance the rights of private business competitors to guard their own place in the market against unfair competition, a clearly spelled out private cause of action for the injured competitor is needed. Businesses who often have the resources to pursue private causes of action should not have to depend on state action to stop unfair practices by their competitors.

#### Sections 7 - 11. Revised and Expanded Definitions of Who is Protected by the UTP Act; Short Title

#### Section 7

Section 7 of the bill amends AS 45.50.541, the only section of the UTP Act where it is appropriate to restrict the word "consumer" to mean a person who acquires goods or services for personal, family, or household purposes (as opposed to a business or municipal "consumer" who purchases goods for use in the work place). AS 45.50.541 is concerned with the non-negotiability of the consumer installment contracts or "paper," such as the three-year contract signed by a consumer purchasing a health spa membership or an automobile. The special protections in this section are necessary only for a consumer who finances the traditional type of consumer purchase made for personal, family, or household use. Therefore, a restrictive definition of "consumer" is added to AS 45.50.541 as subsection (d).

#### Section 8

Section 8 of the bill deals with a similar problem. Presently, AS 45.50.542 contains a provision that "consumers" cannot waive their protections under the Act. To make it clear that this Act covers all types of customers, and not merely a restrictively defined "consumer," the bill amends this section to read that a waiver by any person who is the intended beneficiary of the protections in the Act is contrary to public policy, and is void.

### Section 9

Section 9 of the bill, new AS 45.50.560 provides for a short title by which to cite AS 45.50.471 -- 45.50.561, "The Unfair Trade Practices Act." (Normally, of course, this would be the last section in the article; however, in this instance there is no room left after the definition section and before the next article begins.)

### Section 10

Section 10 of the bill amends AS 45.50.561 by adding three definitions. The first, AS 45.50.561(10), clarifies that whenever the word "person" is used in the UTP Act, it has the meaning given to it in the general definition section for the Alaska Statutes, AS 01.10.060(7), which is

"person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

The second new definition, AS 45.50.561(11), is a crucial component of this bill. It adds a definition of "trade or commerce" that affects the operative section of the entire Act. AS 45.50.471, which forbids unfair or deceptive practices in "the conduct of trade or commerce." Recent court decisions have limited the coverage of the UTP Act to merely the sale of "goods or services," which would eliminate real property and commercial intangibles, such as commodity futures, from the Act. However, it is the opinion of the attorney general that it was the original intent of the legislature to prohibit all unfair trade practices, not only in the sale of goods or services, but in the conduct of any type of "trade or commerce." The new definition of trade or commerce includes not only a sale or lease, but all advertisements or offers for sale, or the barter or any other type of distribution of any type of goods, services, or any type of property, article, commodity, or other thing of value.

This definition of "trade or commerce" is especially critical in reversing the Alaska Supreme Court's ruling that the UTP Act does not cover the sale of real property. State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982). Under that ruling and traditional property law, a builder or developer who sells a piece of land with a newly built home on it, may not be covered by the UTP Act because the house and arguably the materials, appliances, and builder services included in its construction are considered to be "real property."

The court's restriction of the UTP Act to "goods or services" also leaves other gaps in the public protection. For instance, Alaskans are often exposed to high pressure offers to buy commodity futures, an item of value in trade or commerce, but which is not regulated by our state securities law, and arguable is not "goods" or "services," under the UTP Act.

Section 10 also adds, as AS 45.40.561(12), a definition of what it means for a person to "willfully" violate the statute. The term "willful" is not relevant in public actions brought by the attorney general, but is the operative language that gives rise to triple damages in private actions brought by consumer victims or honest competitor victims who use their private cause of action against unfair trade practices.

Section 11 of the bill repeals AS 45.50.561(6), the present definition of "consumer." Section 7 of the bill adds a more restrictive definition of "consumer" only to AS 45.50.541, concerning the non-negotiability of consumer paper, where it is appropriate.



Commission on Judicial  
Conduct

303 K STREET  
ANCHORAGE, ALASKA 99501  
264-0528

March 5, 1986

Rep. M. Mike Miller  
Chairman, Member,  
House Judiciary Committee  
Pouch V, Mail Stop 3100  
Juneau, Alaska 99811

Re: HB 563

Dear Representative Miller:

The proposed language in HB 563 was considered by the Commission on Judicial Conduct at its January 1986 meeting. The Commission is sensitive to the need of the Judicial Council for such information in its evaluation of judges for retention election and does not oppose sending copies of private reprimands to the Council in addition to the Supreme Court. Presently, only the Supreme Court receives copies of private reprimands.

