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BILL CONTACT/ACTION

DATE	CONTACT/ACTION
2/16	Reed STODOLSKA needs to be contacted when
	bill is in committee because he will
	be bringing in witnesses from 100000 US of
	other MINNESOTA cities (586 5340)
4/1/86	Chuck Eggen (62191)
	Reed STODOLSKA (6-5340)
	MILWAUKEE GROUP (586-1287/276-0358)

Introduced: 1/27/86  
Referred: Judiciary

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

SENATE BILL NO. 363

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to Motion Picture Fair Competition."

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

8 \* Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is

9 (1) to establish fair and equitable procedures for bidding and  
10 negotiation for the right to exhibit motion pictures in the state in order  
11 to prevent unfair and deceptive acts or practices and unreasonable  
12 restraints of trade in the business of motion picture distribution and  
13 exhibition within the state;

14 (2) to promote fair and effective competition in that business;

15 (3) to prevent the award of motion picture licenses on other  
16 than an individual, picture-by-picture, theatre-by-theatre basis;

17 (4) to promote the survival of small, independent exhibitors;  
18 and

19 (5) to ensure that an exhibitor has the opportunity to view a  
20 motion picture and know its contents before deciding to exhibit the motion  
21 picture in the community.

22 \* Sec. 2. AS 45 is amended by adding a new chapter to read:

23 CHAPTER 51. EXHIBITION OF MOTION PICTURES.

24 Sec. 45.51.010. PROHIBITED AND REQUIRED PRACTICES. (a) The  
25 buying or selling of the right to exhibit a motion picture by blind  
26 bidding or blind selling is prohibited in the state.

27 (b) Bids may not be returnable, negotiations for the licensing  
28 or exhibition of a motion picture may not take place and a license  
29 agreement and its terms may not be agreed upon for the exhibition of a

1 motion picture in the state before the motion picture has been trade  
2 screened.

3 (c) A distributor shall provide reasonable and uniform written  
4 notice to each exhibitor in the state at least 72 hours before a trade  
5 screening.

6 Sec. 45.51.020. SOLICITATION OF BIDS. (a) When a bid is solic-  
7 ited from exhibitors for the right to exhibit a motion picture in the  
8 state,

9 (1) the invitation to bid shall specify

10 (A) whether the bid being solicited is a first, sec-  
11 ond, or subsequent run;

12 (B) whether the run is an exclusive or nonexclusive  
13 run and the geographic area for the run;

14 (C) the name of each exhibitor who is being solicited;

15 (D) the date and hour the invitation to bid expires;

16 and

17 (E) the time, date, and the address in the largest  
18 city in the state where the bids will be opened;

19 (2) all bids shall be submitted in writing and shall be  
20 opened at the same time and in the presence of the exhibitors who  
21 submitted bids or their agents who attend the bid opening;

22 (3) immediately upon being opened, the bids shall be ex-  
23 amined by the exhibitors who submitted bids or their agents who attend  
24 the bid opening;

25 (4) within 10 business days after the bids are opened, the  
26 distributor shall advise each exhibitor who submitted a bid

27 (A) of the name of the winning bidder; or

28 (B) that each bid submitted was unacceptable.

29 (b) Once bids are solicited under (a) of this section, the

1 distributor may license the motion picture only by bidding and may  
2 solicit rebids only if each bid is unacceptable.

3 (c) The right to exhibit a motion picture for which bids were  
4 solicited shall be awarded to the highest bid submitted unless all  
5 bids are rejected.

6 (d) If an exhibitor notifies a distributor that it wishes to  
7 submit bids for motion pictures released by the distributor in a  
8 particular area of the state designated by the exhibitor, the exhibi-  
9 tor and each competing exhibitor shall be solicited for bids for the  
10 first or second run of each motion picture to be released by the  
11 distributor in the designated area.

12 Sec. 45.51.030. REJECTION OF BIDS. The decision of a distribu-  
13 tor that a bid is an unacceptable bid or is the highest bid is con-  
14 clusive unless a reasonable person could not have made that judgment.

15 Sec. 45.51.040. VIOLATION. A person aggrieved by a violation  
16 of this chapter may bring a civil action in superior court to enjoin  
17 further violations and to recover damages.

18 Sec. 45.51.050. DAMAGES. (a) If an exhibitor establishes that  
19 a violation of this chapter deprived it of a motion picture license  
20 that it was otherwise entitled to, the exhibitor is entitled to the  
21 greater of

22 (1) actual damages; or

23 (2) liquidated damages equivalent to 20 percent of the  
24 gross box office receipts earned by the motion picture at the theatre  
25 in which it was exhibited.

26 (b) In addition to other damages that may be awarded under (a)  
27 of this section, if the violation of this chapter is determined to be  
28 intentional, an aggrieved exhibitor may recover punitive damages  
29 necessary to deter a similar violation in the future. Punitive

1 damages may be awarded under this subsection even if damages are not  
2 awarded under (a) of this section.

3 Sec. 45.51.060. WAIVER. A purported waiver of rights estab-  
4 lished by this chapter is void and unenforceable and this chapter  
5 shall be liberally construed to achieve its purpose.

6 Sec. 45.51.100. DEFINITIONS. In this chapter

7 (1) "blind bidding" means an exhibitor's bid or negotiation  
8 for or the exhibitor's offer or agreement to terms for the license to  
9 exhibit a motion picture at a time either before the motion picture  
10 has been trade screened in the state or before the motion picture has  
11 been otherwise made available for viewing in the state by all exhibi-  
12 tors;

13 (2) "blind selling" means the distributor's agreement to  
14 license a motion picture before an exhibitor has been afforded an  
15 opportunity to view the motion picture by trade screening;

16 (3) "buying" or "selling" of the right to exhibit a motion  
17 picture means the licensing of a theatre to show the motion picture  
18 for a specified number of days for a specified price;

19 (4) "distributor" means a person engaged in the business of  
20 distributing more than one motion picture during a calendar year to  
21 exhibitors by rental, sale, licensing, or other agreement;

22 (5) "highest bid" means a bid for the right to exhibit a  
23 motion picture at a particular theatre at a particular time that would  
24 probably generate greater film rental for the distributor than a  
25 competing bid for the specific run bid;

26 (6) "motion picture" means a feature motion picture exceed-  
27 ing 60 minutes in showing time;

28 (7) "run" means the continuous exhibition of a motion  
29 picture in a defined geographic area for a specific period of time;

1                   (8) "trade screening" means an exhibition of a motion  
2 picture, before its release for public exhibition by a distributor;

3                   (9) "unacceptable bid" means a bid that is inferior to the  
4 lowest bid the distributor would accept for the same run of the same  
5 picture in an area having a population equal to or greater than the  
6 population of the area for which the inferior bid was made.

Original sponsor: Judiciary Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 363 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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8 \* Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is

9 (1) to establish fair and open procedures for bidding and  
10 negotiation for the right to exhibit motion pictures in the state in order  
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12 restraints of trade in the business of motion picture distribution and  
13 exhibition within the state;

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16 than an individual, picture-by-picture, theatre-by-theatre basis;

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20 motion picture and know its contents before deciding to exhibit the motion  
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26 bidding or blind selling is prohibited in the state.

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1 motion picture in the state before the motion picture has been trade  
2 screened.

3 (c) A distributor shall provide reasonable and uniform written  
4 notice to each exhibitor in the state at least 72 hours before a trade  
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6 Sec. 45.51.020. SOLICITATION OF BIDS. (a) When a bid is solici-  
7 ted from exhibitors relating to the exhibition of a motion picture in  
8 the state,

9 (1) the invitation to bid shall specify

10 (A) whether the bid being solicited is a first, sec-  
11 ond, or subsequent run;

12 (B) whether the run is an exclusive or nonexclusive  
13 run and the geographic area for the run;

14 (C) the name of each exhibitor who is being solicited;

15 (D) the date and hour the invitation to bid expires;

16 and

17 (E) the time, date, and the address in the largest  
18 city in the state where the bids will be opened;

19 (2) all bids shall be submitted in writing and shall be  
20 opened at the same time and in the presence of the exhibitors who  
21 submitted bids or their agents who attend the bid opening;

22 (3) immediately upon being opened, the bids shall be ex-  
23 amined by the exhibitors who submitted bids or their agents who attend  
24 the bid opening;

25 (4) within 10 business days after the bids are opened, the  
26 distributor shall advise each exhibitor who submitted a bid

27 (A) of the name of the highest bidder; and

28 (B) the name of the bidder who received the award of

29 exhibition rights; or

1 (C) that each bid submitted was unacceptable.

2 (b) Once bids are solicited under (a) of this section, the  
3 distributor may solicit rebids only if each bid is unacceptable.

4 (c) If an exhibitor notifies a distributor that it wishes to  
5 submit bids for motion pictures released by the distributor in a  
6 particular area of the state designated by the exhibitor, the exhibi-  
7 tor and each competing exhibitor shall be solicited for bids for the  
8 first or second run of each motion picture to be released by the  
9 distributor in the designated area.

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11 tor that a bid is an unacceptable bid is conclusive unless a  
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14 of this chapter may bring a civil action in superior court to enjoin  
15 further violations and to recover damages.

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17 determined to be intentional, an aggrieved exhibitor may recover  
18 punitive damages necessary to deter a similar violation in the future.

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20 lished by this chapter is void and unenforceable and this chapter  
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2 opportunity to view the motion picture by trade screening;

3 (3) "buying" or "selling" of the right to exhibit a motion  
4 picture means the licensing of a theatre to show the motion picture  
5 for a specified number of days for a specified price;

6 (4) "distributor" means a person engaged in the business of  
7 distributing more than one motion picture during a calendar year to  
8 exhibitors by rental, sale, licensing, or other agreement;

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10 ing 60 minutes in showing time;

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12 picture in a defined geographic area for a specific period of time;

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16 lowest bid the distributor would accept for the same run of the same  
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14-1596  
Bradley  
1/17/86

1 IN THE SENATE

BY

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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13 exhibition within the state;

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12 (B) whether the run is an exclusive or nonexclusive  
13 run and the geographic area for the run;

14 (C) the name of each exhibitor who is being solicited;

15 (D) the date and hour the invitation to bid expires;

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17 (E) the time, date, and the address in the largest  
18 city in the state where the bids will be opened;

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20 that it was otherwise entitled to, the exhibitor is entitled to the  
21 greater of

22 (1) actual damages; or

23 (2) liquidated damages equivalent to 20 percent of the  
24 gross box office receipts earned by the motion picture at the theatre  
25 in which it was exhibited.

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27 of this section, if the violation of this chapter is determined to be  
28 intentional, an aggrieved exhibitor may recover punitive damages  
29 necessary to deter a similar violation in the future. Punitive

1 damages may be awarded under this subsection even if damages are not  
2 awarded under (a) of this section.

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4 lished by this chapter is void and unenforceable and this chapter  
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6 Sec. 45.51.100. DEFINITIONS. In this chapter

7 (1) "blind bidding" means an exhibitor's bid or negotiation  
8 for or the exhibitor's offer or agreement to terms for the license to  
9 exhibit a motion picture at a time either before the motion picture  
10 has been trade screened in the state or before the motion picture has  
11 been otherwise made available for viewing in the state by all exhibi-  
12 tors;

13 (2) "blind selling" means the distributor's agreement to  
14 license a motion picture before an exhibitor has been afforded an  
15 opportunity to view the motion picture by trade screening;

16 (3) "buying" or "selling" of the right to exhibit a motion  
17 picture means the licensing of a theatre to show the motion picture  
18 for a specified number of days for a specified price;

19 (4) "distributor" means a person engaged in the business of  
20 distributing more than one motion picture during a calendar year to  
21 exhibitors by rental, sale, licensing, or other agreement;

22 (5) "highest bid" means a bid for the right to exhibit a  
23 motion picture at a particular theatre at a particular time that would  
24 probably generate greater film rental for the distributor than a  
25 competing bid for the specific run bid;

26 (6) "motion picture" means a feature motion picture exceed-  
27 ing 60 minutes in showing time;

28 (7) "run" means the continuous exhibition of a motion  
29 picture in a defined geographic area for a specific period of time;

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2 picture, before its release for public exhibition by a distributor;

3 (9) "unacceptable bid" means a bid that is inferior to the  
4 lowest bid the distributor would accept for the same run of the same  
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Introduced: \_\_/\_\_/\_\_  
Referred: \_\_\_\_\_, \_\_\_\_\_  
and \_\_\_\_\_

IN THE HOUSE

BY \_\_\_\_\_

HOUSE BILL NO. \_\_\_\_  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
FOURTEENTH LEGISLATURE - SECOND SESSION  
A BILL

For an act entitled: "An act relating to Motion Picture Fair Competition."

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

Section 1.

Purpose. The purpose of the chapter is to establish fair and open procedures for bidding and negotiation for the right to exhibit motion pictures in the state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution and exhibition within the state; to promote fair motion picture licenses on other than an individual, picture-by-picture, theatre-by-theatre basis; to promote the survival of small, independent exhibitors; and to insure that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibiting the motion picture in their communities.

Section 2.

Blind bidding or blind selling prohibited -- Trade screening required -- Notice.

- (1) The buying or selling of the right to exhibit a feature motion picture by blind bidding or blind selling is prohibited within the state.
- (2) No bids may be returnable, no negotiations for the exhibition or licensing of a motion picture may take place and no license agreement or any of its terms may be agreed upon, for the exhibition of a feature motion picture within the state before the feature motion picture has been trade screened.
- (3) A distributor shall provide reasonable and uniform written notice at least 72 hours prior to the event of any trade screening to all exhibitors within the state.

