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To: Mike  
From: Roger

February 7, 1985

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HB 148:

There is no companion legislation in the Senate

There were no versions of this bill in previous years.

Linda O'Bannon, head of the Consumer Protection Section of the Dept. of Law, will be here to testify in support of the bill.

There is no anticipated opposition to it; it should protect the consumers. Since the manufacturers of mobile homes are located out of state, it is unlikely they will be here to testify one way or the other. I could not locate a lobbyist for them in the lobbyist directory.

If anyone is curious about us approving transfers after the fact, this is a normal procedure in the administration. A transfer of responsibilities is tried out by the Governor's office, and then if it turns out there are problems or it is unsuccessful, they don't have to pester the legislature with another transfer request to still another department or back to the original department; but the legislature still retains the final approval to prevent the Governor from grossly abusing his powers in the matter.

An interesting related legal question arises as to what happens in a case where an agency or section or office that is transferred (like this one) by an internal executive order but has not yet received approval by the legislature ends up in a law suit. Is the state liable? Which department would get sued? You might ask Linda about this, since they deal a lot with lawsuits and she is a lawyer.

The zero fiscal note doesn't mean there are no program expenses--they are simply in the on-going operating budget of the program in the Dept. of Law. You might want to ask how much she estimates that program is costing to run currently, and if there are any sizeable increases anticipated in the future; and also if there are any anticipated litigation expenses that would end up having this state lose money in a lawsuit or too many legal fees (she told me that the program costs about \$800,000, but it saves about the same amount in consumer costs through the settlement of cases).

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

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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 th's 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.



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.

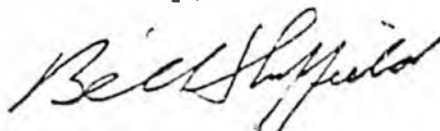
The second component of the bill is a transfer of the warranty enforcement powers from DCED to the Department of Law. The April 1983 legislative audit of the division of measure-

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,



Bill Sheffield  
Governor

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
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

*Richard I. Pegues*  
Prepared By: Richard I. Pegues, Director  
Division: Administrative Services Division  
*Richard I. Pegues / FR*  
Approved by Commissioner: Norman C. Gorsuch  
Agency: Department of Law

Phone: 465-3672  
Date: 12/10/84  
Date: 12/10/84

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

7/1/84

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: 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
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0				

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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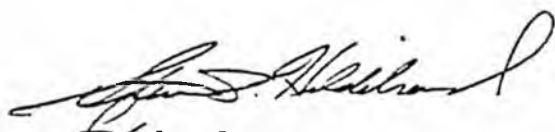
FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	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: 12/4/84

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

HB 148 FILE CONTENTS

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- 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

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.

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

What 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.



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 45.45.105-45.45.110	10
Funeral Disclosure -- AS 45.45.120	11
Automobile Repair Act -- AS 45.45.130-45.45.240	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

#### 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

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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.

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**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 signating 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;

(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 ~~45.02.125~~, AS 45.02.350

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

(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 45.50.561.

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).

**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 is 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

(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,

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 SLA 1970; am § 1 ch 225 SLA 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. 45.50.511. 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

(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)

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. 45.50.561. 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. 45.50.850. 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

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 1994)

**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; or

(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)

**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

(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.

(H) services of funeral director and staff;

(I) 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. (§ 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)

Article 5. Alaska Gasoline Products Leasing Act.

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." (S 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. (S 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.

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. (S 2 ch 234 SLA 1976)

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

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the period during which the vehicle is available for use 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 by the owner;
- (B) body damage not caused by a fire or theft;

(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 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 — 140 of this chapter, if the customer pays the authorized price for the authorized repairs.

(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 28.10" for "with the Department of Public Safety under AS 28.10.040," and "AS 28.35.260" for "AS 28.10.650," "under" for "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

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

# 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.)

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.

#### ANCHORAGE

1031 West 4th Avenue,  
Suite 110  
Anchorage, AK 99501  
(907) 279-0428

#### JUNEAU

S.S. Fuller Building  
4th & Harris, Suite 214  
Pouch K  
Juneau, AK 99811  
(907) 465-3692

#### FAIRBANKS

1st National Center  
100 Cushman, Suite 400  
Fairbanks, AK 99701  
(907) 456-8588

#### VALDEZ

P.O. Box 671  
Valdez, AK 99686  
(907) 835-2462

ANCHORAGE

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

FAIRBANKS

1st National Center  
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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.



INTRODUCTION OF BILLS (House)(cont'd)

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

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

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

Both departments have agreed that this is a more efficient enforcement pattern, as the Department of Law, consumer protection section, already processes mobile home complaints that fall outside the warranty Act, as well as those that may duplicate warranty Act enforcement by DCED.

In FY 84, DCED transferred the one mobile home investigator position to the Department of Law through a reimbursable services agreement.

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

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.

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**Office of the Attorney General  
Consumer Protection Section**

**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 Building  
4th and Harris, Suite 214  
Pouch K  
Juneau, AK 99811  
465-3692

**VALDEZ**

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

**OTHER AREAS IN ALASKA**

Phone: 277-1961  
Collect

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# ALASKA'S LEMON LAW



**Consumer Protection Section  
Department of Law**

**NORMAN C. GORSUCH**  
*Attorney General*

**BILL SHEFFIELD**  
**GOVERNOR**

(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 the period during which the vehicle is available for use 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 by the owner; or

(B) body damage not caused by a nonconformity;

(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.



## A MESSAGE FROM THE ATTORNEY GENERAL

The motor vehicle of today is an expensive and complicated device. Most Alaskans have become dependent on the availability of a motor vehicle to conduct their daily affairs. Unfortunately, some new cars prove less than dependable. They turn out to be lemons. When this happens, the consumer is faced with a problem that is not easily resolved.

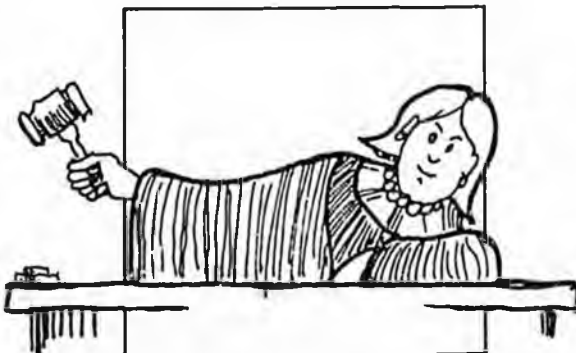
The legislature, recognizing the dilemma faced by many new car buyers, enacted a law which has commonly become known as the "Lemon Law." The law was approved by Governor Bill Sheffield, June 13, 1984. The actual effective date was September 11, 1984. New motor vehicles purchased after that date are clearly covered by this law.