SUBSTANTIVE IMPACT OF HB 563

The Commission on Judicial Conduct may take one or more of the following actions in regard to judicial discipline matters:

Commission Criticism

- Counseling short of Admonishment
- Private Admonishment
- Private Reprimand
- Public Reprimand

HB563  
page two  
03/05/86

Recommend Supreme Court Criticism

- Private Censure by Supreme Court
- Public Censure by Supreme Court

Recommend Supreme Court Discipline

- Suspension
- Removal from Office

Counseling and admonishment are Commission actions in the nature of advice or constructive criticism. A reprimand is the lowest level of Commission action which could be considered a significant sanction, as is evidenced by the requirement that the Supreme Court receive a copy of a reprimand. The proposed legislation (HB563) would grant the Judicial Council the same access to private reprimands as the Supreme Court.

The more serious sanctions of censure, suspension and removal from office are carried out by the Supreme Court upon the recommendation of the Commission on Judicial Conduct. The Commission's recommendation is preceded by a statement of Formal Charges which is public information. The Commission has agreed to provide a copy of such charges to the Judicial Council when they are issued.

FISCAL IMPACT

HB563 as presently drafted should not have a significant fiscal impact on the Commission's operations. However, if disclosure were extended to matters that are currently considered "counseling" or "admonishments", or the Judicial Council were required to publish private reprimands, we could expect a significant fiscal impact where matters of constructive criticism are viewed as potentially career-threatening, we can expect that judges will be represented by attorneys, at state expense, at the earliest stages of the Commission's investigation. The investigative process will be both adversarial and costly.

HB 563  
03/05/86  
page three

SUMMARY

HB563, as drafted, provides useful information to the Judicial Council without a significant adverse substantive or fiscal impact on the Commission on Judicial Conduct.

Thank you for your consideration in this matter.

Sincerely,

*Frank Flavin / jsv*  
Frank Flavin  
Executive Director



# alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR  
Francis L. Bremson

NON-ATTORNEY MEMBERS  
Mary Jane Fate  
Hilbert J. Henricksen, M.D.  
Renee Murray

ATTORNEY MEMBERS  
William T. Council  
James D. Gilmore  
Barbara L. Schuhmann

March 3, 1986

CHAIRMAN, EX OFFICIO  
Jay A. Rabinowitz  
Chief Justice  
Supreme Court

Representative M. Mike Miller  
House Judiciary  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

RE: House Bill 563  
"An Act relating to the Duties of the Commission on  
Judicial Conduct"

Dear Representative Miller:

Enclosed please find a zero fiscal note for the  
Judicial Council on H.B. 563. The Council requests your  
favorable consideration of this proposed legislation.

This proposed amendment will enable the Judicial  
Conduct Commission to provide the Judicial Council with access  
to private reprimands issued by the Commission. This  
information will be utilized by the Council in performing its  
mandated functions of evaluating each judge or justice standing  
for retention election (AS 15.58.050).

Currently, the Judicial Council bases its evaluations  
on: (1) surveys of all active members of the Alaska Bar  
Association and all state peace officers and all probation  
officers; (2) narrative questionnaires submitted by counsel who  
have appeared before each judge or justice during their term;  
and (3) personal questionnaires filled out by the judges. The  
Council also reviews health, credit, criminal, civil, judicial  
discipline and Alaska Public Offices Commission records.  
Under current law, the Council's access to judicial discipline  
records is limited to those that are considered public records,  
i.e., where formal charges and public sanctions have been  
imposed. Since private reprimands are formal sanctions that

Representative M. Mike Miller  
March 3, 1986  
Page 2 of 2

are not made public, the Judicial Council is not aware of their issuance. Judicial misconduct that warrants a private reprimand may be relevant to a judge's fitness to be retained in office. Though not serious enough to warrant a public sanction, such misconduct should be available to the Judicial Council to consider in conjunction with the other information it receives when recommending whether a judge should be retained in office. By receiving private reprimands, the Judicial Council will be able to formulate informed opinions as to judges' qualifications.

The Judicial Council will maintain the confidentiality of the existence of private reprimands. The proposed amendment to AS 22.30.011(f) will strike an effective balance between the privacy interests of the judge and the public's need for reliable information on which to base informed decisions in judicial retention elections.

Thank you for the opportunity to submit written testimony on this matter. Please let us know if you have questions regarding the Council's position on this legislation.