### Section 3.

Solicitation of bids. When bids are solicited from exhibitors for the right to play a feature motion picture within the state, then:

- (1) The invitation to bid shall specify: (a) Whether the run for which the bid is being solicited is a first, second, or subsequent run; whether the run is an exclusive or non-exclusive run; and, the geographic area for the run; (b) the names of all exhibitors who are being solicited; (c) the date and hour the invitation to bid expires; and (d) the time, date, and location, including the address, where the bids will be opened, which shall be in the largest city within the state.
- (2) All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and who attend the bid opening.
- (3) Immediately upon being opened, the bids shall be subject to examination by the exhibitors, or their agents, who submitted bids, and who are present at the opening. Within ten business days after the bids are opened, the distributor shall notify each exhibitor who submitted a bid either the name of the winning bidder or the fact that each bid submitted was an unacceptable bid.
- (4) Once bids are solicited, the distributor shall award the feature motion picture only by bidding and may solicit rebids if, but only if, each of the submitted bids is an unacceptable bid.
- (5) The right to play any feature motion picture for which bids are solicited shall, unless all bids are rejected, be awarded to the highest bid submitted.

### Section 4.

If an exhibitor notifies a distributor that it wishes to submit bids for feature motion pictures released by that distributor in a particular area of the state designated by the exhibitor, then the exhibitor and all competing exhibitors shall be solicited for bids for the first or second runs of all motion pictures to be released by the distributor in the designated area.

### Section 5.

The distributor's judgment as to whether a bid is an "unacceptable bid" or is the "highest bid" shall be conclusive unless no reasonable person could have made that judgment.

Section 6.

Violation -- Civil suit -- Attorney's fees. Any person aggrieved by a violation of this chapter may bring a civil action in superior court to enjoin further violations or to recover damages, or both, together with the actual reasonable expenses incurred in bringing the suit and shall be entitled to a trial by jury of every issue of fact raised by the action. In any such action, the court shall award reasonable attorneys' fees to the prevailing party.

Section 7.

If an exhibitor establishes that a violation of this chapter deprived it of a feature motion picture license which it should otherwise have secured, the exhibitor shall be entitled to either the actual damages it suffered by not obtaining the license or liquidated damages equivalent to twenty percent of the gross box office receipts generated by the feature motion picture at the theatre to which it was awarded, whichever is greater.

Section 8.

In addition to any other damages that may have been incurred on account of a violation of this chapter, and even if no actual damages have been incurred, if the violation is found to be intentional, a person aggrieved may recover such punitive damages as are necessary to deter similar violations in the future.

Section 9.

If any provision or portion of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision or portion to other persons or circumstances is not affected.

Section 10.

A purported waiver of the rights created by this chapter is void and unenforceable and the language of this statute shall be construed liberally to achieve its purpose.

Section 11.

Definitions. The definitions contained in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bid" means a written or oral offer or proposal to buy made by an exhibitor to a distributor in response to an invitation to bid for the license or right to exhibit a motion picture, the license stating the terms under which the exhibitor agrees to exhibit the motion picture.

(2) "Blind bidding" means the exhibitor's bidding or negotiating for, or the exhibitor's offering or agreeing to, terms for the license or right to exhibit a feature motion picture at any time either before the feature motion picture has been trade screened within the state or before the feature motion picture has been otherwise made available for viewing within the state by all exhibitors.

(3) "Blind selling" means the practice whereby a distributor licenses a feature motion picture before the exhibitor is afforded an opportunity to view the feature motion picture by trade screening.

(4) "Buying" or "selling" of the right to exhibit a feature motion picture means the licensing of a theater to show the feature motion picture for a certain number of days for a certain price.

(5) "Distributor" means a person engaged in the business of distributing or supplying more than one feature motion picture per year to exhibitors by rental, sale, licensing, or other agreement.

(6) "Exhibit" or "exhibition" means playing or showing a feature motion picture to the public for an admission charge.

(7) "Exhibitor" means a person in the business of operating one or more theaters in which motion pictures are exhibited to the public.

(8) "Feature motion picture" means a motion picture exceeding sixty minutes in duration.

(9) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the license or right to exhibit a feature motion picture.

(10) "Licensing Agreement" means a contract, agreement, understanding, or condition between a distributor and an exhibitor relating to the licensing or exhibition of a feature motion picture by the exhibitor.

(11) "Person" means one or more individuals, firms, partnerships, associations, societies, trusts, organizations, or corporations.

(12) "Run" means the continuous exhibition of a feature motion picture in a defined geographic area for a specific period of time. A "first run" is the first exhibition of the feature motion picture in the defined area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is a run limited to a single theater in a defined geographic area and a "nonexclusive run" is a run in more than one theater in a

defined geographic area.

(13) "Theater" means an establishment in which feature motion pictures are regularly exhibited to the public for an admission charge.

(14) "Trade screening" means the exhibition of a feature motion picture, prior to its release for public exhibition by a distributor, in the largest city within the state.

(15) "Highest bid" means that bid for the right to play a film at a particular theater at a particular time that would probably generate greater film rental for the distributor than any competing bid for the specific run in question.

(16) "Unacceptable bid" means a bid that is inferior to the lowest bid the distributor has accepted or would accept for the same type of run of the same picture in an area having a population equal to or greater than the population of the area for which the inferior bid was made.

questions asked of such person. Such advice may be given in confidence.

(2) Such person may refuse to answer any question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise refuse to answer any question.

(3) If such person refuses to answer any question on grounds of the privilege against self-incrimination, his testimony may be compelled by the same procedure as provided in ORS 136.317.

(4) The antitrust investigator or investigators conducting the examination shall exclude from the place where examination is held all other persons except the person being examined, his counsel, the officer before whom the testimony is to be taken and any stenographer taking the testimony. [1977 c.729 §4]

646.830 [Repealed by 1971 c.744 §27]

**646.831 Fees and mileage for persons testifying.** Any person appearing for oral examination pursuant to a demand served under ORS 646.750 shall be entitled to the same fees and mileage which are paid to witnesses in the circuit courts. [1977 c.729 §5]

**646.836 Confidential status of investigative material; use of information in other proceedings.** While in the possession of the Attorney General any documentary material, answers to interrogatories and transcripts of oral testimony shall be held in confidence and not disclosed to any person except the person providing such material or answers, his representative or attorney and persons employed by the Attorney General. Any such material or answers may, however, be used in any case or proceeding before a court or administrative agency or disclosed to any committee or subcommittee of the Legislative Assembly in such manner and for such purposes as the Attorney General deems appropriate. [1977 c.729 §6]

646.840 [Repealed by 1971 c.744 §27]

MISCELLANEOUS

**646.860 Tampering with odometer prohibited.** (1) No person shall advertise for sale, sell, use or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage driven. For the purposes of this subsection the true mileage driven is that mileage driven by the

vehicle as registered by the odometer within the manufacturer's designed tolerance.

(2) No person shall with the intent to defraud operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

(3) No person shall replace, disconnect, turn back or reset the odometer of any motor vehicle with the intent to reduce the number of miles indicated on the odometer gauge.

(4) This section does not apply to the disconnecting of the odometer of a new motor vehicle being driven from the premises of a manufacturer, distributor or dealer to the premises of another manufacturer, distributor or dealer, incident to the sale of the motor vehicle. [1969 c.395 §1]

**646.870 Delivery of unrequested hazardous substances prohibited.** No person shall deliver, or cause to be delivered, any hazardous substance, as defined in ORS 453.005 (7), to any residential premises without the prior consent of any occupant of such premises. [1973 c.456 §2]

**646.875 Display of motor vehicle fuel prices required.** (1) A person who operates a service station, business or other place for the purpose of retailing and delivering gasoline, diesel or other fuel into the tanks of motor vehicles must display the prices charged for the sale of gasoline, diesel or other fuel in compliance with this section. To be in compliance with this section, if there is a sign displayed, the display must:

(a) Show the price per unit of measurement and the unit of measurement at which the person sells the fuel; and

(b) Show the same price per unit and the unit on any sign as that indicated on any dispensing device used for delivering the fuel into the tanks of motor vehicles.

(2) A person violating this section commits a Class C misdemeanor. [1981 c.807 §1]

**646.880 Diesel fuel sales; price discrimination.** (1) No person operating a service station selling to the public at retail diesel fuel, where delivery is regularly made into a receptacle on a vehicle from which receptacle the fuel is supplied to propel the vehicle, shall refuse to sell and deliver any quantity of such fuel to any vehicle during regular business hours, upon demand and tender of the posted price plus any applicable tax for such fuel delivered, subject to a rationing policy established by state or federal statute or regulation.

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(2) A price differential or method of delivery designed to discriminate against or discourage purchases by vehicles of small fuel capacity is prohibited. However, a reasonable discount or differential based upon quantity of delivery shall not be considered discriminatory. [1977 c.429 §10]

**646.890 Sale of rights by distributor to exhibit motion picture without first giving exhibitor opportunity to view motion picture prohibited; attorney fees.** (1) As used in this section:

(a) "Distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sales, license or any other agreement to sell rights to exhibit a motion picture.

(b) "Exhibitor" means any person engaged in the business of operating one or more theaters in which motion pictures are exhibited to the public for a charge.

(c) "Market" means any geographical area in this state for which a distributor solicits exhibitors to compete, by bidding or other negotiations, for the rights to exhibit a motion picture.

(2) No distributor shall sell rights to exhibit a motion picture in this state unless each exhibitor solicited by the distributor for an offer to exhibit the motion picture is first allowed a reasonable opportunity to view the motion picture within the state. Any waiver of this subsection is void and unenforceable.

(3) Nothing in this section applies to any form of solicitation of offers for, negotiation concerning or sale of rights to exhibit a motion picture:

(a) That has been exhibited in this state before October 3, 1979.

(b) In a market where the motion picture has been exhibited for one week or more.

(c) That is 60 minutes or less in length.

(4) An exhibitor may enforce this section by bringing an action in the appropriate court of this state. In enforcing this section a court may:

(a) Issue an injunction to prohibit violation of this section; and

(b) Award an exhibitor any actual damages arising from violation of this section.

(c) In any suit under subsection (4) of this section, the court shall award reasonable attorney fees at trial and on appeal to the prevailing party. [1979 c.254 §1; 1981 c.897 §84]

**PENALTIES**

**646.990 Penalties.** (1) Each violation of any of the provisions of ORS 646.010 to 646.180 by any person, firm or corporation, whether as principal, agent, officer or director, for himself or itself, or for another person, or for any firm or corporation, is punishable, upon conviction, by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail not exceeding six months, or by both.

(2) Violation of ORS 646.860 is a misdemeanor.

(3) Violation of ORS 646.725 or 646.730 is a Class A misdemeanor. [Amended by 1953 c.391 §2; 1967 c.144 §2; 1967 c.599 §4; subsection (8) enacted as 1969 c.395 §2; 1971 c.744 §24; 1975 c.255 §15; subsection (3) enacted as 1975 c.255 §16 (1)]

**646.992 Penalty for unlawful delivery of hazardous substances.** Violation of ORS 646.870 is a Class A misdemeanor. [1973 c.456 §3]

### CHAPTER 19.58—MOTION PICTURE FAIR COMPETITION ACT

Sections		Sections	
19.58.010 Purpose.		19.58.040 Solicitation of bids.	
19.58.020 Definitions.		19.58.050 Violation—Civil suit—Attorneys' fees.	
19.58.030 Blind bidding or blind selling prohibited—Trade screening required—Notice.		19.58.900 Short title.	
		19.58.905 Severability—1979 ex.s.c. 29.	

CJS Theaters and Shows II 4 to 15.

Key Number Digests: Theaters and Shows 62.

#### 19.58.010 Purpose

The purpose of this chapter is to establish fair and open procedures for bidding and negotiation for the right to exhibit motion pictures in the state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution and exhibition within the state; to promote fair and effective competition in that business; and to insure that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibiting the motion picture in their communities.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 1.]

#### 19.58.020 Definitions

The definitions contained in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bid" means a written or oral offer or proposal to buy made by an exhibitor to a distributor in response to an invitation to bid for the license or right to exhibit a motion picture, the license stating the terms under which the exhibitor agrees to exhibit the motion picture.

(2) "Blind bidding" means the exhibitor's bidding or negotiating for, or the exhibitor's offering or agreeing to, terms for the license or right to exhibit a feature motion picture at any time either before the feature motion picture has been trade screened within the state or before the feature motion picture has been otherwise made available for viewing within the state by all exhibitors.

(3) "Blind selling" means the practice whereby a distributor licenses a feature motion picture before the exhibitor is afforded an opportunity to view the feature motion picture by trade screening.

(4) "Buying" or "selling" of the right to exhibit a feature motion picture means the licensing of a theater to show the feature motion picture for a certain number of days for a certain price.

(5) "Distributor" means a person engaged in the business of distributing or supplying more than one feature motion picture per year to exhibitors by rental, sale, licensing, or other agreement.

(6) "Exhibit" or "exhibition" means playing or showing a feature motion picture to the public for an admission charge.

(7) "Exhibitor" means a person in the business of operating one or more theaters in which motion pictures are exhibited to the public.

(8) "Feature motion picture" means a motion picture exceeding sixty minutes in duration.

(9) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the license or right to exhibit a feature motion picture.

(10) "Licensing agreement" means a contract, agreement, understanding, or condition between a distributor and an exhibitor relating to the licensing or exhibition of a feature motion picture by the exhibitor.

(11) "Person" means one or more individuals, firms, partnerships, associations, societies, trusts, organizations, or corporations.

(12) "Run" means the continuous exhibition of a feature motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of the feature motion picture in the defined area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is a run limited to a single theater in a defined geographic area and a "nonexclusive run" is a run in more than one theater in a defined geographic area.

(13) "Theater" means an establishment in which feature motion pictures are regularly exhibited to the public for an admission charge.