This brochure is designed to inform consumers of the protections offered by this law. If you need additional information, or if you have information regarding violations of this law, please contact my Consumer Protection Section.

Norman C. Gorsuch  
Attorney General

## WHAT ARE THE BENEFITS OF THE LAW?

- The Lemon Law (AS 45.45.300) provides protection to buyers of new motor vehicles. If a new vehicle turns out to be defective and has not been properly repaired after a reasonable number of attempts, the law requires a refund or replacement vehicle.
- Only a small percentage of new vehicles will be declared lemons. However, all new vehicle buyers will benefit from this law. The manufacturer and the dealer now have a stronger economic incentive to deliver the vehicle free from defects, and if problems develop, correct them speedily and accurately.
- The law encourages the vehicle manufacturers to establish third party arbitration programs. These programs must meet specific standards and must have the approval of the Attorney General. Any decisions ordered by the arbitrations are binding on the manufacturer but not on the consumer.
- This law spells out clearly the owner, dealer and manufacturer's responsibilities. It does not limit other rights and remedies that may be available to the owner of a motor vehicle under other provisions of law.



(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 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 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;

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

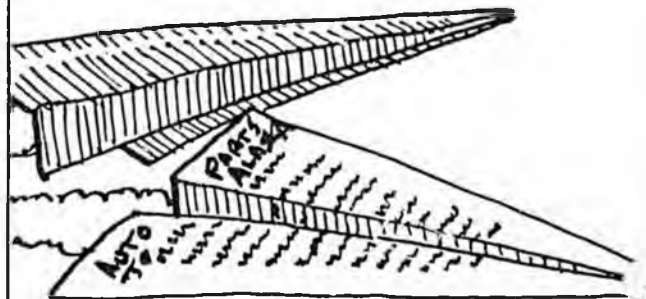
(2) the vehicle is out of service for repair for a total of 30 or more business days during the express warranty term or the one-year period referred to in (1) of this subsection, whichever period terminates first; any period of time that repairs are not performed for reasons that are beyond the control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

## WHAT ARE THE MANUFACTURER'S RESPONSIBILITIES?

- If an owner of a new motor vehicle reports a defect or problem, the manufacturer normally, through their dealer or repairing agent, makes the necessary repairs.
- If the manufacturer, dealer or repairing agent has been unable to repair the defect or problem after a reasonable number of attempts, the manufacturer shall, at the owner's option, replace the vehicle or offer a refund.
- When a manufacturer refunds or replaces a motor vehicle, they are also required to refund any reasonable charges the owner may have paid in shipping the defective motor vehicle back and forth to the nearest authorized facility for repairs.
- A manufacturer shall ship its dealer or repairing agent parts necessary for warranty repairs by the fastest means available (generally air freight) with no additional charge for freight or handling.



## HOW DOES THE LEMON LAW DEFINE A REASONABLE NUMBER OF ATTEMPTS?

- First for a single defect or condition that defies repairs the Lemon Law says:  
" (1) The same non-conformity 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 non-conformity continues to exist;"
- Second for a motor vehicle that has been out of service for an unreasonable period of time due to a single or multiple defects the Lemon Law says:  
" (2) The vehicle is out of service for repair for a total of 30 or more business days during the one-year period referred to in (1) of this subsection whichever period terminates first;"

## WHAT ARE THE HITCHES?

- The defect or problem must substantially impair the use or the market value of the vehicle.
- The defect or problem must not be the result of alteration, abuse or neglect by the owner or a person other than the dealer or repairing agent.

## 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

## A SAMPLE NOTICE

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Phone (day)

\_\_\_\_\_  
Phone (night)

Dear Sir or Madam:

My \_\_\_\_\_,  
Year Make of Vehicle

\_\_\_\_\_ has a non-conformity.  
V.I.N.

The non-conformity is \_\_\_\_\_  
Describe the Non-conformity

\_\_\_\_\_  
\_\_\_\_\_  
Your dealer or repairing agent has made a reasonable number of attempts to conform the vehicle. I demand a \_\_\_\_\_  
Refund or Replacement

be delivered to me on the 60th day after the mailing of this notice.

\_\_\_\_\_  
Signature

- Any period of time that repairs are not performed for reasons that are beyond the control of the manufacturer, dealer or repairing agent is excluded from the 30-day period. This refers to situations such as labor disputes or natural disasters.
- The owner must provide written notice via certified mail to the manufacturer **and** their dealer or repairing agent. Within 30 days after receiving the notice the manufacturer may make another final attempt to repair the vehicle.
- If you choose a refund over a replacement, the refund will not include any accrued finance charges. The manufacturer may also deduct an allowance for your use of the vehicle and for excess depreciation due to damage, neglect or abuse.
- If the manufacturer has set up an approved informal dispute settlement procedure and if they offer in writing to arbitrate, you will be required to participate or you will lose the protections offered by this law.

## SOME THINGS TO DO

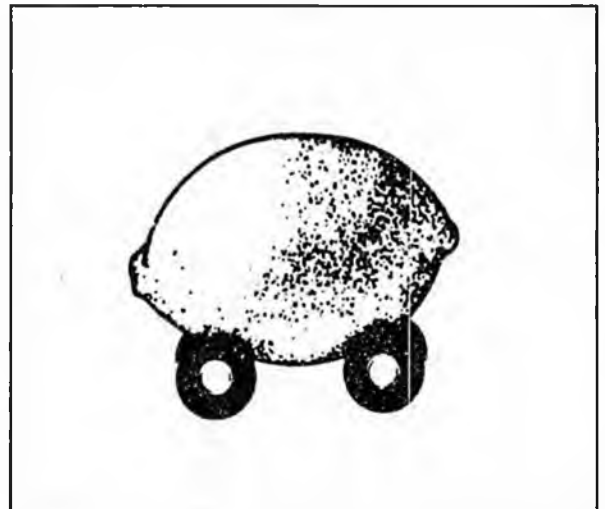
- You never know when you buy a new car whether it will turn out to be a lemon. As a new car buyer you should check out the dealership's service facility as closely as you check out the new vehicle. Is the area clean, organized, and well lit; do the equipment and tools appear modern and well maintained? A dealer who is proud of the service facility will be happy to demonstrate this. Also, ask if the dealer gives appointments for warranty repairs and what is the normal delay in obtaining an appointment.



- Prior to the sale read and understand the warranty. The dealer is required by a Federal Trade Commission rule to make all warranties available prior to the sale.
- Be wary of purchasing a service contract (extended warranty), especially contracts which are not backed by the vehicle's manufacturer. Read and understand what is covered and more importantly what is **not** covered. In most cases service contracts can be purchased up to the date the manufacturer's new car warranty expires. Remember, there is little or no benefit from a service contract during a vehicle's first year.
- Prior to taking delivery of your new car, inspect it. If any problems are noted, refuse delivery until they are corrected. Be wary of promises that "We'll take care of those problems at the first service."
- You should be very concerned if a dealer attempts to deliver a new vehicle with obvious defects.