Sincerely

*Francis L. Bremson*

FRANCIS L. BREMSON  
EXECUTIVE DIRECTOR



Enclosure

cc: Frank Flavin, Commission on Judicial Conduct  
Hayden Kaden

# STATE OF ALASKA

**DEPARTMENT OF LAW**  
OFFICE OF ATTORNEY GENERAL  
CONSUMER PROTECTION SECTION

February 21, 1985

**BILL SHEFFIELD, GOVERNOR**

XX REPLY TO

- 1031 W 4th SUITE 110  
ANCHORAGE ALASKA 99501  
PHONE (907) 279-0428
- 1st NATIONAL CENTER  
100 CUSHMAN SUITE 400  
FAIRBANKS ALASKA 99701  
PHONE (907) 456-9588
- 5th FULLER BLDG.  
4th & HARRIS SUITE 214  
POUCH K  
JUNEAU ALASKA 99811  
PHONE (907) 465-3632
- STATE COURTHOUSE ROOM 24  
P O BOX 671  
VALDEZ ALASKA 99686  
PHONE (907) 835-2462

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

Dear Representative Miller:

During the House Judiciary Committee hearing on February 8, 1985, on HB 125, Representatives Pettyjohn and Gruenberg requested a listing of the current litigation cases in the Consumer Protection Section of the Department of Law. I have enclosed that information for the committee's use. In the listing we included all litigation cases that were opened or closed during this fiscal year to date with a very brief summary about the cases. We hope this information is useful to you and the committee members. If we can provide any further information please don't hesitate to contact us.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:

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

LMO/ssr  
Encl.

SUMMARY OF CASES OPENED, PENDING,  
OR CLOSED DURING FY 85  
Consumer Protection Section  
Department of Law

State v. Marvin L. Hanson 122-679-83

The defendant in this case, a surveyor, allegedly obtained advance payments from some 70 consumers to survey fishing set net sites in the Bristol Bay area and then failed to complete the work promised. This impeded the consumers' efforts to get state shorefishery leases for their sites. The case is still pending, but after long delays the defendant has recently made substantial progress toward completing the surveys.

State v. MD Associates, Inc. and  
Donald Burke 122-741-83

The State brought this action against a California corporation and its local distributor who manufactured and distributed an imitation milk beverage, MDA Farms. The State alleged that misrepresentations were made about the nutritional properties of the imitation milk product in comparison with real milk. The State also alleged misrepresentations concerning the cost savings of the product. Allegations were also made about defendants' multi-level marketing plan. The State and the defendants entered into a consent judgment and injunction which was approved by the court. The defendants agreed to pay the State a total of \$5000 in penalties, costs and attorney's fees, and agreed to an injunction prohibiting certain activities in future conduct and providing consumer restitution in the form of refunds to purchasers of the product.

State v. Nugget Properties  
d/b/a Brigantine Bay, William  
Lange, Ted Hanson, et al. 122-761-84

The State sued the developers of a timeshare project located near Seward, Alaska for various misrepresentations in the sale of timeshares. These misrepresentations included information given to persons solicited to attend timeshare presentations as well as persons who actually attended and purchased timeshares.

The defendants and the State entered into a consent judgment and injunction approved by the court which provided for a payment of \$25,000 in penalties, costs and attorney's fees to the State. Consumers who had relied on the defendant's misrepresentations in the purchase of timeshare units at Brigantine Bay were offered restitution pursuant to the consent judgment.

State v. John Jarrett  
d/b/a Kennelly and Associates,  
Inc. 122-486-85

This case involves a contractor who used an illegal pre-printed form contract from the State of Washington to contract with Alaskan consumers. Alaska's door-to-door solicitation statute allows a consumer five business days in which to cancel or revoke an offer to purchase. The defendant's contract stated a three day cancellation period. Further the defendant contracted with several Alaskan consumers, received consumer down payments and in some cases, payments in full for the work to be done and never performed the work. One Alaskan consumer paid \$10,000 to the defendant and to date has not seen or heard from him again. In several cases in Fairbanks, this same contractor received full payment from consumers and failed to pay the supplier. The supplier sent "notice of right to lien" to these consumers forcing these consumers to hire attorneys to protect their homes from liens. Another consumer paid to have work completed on their home and the work was not done in a professional manner and some of the work agreed upon was not done at all. The consumer used his home as collateral for a loan from the contractor to do the work and the contractor has since assigned that deed of trust to a third party. The consumer can not now stop paying for the work that was not done for fear that the third party will foreclose on his home. We have just recently obtained service and are awaiting defendant's answer. Defendant is believed to be now residing in Louisiana.

State v. Brunner J22-122-82

This litigation involves misrepresentations made to consumers who hired defendants for guided hunting in Alaska.