(14) "Trade screening" means the exhibition of a feature motion picture, prior to its release for public exhibition by a distributor, in the largest city within the state, which is open to all exhibitors from whom the distributor intends to solicit bids or with whom the distributor intends to negotiate for the license or right to exhibit the feature motion picture.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 2.]

#### 19.58.030 Blind bidding or blind selling prohibited—Trade screening required—Notice

(1) The buying or selling of the right to exhibit a feature motion picture by blind bidding or blind selling is prohibited within the state.

(2) No bids may be returnable, no negotiations for the exhibition or licensing of a motion picture may take place, and no license agreement or any of its terms may be agreed upon, for the exhibition of a feature motion picture within the state before the feature motion picture has either been trade screened or otherwise made available for viewing by all exhibitors within the state.

(3) A distributor shall provide reasonable and uniform notice of the trade screening of feature motion pictures to those exhibitors within the state from whom bids will be solicited or with whom negotiations will be conducted for the license or right to exhibit the feature motion picture.

(4) A purported waiver of the prohibition in this chapter against blind bidding or blind selling is void and unenforceable.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 3.]

#### 19.58.040 Solicitation of bids

If bids are solicited from exhibitors for the licensing of a feature motion picture within the state, then:

(1) The invitation to bid shall specify: (a) Whether the run for which the bid is being solicited is a first, second, or subsequent run; whether the run is an exclusive or nonexclusive run; and, the geographic area for the run; (b) the names of all exhibitors who are being solicited; (c) the date and hour the invitation to bid expires; and (d) the time, date, and location, including the address, where the bids will be opened, which shall be within the state.

(2) All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and who attend the bid opening.

(3) Immediately upon being opened, the bids shall be subject to examination by the exhibitors, or their agents, who submitted bids, and who are

## 19.58.040 BUSINESS REGULATIONS

present at the opening. Within ten business days after the bids are opened, the distributor shall notify each exhibitor who submitted a bid either the name of the winning bidder or the fact that none of the bids were acceptable.

(4) Once bids are solicited, the distributor shall license the feature motion picture only by bidding and may solicit rebids if none of the submitted bids are acceptable.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 4.]

### 19.58.050 Violation—Civil suit—Attorneys' fees

Any person aggrieved by a violation of this chapter may bring a civil action in superior court to enjoin further violations or to recover the actual damages sustained, or both, together with the costs of the suit. In any such action, the court shall award reasonable attorneys' fees to the prevailing party.

[Enacted Laws 1st Ex Sess 1979 ch 26 § 5.]

### 19.58.900 Short title

This chapter may be known and cited as the Washington motion picture fair competition act.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 0.]

### 19.58.905 Severability—1979 ex.s. c 29

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 8.]

## CHAPTER 19.60—PAWN BROKERS AND SECOND-HAND DEALERS

### 19.60.010 "Pawn broker"—Defined—Purchasers of precious metals

(1) Every person engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits or conditional sales of personal property, shall be deemed to be a pawnbroker.

(2) Every person engaged in whole or in part in the business of purchasing precious metals in a place other than a place of business where precious metals are ordinarily and customarily purchased shall be deemed to be a pawnbroker doing business in a first class city: *Provided*, That any report required to be furnished to the chief of police shall be furnished to the county sheriff in the absence of a chief of police.

[Amended by Laws 1981 ch 279 § 3.]

### 19.60.050 Retention of property

Where pawnbroker recognizes title in rightful owner to property which had been stolen and refuses to return property unless pawn fee is first paid, affirmative defense of "good faith claim of title" is inapplicable in prosecution of pawnbroker under theft ordinance. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

Where pawnbrokers acquired pawned property without knowledge it was stolen and were unwilling to return pawned property to their rightful owners, such conduct amounted to larceny by conversion, as to which conduct theft ordinance, under which pawnbrokers were charged with theft for allegedly having "obtained or exerted unau-

## BUSINESS REGULATIONS 19.62.010

Authorized control over the property of another . . . provided fair notice of proscribed conduct and ascertainable standards for adjudication. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

### 19.60.062 Attorney fees in action to recover possession

Whenever the owner of stolen goods locates said stolen goods in the possession of a pawnbroker or second-hand dealer, and brings an action to recover possession, including proceedings pursuant to chapters 7.04 and 12.28 RCW, the owner shall be entitled to reasonable attorney fees and costs in connection with said action.

[Added by Laws 1st Ex Sess 1979 ch 41 § 1.]

CJS Pawnbrokers §§ 8 to 12.

Key Number Digests: Consumer Credit ⇨7.

### 19.60.063 Penalty

Larceny—Receiving stolen property: RCWA 9A.56.140-9A.56.170.  
Obstructing Justice: RCWA Chapters 9A.72 and 9A.76.

Prosecution of pawnbroker under theft ordinance did not violate due process by requiring defendant, under risk of criminal prosecution, to relinquish property in his possession without prior determination of ownership where city was required to prove that claimant was owner of property and that defendant knew said claimant was owner. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

As against true owner, pawnbroker acquires no right to retain possession, as security for loan, of article pawned without knowledge, consent or authority of owner. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

True owner is entitled to possession of chattel pawned by unauthorized pawnor without repaying pawnbroker amount advanced by him to pawnor. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

### 19.60.064 Owner of stolen goods entitled to attorney fees and costs when required to bring action for recovery [Repealed]

Repealed by Laws 1st Ex Sess 1979 ch 41 § 2.

Later enactment, see RCWA 19.62.062.

## CHAPTER 19.62—PROPERTY SALES AND LOANS—DOCUMENT OR INSTRUMENT PREPARATION

Sections	Sections
19.62.010 Preparation of documents for property sales or loan by certain persons or entities—When.	19.62.020 Standard of care.
	19.62.900 Severability—1979 ex.s. c 107.

### 19.62.010 Preparation of documents for property sales or loans by certain persons or entities—When

The following individuals, firms, associations, partnerships, or corporations:

(1) Any person or entity doing business under the laws of this state or the United States relating to banks, trust companies, bank holding companies and their affiliates, mutual savings banks, savings and loan associations, credit unions, insurance companies, title insurance companies and their duly authorized agents exclusively engaged in the title insurance business, federally approved agencies or lending institutions under the National Housing Act 1; or

WASHINGTON  
HB 58

1 AN ACT relating to the exhibition of motion pictures; and adding CR72B  
2 a new chapter to Title 14 RCW. Y

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: X

4 NEW SECTION. Section. 1. The purpose of this chapter is -548;  
5 to establish fair and open procedures for bidding and 1  
6 negotiation for the right to exhibit motion pictures in the PASTA  
7 state in order to prevent unfair and deceptive acts or practices ;1  
8 and unreasonable restraints of trade in the business of motion 10  
9 picture distribution and exhibition within the state; to promote 11  
10 fair and effective competition in that business; and to insure 11  
11 that exhibitors have the opportunity to view a motion picture 12  
12 and know its contents before committing themselves to exhibiting 13  
13 the motion picture in their communities. 14

14 NEW SECTION. Sec. 2. The definitions contained in this 16  
15 section apply throughout this chapter unless the context clearly 17  
16 requires otherwise. 17

17 (1) "Bid" means a written or oral offer or proposal to 18  
18 buy made by an exhibitor to a distributor in response to an 19  
19 invitation to bid for the license or right to exhibit a motion 20  
20 picture, the license stating the terms under which the exhibitor 21  
21 agrees to exhibit the motion picture. 21

22 (2) "Blind bidding" means the exhibitor's bidding or 22  
23 negotiating for, at the exhibitor's offering or agreeing to, 23  
24 terms for the license or right to exhibit a feature motion 23  
25 picture at any time either before the feature motion picture has 24  
26 been trade screened within the state or before the feature 25  
27 motion picture has been otherwise made available for viewing 26  
28 within the state by all exhibitors. 26

29 (3) "Blind selling" means the practice whereby a 27  
30 distributor licenses a feature motion picture before the 28

1 exhibitor is afforded an opportunity to view the feature motion  
2 picture by trade screening.

3 (4) "Buying" or "selling" of the right to exhibit a  
4 feature motion picture means the licensing of a theater to show  
5 the feature motion picture for a certain number of days for a  
6 certain price.

7 (5) "Distributor" means a person engaged in the business  
8 of distributing or supplying more than one feature motion  
9 picture per year to exhibitors by rental, sale, licensing, or  
10 other agreement.

11 (6) "Exhibit" or "exhibition" means playing or showing a  
12 feature motion picture to the public for an admission charge.

13 (7) "Exhibitor" means a person in the business of  
14 operating one or more theaters in which motion pictures are  
15 exhibited to the public.

16 (8) "Feature motion picture" means a motion picture  
17 exceeding sixty minutes in duration.

18 (9) "Invitation to bid" means a written or oral  
19 solicitation or invitation by a distributor to one or more  
20 exhibitors to bid or negotiate for the license or right to  
21 exhibit a feature motion picture.

22 (10) "Licensing agreement" means a contract, agreement,  
23 understanding, or condition between a distributor and an  
24 exhibitor relating to the licensing or exhibition of a feature  
25 motion picture by the exhibitor.

26 (11) "Person" means one or more individuals, firms,  
27 partnerships, associations, societies, trusts, organizations, or  
28 corporations.

29 (12) "Run" means the continuous exhibition of a feature  
30 motion picture in a defined geographic area for a specified  
31 period of time. A "first run" is the first exhibition of the  
32 feature motion picture in the defined area; a "second run" is  
33 the second exhibition; and "subsequent runs" are subsequent  
34 exhibitions after the second run. "Exclusive run" is a run  
35 limited to a single theater in a defined geographic area and a  
36 "nonexclusive run" is a run in more than one theater in a

1\* defined geographic area.

2 (13) "Theater" means an establishment in which feature  
3 motion pictures are regularly exhibited to the public for an  
4 admission charge.

5 (14) "Trade screening" means the exhibition of a feature  
6 motion picture, prior to its release for public exhibition by a  
7 distributor, in the largest city within the state, which is open  
8 to all exhibitors from whom the distributor intends to solicit  
9 bids or with whom the distributor intends to negotiate for the  
10 license or right to exhibit the feature motion picture.

11 ARTICLE SECTION 3. Sec. 3. (1) The buying or selling of the  
12 right to exhibit a feature motion picture by blind bidding or  
13 blind selling is prohibited within the state.

14 (2) No bids may be returnable, no negotiations for the  
15 exhibition or licensing of a motion picture may take place, and  
16 no license agreement or any of its terms may be agreed upon, for  
17 the exhibition of a feature motion picture within the state  
18 before the feature motion picture has either been trade screened  
19 or otherwise made available for viewing by all exhibitors within  
20 the state.

21 (3) A distributor shall provide reasonable and uniform  
22 notice of the trade screening of feature motion pictures to  
23 those exhibitors within the state from whom bids will be  
24 solicited or with whom negotiations will be conducted for the  
25 license or right to exhibit the feature motion picture.

26 (4) A purported waiver of the prohibition in this  
27 chapter against blind bidding or blind selling is void and  
28 unenforceable.

29 ARTICLE SECTION 4. Sec. 4. If bids are solicited from  
30 exhibitors for the licensing of a feature motion picture within  
31 the state, then:

32 (1) The invitation to bid shall specify: (a) whether  
33 the run for which the bid is being solicited is a first, second,  
34 or subsequent run; whether the run is an exclusive or  
35 nonexclusive run; and, the geographic area for the run; (b) the  
36 needs of all exhibitors who are being solicited; (c) the date

1 and hour the invitation to bid expires; and (d) the time, date,  
2 and location, including the address, where the bids will be  
3 opened, which shall be within the state.

4 (2) All bids shall be submitted in writing and shall be  
5 opened at the same time and in the presence of those exhibitors,  
6 or their agents, who submitted bids and who attend the bid  
7 opening.

8 (3) Immediately upon being opened, the bids shall be  
9 subject to examination by the exhibitors, or their agents, who  
10 submitted bids, and who are present at the opening. Within ten  
11 business days after the bids are opened, the distributor shall  
12 notify each exhibitor who submitted a bid either the name of the  
13 winning bidder or the fact that none of the bids were  
14 acceptable.

15 (4) Once bids are solicited, the distributor shall  
16 license the feature action picture only by bidding and may  
17 solicit rebids if none of the submitted bids are acceptable.

18 NEW SECTION. Sec. 5. Any person aggrieved by a  
19 violation of this chapter may bring a civil action in superior  
20 court to enjoin further violations or to recover the actual  
21 damages sustained, or both, together with the costs of the suit.  
22 In any such action, the court shall award reasonable attorneys'  
23 fees to the prevailing party.

24 NEW SECTION. Sec. 6. This chapter may be known and  
25 cited as the Washington motion picture fair competition act.

26 NEW SECTION. Sec. 7. Sections 1 through 6 of this act  
27 shall constitute a new chapter in Title 19 RCW.

28 NEW SECTION. Sec. 8. If any provision of this act or  
29 its application to any person or circumstance is held invalid,  
30 the remainder of the act or the application of the provision to  
31 other persons or circumstances is not affected.

CCI

CAPRI THEATRE CORPORATION

CAPRI - CONSOLIDATED INDUSTRIES

THEATRICAL & ENTERTAINMENT MEDIA DIVISION

POST OFFICE BOX 933 - ANCHORAGE, ALASKA 99510-0933

PHONE (907) 243-4525/243-4544 243-1244

March 17, 1986

Patrick M. Rodey  
Senator  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Pat:

This week you will be hearing House Bill 551 dealing with the Fair Motion Picture Trade Act.

I would like to encourage your support for this bill as it will be most important to small independent theatre operators in the years to come.