- (3) that the manufacturer, distributor, dealer, or repairing agent has made a reasonable number of attempts to conform the vehicle; and
- (4) that the owner demands a refund or replacement vehicle to be delivered on the 60th day after the mailing of the written notice.
- (5) a description of the vehicle (year, make, and model)
- (6) the vehicle identification number. This number is located on the tag behind the driver's side of your windshield, or it can be found on the vehicle registration as "serial number."
- (7) your name, address and if possible a daytime phone number.

- If you have problems with exercising your rights under the Lemon Law or if you believe a dealer or manufacturer is not complying with the law phone or write the nearest Consumer Protection Section of the Attorney's Office listed on the back cover of this brochure.



- Once you have compiled your documentation write a chronological description of the history of your vehicle and its problems. When writing this history remember this guide: What, Why, When, How, Where and Who.
- Consider consulting with an attorney. If you do not have an attorney, contact the Alaska Bar Association's Lawyer Referral Service in Anchorage. The telephone number is 272-0352 (outside of Anchorage call toll-free ZENITH 9999). Some labor union contracts allow for legal services. If you have this coverage, contact your union representative for assistance.
- Under the Lemon Law, if you wish to claim a refund or replacement you must give written notice by certified mail to the manufacturer and its dealer or repairing agent. This notice may be sent any time before 60 days have elapsed, after the expiration of the express warranty or the one-year period, after the date of the delivery of the motor vehicle to the original owner, whichever terminates first.
- The notice must contain the following information:
  - (1) that the vehicle has a nonconformity;
  - (2) a reasonable description of the nonconformity;

- Read, understand and follow maintenance requirements contained in the owner's manual. Your driving cycle may be considered by the manufacturers as a severe operating condition and may require more frequent maintenance.
- If problems develop, contact your dealer as soon as possible to request an appointment for repairs. On the appointment date arrive 15 minutes early and be ready for up to a one-hour delay. Few Alaska dealers offer loaner or courtesy car service. Therefore, you should arrange to be picked up or plan on a cab ride.
- Give the service advisor a dated note completely describing all of the conditions you are complaining about. Do not attempt to diagnose the cause of the conditions, simply describe them.



## PROPER EXAMPLE

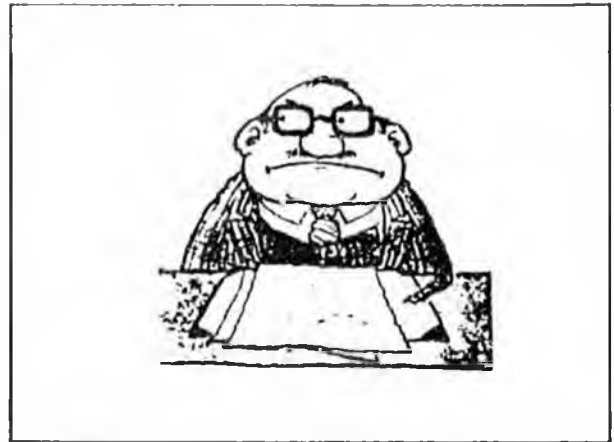
**Owner:** Thadius D. Foghorn  
**Address:** 12134 N St  
Anchorage, AK 99000  
**Vehicle:** 1985 Backfire 4  
(Black Hatchback)  
**Plate:** WID 346  
**Home Telephone:** 212-3000  
**Work Telephone:** 202-2000

### Problems

- 1) Entire car vibrates between 35 mph and 55 mph. Seems worse with passengers in back.
- 2) Engine is hard to start when hot. Starts fine when cold.
- 3) Gas mileage has dropped from 22-24 mpg to 16-18 mpg.
- 4) Last week a light on the dashboard was lit that said check engine. This morning it went out.

- Keep a copy of the note. Remember you never know if your new car is going to turn out to be a lemon.
- If it is necessary to have your vehicle towed to the dealership, ask the dealer to provide the service or reimbursement for the expenses. Some warranties offer this coverage. Other dealers have a policy that may cover towing expense. If towing is not provided keep copies of your bills. The Lemon Law allows for reimbursement of reasonable shipping expenses if the vehicle is later declared a lemon.
- An hour or two prior to picking up your vehicle call the dealer to verify repairs will be completed as scheduled. Often problems develop that can delay the repair process. If this occurs, again request a loaner vehicle.

- If your vehicle is in the shop for repairs more than one day, make sure the repair invoice shows the day it was brought in and the day it was picked up.
- Keep copies of all repair invoices for maintenance or warranty repairs. The dealer or repairing agent is required by law to furnish a copy of the repair invoice even if the repairs were done under warranty.
- If the problems persist, and you end up writing the dealer or manufacturer, keep copies of all correspondence. If you make long distance telephone calls, keep your telephone bills and make notes of who you talked to and about what.



## THE DEALER HAS TRIED THREE TIMES AND STILL THE PROBLEM PERSISTS. NOW WHAT?

- First, organize all of your documentation. If you are missing any repair orders, contact your dealer or repairing agent and request a copy from their files. The dealer or repairing agent is required by the Alaskan Auto Repair Act to maintain these records for two years.

**But I Don't Have Many Dissatisfied Customers.**

(YOU SAY)



**ARE YOU SURE?**

The truth is you probably don't know how many you have because **MOST DISSATISFIED CUSTOMERS DO NOT COMPLAIN.** The average business does not hear from 96% of its unhappy customers. For every complaint received at company headquarters the average business has another 26 customers with problems, at least 6 of which are serious ones.

How can this be true? Think of your own record as a consumer and as a complainer. How often have you been less than satisfied with a product, a service, a meal in a restaurant, a wait in line? And how often have you complained to the management, the manufacturer, or the retailer? Your customers are just like you: they don't complain. Three reasons are most often given:

- “It's not worth my time or trouble.”
- “Complaining will do no good—no one cares.”
- “I don't know where or how to complain.”

**Well, If They Don't Complain, They Can't Be All That Dissatisfied.**

(YOU SAY)



**ON THE CONTRARY!**

Noncomplainers are unhappy with your product or service, mad at themselves, and frustrated. They are actually the **LEAST** likely group to buy from your company again. Even a complainer who gets no response to his complaint is more likely to buy your products again than is a noncomplainer. The odds are that between 55% and 90% of your non-complainers will **NOT** buy from you again *and you will never know why.*

Your customers who have problems and complain to you are giving you a chance to keep their business. Surveys show that you can win back between 54% and 70% of these complainers by resolving their complaints. Actually, up to 95% of this group will become loyal customers again if their complaints are handled well and quickly.