State v. George Smith  
d/b/a A and M Associates 122-420-84

The State filed this action against the defendant tax preparer after he did not return to his business premises after April 16, 1983. Defendant had taken consumer deposits for tax preparation work. Not only did consumer tax returns not get filed by defendant as promised but consumers could not obtain their tax records in order to complete their tax preparation or have another tax preparer complete their tax preparation. There was a court hearing in this case and the court entered a preliminary order requiring the defendant to

give notice to all his clients as to his present location and how they could go about obtaining their tax documents. In addition certain consumer deposits were ordered to be refunded. No time has been set for an action on a permanent injunction. The case is still pending but apparent compliance with the court's order and each of further violations suggests the case may be closed without requirement of actually going to trial.

State v. American Home Furnishings,  
Olympus Waterbed, Mike Ryan,  
Mitchell Ryan, Valley Home  
Furnishings, American Waterbeds,  
et al. 122-687-84

The State filed this action to halt false advertising claims made by defendants in their various going out-of-business sales. It was alleged that defendants moved merchandise from location to location during the sales. Further it was alleged that advertising of going out-of-business sales was deceptive because although the various stores were owned by the same person their different names suggested they were in competition with each other, coupled with the fact that rather than actually having a going out-of-business sale that would liquidate the entire stock of a particular retail outlet the stock was just transferred from location to location. Defendants entered into a consent judgment with the State and agreed to pay the State \$5000 in costs, attorney's fees and penalties.

State v. Alaska Towing and  
Wrecking 122-917-84

The State and Alaska Towing and Wrecking entered into an Assurance of Voluntary Compliance which was approved by the court. Alaska Towing and Wrecking agreed to refrain from asserting any lien rights not granted them by statute. By statute Alaska Towing and Wrecking is entitled to a lien on a motor vehicle for towing and storage charges. Alaska Towing and Wrecking had been implying that they also had a lien for other charges such as a Department of Motor Vehicle title or ownership search or other administrative costs.

State v. Saleh, Baghdadi,  
and Enus d/b/a National  
Chemical Co. 122-089-85

The defendant and the State of Alaska entered into a

Voluntary Assurance which was approved by the court. Defendants were selling a home cleaning fluid for approximately \$68 per gallon. Defendants agreed to comply with Alaska's door-to-door sales law and to refrain from misrepresentations about the product in the future as well as pay the State \$1000 in investigative costs. Further defendants agreed not to represent that the cleaning fluid was safe around food and food preparation areas.

State v. Mary O'Brannon  
d/b/a Alaska Directory  
Service, Inc.

122-209-85

The State of Alaska and the defendant entered into an Assurance of Voluntary Compliance in which she agreed to return consumer business deposits for advertising in a telephone directory that was never published.

State v. United Financial  
Incentives

122-735-85

The State sued this Pennsylvania corporation for operation of a chain referral sales plan which is a violation of the Unfair Trade Practices Act. The plan was the United Financial Incentives Grocery Tape Purchase Plan. The defendant offered distributorships promising \$20,000 per month income for collecting grocery tape receipts. Defendant entered into an Assurance of Voluntary Compliance with the State, agreeing not to conduct a chain referral or chain distributor plan in Alaska and to pay the State \$1000 in costs and investigative fees. The corporation ultimately went out of business.

State v. Alaska Financial  
and Insurance Co. d/b/a  
Stepp Brothers Lincoln/  
Mercury

122-959-84

This Assurance of Voluntary Compliance entered into by the State of Alaska and Michal D. Stepp, president, on June 4, 1984, requires the defendant to conduct repossession sales in a "commercially reasonable manner". It had been alleged previously that in the course of repossessing vehicles, for whatever reason, defendant had not followed the standards set out by federal or state law in regards to notice provisions and timeframes within which the dispossessed owner would have an opportunity to redeem. Further it was alleged that defendant did not have a public sale whereby it sold the repossessed vehicle to the highest bidder as required by law.

State v. Northwest Trade  
Corporation

122-383-80

This case involved a health club which rented temporary quarters and began a advertisement campaign to stimulate the purchase of memberships. After a large number of memberships were sold in the Anchorage area, the Northwest Trade Corporation closed its doors with the money and did not re-open. This has been indicative of a number of national health clubs which will open temporary branches, obtain money and then close their doors claiming they are going out of business. In the case of Northwest Trade Corporation we were unable to obtain restitution for all consumers involved.