Competition between theatre operators will increase with more and more outside companies investing in Alaska, this bill will protect all operators by making sure that bids are opened in front of all of the interested parties and the consequences can be reviewed by same.

This bill should also make it possible for theatre operators to know what they are buying before they make a bid.

Being a small operator myself, I can assure you this is the only way theatres of my caliber will continue to exist in the future.

Thank you for your time and consideration in support of House bill 551.

Sincerely yours,

  
Rand Thornsley  
Vice-president  
Capri Theatre Corporation

RT/

xc: Mitch Gravo

*Just -*

*Just Bill = SB 363*

# Gross-Alaska, Inc.

W.D. Gross II, President



"Pioneering Alaska Since 1897"

(907) 586-3634

222 Front Street • Penthouse Suite 600 • Juneau, Alaska 99801

February 6, 1986

The Honorable Patrick Rodey  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

RE: Senate Bill No. 363

Dear Chairman:

As you may be aware, there has been a bill introduced through the Senate Judiciary Committee relating to "motion picture fair competition." We would sincerely appreciate your effort in opposing any such legislation for the procurement of motion picture product in the State of Alaska.

Senate Bill No. 363 appears, at face value, to protect the small, independent motion picture exhibitor from the large producers and distributors. In reality, it allows the largest motion picture exhibitor, who has the "financial capability," of literally putting the smaller, independent exhibitor out of business. This, in fact, has been done and is a matter of record by the party that has requested this legislation.

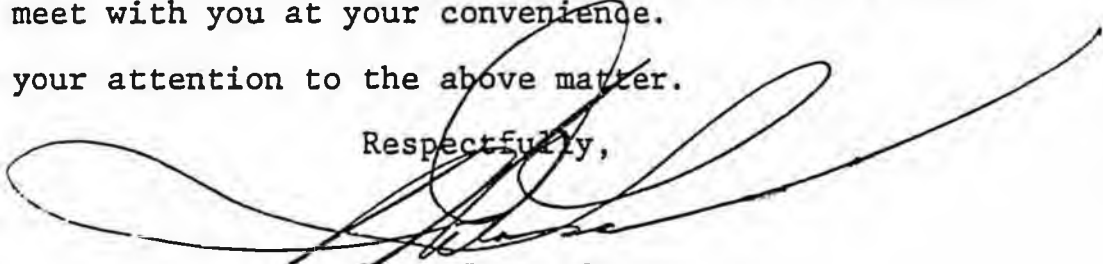
Our family has been in business in Alaska for 89 years -- since the time that my grandfather traveled throughout Alaska with his motion picture machine. We have survived competition at various times throughout those years. We would like to continue living in Alaska and doing business in Alaska. The bill before the Senate, if passed, would most certainly be the demise of four generation's lifetime commitments.

We have discussed Senate Bill No. 363 with all of the other independent exhibitors in the State of Alaska. They also oppose this legislation and are aware of its consequences.

For your information, I am enclosing copies of letters, as well as a Position Paper regarding the above referenced bill. If I can be of further help to you in establishing our point, I would be more than happy to meet with you at your convenience.

Thank you for your attention to the above matter.

Respectfully,

  
W.D. Gross II  
President & General Manager

Coliseum Twin Theatre  
405 Mission Street  
Ketchikan, Alaska 99901  
Phone: (907) 225-2294

Coliseum Twin Theatre  
315 Lincoln Street  
Sitka, Alaska 99835  
Phone: (907) 747-6920

Glacier Cinema 1 & 2  
9091 Cinema Drive  
Juneau, Alaska 99801  
Phone: (907) 789-9191

20th Century Twin  
222 Front Street  
Juneau, Alaska 99801  
Phone: (907) 586-4055

## POSITION PAPER

### In Opposition To State Regulation Of Motion Picture Licensing

#### Background

Motion pictures in Alaska, as in most other states, are licensed to theater owners either by bidding or by negotiated agreements. In negotiations, the distributor seeks the best price and terms for the rights to exhibit a movie, and is free to consider all other relevant factors to a successful business arrangement. In addition to price, the distributor may also take into account theater quality, maintenance, location, past performance, seating capacity, advertising, parking facilities, and other factors which contribute to a pleasurable public viewing experience.

Frequently, the theater owner previews the full length film in advance of negotiations. On occasion, and in particular when a film has a number of special effects, film clips and descriptive materials are used in lieu of the full film preview. This process is termed advanced bidding and is sometimes called "blind bidding". For the Alaska market, film previews usually take place in Seattle or Portland, for the convenience of the theater chains which are headquartered there, and for the booking agents which handle most of the remainder of the independently-owned Alaskan theaters.

Alaska now has 52 theater screens in operation. Sixty-eight percent (35 screens) are owned by out-of-state chains; 15% (8 screens) by an Alaskan based chain; and 17% (9 screens) by other Alaskan independent owners. Tom Moyer Theatres, based in Portland, is the largest out-of-state owner with 24 screens in Anchorage and Fairbanks. Festival Enterprises from California owns 12 screens in Anchorage and Eagle River. Gross-Alaska Theatres, based in Juneau, owns 8 screens in Juneau, Sitka and Ketchikan. The remaining screens are small independents located in Petersburg, Seward, Kodiak, Juneau and Soldotna.

#### Issue

The Moyer Theatre chain has requested introduction of SB 363, which would for the first time establish State regulation of motion picture licensing. This legislation, which has provisions nearly identical to legislation being sought by Moyer Theatres in the State of Washington, would require that all films licensed in Alaska be first trade screened and that when requested by a theater owner, all licensing be on a sealed bid basis, with the highest numerical bid required to be accepted by the distributor without regard to the other factors cited above.

While the proposed legislation has been portrayed as beneficial to all theater owners, including the Alaskan based businesses, this is not the case. In reality, while purporting to fix problems which do not exist, the proposal favors the Moyer chain at the expense of other owners. This special interest legislation should be viewed as a "Trojan Horse."

The Moyer chain is the tenth largest in the U.S., and therefore has the financial resources to outbid the other theaters in the short run, thus preventing them from getting the best films. It is also in an aggressive take-over posture, having offered to purchase many of the remaining Alaskan based theaters. Passage of the proposed legislation would facilitate this chain's drive to become a monopoly in Alaska.

While creating a competitive advantage for Moyer Theatres, the proposal creates disadvantages for other theater owners. It would significantly raise the cost of previewing films by requiring an unnecessary trade screening in Alaska. It eliminates the right to subsequent renegotiation of contracts where films do not generate as much revenue as anticipated. It prevents distributors from considering critical factors other than the highest monetary bid, which discourages high-quality theater operations, and it increases the potential for litigation, when most independent owners do not have the resources for expensive court fights as do the large chains like Moyer Theatres. It would also hurt the movie-going public by risking delay in the opening of films and increasing the cost of admission tickets.

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The current unregulated environment for the motion picture business in Alaska has worked well since territorial days when Cap Lathrop and W. D. Gross first showed hand cranked moving pictures to frontier saloon patrons. The status quo is fair to both in-state and out-of-state distributors, booking agents, and theater owners. It has even allowed Moyer Theatres to dominate in the Anchorage and Fairbanks market. Let's not spend time imposing unnecessary regulations on problems which do not exist.

Gross-Alaska Theaters  
Juneau, Alaska (Juneau, Sitka, Ketchikan)

Festival Theaters (Anchorage Eagle River)  
Walnut Creek, California

Motion Picture Association of America

Motion Picture Exhibitors Association (Northwest U.S.)

7/rs/5

# Hickel Investment Company

BOX 101700

ANCHORAGE, ALASKA 99510-1700

EXECUTIVE OFFICES  
PHONE (907) 376-7400

RECEIVED JAN 0 6 1986

January 3, 1986

Honorable Arliss Sturgulewski  
Alaska State Senator  
2957 Sheldon Jackson  
Anchorage, AK 99508

Dear Arliss:

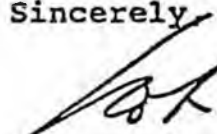
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You should be aware that Festival Enterprises, Inc., an operator of several movie screens in the Anchorage area, opposes such legislation for the simple fact that it would interfere with the free market system, and in effect could result in price fixing and restraint of trade.

I would appreciate it if you would keep me abreast of any development that might result in this being proposed as legislation during this session.

Have a good new year, and a successful session.

Sincerely

  
Robert J. Hickel  
President

cc: Mr. Dick Jeha ✓  
Festival Enterprises

same letter sent to Senators Jan Falke, Tim Kelly & Rick Halford  
also Representatives Sam Cotten, H.A. Boucher, Virginia Collins &  
Randy Phillips...

# Moyer Theatres

1953 N. W. KEARNEY STREET  
PORTLAND, OREGON 97209  
503/226-2735

December 31, 1985

Mr. D. Bruce Gardiner  
Motion Picture Exhibitors  
of Washington, Alaska & Northern Idaho  
1644 116th N. E.  
Bellevue, WA 98004

Dear Bruce:

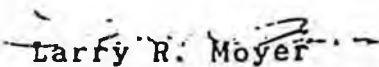
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Moyer Theatres was founded in 1933 and has a total of 41 screens in Oregon and Washington. We are the No. 2 exhibitor in Portland, Oregon. We were nearly forced out of business and bankrupt by the No. 1 exhibitor three years ago because we were not able to bid enough money for pictures and our competitor was bidding sometimes as much as the picture would gross. During the period from 1975 to 1980 we were able to stay in business by several film companies choosing not to sell our competitor and selling us all their product without bidding. When we were forced to bid for their product, we were then put into the position I have outlined above and were forced to make an out-of-court settlement in our Anti-Trust suit so that we could remain in business.

I have strong doubts that this legislation will help the small exhibitor. The small exhibitor could be very vulnerable to the large companies with their capital resources. The distributor should be free in picking the best theatres for their product. I think that each theatre has its own economic advantage over others whether it be size, location or different clientele that patronize the theatre. For example, action motion pictures do well in some theatres and don't do well in others. I definitely do not think the legislature should try to regulate our industry.

Respectfully,

MOYER THEATRES

  
Larry R. Moyer  
President

LRM:bbs

# Gross-Alaska, Inc.

W.D. Gross II, President

Alaska Since 1917

(907) 586-3634

222 Front Street • Penthouse Suite 600 • Juneau, Alaska 99801

February 4, 1986

Mr. Bruce Gardiner  
12040 98th N.E.  
Kirkland, Washington 98034

Dear Mr. Gardiner:

This letter is to advise you that Tom Moyer, who is the largest theatre owner in Alaska, has requested the introduction of Senate Bill 363 in the Alaska Legislature which would control the motion picture licensing practices of exhibitors in our State.

This bill is identical to the bill that he has had introduced in the Washington Legislature. Where a theatre owner so requests, it would compel a distributor to award both first and second run pictures to the highest numerical bidder. Renegotiation of contracts for films which are less successful than anticipated is prohibited where bidding is used to license films.

This proposed legislation would eventually allow Tom Moyer to monopolize the Alaska film industry, which he already dominates. Virtually all of the other exhibitors in Alaska are opposed to the legislation as we would be unable to compete on Tom Moyer's terms.

Sincerely,

GROSS-ALASKA, INC.



W. D. Gross, II

WDG:RS:sd/1.52

Coliseum Twin Theatre  
405 Mission Street  
Ketchikan, Alaska 99901  
Phone: (907) 225-2294

Coliseum Twin Theatre  
315 Lincoln Street  
Sitka, Alaska 99835  
Phone: (907) 747-6920

Glacier Cinema 1 & 2  
9091 Cinema Drive  
Juneau, Alaska 99801  
Phone: (907) 789-9191

20th Century Twin  
222 Front Street  
Juneau, Alaska 99801  
Phone: (907) 586-4055

# Gross-Alaska, Inc.

W.D. Gross II, President



"Pioneering Alaska Since 1897"

(907) 586-3634

222 Front Street • Penthouse Suite 600 • Juneau, Alaska 99801

February 6, 1986

The Honorable Patrick Rodey  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

RE: Senate Bill No. 363

Dear Chairman:

As you may be aware, there has been a bill introduced through the Senate Judiciary Committee relating to "motion picture fair competition." We would sincerely appreciate your effort in opposing any such legislation for the procurement of motion picture product in the State of Alaska.

Senate Bill No. 363 appears, at face value, to protect the small, independent motion picture exhibitor from the large producers and distributors. In reality, it allows the largest motion picture exhibitor, who has the "financial capability," of literally putting the smaller, independent exhibitor out of business. This, in fact, has been done and is a matter of record by the party that has requested this legislation.

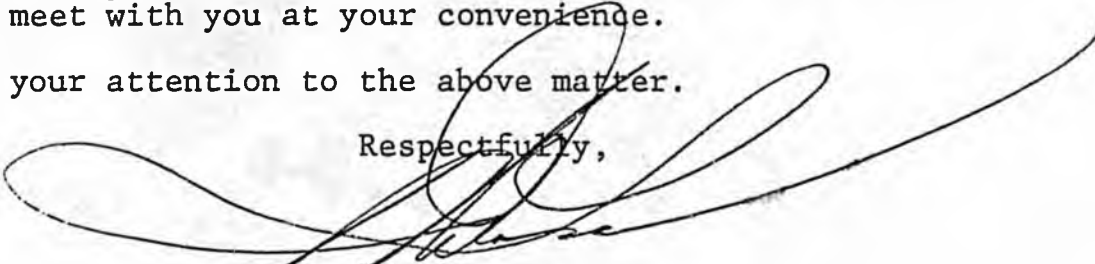
Our family has been in business in Alaska for 89 years -- since the time that my grandfather traveled throughout Alaska with his motion picture machine. We have survived competition at various times throughout those years. We would like to continue living in Alaska and doing business in Alaska. The bill before the Senate, if passed, would most certainly be the demise of four generation's lifetime commitments.