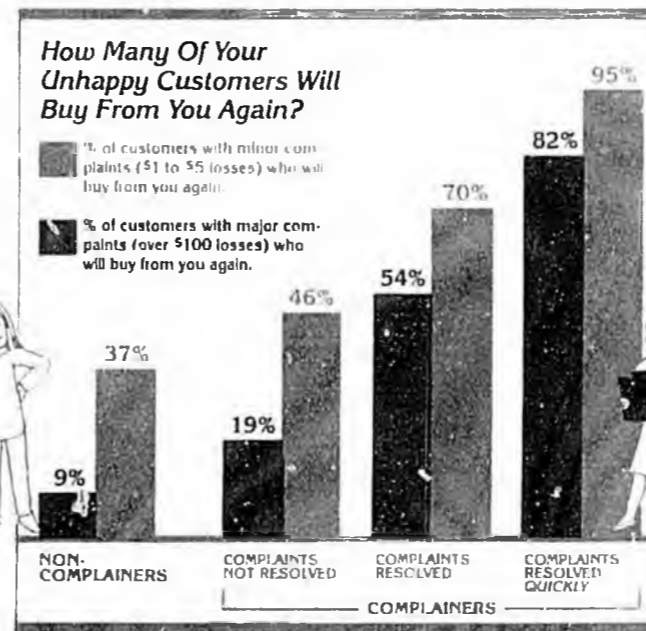
**But I Can Afford To Lose Some Customers. I'll Replace Them With New Ones.**

(YOU SAY)



**THAT'S AN EXPENSIVE WAY TO DO BUSINESS.**

How much do you spend to gain a new customer? Marketing data indicate that it usually costs five times as much to get a new customer as it does to keep an existing one.



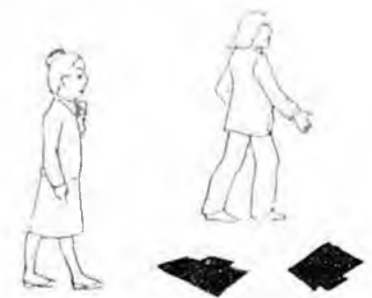
**It's A Good Thing Most Of My Unhappy Customers Don't Go Around Complaining!**

(YOU SAY)



**OH, BUT THEY DO!!**

It's true that about 96% of your unhappy customers don't complain to you, but they do let off steam and spread their dissatisfaction with your products. They complain to other customers and potential customers (lots of them)—family, friends, associates at work, anyone who will listen. They feel wronged and frustrated and want to talk about it. **ON THE AVERAGE, A CUSTOMER WHO HAS HAD AN UNPLEASANT EXPERIENCE WITH A BUSINESS WILL TELL 9 OR 10 OTHER PEOPLE.** And about 13% will tell more than 20 other people. This negative word-of-mouth can be very harmful to your business. In today's complex marketplace more and more consumers are basing their purchasing decisions on the advice of people they know.



## How Can I Keep Them Quiet?

(YOU ASK)



**YOU CAN'T . . . BUT**

You can turn them around. How? Solve their complaints as quickly as possible and you will not only get them back as customers but you will give them something positive to talk about. According to consumer surveys, a customer who has had a good experience with a company will tell an average of 5 other people, some of whom will become new customers. If a customer has a complaint resolved quickly and courteously, he wants to tell others about his good fortune . . . and his good sense (after all, he had the courage to complain). Speedy complaint resolution can help you keep your present customers and get new ones by changing word-of-mouth advertising from negative to positive. But remember . . . Over 96% of your dissatisfied customers may not be registering complaints with you. First you have to find out who they are and why they are unhappy.



## So What Can I Do?

(YOU ASK)



The Technical Assistance Research Program, the research company that gathered the foregoing data, suggests:

- 1 Solicit complaints—make it easy for unhappy customers to tell you what their problems are.
- 2 Solve customer complaints as quickly as possible and with a smile.
- 3 Keep records of why complaints occur.
- 4 Analyze how complaints can be prevented and make changes in your products and marketing procedures when appropriate.
- 5 Provide incentives to encourage your salespeople to carry out the policies described above.

**FOR ASSISTANCE:** the Department of Commerce has recently published a helpful guide entitled *Managing Consumer Complaints*. This guide and four others (*Advertising, Packaging and Labeling; Product Warranties and Servicing; Credit and Financial Issues; and Consumer Product Safety*) were written for the express purpose of helping businesses respond to their customers needs. These booklets were written with the assistance of the National Association of Consumer Agency Administrators (NACAA) and the Society of Consumer Affairs Professionals in Business (SOCAP). For more information, call or write the Office of Consumer Affairs, Department of Commerce, Washington, DC, 20230 (202) 377-5001.

## Who Says So?

(YOU ASK)



The data reported in this pamphlet are based on studies conducted by Technical Assistance Research Programs, Inc. (TARP, a Washington, D.C. based research firm) for the White House, the National Science Foundation, and a number of private companies. See TARP, *A National Survey of the Complaint-Handling Procedures Used by Consumers*, NTIS PB-263-082 (Washington, D.C.: White House Office of Consumer Affairs, 1976); *Consumer Complaint Handling in America: Final Report*, NTIS PB 80-176316 (Washington, D.C.: White House Office of Consumer Affairs, 1980); and *Measuring the Grapevine—Consumer Response and Word-of-Mouth*, (Atlanta, Georgia: Consumer Information Center, The Coca-Cola Company, 1981).

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The Foundation runs consumer conferences; publishes a free quarterly newsletter, *AT HOME WITH CONSUMERS*, that presents diverse points of view on topical consumer issues; develops and distributes consumer information literature in English and Spanish; supports research on consumer and marketplace matters; and maintains a library in Washington.



Direct Selling Education Foundation  
1730 M Street, N.W.  
Washington, DC 20036  
(202) 293-5760

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# CUSTOMERS MEAN BUSINESS...



**SURVEYS SHOW**

**You Have More Dissatisfied Customers Than You Think**



# Check Cashing Precautions!

CHECK  
THAT  
CHECK

UNITED STATES POSTAL SERVICE  
Postal Inspection Service  
Washington, DC 20260

PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE, \$300



United States Postal  
Inspection Service

Notice 178 April 1981

# CHECK CASHING PRECAUTIONS!

Businesses lose millions of dollars each year by unwittingly cashing checks or honoring credit cards stolen from the mail, often by accepting false, altered or incomplete identification.

The Postal Inspection Service, which investigates theft of all mail, suggests the following precautions to help you protect your business:

## 1. Require at least two types of identification.

Be sure to record all information on the check. Social Security cards are not reliable identification. They are easily obtained and cannot be traced. A state driver's license is one example of a usually reliable ID because it bears a signature, often has a picture on it and has the general advantage of being an officially issued document that is subject to fairly tight controls.