State v. David Pillott et al. 122-740-83

This case involved an outside distributor who began advertising Necchi sewing machines for sale. Alaska law, federal law, and Alaska Retail Advertising Regulations state that you cannot misrepresent the price of goods, the manufacturer's suggested retail price, or the regular price in an effort to mislead consumers into thinking they are buying at a discounted price. The defendant advertised that the sewing machines were regularly sold at \$729 and \$629 and that he was offering them for sale for \$399 and \$299 respectively. The truth of the matter was that these sewing machines cost substantially less than the price for which they were being sold and were not worth near the \$629 and \$729 as stated in the advertisement. Further defendant indicated that it was a public sale and that these were "unclaimed school orders" and "must be sold" creating the impression of special or circumstances forcing a sale when in fact this was not the case. Consumers were misled and deceived into thinking that they were buying a certain quality sewing machine when in fact they were buying a lesser quality sewing machine. The State obtained injunctive relief and civil penalties in the amount of \$500.

State v. Capetti d/b/a  
Capetti and Associates

122-258-85

This case involved a concert promoter who scheduled a program for the Sullivan Arena. When he saw that the attendance was not going to be as he hoped it would be, he cancelled the show but failed to refund money to consumers. He had received approximately \$9000 from consumers and consumers were unable to contact him for refunds. Alaska

law requires a concert promoter to refund money within 10 days after the date of a program which has been cancelled and also to place on the tickets an address where the promoter can be reached for refunds. The concert promoter in this case failed to provide consumers with the necessary information for refunds and failed to refund monies to consumers. The State obtained an Assurance of Voluntary Compliance and full refunds for all consumers.

# STATE OF ALASKA THE LEGISLATURE

HOUSE STATE CAPitol  
BUILDING ALASKA 99501  
907 465 3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1985

SUBJECT: House Bill 125 and Alaska Rule of  
Civil Procedure 89

TO: Representative M. Mike Miller  
Chairman, House Judiciary Committee

FROM: Theresa L. Bannister *TB*  
Legislative Counsel

You have requested the following:

1. an opinion whether Section 1 of HB 125 conflicts with Alaska Rule of Civil Procedure 89 and how a conflict should be addressed in the bill; and
2. a draft of new language for Civil Rule 89 conforming it to HB 125.

From my review of the pertinent authorities, it is my opinion that the ability to apply for pre-judgment attachment of property is a matter of substance rather than a matter of procedure. "[S]ubstantive law creates, defines and regulates rights, while procedural law prescribes the method of enforcing the rights." Ware v. City of Anchorage, 439 P.2d 793, 794 (Alaska, 1968). The remedy of pre-judgment attachment gives the plaintiff a substantial right, that of preventing the defendant from exercising defendant's normal rights over its property during the pendency of the action. The court in Nolan v. Sea Airmotive, Inc., 627 P.2d 1035, 1042-43 (Alaska 1981), used as the criteria for distinguishing between procedure and substance, whether the matter was more related to judicial rule-making power or to the making of public policy. The right of one party in a court action to restrict the other party's use of its property during the action appears to me to be a matter of policy to be set by the legislature rather than a rule of procedure to be set by the court system. It creates a new right in one party and removes a right in the other party.

Representative M. Mike Miller  
February 13, 1985  
Page 2

The basic authority to seek pre-judgment attachment comes from AS 09.40.010(a). That statute lists the areas in which the remedy is available. In addition to contract matters, AS 09.40.010(a) gives the remedy to a state in the collection of its state taxes or license fees. The source of the remedy is statute, not court rule. Civil Rule 89 sets up the procedure for obtaining the remedy.

With regard to the relationship between § 1 of the bill and Civil Rule 89, it is my opinion that Section 1 of the bill does not conflict with Civil Rule 89. Part (a) of civil Rule 89 indicates that the right of pre-judgment attachment given in AS 09.40.010-110 is to be pursued in accordance with the provisions of Civil Rule 89. In other words, the substantive matter in the statute is to be handled by the procedure in the rule.

The addition, of another cause of action that is entitled to seek pre-judgment attachment relief, to AS 09.40.010 cannot conflict with the rule as it is now worded. Part (b)(1)-(3) of Civil Rule 89 apparently was designed only for the contracts portion of AS 09.40.010, since it does not apply to state taxes or license fees. The Rule could use some re-working, and the court system may want to do so, but it is unnecessary for the legislature to re-write it because of HB 125. Re-writing the problematical language of Civil Rule 89 (b) (1)-(3) may also create a problem with Article IV, Section 15 of the Alaska Constitution. Since Part (b) establishes the form and contents of a document to be submitted for the relief, it is very possible that it would be held to constitute a rule for the internal administration of the court and, therefore, not available for amendment by the legislature.

In light of the above, I have not re-worked the court rule. However, if you still wish that to be done, please so advise.

TLB:ojb  
J11/083