We have discussed Senate Bill No. 363 with all of the other independent exhibitors in the State of Alaska. They also oppose this legislation and are aware of its consequences.

For your information, I am enclosing copies of letters, as well as a Position Paper regarding the above referenced bill. If I can be of further help to you in establishing our point, I would be more than happy to meet with you at your convenience.

Thank you for your attention to the above matter.

Respectfully,

  
W.D. Gross II  
President & General Manager

Coliseum Twin Theatre  
405 Mission Street  
Ketchikan, Alaska 99901  
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## POSITION PAPER

### In Opposition To State Regulation Of Motion Picture Licensing

#### Background

Motion pictures in Alaska, as in most other states, are licensed to theater owners either by bidding or by negotiated agreements. In negotiations, the distributor seeks the best price and terms for the rights to exhibit a movie, and is free to consider all other relevant factors to a successful business arrangement. In addition to price, the distributor may also take into account theater quality, maintenance, location, past performance, seating capacity, advertising, parking facilities, and other factors which contribute to a pleasurable public viewing experience.

Frequently, the theater owner previews the full length film in advance of negotiations. On occasion, and in particular when a film has a number of special effects, film clips and descriptive materials are used in lieu of the full film preview. This process is termed advanced bidding and is sometimes called "blind bidding". For the Alaska market, film previews usually take place in Seattle or Portland, for the convenience of the theater chains which are headquartered there, and for the booking agents which handle most of the remainder of the independently-owned Alaskan theaters.

Alaska now has 52 theater screens in operation. Sixty-eight percent (35 screens) are owned by out-of-state chains; 15% (8 screens) by an Alaskan based chain; and 17% (9 screens) by other Alaskan independent owners. Tom Moyer Theatres, based in Portland, is the largest out-of-state owner with 24 screens in Anchorage and Fairbanks. Festival Enterprises from California owns 12 screens in Anchorage and Eagle River. Gross-Alaska Theatres, based in Juneau, owns 8 screens in Juneau, Sitka and Ketchikan. The remaining screens are small independents located in Petersburg, Seward, Kodiak, Juneau and Soldotna.

#### Issue

The Moyer Theatre chain has requested introduction of SB 363, which would for the first time establish State regulation of motion picture licensing. This legislation, which has provisions nearly identical to legislation being sought by Moyer Theatres in the State of Washington, would require that all films licensed in Alaska be first trade screened and that when requested by a theater owner, all licensing be on a sealed bid basis, with the highest numerical bid required to be accepted by the distributor without regard to the other factors cited above.

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The Moyer chain is the tenth largest in the U.S., and therefore has the financial resources to outbid the other theaters in the short run, thus preventing them from getting the best films. It is also in an aggressive take-over posture, having offered to purchase many of the remaining Alaskan based theaters. Passage of the proposed legislation would facilitate this chain's drive to become a monopoly in Alaska.

While creating a competitive advantage for Moyer Theatres, the proposal creates disadvantages for other theater owners. It would significantly raise the cost of previewing films by requiring an unnecessary trade screening in Alaska. It eliminates the right to subsequent renegotiation of contracts where films do not generate as much revenue as anticipated. It prevents distributors from considering critical factors other than the highest monetary bid, which discourages high-quality theater operations, and it increases the potential for litigation, when most independent owners do not have the resources for expensive court fights as do the large chains like Moyer Theatres. It would also hurt the movie-going public by risking delay in the opening of films and increasing the cost of admission tickets.

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Juneau, Alaska (Juneau, Sitka, Ketchikan)

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Motion Picture Association of America

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7/rs/5

# Hickel Investment Company

BOX 101700  
ANCHORAGE, ALASKA 99510-1700

1/16  
*[Handwritten initials]*

EXECUTIVE OFFICES  
PHONE (907) 274-7400

RECEIVED JAN 0 6 1986

January 3, 1986

Honorable Arliss Sturgulewski  
Alaska State Senator  
2957 Sheldon Jackson  
Anchorage, AK 99508

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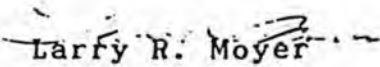
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Larry R. Moyer  
President

LRM:bbs

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W.D. Gross II, President

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222 Front Street • Penthouse Suite 600 • Juneau, Alaska 99801

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GROSS-ALASKA, INC.

W. D. Gross, II

WDG:RS:sd/1.52

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STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1986

SUBJECT: Motion Picture Fair Competition  
(SB 363)

TO: Senator Pat Rodey  
Chair, Senate Judiciary Committee

FROM: Richard A. Bradley  
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill states the legislative purposes of the bill.

Section 2 of the bill would enact a new chapter 51 to AS 45: EXHIBITION OF MOTION PICTURES.

Sec. 45.51.010(a) provides that the blind bidding or the blind selling of the right to exhibit a motion picture in the state is prohibited. The bill defines "blind bidding" as an "exhibitor's bid or negotiation for or the exhibitor's offer or agreement to terms for the license to exhibit a motion picture at a time before the motion picture has been trade screened in the state or before the motion picture has been otherwise made available for viewing in the state by all exhibitors;" [see Sec. 45.51.100(1)]; "blind selling" is similarly defined as the "distributor's agreement to license a motion picture before an exhibitor has been afforded an opportunity to view the motion picture by trade screening" [see Sec. 45.51.100(2)]; and "buying" or "selling" of the

right to exhibit a motion picture is defined as "the licensing of a theatre to show the motion picture for a specified number of days for a specified price" [see Sec. 45.51.100(3)].

Sec. 45.51.010(b) provides that before the motion picture has been "trade screened", bids may not be returnable, negotiations for the licensing of exhibition of the motion picture may not take place, and a license agreement and its terms may not be agreed upon for the exhibition of the motion picture. Sec. 45.51.100(8) defines "trade screening" as an "exhibition of a motion picture before it release for public exhibition by a distributor".

Sec. 45.51.010(c) provides that a distributor shall provide "reasonable and uniform written notice to each exhibitor in the state at least 72 hours before a trade screening."

Sec. 45.51.020(a) relates to the solicitation of bids. It specifies the elements that the solicitation of the bid for the exhibition of a motion picture must contain, requires that the bid be in writing and that the bids be opened at the same time, permits the bids to be examined by those bidding, and requires the distributor to advise each exhibitor either of the name of the winning bidder or that each bid was unacceptable.

Sec. 45.51.020(b) provides that a distributor may license a motion picture only by bidding and may solicit rebids only if each bid is unacceptable.

Sec. 45.51.020(c) provides that the right to exhibit shall be awarded to the highest bidder unless all bids are rejected.

Sec. 45.51.020(d) permits a distributor to bid for rights to distribute in a "particular area of the state".

Sec. 45.51.020 provides that the decision of a distributor that a bid is an unacceptable bid or is the highest bid is conclusive "unless a reasonable person could not have made that judgment."

Sec. 45.51.040 permits a person aggrieved by a violation to bring an action for damages and to enjoin future violations.

Sec. 45.51.050 relates to damages.

Senator Pat Rodey  
Page 3  
February 24, 1986

Sec. 45.51.050(a) provides that an exhibitor may recover the greater of "actual damages" or "liquidated damages equivalent to 20 percent of the gross box office receipts earned by the motion picture" where it was exhibited.

Sec. 45.51.050(b) permits punitive damages if the violation is determined to have been intentional. And punitive damages may be awarded even if damages were not awarded under Sec. 45.51.050(a).

Sec. 45.51.060 provides that a purported waiver of rights established under the chapter is void and that the chapter be liberally construed.

Sec. 45.51.100 defines the terms used in the bill, including, "blind bidding", "blind selling", "buying" or "selling", "distributor", "highest bid", "motion picture", "run", "trade screening", and "unacceptable bid".

No effective date section is added; the bill would therefore be effective 90 days after enactment.

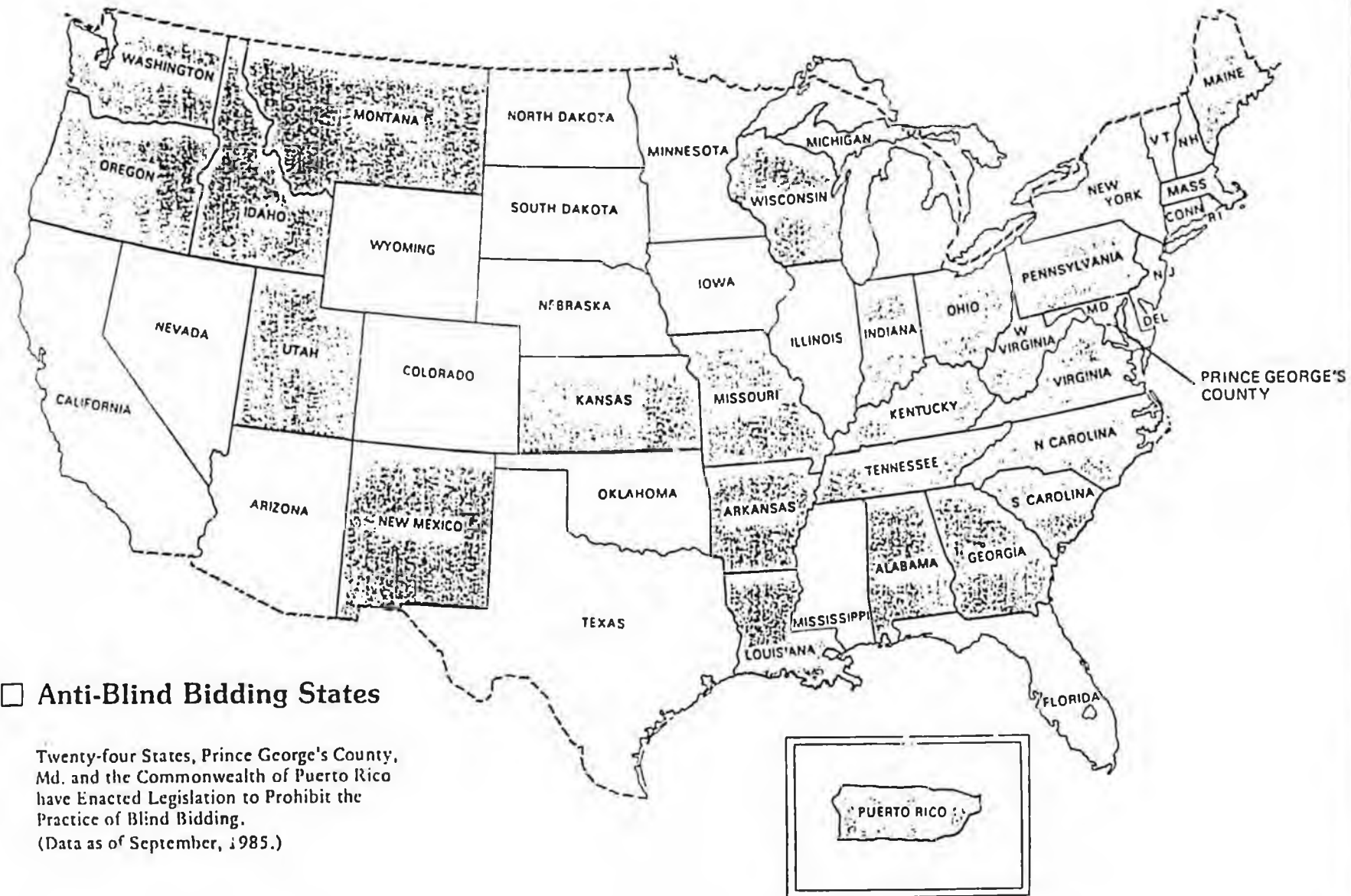
If I may be of further assistance, please advise.

RAB:mkr  
m3/072

# Anti-Blind Bidding Laws — A Summary Report

Charted below are the basic provisions of the 26 Anti-Blind Bidding Laws enacted as of September, 1985:

STATE	DATE OF LAW	WHERE TO TRADE SCREEN	PERTAINING TO GUARANTEES	OPEN BID	WHERE BIDS ARE OPENED	OTHER	PENALTY
ALABAMA	4/18/78	Not specified	None	Yes	Not specified		Civil
ARKANSAS	7/1/81	Within state	Cannot condition award based on guarantees or advances	Yes	Within state	Clearance clause	Misdemeanor
GEORGIA	3/21/79	Within state	None	No			Civil
IDAHO	7/1/79	Not specified	Cannot condition award based on guarantees or advances	No			Misdemeanor
INDIANA	9/1/80	Within state	None	Yes	Not specified		Civil
KANSAS	7/1/81	Within 1 of 3 largest cities	None	Yes	Not specified		Not specified
KENTUCKY	7/15/80	Lexington, Paducah & other cities of distributor's choice	Cannot condition award based on guarantees or advances	Yes	Within state		Civil
LOUISIANA	7/1/78	Within state	None	Yes	Within state	Amended 7/18/80	Civil
MAINE	9/16/79	Within Metropolitan area where exchange is located	None	Yes	Same as Trade Screen	Extended 2 years Must be reviewed in 1983	Known as a deceptive Trade Practice
PRINCE GEORGE'S COUNTY, MD.	1/11/82	Prince George's, Montgomery County D.C. or Va.	Not stipulated	Yes	Within trade screen area	None	Office of law may bring action in name of county for temporary restraining order and preliminary injunction
MASSACHUSETTS	1/14/80	Within commonwealth	None	Yes	Same as Trade Screen		Known as a deceptive Trade Practice
MISSOURI	8/13/82	In the two largest metropolitan areas	Not stipulated	Yes	Within state	Two Pictures per year may be blind bid — also others, under certain conditions	Damages set by distributor to be paid to exhibitor if distributor in violation
MONTANA	3/31/81	Within 1 of 11 western states with Blind Bidding Laws	Guarantees prohibited	No			Misdemeanor
NEW MEXICO	7/3/79	Within 1 of 3 largest cities	None	Yes	Within state		Not specified
NORTH CAROLINA	7/1/79	Within state	None	Yes	Within state		Misdemeanor
OHIO	10/23/78	Within 1 of 5 largest cities	Cannot condition award of picture on guarantee nor advance more than 14 days prior to playdate	Yes	Within state	Constitutionality upheld 7/9/80 — now under appeal	Not specified
OREGON	10/5/79	Within state	None	No			Exhibitors may bring action in State Court
PENNSYLVANIA	5/5/80	Within state	Guarantees and advances prohibited	Yes		First-run clearance maximum 42 days	
PUERTO RICO	6/14/80	Within commonwealth	No guarantees No unreasonable advances	Yes	Within commonwealth		Felony
SOUTH CAROLINA	5/30/78	Within South Carolina or North Carolina	None	Yes	Same as Trade Screen	May be waived if all first-run exhibitors agree in writing	Misdemeanor
TENNESSEE	4/18/79	Within state	Prohibited	No			Civil
UTAH	7/1/79	Within 1 of 3 largest cities	None	No		No Per Capita	Class A Misdemeanor
VIRGINIA	7/1/78	Within state or Washington, D.C. or Prince George or Montgomery Counties, Maryland	None	Yes	Same as Trade Screen		Civil
WASHINGTON	9/1/79	Largest city within state	None	Yes	Within state		Civil
WEST VIRGINIA	6/7/79	Within state or Local Exchange Area serving state	None	Yes	Same as Trade Screen	Waived within 20 miles of border of state without Blind Bidding Law	Not specified
WISCONSIN	5/10/84	Within 1 of 3 largest cities	Prohibited	No			Civil



*Motion picture negs.*  
SB 363

FESTIVAL ENTERPRISES INC.