## 2. Examine the date on identification to determine if it was obtained close to the date on the check. If a photo-ID is used, OBSERVE WHETHER THE PERSON IS DRESSED IN THE SAME CLOTHING AS IN THE PHOTO-ID.

Both observations may indicate the ID is bogus and is being used to cash a stolen check. Be sure the physical description and photograph match the person.

## 3. Do not accept identification that is unfamiliar to you; it may be one of a kind. There are many photo-ID shops which issue cards in any name, and these are frequently used by forgers.

## 4. Examine each check closely. U.S. Treasury and state checks, for example, usually include the purpose for payment on the face, e.g., "Soc. Sec.," "Ret.," "Tax Ref.," "CSF Annuity," "V.A. Ed.," etc. Ask the person why the check was issued. The presenter should be able to tell you without hesitation.

## 5. Observe the person. Is the individual overly nervous? Does the appearance correspond with the purpose of the check? For example, a retirement check presented by a young individual is cause for concern.

## 6. Beware of second endorsements and any check that is not signed in your presence. Compare signatures on the identification against endorsements on the check. If the check has already been signed, have it signed again in your presence.

## 7. Take your time. If you question the person's identity, ask for their telephone number and then verify it in the phone book. If you have any doubts, call the listed number for verification, and ask for additional identification or verification.

## 8. Take personal note of vehicle license numbers when possible and record them on checks.

## 9. The check should be initialed by the employee accepting it.

## 10. Many of the above precautions also apply to accepting credit cards. When accepting credit cards, check lost/stolen credit card lists. Follow the guidelines set by the credit card company. Compare the signature on the card with the newly signed charge slip and ask for additional identification, if necessary.

## 11. Call your local police immediately if you are in any way suspicious. Postal Inspectors should also be notified if you believe the check or credit card may have been stolen from the mail.

**NOTE:** You may wish to consider using one of the commercially available identification systems. Taking photographs and/or thumbprints often deters forgers and will help identify offenders.

## FDIC Offices

Director  
Office of Bank Customer Affairs  
Federal Deposit Insurance Corporation  
Washington, D.C. 20429

### ATLANTA REGION

Regional Director  
Federal Deposit Insurance Corporation  
2 Peachtree Street, N.W., Suite 3030  
Atlanta, Georgia 30303

Alabama  
Florida  
Georgia

### BOSTON REGION

Regional Director  
Federal Deposit Insurance Corporation  
2 Center Plaza, Room 810  
Boston, Massachusetts 02108

Connecticut, Maine  
Massachusetts  
New Hampshire  
Rhode Island, Vermont

### CHICAGO REGION

Regional Director  
Federal Deposit Insurance Corporation  
233 S. Wacker Drive, Suite 6116  
Chicago, Illinois 60606

Illinois  
Indiana

### COLUMBUS REGION

Regional Director  
Federal Deposit Insurance Corporation  
37 West Broad Street, Suite 600  
Columbus, Ohio 43215

Kentucky  
Ohio  
West Virginia

### DALLAS REGION

Regional Director  
Federal Deposit Insurance Corporation  
300 North Ervay Street, Suite 3300  
Dallas, Texas 75201

Colorado  
New Mexico  
Oklahoma  
Texas

### MADISON REGION

Regional Director  
Federal Deposit Insurance Corporation  
1 South Pinckney Street, Room 813  
Madison, Wisconsin 53703

Michigan  
Wisconsin

### MEMPHIS REGION

Regional Director  
Federal Deposit Insurance Corporation  
165 Madison Avenue, Suite 1010  
Memphis, Tennessee 38103

Arkansas  
Louisiana  
Mississippi  
Tennessee

### MINNEAPOLIS REGION

Regional Director  
Federal Deposit Insurance Corporation  
730 Second Avenue South, Suite 266  
Minneapolis, Minnesota 55402

Minnesota, Montana  
North Dakota  
South Dakota  
Wyoming

### NEW YORK REGION

Regional Director  
Federal Deposit Insurance Corporation  
345 Park Avenue, 21st Floor  
New York, New York 10022

New Jersey  
New York  
Puerto Rico  
Virgin Islands

### OMAHA REGION

Regional Director  
Federal Deposit Insurance Corporation  
1700 Farnam Street, Suite 1200  
Omaha, Nebraska 68102

Iowa  
Nebraska

### PHILADELPHIA REGION

Regional Director  
Federal Deposit Insurance Corporation  
5 Penn Center Plaza, Suite 2901  
Philadelphia, Pennsylvania 19103

Delaware  
Maryland  
Pennsylvania

### RICHMOND REGION

Regional Director  
Federal Deposit Insurance Corporation  
908 E. Main Street, Suite 435  
Richmond, Virginia 23219

District of Columbia  
North Carolina  
South Carolina  
Virginia

### ST. LOUIS REGION

Regional Director  
Federal Deposit Insurance Corporation  
720 Olive Street, Suite 2909  
St. Louis, Missouri 63101

Kansas  
Missouri

### SAN FRANCISCO REGION

Regional Director  
Federal Deposit Insurance Corporation  
44 Montgomery Street, Suite 3600  
San Francisco, California 94104

Alaska, Arizona  
California, Guam  
Hawaii, Idaho  
Nevada, Oregon  
Utah, Washington

## FEDERAL ENFORCEMENT AGENCIES

### National Banks

Comptroller of the Currency  
Consumer Affairs Division  
Washington, D.C. 20219

### State Member Banks

Federal Reserve Bank serving the area in which the State member bank is located.

### Nonmember Insured Banks

FDIC Regional Director for the Region in which the nonmember insured bank is located or the Office of Bank Customer Affairs in Washington, D.C. The addresses of these offices are listed in this brochure.

### Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)

The FHLBB's Supervisory Agent in the Federal Home Loan Bank District in which the institution is located.

### Federal Credit Unions

Regional Office of the National Credit Union Administration, serving the area in which the Federal Credit Union is located.

### Creditors Subject to Civil Aeronautics Board

Director, Bureau of Enforcement  
Civil Aeronautics Board  
1825 Connecticut Avenue, N.W.  
Washington, D.C. 20428

### Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

### Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations

Farm Credit Administration  
490 L'Enfant Plaza West  
Washington, D.C. 20578

### Retail Department Stores, Consumer Finance Companies, All Other Creditors, and All Nonbank Credit Card Issuers

Truth in Lending  
Federal Trade Commission  
Washington, D.C. 20580

Text prepared by staff members of the Federal Reserve Board

**FEDERAL DEPOSIT INSURANCE CORPORATION**  
550 17th Street, N.W., Washington, D.C. 20429

P-1400-004-77

3-16-77

# FAIR CREDIT BILLING

your rights

**FDIC**  
FEDERAL DEPOSIT INSURANCE CORPORATION

"Charge it!" Magic words—unless there's an error when your bill comes. If ever you've been hassled by the credit department's computer, you'll be pleased to learn about the *new rights that you have when you think that your bill is wrong*.

Fair Credit Billing, an addition to the Truth in Lending law, requires prompt correction of billing mistakes. This pamphlet explains how to resolve a billing dispute in a way that protects your credit rating.

## Billing Error

You may challenge either the purchase or the price of an item that appears on your billing statement. The law defines an error as any charge:

- Not made either by you or someone authorized to use your account
- Poorly identified, for a different amount or on a different date than is shown on the statement
- Something which you did not accept on delivery or which was not delivered according to agreement

Billing errors also include:

- Failure to credit your account properly
- Computational or accounting mistakes
- Failure to mail your statement to your current address, provided you notified the creditor of your address change at least 10 days before the billing period ended

A request for additional information or an explanation about a questionable item is also considered a billing error.

## In Case of Error

If you think your bill is wrong or want more information about it, follow these steps:

1. Notify the creditor in writing within 60 days after the bill was mailed. Be sure to include:
  - Your name and account number;
  - A statement that you believe the bill contains an error and an explanation of *why* you believe there is an error;
  - The suspected amount of the error.

2. While you are waiting for an answer, you do not have to pay the amount in question (the "disputed amount") or any minimum payments or finance charges that apply to it. But you are still obligated to pay all parts of the bill that are *not* in dispute.

3. The creditor must acknowledge your letter within 30 days, unless your bill is corrected before that. Within two billing periods—but in no case more than 90 days—your account must either be corrected or you must be told why the creditor believes the bill is correct.

4. If the creditor made a mistake, you do not pay any finance charges on the disputed amount. Your account must be correct for either the full amount in dispute, or for a part of that amount along with an explanation of what you still owe. You then have the time usually given on your type of account to pay any balance.

If no error is found, the creditor must promptly send you a statement of what you owe. In this case, the creditor may include any finance charges that accumulated and any minimum payments you missed while you were questioning the bill.

5. If you still are not satisfied, you should notify the creditor within the time you have to pay your bill. However, the creditor has now fulfilled his legal obligation (except for the requirements that follow regarding your credit rating).

## Your Credit Rating

Once you have written about a possible error, the creditor may not give out information to other creditors or credit bureaus or threaten to damage your credit rating. Until your letter is answered, the creditor also may not take any collection action on the disputed amount, or restrict your account because of the dispute. A creditor can, however, apply the disputed amount against your credit limit.

But, after the bill has been explained—and if you still disagree in writing within the time allowed for payment and do not pay—the creditor can report you as delinquent on your account and begin collection proceedings. If this is done, the creditor must also report that you challenge your bill, and you must be provided in writing the name and address of each person to whom your credit information has been given. When the matter is settled, the creditor must report the outcome to each person who received information about you.

## Defective Merchandise or Services

The law now provides that you may withhold payment of any balance due on defective merchandise or services purchased with a credit card, provided you have made a good faith effort to return the goods or resolve the problem with the merchant from whom you made the purchase.

If the store that honored the credit card was not also the issuer of the card, two limitations apply to this right:

- The original amount of the purchase must have exceeded \$50; and
- The sale must have taken place in your State or within 100 miles of your current address.

In the case of defective merchandise or services, a legal action may result to determine the validity of your claim.

## Penalties and Other Provisions

The law provides that any creditor who fails to comply with these rules applying to billing errors and credit ratings automatically forfeits the amount of the item in question and any finance charges on it, up to a total of \$50, even if no error occurred. You as an individual may also sue for actual damages plus twice the amount of any finance charges, in any case not less than \$100 or more than \$1,000. Class action suits are also permitted.

The law also includes requirements for prompt reporting and crediting of payments or return of merchandise. In addition, it provides that credit card issuers may not prohibit stores which honor their cards from offering discounts to customers who pay in cash or by check.

## To Find Out More

Creditors must provide you a complete statement of your Fair Credit Billing rights when you first open an account and at least twice annually (or send a shorter version with each billing). If you have any further questions about Fair Credit Billing, please contact one of the FDIC's 14 Regional Offices or the Office of Bank Customer Affairs. Other Federal agencies which enforce Fair Credit Billing for particular creditors are also listed in this brochure.

## How to guard credit and charge cards

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### Always:

- Sign new cards as soon as they arrive.
- Keep a record of your card numbers, their expiration dates, and the phone number and address of each company.
- Retrieve cards promptly after using them.
- Void or destroy incorrect receipts.
- Save receipts to compare them with billing statements.
- Open billing statements promptly and reconcile your card accounts each month, just as you would your checking account.
- Report promptly any questionable charges to the card issuers.
- Notify card companies in advance of a change of address.

### Never:

- Lend card(s) to anyone.
- Leave cards or receipts lying around.
- Put a card number on a postcard or on the outside of an envelope.
- Give a card number over the phone *unless* you are initiating a transaction with a company you know is reputable. If you have questions about a company, check with your local Consumer Protection Office or Better Business Bureau before ordering.

## If you suspect someone is using your account number without your permission:

---

Send the card issuer a letter that includes your name, account number(s), and the charges that you question, with your reasons. You must direct your letter to the "billing error address" provided on your statement, and it must reach the creditor within 60 days after the first bill containing the error was mailed to you. Sending your letter by certified mail, with a return receipt requested, will give you proof that the letter was mailed and received.

If you decide to call the card issuer for faster action—using the special numbers that many card issuers list on billing statements—follow up with a letter. Only a letter protects your rights under the Fair Credit Billing Act.

The card issuer must acknowledge receipt of your letter or correct the error within 30 days. Or, they must investigate and either correct the mistake or justify the charges within two billing cycles or 90 days, whichever is less. You may be asked to sign a statement under oath that you did not make the purchases(s) in question.

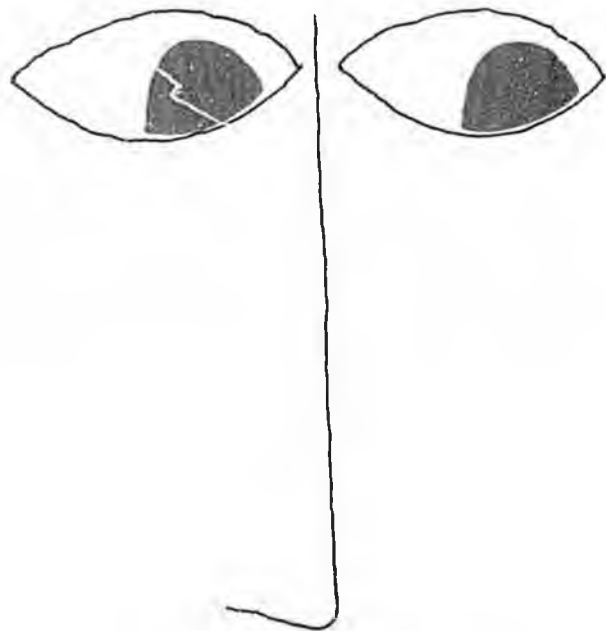
For more information about your rights, contact the Federal Trade Commission, Washington, D.C. 20580.