1460 MARIA LANE, SUITE 420, WALNUT CREEK, CA 94596

TELEPHONE: 415-934-8652

January 16, 1986

The Honorable Patrick Rodey  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Senator Rodey:

We understand that a bill may be introduced in the Alaska Legislature which would require film companies to put out their pictures for bid, rather than enabling them to distribute their product as they wish according to their best business judgment.

We recently opened two theatre complexes in Alaska, the University Cinemas in Anchorage and the Valley River Cinemas in Eagle River. In conjunction with our landlord, Hickel Investment Company, these complexes represent an investment of nearly \$10,000,000. We provide employment for nearly 100 people, many of them young, first time employees.

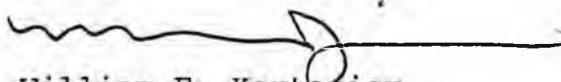
We are extremely proud of these new theatres which bring to the State of Alaska "state of the art" theatrical entertainment. The response of the people of Alaska has been extremely gratifying, justifying our belief that we had discovered a market which deserved an investment of the magnitude we made.

We would be extremely disappointed if, after making this substantial commitment in Alaska, we were confronted with a situation in which government mandate rather than free market processes were to dictate the future of our business. There is nothing like the proposed legislation in any other State, and in our opinion, nothing is different in the State of Alaska which should require the consideration of such legislation. If such legislation had been in effect when we were deciding to invest in Alaska, we may well have done other than we did, and we would think that anybody else in our industry would come to the same conclusion.

We urge you to defeat this proposal.

Thank you for your consideration.

Sincerely,



William F. Kartozian

WFK/md

cc: Robert J. Hickel

STATE OF ALASKA  
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 31, 1986

SUBJECT: Motion Picture Fair Competition  
(SB 363)

TO: Senator Pat Rodey  
Chair, Senate Judiciary Committee

FROM: Richard A. Bradley  
Legislative Counsel 

Katie has asked that the provisions relating to the mandated award to the highest bidder be eliminated. I am advised that the goal of the bill, as amended, would be to open up the exhibition award process without tying the award to the highest bidder.

My first reaction was that secs. 30 - 50 of the bill would necessarily be dropped.

On rethinking the question, I suspect that some aspects of those provisions may remain but I suspect that they are more shell-like than real.

In sec. 30, I have deleted "or is the highest bid". Since there are no benefits to having the highest bid under sec. 20(b), sec. 30 should be amended as suggested.

And while a "violation" (sec. 40) can still exist, it consists of failing to comply with sec. 10.

I have deleted sec. 50(a). While the exhibitor may have some nominal damages from being excluded from screening -- since there is no obligation to make the award to the highest bidder, I fail to see what actual or liquidated damages could be proven under the Act.

But I left sec. 50(b) in; while I think the burden on actual damages is high, perhaps some punitive damages may be

Senator Pat Rodey  
Page 2  
January 31, 1986

obtained for "intentional" violations of sec. 10.

Finally, I deleted the definition of "highest bid", sec. 100(5).

If I may be of further assistance, please advise.

RAB:mkr  
M2:121

LAW OFFICES OF  
MITCHELL D. GRAVO, INC.  
A PROFESSIONAL CORPORATION  
625 W. 5TH AVENUE, SUITE C  
ANCHORAGE, ALASKA 99501  
(907) 276-0358

October 28, 1985

Senator Pat Rodey  
C/O Legislative Information Office  
1024 West Sixth Avenue  
Anchorage, Alaska 99501

Dear Pat:

Per our discussion, please review the following material regarding anti-blind bidding legislation for Alaska. On behalf of my client, Luxury Theatres, I'm requesting that you sponsor such legislation in the Senate.

Sincerely,



Mitchell D. Gravo

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ASSOCIATED FILM DISTRIBUTION CORPORATION, et al.	:	CIVIL ACTION
	:	
vs.	:	
	:	
THE HONORABLE DICK THORNBURGH, et al.	:	NO. 80-1179

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I uphold the constitutionality of the Pennsylvania Feature Motion Picture Fair Business Practices Law.<sup>1</sup> That Act regulates certain trade practices in the licensing relationship between those who distribute films and those who exhibit them. The distributors contend that the Act violates their rights to freedom of speech, offends the right of Congress to regulate interstate commerce, is preempted by federal copyright legislation, and is contrary to the Pennsylvania Constitution's prohibition of "special laws."<sup>2</sup>

1/ 73 P.S. §§ 203-1 through 203-11.

2/ The history of this case includes a grant of summary judgment for the plaintiffs on the grounds that the Act violated the First and Fourteenth Amendments and the Supremacy Clause of the United States Constitution. See Associated Film Distributors, et al. v. Thornburgh, 520 F.Supp. 971 (E.D. Pa. 1981) (hereinafter AFD I). The Court of Appeals reversed the order. 683 F.2d 808 (3d Cir. 1982) (hereinafter AFD II).

I. Background: Mutual Dependency

The relationship between exhibitors and distributors is one of mutual dependence. Distributors need theatres in which to play their films; exhibitors need films to play in their theatres. This symbiotic relationship has given rise to a long history of sharp dealing. See United States v. Paramount Pictures, 334 U.S. 131 (1948).

The plaintiffs in this action are the major distributors of motion pictures in the United States. They distribute most films. Those which they do not distribute are released by foreign companies or small independents.

Although there are national theatre chains, most theatres in Pennsylvania are owned by local chains or by independent exhibitors. The exhibition business in some areas of the Commonwealth is competitive, while in other areas a chain or an individual owns all the theatres. If a distributor wishes to play a film in a certain area, it must license that film to an exhibitor in that area. Not all theatres are alike. Factors such as seating capacity, location,

and parking are important in what is a prime theatre.

All exhibitors depend on the product available from distributors. Theatre owners need new pictures on their screens. Exhibitors fear the mythical screen without a picture; distributors fear the mythical film without a theatre.

During the peak seasons, Christmas, Easter and summer, there is usually ample product for exhibitors. At other times, however, distributors release fewer films. This is a problem for both small exhibitors operating one theatre and for the giants of the exhibition field who own all the screens in an area. The more screens an exhibitor owns, the more devouring its need for film product. While a theatre owner can subsist on the average film, the eternal hope is to garner a blockbuster.

Distributors license films by two methods, bidding and negotiation. The Pennsylvania Act defines a bid as

[a] written or oral proposal by an exhibitor to a distributor, which proposal is in response to an invitation to bid or negotiate and states the terms under which the exhibitor will agree to exhibit a feature motion picture.

73 P.S. § 203-3

In practice, distributors use bidding in areas where competition among exhibitors exists. Although bidding may take place over the telephone, normally the distributor sends exhibitors in the area an

"invitation to bid" which contains a brief description of the film, the time at which it will be available and the suggested licensing terms. The exhibitor submits a bid which will include not only financial terms, but also minimum length of run and any requested "clearances" over other theatres in the area. A clearance is an assurance that another theatre will not obtain the same film. The distributor, taking into account both the quality of the theatre and the terms of the bid, presumably selects the most favorable bid. The distributor can reject all bids. Before the Pennsylvania Act, the distributor could negotiate with individual theatres after rejecting all bids. Traditionally, terms on licenses procured by bidding are "firm"; the distributor will not be expected to reduce the agreed terms if the picture is unsuccessful.

Distributors normally use negotiation in areas where there is little or no competition among exhibitors. Under negotiation, a representative of the distributor contacts a specific exhibitor and, without soliciting other offers, attempts to work out a licensing arrangement. Traditionally, terms under negotiated licenses are not firm. If a picture bombs, the distributor may renegotiate the terms downward.

Another method of licensing is "competitive negotiation." Competitive negotiation is oral bidding. The distributor contacts the exhibitor and indicates that he is soliciting offers from more than one theatre. As with bidding, the industry practice is that terms licensed under competitive negotiation are considered firm.

In the 1950's and 1960's films were usually licensed by flat rental or by a sliding scale in which exhibitors paid a higher percentage of the box-office gross as the gross increased. As time went on,

distributors stopped using sliding scales and flat rentals. Film rental is now calculated by percentage rental and a house allowance. Under this system, the distributor and exhibitor agree on a house allowance, a specific dollar amount which is supposed to represent the exhibitor's weekly expenses. The exhibitor keeps 10% of the weekly gross above this house allowance; the remaining 90% inures to the distributor. The contract, however, almost always provides that the distributor will receive a minimum percentage of the box office gross. The amount of this minimum percentage has increased over the years. Currently, the distributor usually demands a minimum of seventy percent of the box office gross for the first week of the exhibition (or "run"). The percentage decreases in the succeeding weeks of the run.

Several events occurred in the past few decades which have made business more difficult for exhibitors. The first was a significant decrease in the amount of film product available. The second was the increase of "blind bidding," defined in the Pennsylvania Act as

[b]idding, negotiating, offering terms, accepting a bid or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the feature motion picture that is the subject to the agreement.<sup>3</sup>

73 P.S. § 203-3.

3/ A trade screening is the showing of a feature motion picture by a distributor which is within the Commonwealth and is open to any exhibitor. See 73 P.S. § 203-3.

A consent decree between most of the major distributors and the United States Department of Justice limited blind bidding between 1968 and 1975 by preventing the distributors from blind bidding more than three pictures per year. When the decree expired, the practice of blind bidding increased dramatically. By the late 1970's most films, and virtually all those that were considered potential "blockbusters," were blind bid.

Economic power is highly concentrated in the hands of a few distributors who control most feature films. Concentration of exhibitors in local markets is growing. In the business relationship between distributors and exhibitors, the distributors probably have the upper hand.

## II. Making a Motion Picture

Making a film is a complicated process, characterized by ingenuity in adjusting. While it may be true that there is no business like show business, show business is also big business. An average movie costs ten to twenty million dollars to make and distribute.

It is difficult to predict how long it will take to make a film. Target dates are set before shooting begins. Such factors as script revision, the health of stars and key members of the crew and the weather can cause significant delays. Principal photography lasts three to five months. When shooting is finished, the post-production process begins. Post-production may take up to a year. It is during this time that music

and special effects are added, the quality of the sound and color are improved and the film is edited.

During post-production, a "rough cut" of the film is made from the original negative. The director turns the "work-in-progress" into a finished product. Some directors work quickly, others at a snail's pace.

The main circumstances which may slow the production and post-production processes have always existed and have nothing to do with legislation. It is often necessary to accelerate post-production by adding technicians, renting extra equipment or paying for costly overtime. Once a release date for a film is set, changing that date is expensive. Distributors buy national television advertising time for a film a year before its release. A delay in release means decline in the effectiveness of the advertising. Postponement forces the filmmaker and distributor to incur extra interest costs, creates a risk that a timely film will become stale, and may cause a film to miss a prime release season. Acceleration is the way the problem is solved. It is rare for a film to miss its release date.

### III. The Pennsylvania Act

The Pennsylvania Feature Motion Picture Fair Business Practices Law was enacted in 1980. The legislature described its purposes in passing the Act in 73 P.S. §203.2:

The General Assembly of the Commonwealth of Pennsylvania finds and declares that the licensing and distribution of feature motion pictures to theatres in this Commonwealth, including the rights and obligations of distributors and

exhibitors, vitally affects the general economy as well as the access of the public to works of artistic expression and opinion. In order to promote the public interest and public welfare of this Commonwealth to:

- (1) insure unabridged access for the public to artistic expression and opinion in feature motion pictures at reasonable prices and at many different locations;
- (2) avoid undue control of the exhibitors by the distributors;
- (3) foster vigorous and healthy competition in offering feature motion pictures for the benefit of the public by prohibiting practices through which fair and honest competition is restrained, destroyed or inhibited.
- (4) promote the wide geographical dissemination at reasonable prices to the public of ideas, opinions and artistic expression in feature motion pictures;
- (5) prevent delay in the exhibition of feature motion pictures to the public in theatres playing subsequent to the first run showing;
- (6) prevent theatres from unnecessarily going out of business, thereby resulting in reducing the number of small independent businesses and unemployment with loss of tax revenues and other undesirable consequences;
- (7) prevent unfair and deceptive acts or practices and

unreasonable restraints of trade in the business of distribution and exhibition of feature motion pictures within the Commonwealth;

(8) promote fair and effective competition in that business;

(9) benefit the movie going public by limiting the long and extensive first runs so that additional theatres, in a given area, may also exhibit the same feature motion picture and at possibly a lower admission price; and

(10) prohibit blind bidding by insuring that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibit it in their communities;

it is necessary to legislate regulations and standards pursuant to the exercise of the police power of this Commonwealth governing the relationship between feature motion picture distributors or licensors and exhibitors serving the public by establishing fair business practice procedures for the licensing and distribution of feature motion pictures within the Commonwealth of Pennsylvania and to provide remedies for the violation of this act, including damages and attorneys' fees.