Published by the Consumer Affairs Office, American Express Company in cooperation with the Federal Trade Commission  
American Express Company 1984

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# Who's got your number?



Protect yourself against credit and charge card fraud.

*Would you...*

*Give your checking account number and current balance to an unfamiliar caller?*

*Leave your ID and a blank check behind at a restaurant?*

*Send cash through the mail?*

*Of course not...*

---

But thousands of Americans do things that are just as risky as sending cash through the mail. Giving credit or charge card numbers to unknown callers, or carelessly tossing away card receipts are some of the ways consumers unwittingly fall victim to credit card fraud.

The cost of credit and charge card fraud—to card holders and to card companies alike—may be as high as \$500 million a year. Everyone pays for card fraud in higher prices, whether or not they are personally defrauded.

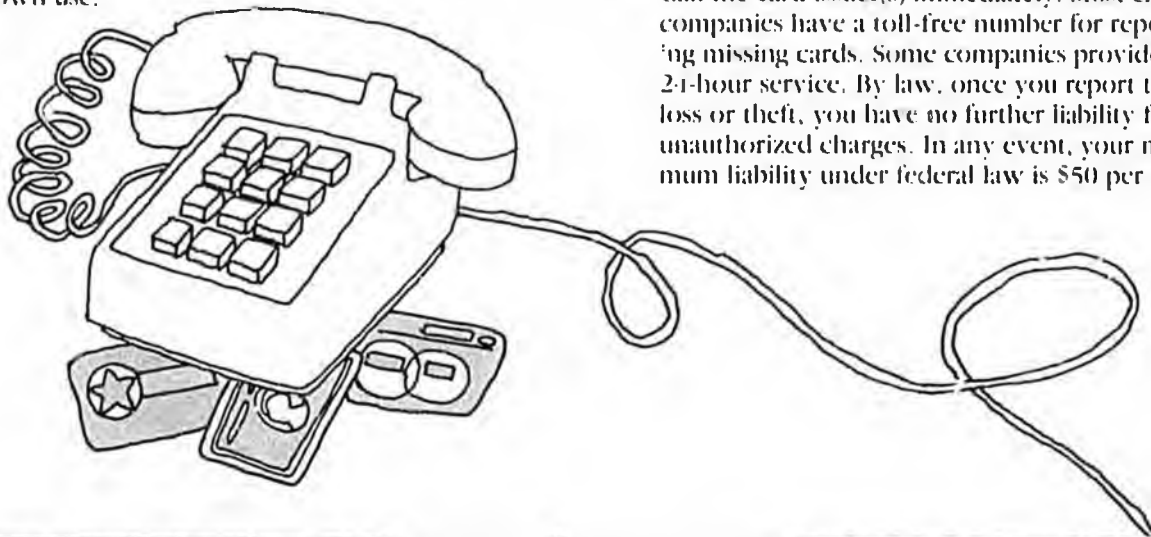
While theft is the most obvious form of card fraud, it is not the only way crimes occur. A more subtle crime is "misappropriation": the use of your card number (not the card itself) without your permission.

*How can it happen?*

---

Misappropriation may occur in a variety of ways:

- A caller says that to qualify for a discount vacation or a special investment opportunity you need only give your card number and its expiration date. Neither offer is genuine—the caller wants your card number for an illegal use.
- Someone rifles the trash behind a store for discarded card receipts or carbons to get numbers for making counterfeit cards or for ordering merchandise by mail or phone.
- A dishonest clerk makes an extra imprint from the credit or charge card for his or her own use.



*Consider taking other precautions:*

---

- Keep infrequently used cards in a secure place.
- Carry cards separately from your wallet.
- Keep the card in view, whenever you can, after you give it to a clerk.
- Avoid signing a blank receipt, if possible.
- Draw a line through blank spaces above the total when you sign card receipts.
- Destroy carbon papers on card receipts.
- Instruct others who are authorized to use your account to take these same precautions.

*If cards are lost or stolen:*

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Call the card issuer(s) immediately. Most card companies have a toll-free number for reporting missing cards. Some companies provide 24-hour service. By law, once you report the loss or theft, you have no further liability for unauthorized charges. In any event, your maximum liability under federal law is \$50 per card.

— If you pay by a charge or credit card not issued by the seller, the law says you can stop payment on the amount in dispute by notifying the company that issued the card. They must then get your problem settled within two billing cycles (but not more than 90 days).

**The law says**

- If you win the dispute, the unpaid amount will be credited to your account.
  - If your problem is not resolved to your satisfaction, you may not withhold payment unless you've made a sincere effort to work out the problem with the seller and provided:
    - 1) the transaction is over \$50, and
    - 2) the seller is located within your state or within 100 miles of your home.
- In such event the seller is permitted to use other legal means to determine the validity of your claim and attempt to collect the money from you.

Most firms are reliable and depend upon repeat orders and goodwill to stay in business. If you don't get results within a reasonable time, contact the agencies listed below. Include details, a copy of your canceled check, charge or credit card statement and, if available, a copy of the original ad.

**Mail Fraud —  
Misrepresentation**

Your local Postmaster or  
Inspector or  
Chief Postal Inspector  
U.S. Postal Service  
Room 3517  
Washington, D.C. 20260-  
2100  
(202) 245-5445

**Sexually Offensive Mail**  
Your local Postmaster

**For Any Mail Service  
Questions**

Your local Postmaster or  
The Consumer Advocate  
U.S. Postal Service  
Washington, D.C. 20260-  
6320  
(202) 245-4514

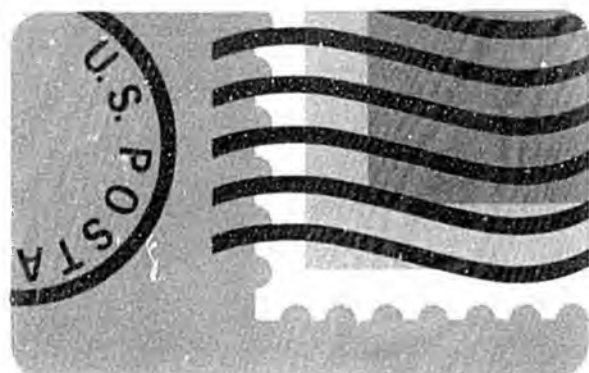
**Unordered Merchandise  
and Mail Order Delay**

Consumer Inquiries  
Federal Trade  
Commission  
Washington, D.C. 20580  
(202) 523-3598

**For Any Mail Order  
Questions**

Your local Consumer  
Protection Agency or  
The Direct Mail Market-  
ing Association (DMMA)  
6 East 43rd Street  
New York, N.Y. 10017  
(212) 689-4977

To have your name re-  
moved or added to mail-  
ing lists, contact DMMA at  
the same address.  
ATTENTION: Mail  
Preference Service



# ConsumerCard

**Keep it handy . . .**

**It's what you need to know to shop by  
mail or phone with confidence,  
satisfaction and protection.**



One in a series published by the ConsumerCard<sup>®</sup> Committee,  
Service of the Consumer Affairs Office, American Express Company.  
Created in cooperation with the United States Postal Service, U.S.  
Council on Consumer Affairs and the Consumer Information Center of  
the General Services Administration.

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Copies may be reproduced for nonprofit educational purposes.



Consumers order millions of items from mail order companies each year. Shopping at home can offer you convenience, better service, wider selection, and more complete product information. But remember these tips to keep your mail order shopping trouble-free.

• Deal with reliable firms. In doubt? Check the Better Business Bureau or consumer protection agency where the company is located, or the Direct Mail/Marketing Association. Read advertisements carefully. Don't rely on pictures alone. Contact the company about its warranty and exchange policy, missing facts or questionable claims.

• Pay by money order, check, charge or credit card so you have a record. Never send cash. Clearly mark name and address on the order form. Keep a copy of the ad, order form, correspondence, company's name and address, and mailing costs.

It helps to know your legal rights. The U.S. Postal Service and the Federal Trade Commission enforce laws covering purchases by mail or phone.

—If a package is late, first check your local Post Office. They may be holding it for you

The FTC Mail Order Rule says mail order companies must ship your order within the time promised, or, if no time is stated, within 30 days of receipt of your properly completed order and payment. If you pay by charge or credit card, the 30 days begin when you are charged.

In case of delay, the seller must notify you when your order will be shipped. If the new delivery date is more than 30 days past the original date promised, you can accept the new shipping date or you can cancel for a full refund. Either way, you must do so in writing. (An easy, no-cost means for canceling must be sent to you.) If the delay is less than 30 days, the process is the same, except that if you don't answer, it means you accept.

The seller must refund all your money within seven working days after receiving your CANCEL order if merchandise cannot be shipped within 30 days, or if you do not accept a delay offer. If your order was billed as a charge or credit, the seller has one billing cycle to notify the charge or credit card issuer to credit your account.

Exceptions to the Mail Order Rule include spaced deliveries such as magazine subscriptions (but not the first shipment), other spaced orders not charged until shipped, COD, photo finishing, seeds or growing plants.

—If a product you didn't order comes in the mail, it is illegal to pressure you to return it or to pay for it. But be sure it's not part of a merchandise series you or a family member ordered.

—To prohibit mailings, obtain forms from your local Postmaster.

—At your request, the Direct Mail/Marketing Association will ask to have your name removed from (or added to) the lists of their members.

—If damage is obvious, or if you decide not to accept the package, write "REFUSED" on the wrapper (at the time of delivery) and return it unopened to the seller. No new postage is needed, unless the package came by insured, registered, certified or COD mail and you signed for it.

If you open it first, enclose a note explaining the problem. Repackage it, add new postage, and mail it back by certified or insured mail.

—Check the warranty or ask the seller about replacement, repair or refund. If you think the advertising was misleading, or you suspect fraud, contact the Postal Inspection Service.

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state of alaska  
 department of law  
 consumer protection section

BILL SHEFFIELD  
 GOVERNOR  
 NORMAN C. GORSUCH  
 ATTORNEY GENERAL

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

1031 West 4th Avenue  
 Suite 110  
 ANCHORAGE, AK 99501  
 279-0428

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

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

# CONSUMER PROTECTION NEWSLETTER

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FALL 1983

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## YOU WON!!!

How lucky! You've been selected. You have won a color television, a home computer, a video recorder, diamond jewelry, or an all expenses paid vacation. Great. Or, is it? Did you really win? Is it really free?

No; you and thousands of others were all selected to win these prizes which could easily cost you several

Alaskans are being "selected" by the thousands to "win" just such prizes. All you have to do to claim your prize is to purchase vitamins, pens, or printed advertisements for your business. Sounds worth it, doesn't it?

Chances are, it isn't worth it. The Consumer Protection Section of the Attorney General's Office reports numerous complaints about just

frequently, the fabulous "prize" turns out to be virtually worthless. And, the merchandise you had to buy to receive the prize is far less desirable than represented. In some cases, even after you have paid for your merchandise, you never receive either the merchandise or the prize.

Beware; these contest lures can be hazardous to your

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state of alaska  
department of law  
consumer protection section

BILL SHEFFIELD  
GOVERNOR  
NORMAN C. GORSUCH  
ATTORNEY GENERAL

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

1031 West 4th Avenue  
Suite 110  
ANCHORAGE, AK 99501  
279-0428

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

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

# CONSUMER PROTECTION NEWSLETTER

SUMMER 1984

## LEMON LAW PASSES!

**lemon law** On June 13, 1984 Governor Bill Sheffield signed into law HCS-CSSB 286, commonly known as the "Lemon Law."

"This legislation, first introduced by Representative Mike Miller (D-Juneau) was subject to much scrutiny by both the Senate and the House before it evolved into its present form," Sheffield said. "While 30 other states have

purchases made prior to the effective date, it is not intended to have a retroactive effect. Consequently, new car purchasers whose purchase dates occur after September 11, 1984, will be covered under this law while those occurring before will not. By early September, the Consumer Protection Section of the Attorney General's Office will have available a brochure explaining the new law.

seriously. They are only issued on the most serious problems. 1980 Subaru owners should have received notification from Subaru of a steering rack recall. It appears that the boot which protects the rack can't stand our cold winters. The failure of this boot can cause corrosion which results in hard steering or seizure. If you own a 1980 Subaru and did not receive a

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# ALASKA LANDLORD- TENANT LAW

December 1983  
Revised

Cooperative Extension Service  
University of Alaska

and

State of Alaska  
Department of Law

Barbara G. Eichner  
Home Economist  
Anchorage District

This booklet is a revision of P-98 "Alaska's Landlord-Tenant Law," originally prepared by Alaska Legal Services with the Cooperative Extension Service in 1974. Revised editions were prepared in 1975 and 1980.

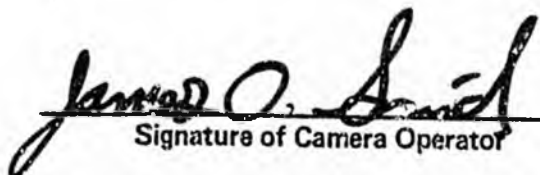
The 1983 revision was prepared with the assistance of Alaska Legal Services, the Alaska Law Library, the Consumer Protection



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