In order to effectuate the objectives described, the Pennsylvania Act regulates the licensing of films in the Commonwealth.

First, the Act flatly prohibits the practice of blind bidding. The act prevents exhibitors and distributors from

negotiating for a license or entering into a licensing agreement before a film is trade screened in Pennsylvania.<sup>4</sup> 73 P.S. § 203-4.

The Act does not permit licensing agreements to include provision for the payment of guarantees or advances. 73 P.S. § 203-5, 6. A guarantee is a promise by the exhibitor to the distributor to pay a minimum fixed dollar amount regardless of box office gross.<sup>5</sup>

When a film does not earn as much as its guarantee, the difference is "unearned film rental." This sum is not refundable. An advance is a promise by the exhibitor to pay part of the film's anticipated rental to the distributor before the exhibition. If the film rental does not equal the advance, the distributor is supposed to refund the difference.

The Act also contains a "42-day clause," which prevents distributors from granting exhibitors exclusive runs for more than 42 days without making provision to expand the run to other theatres within the geographical area.<sup>6</sup> 73 P.S. § 203-7.

4/ Approximately one half of the states have enacted similar trade screening requirements.

5/ The Act prohibits guarantees only where payment to the distributor is otherwise based in whole or in part on attendance or box office receipts. Thus, the Pennsylvania Act does not forbid distributors and exhibitors from entering into agreements where the exhibitor's only payment to the distributor consists of a "flat rental."

6/ § 203-3 of the Act defines a "run" as:

[T]he continuous exhibition of a feature motion picture in a defined geographical area for a specified period of time. A "first run" is the first exhibition of a feature motion picture in the designated area; a "second run" is the second exhibition and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is any run limited to a single theatre in a defined geographical area and a "nonexclusive" or "multiple run" is any run in more than one theatre in a defined geographical area.

The Feature Motion Picture Fair Business Practices Law also regulates bidding procedures. 73 P.S. § 203-8. It requires open bidding. Those exhibitors who submitted bids have a right to be present when bids are opened. Within sixty days after bids are opened, a bidding exhibitor may examine any bid that was made for that particular run, even if the distributor has rejected all bids. When a distributor accepts a bid, it must notify all the bidding exhibitors of the identity of the successful exhibitor and the terms of the successful bid. The Act also requires rebidding. If a distributor rejects all bids, it must so inform all bidding exhibitors, issue new bid solicitations, and bid the film again. Thus, once a distributor chooses to license by bidding, it cannot switch to negotiation if the terms offered in the bids received prove disappointing.

#### IV. The Effect of the Act

The effect of the Act on the motion picture business is relatively minor. Both sides exaggerate its effect. The extravagant claims of the parties give rise to a mythology about the effects of the Act which far outdistances the credible evidence. The distributors' claims, unsupported by credible evidence, range from complaints that the Act inhibits the artistic development of pictures to complaints that compliance with the Act requires expenditure of great sums for distribution, promotion and marketing. There were claims that the Act has contributed to the elimination of certain types of special effects

and has precluded the use of shopping mall promotions. The exhibitors, on the other hand, claim that the Act is a panacea protecting them from their helplessness in the market place against the overwhelming market power of the distributors. In fact, there are both distributors and exhibitors who are unfair competitors. The distributors' history includes the practices leading to the Paramount decree. Some exhibitors have engaged in collusive conduct by agreeing to split available film with competitors. The range of unfair practices by both sides is extensive. While distributors have often misrepresented the quality, nature and critical reception of a film, powerful exhibitors have often oppressed smaller competitors by using their deeper pockets to offer guarantees unrelated to the merits of a bidding situation. Favored arrangements between large distributors and large exhibitors led in the past to sneak looks at competitors' bids. Clearances for some theatres unreasonably restricted wide and prompt dissemination of films. "Customer relationships" still exist, in which some exhibitors commit screens to particular distributors long before trade screening. There are also claims of sham bidding, where an exhibitor bids high terms but consistently pays at a lower renegotiated rate.

Against this background of seamy conduct and exaggerated claims, the Pennsylvania Act modestly regulates a variety of unfair trade practices. The Act does not restructure the movie industry, nor does it address all its inequities. The failure of the law to correct all of the problems of this complex and sometimes shady business, however, is no reason to strike down a modest effort at reform.

A. The Trade Screening Requirement

Plaintiffs have attacked the trade screening requirement of the Pennsylvania Act on several grounds. The distributors maintain that they prefer to trade screen whenever possible. They allege, however, that the trade screening requirement causes delay in the release of motion pictures and that, because they cannot license until after a film has been screened, they are often foreclosed from prime theatres.

The distributors see themselves faced with a Hobson's Choice. Delaying a release date is costly and, because timing can be a key element in a film's success, potentially disastrous. The other alternative is to accelerate work on the project in order to complete a "trade screening" print to be shown to exhibitors. Such prints represent the work-in-progress and are not equivalent to the print ultimately released to the public. The distributors complain that this process diverts resources from the completion of the final print, is extremely expensive, and is wasteful because trade screening prints are ultimately useless. They claim that trade screening prints are usually incomplete, unpolished and, therefore, in no way representative of the final product. The evidence at trial, however, showed that there are substantial benefits to trade screening and that the burdens alleged by plaintiffs have been overstated.

The main benefit of the trade screening requirement is prevention of certain deceptive trade practices by distributors. The evidence supported the notion that before trade screening legislation, distributors were licensing films by tactics ranging from exaggeration to outright misrepresentation.

In the days of blind bidding, licensing often took place about a year before the actual release of a film. The only information an exhibitor received about a picture besides industry rumor was the puffing contained in a brief bid solicitation letter. The letters usually included the name of the film, the director and a paragraph summarizing the plot. Such letters uniformly described the upcoming film in glowing terms. With this information, the exhibitor had no rational way to differentiate a blockbuster from a disaster, nor could it determine whether a film would play well in a particular area. Bid solicitation sometimes passed beyond hype into deception.

A 1977 bid solicitation for "THE SWARM" promised "another giant spectacular." The letter touted the film as starring several celebrities. By the time these letters were sent out, however, Warner Brothers had already performed a study of marketing opportunities for "THE SWARM," which showed little audience interest in seeing the film. Moreover, most of the actors advertised as "starring" in the movie had only cameo roles. The film was a disappointment at the box office. As a result of a lawsuit brought by Texas exhibitors against Warner Brothers under the Texas Deceptive Practices Act, a jury in federal district court in Texas explicitly found that Warner Brothers committed false, misleading or deceptive acts or practices.<sup>7</sup>

<sup>7/</sup> The jury, however, failed to find that those acts or practices proximately caused injuries to the plaintiffs. See Presidio Enterprise, Inc. et al. v. Warner Brothers Distributing Corporation, Civil Action No. A-79-CA-290 (W.D. Texas).

A more recent example is the Paramount film, "BEST DEFENSE." The bid solicitation stated that Dudley Moore and Eddie Murphy would "join forces in an all-out assault at the military and the funny-bone." The movie was touted as "a rare and extraordinary treat, bringing together two of the screen's hottest and most versatile comic giants . . . ." In fact, Murphy was on screen for only fifteen to twenty minutes and he and Moore did not have one scene together.

Exhibitors admit that their judgment on films is far from perfect but testimony supported the common sense notion that the best way to evaluate the box office potential of a film is to see it. Knowing a film's stars, its director or the book on which it is based is no substitute for actually seeing the film. It does not matter that the sound and visual effects or editing are incomplete. The overall impression of the story and performances are the most important features in judging a film and they can be assessed even when the film is screened with an unfinished print.

Trade screening also allows exhibitors to determine whether a film is likely to sell to their particular community. Films which are blind bid have often not received a rating

from the Motion Picture Association of America at the time they are licensed.

Trade screening allows exhibitors to predict at which location a film will receive the best reception. Even large exhibitors who license virtually every picture gain from trade screening, which allows them to judge whether to place a given picture in a large or small theatre and to vary their bid according to what they perceive to be the worth of the film.<sup>8</sup>

The plaintiffs contend that trade screening cannot be too important to exhibitors because of sparse attendance at some screenings. They base their argument on sign-in sheets for screenings. These sheets are somewhat misleading. One exhibitor had no recollection of ever being asked to sign in. Major exhibitors almost always send a representative and many small exhibitors sometimes employ a single booking agent to license films.

<sup>8/</sup> Some exhibitors maintain customer relationships with distributors in which they commit screens to that distributor in advance of trade screening. The plaintiffs argue that this undercuts the need for anti-blind bidding legislation. Customer relationships, however, are not universal. Small exhibitors do not have such arrangements. Those large exhibitors with customer relationships contend that they have only tentatively committed a screen to a certain company. The decision of what film to play on which screen has not been made. Trade screening also determines the terms they will bid for the film. Even with a customer relationship, an exhibitor is unlikely to offer high percentage terms or a long run if a picture does not seem likely to do well.

The plaintiffs concede that screenings for films rumored to be potential blockbusters are well attended. These are the movies for which an exhibitor may bid high terms and a long run. If an exhibitor licenses such a picture on those terms and the picture proves to be a flop, the exhibitor, especially the small one, may be faced with disaster. The Pennsylvania Act allows movie exhibitors to use their own judgment to determine whether such a film will succeed. The public benefits from requiring reasonable disclosure to afford the opportunity of an informed choice.

One ancillary benefit to trade screening is its benefit to unknown but worthwhile film makers. Trade screening allows exhibitors to judge films on what they perceive as real worth, rather than purely on the basis of reputation. Successful films which would otherwise be passed up because they contain unknown quantities receive more exposure. This may benefit the smaller and often more innovative distribution company.

While the benefits of the trade screening requirements are substantial, the burdens alleged by the plaintiffs are overstated.

There was a great deal of testimony about the costs of delaying a film's release date. Trade screening legislation, however, has simply not caused delay in the release of motion pictures. Plaintiffs point to a handful of films which missed their release dates, none because of the trade screening requirement. Meeting the deadline for producing a trade screening print is a burden which plaintiffs exaggerate in this litigation; the real world burden is the deadline of a national release date. The latter deadline causes the costs which plaintiffs attribute to the trade screening requirement. If a film comes close to meeting its production schedule, there will

be no delay because of trade screening. A distributor can successfully license a film within 24 to 48 hours of trade screening. There are, of course, films delayed because of factors unrelated to the trade screening requirement. These other factors may include a director who takes an extraordinarily long time to edit a film or the illness of a star. The distributors made no credible showing that the trade screening requirement has had any effect on the number of films that missed their release date.<sup>9</sup>

Plaintiffs contend that the trade screening requirement reduces the effectiveness of advertising because it usually prevents films from being licensed to specific theatres until shortly before release. These contentions are unfounded. Local advertising can link a film to a theatre on short notice before release. National advertising tends not to be theatre specific and such advertising can therefore appear in advance of licensing. The evidence indicated, in fact, that there has been no change in strategy concerning national advertising because of the Act.

The plaintiffs also complain that because they cannot license their films far enough in advance they are often precluded from placing their movies in prime theatres. The requirement of trade

<sup>9/</sup> The Court gave little weight to the testimony actually offered that a given film was delayed because of the trade screening law. Such testimony was presented in a conclusory fashion and was not very helpful to the Court's resolution of the complex issues presented in this case.

screening pictures does not foreclose distributors from access to the more desirable theatres at peak seasons. Before the Act, distributors could book theatres long before the product was available. The Act changes the race's starting line to the availability of a trade screening print. It gives the race to the swift producers of movies rather than to the swift pre-emptors of theatres. In doing so, it makes the merits of the films more relevant. Moreover, the industry as a whole is not injured. If one company has production difficulties and is unable to screen its new film until a month before the release date, the company which finished its film according to schedule and trade screened two months in advance benefits. This is hardly an irrational result.<sup>10</sup>

Plaintiffs' next complaint is that the act forces the production of a separate trade screening print which is expensive to make and diverts valuable resources from the work being performed on the final print. As to the first contention, the costs of producing a trade screening print are insignificant when compared to other production and post-production expenses. The oft-told tale of the horrors of inconvenience in using the corporate Lear Jet to shuttle a trade screening print between cities makes one wonder from what important missions the jet was diverted. As to the second contention, plaintiffs' own witnesses testified that acceleration of post-production has always

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<sup>10/</sup> Plaintiffs' farfetched claim that the act effectively precludes the use of mall promotions because such promotions must be planned long in advance and must be tied to a theatre which will show the film is without merit. There are myriad methods to promote and advertise new films unaffected by the passage of the Pennsylvania Act.

been a way of life in the movie business. There was no credible evidence that the diversion of resources to make a trade screening print has had any effect on the quality of pictures being released.

The distributors have also contended that a trade screening print is simply not representative of the final product. Such prints often lack titles, music, color-coding and various other special effects and finishing touches. The exhibitors who testified, however, all agreed that the quality of the prints is adequate to judge the basic worth of the film.<sup>11</sup> Also telling is the fact that certain distributors have on occasion shown trade screening prints as sneak previews for audiences and the press.

#### B. Guarantees and Advances

The most troublesome regulation in the Pennsylvania Act is the prohibition of guarantees and advances.<sup>12</sup> The distributors'

11/ The Court viewed the first reels of two trade screening prints and compared them to the finished prints of those reels. Although there were clear differences between the unfinished and final prints, the trade screening prints adequately represented the final versions. I felt able to determine the nature of the films from the screening prints. Moreover, both films contained disclaimers that the prints were unfinished.

12/ The Ohio statute regulating licensing practices in the movie industry does not outlaw all guarantees and advances, but forbids conditioning licenses on the payment of guarantees and advances. Thus, distributors may not solicit guarantees and advances, but exhibitors may offer them. Moreover, the Ohio Act regulates only advances more than fourteen days before the first exhibition of a picture. Ohio R.C. §1333.06.

mythology is that guarantees and advances enable small town exhibitors to obtain films earlier than they otherwise would by ensuring that the distributor will receive enough to cover the cost of the print. The exhibitors' claim is that the law against guarantees and advances is necessary to protect them against the extortionate demands of the distributors against which they are otherwise helpless. I do not believe either claim.<sup>13</sup> I do find, however, that there is significant public benefit to the prohibition of guarantees and advances and that the burdens of such provisions are minimal.

The most significant benefit of prohibiting guarantees and advances is the protection of independent exhibitors from the predatory practices of larger exhibitors. Large exhibitors often use their deep pockets to put up substantial guarantees and advances. The small exhibitor simply cannot compete fairly even if his theatre and the terms he offers are as good or better than the larger exhibitor.<sup>14</sup> He may have to seek bank financing to pay even a modest guarantee or advance.

13/ The exhibitors' claim that the distributors' use of guarantees is unfair had more validity when blind bidding was permitted. There was a great deal of testimony about exhibitors losing large sums of money because they put up substantial guarantees based on inaccurate information about a film.

14/ At trial, a representative of AMC, the third largest exhibitor in the country, testified that his company viewed guarantees as a "viable" method of licensing film. Other witnesses from large exhibition chains freely admitted offering sizeable guarantees when competing against smaller theatres.

An exhibitor with a deep pocket is able to put films beyond the reach of a smaller competitor regardless of which theatre is the more appropriate showcase. It is to the public's benefit that there be competition in exhibiting films and that large exhibitors do not squeeze smaller ones out of business.

Plaintiffs' position that guarantees and advances help small exhibitors break into the market and allow theatres in small towns to obtain film is unsupported by credible evidence. Unless two theatres are relatively equal, distributors choose on the basis of box office potential. A smaller, less attractive theatre will rarely, if ever, beat out a larger, more attractive theatre in a good location. Moreover, plaintiffs' own expert testified that a guarantee is a useful competitive tool for an exhibitor only when it is substantial enough to approximate the amount the distributor expects to earn from the license. Offering a marginal sum as a guarantee will not help the small exhibitor who would find it impossible to come up with a guarantee sizeable enough to secure a film.

The credible evidence also fails to support plaintiffs' theory that films which would otherwise not play in small towns are able to appear when exhibitors can offer guarantees large enough to cover print costs. There was testimony from exhibitors with theatres in small communities that they had at times attempted to buy a film print in order to show a particular film. These offers were rejected. The experience of these exhibitors was that guarantees had never made the difference in obtaining or not obtaining a film.

When exhibitors put up sizeable guarantees on films which produce disappointing box office receipts, they often play these pictures for longer than they normally would to reduce losses. Despite sagging popularity, exhibitors milk the runs of such films to the exclusion of otherwise available movies. Thus, the prohibition of guarantees benefit the public by reducing the incentive of exhibitors to play motion pictures beyond their useful life.<sup>15</sup>

Again, plaintiffs overstate the burdens arising from the prohibition of advances and guarantees. They claim that guarantees moderate the risk the distributor takes in producing a film by shifting some of that risk to exhibitors. Plaintiffs' statistical study indicated that in unregulated periods in Pennsylvania, 4.3% of plaintiffs' total film rental was unearned guarantee income. Plaintiffs' own economics expert testified that the presence or absence of guarantees does not have a significant impact on film rental.

<sup>15/</sup> There was also evidence that some exhibitors occasionally raised ticket prices on films for which they paid large guarantees.

Plaintiffs argued that advances serve the purpose of assuring payment from exhibitors who are considered poor credit risks or slow payers. There are, however, other effective methods to deal with film rental delinquencies. One such method is not supplying film to delinquent exhibitors. There was also evidence that advances were often solicited from exhibitors with excellent payment records, casting doubt on plaintiffs' argument about the purpose of advances. When film rental does not equal the advance, the distributor does not usually repay the theatre owner at the end of the run, but holds the money as a credit balance until the next picture. Such a practice is onerous for the small exhibitor. While both distributors and exhibitors pay their debts to each other with small honor, there is no credible evidence that the prohibition of advances materially affects the credit relationship or the collection of debts.<sup>16</sup>

C. The 42 Day Clause

§203-7 of the Pennsylvania Act provides:

<sup>16/</sup> Plaintiffs have made some farfetched claims about the evils of prohibiting guarantees and advances. Their proposed Findings of Fact complain that these provisions "may reduce the amount of internal capital available for other films and may, over the long run, reduce the distributors' willingness and ability to finance films without a built-in market." Plaintiffs, before trial, abandoned their claim that the Act affects financing for films and presented no evidence on this issue. The distributors have also contended that an exhibitor who has paid a substantial guarantee for a film will promote the film more vigorously than one who licenses a film without a guarantee term. This position is not supported by the evidence.

No license agreement shall be entered into between distributor and exhibitor to grant an exclusive first run or an exclusive multiple first run for more than 42 days without provision to expand the run to a second run or subsequent run theatres within the geographical area and license agreements and prints of said feature motion picture shall be made available by the distributor to those subsequent run theatres that would normally be served on subsequent run availability.

This part of the statute was inartfully drafted,<sup>17</sup> and distributors interpret its requirements differently. Some read it to mean that no theatre may play a film for longer than 42 days. There is no support for such an interpretation, however. The clause prohibits contracts which grant an exhibitor an exclusive run in an area for more than 42 days. There is nothing in the law that prevents a distributor and exhibitor from agreeing to a run of more than six weeks as long as the license provides for expansion on the 43rd day. There is nothing in the law which prevents a distributor from contracting with an exhibitor for an exclusive run of six weeks and then, after bidding or negotiation contracting for another exclusive engagement with the same theatre owner.

Plaintiffs contend that some films have opened late in Pennsylvania because of the 42-day clause. Distributors release

<sup>17/</sup> For instance, the statute leaves the definition of a "geographical area" unclear. It is not necessary for me to resolve these ambiguities.

films which are likely to start slowly at the box office and then build in popularity on what is called a "platform" release strategy. These films open initially in a handful of theatres in a few big cities and rely on word-of-mouth to gain audience size. Distributors nurture these films slowly and do not release them broadly until they have attained a certain level of popularity. The plaintiffs contend that the 42-day clause prevents them from maintaining control over this type of slow release and that, as a result, they have chosen not to open some films in Philadelphia at the early states of platform release. The Act however, does not cause such a delay. At most, it is a minor factor in marketing decision exclusively within the control of the distributor. It is the distributors' strategic choice, not the Act, which may delay release. In addition, this problem affects so few pictures that its impact is minimal.<sup>18</sup>

Plaintiffs' next complaint is that as a result of the 42 day clause exhibitors are less likely to offer high rental terms on certain films because the distributors cannot guarantee an exclusive run of longer than six weeks. Such complaints are not supported by any credible evidence in the record. It is more likely that the clause will

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<sup>18/</sup> One picture which allegedly opened late in Philadelphia because of the 42 day clause was "THE KILLING FIELDS." The film opened for an exclusive run in Boston in December and opened in Philadelphia on January 18. The movie, however, opened in Washington, D.C., an unregulated jurisdiction, on the same day that it opened in Philadelphia and in both Boston and Philadelphia the picture was more broadly released on February 1.

increase film rental for those films that are blockbusters or which turn out to be more popular than expected. When such films are reoffered after 42 days, they will probably garner higher percentage rental terms for the first weeks of the new license than they would for the seventh and succeeding weeks of the original agreement.<sup>19</sup>

The 42 day clause also has benefits for the Pennsylvania moviegoer. The purpose of the provision is to promote the wider dissemination of films in the Commonwealth. The evidence showed that the Act has achieved that purpose. Some films have opened in suburban and rural areas more quickly since the Act took into effect. Indeed, some have done so on exactly the 43rd day after the initial area release.

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<sup>19/</sup> Administrative expense caused by having to reoffer a film after six weeks is minimal.

#### D. Regulation of Bidding Procedures

The open bidding provision of the Act and the provision requiring re-bidding when the distributor rejects all bids serve a useful function by preventing certain unfair licensing practices. Before the Act, some distributors frequently gave favored exhibitors secret glances at competitors' bids, called "5 o'clock looks." Collusion between favorites often controlled the bidding for pictures. The open bidding and re-bidding requirements eliminate the 5 o'clock look, place all exhibitors on equal footing, and remove the bidding process from the dark. The distributors argue that open bidding encourages collusion among exhibitors. They admit that "documented examples of such abuse have been sparse." In fact, documented examples of such abuse are non-existent.

Plaintiffs also contend that because open bidding allows exhibitors to compare bids, they ultimately receive less favorable terms on film licenses. There is no evidence that this has occurred.<sup>20</sup> It seems equally likely that an exhibitor will bid higher terms after seeing his competition's bids.<sup>21</sup>

Plaintiffs next complain that distributors often prefer to accept low bids rather than submit to the time-consuming rebidding

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<sup>20/</sup> In fact, the evidence indicated that those distributors who have adhered most closely to the open bidding provision have received higher film rental percentages since the act.

<sup>21/</sup> The plaintiffs complain that the Act allows the exhibitor who submits a bid stating only that he is "willing to negotiate" to learn about the competition's bidding practices. This position is based on a misreading of the statute. Under §203-3 a bid "states the terms under which the exhibitor will agree to exhibit a feature motion picture." The exhibitor who is merely "willing to negotiate" has not submitted a bid and is not entitled to examine competitors' bids.

process. Rebidding, however, can take place almost instantaneously. The Act permits oral bid solicitation and oral bids. The plaintiffs have not made a credible showing that this has been a problem of any significance.

Finally, the distributors allege that the Act's regulation of bidding procedures is so onerous that it has forced some distributors to license all films in Pennsylvania by negotiation, which usually results in lower film rentals. The problem with this argument is that while some distributors have switched to negotiation, others bid just as frequently and others use bidding more frequently. Those distributors who switched to negotiation have done so as a business judgment. The Act leaves open to the choice of distributors whether to license by bidding or negotiation. There is no credible evidence that the Act has caused any distributor to stop licensing pictures by bidding.<sup>22</sup>

#### E. Plaintiffs' and Defendants' Statistical Claims

Both parties to this lawsuit have presented statistical evidence relating to the burdens imposed by the Pennsylvania Act.

Plaintiffs' study was far more ambitious than defendants. They collected information on every new film license issued by plaintiffs in six metropolitan areas: Philadelphia, Pittsburgh,

<sup>22/</sup> Plaintiffs argue that those distributors who continue to bid may be able to "hold their percentage rental figures up, but may, . . . be licensing fewer runs than sought or accepting offers from sub-run theatres." First, the record does not support this contention. Second, the premise behind plaintiffs' statistical study is that distributors try to maximize their film rental percentages. The argument they make here undercuts this premise by acknowledging that percentage rentals are not necessarily the bottom line for distributors.

Reading/Lancaster, Scranton/Wilkes-Barre, Harrisburg and Erie.

Plaintiffs selected January 1, 1977 as the starting date and June 30, 1983 as the termination date of the study. In all, the study included approximately 14,000 licenses. Of the six and one-half year period covered by the study, the Pennsylvania statute was only in effect for two and one half years. The period between the granting of summary judgment in AFD I and the Court of Appeals mandate reversing and remanding that decision were counted with the time before the Act took effect as the "unregulated" periods. More than twice as many licenses were issued in these times as in the regulated periods.

Plaintiffs' study demonstrates that the distributors' film rental percentage in unregulated periods was 55% and in regulated periods was 51%. Film rental percentage is that percentage of the exhibitor's box office gross paid to the distributor as rental. Plaintiffs allege that the decline in percentage rental demonstrates significant burden caused by the Pennsylvania statute. One problem with this conclusion is that it assumes that percentage film rental is a meaningful term. The evidence suggests that percentage rental is a statistic with only marginal significance. Like other businesses, the motion picture industry looks to its dollar receipts and its bottom line to measure results. Percentage rental may have little relation to the bottom line. Plaintiffs themselves offered a great deal of testimony about differences among movie theatres. Distributors do their best to license their films to prime theatres. A distributor may not be able to license a picture to a prime theatre on terms as favorable as it can to a less attractive or spacious facility, but the film may earn more dollars at the former. In addition, there was evidence that some

distributors substantially reduce contract terms in licenses with certain exhibitors by renegotiating after the run. Reductions occur even when films are licensed by bid, where traditionally terms are held firm, and even when the film has been successful. That these reductions occur indicates that distributors do not always act to maximize percentage rental.

Another basic fallacy is plaintiff's reasoning that because distributors' share of film rental declined during the periods of regulation, the Pennsylvania Act caused the reduction. In fact, the causal connection does not appear to exist. When one examines the fortunes of each of the plaintiffs individually, it becomes extremely difficult to blame the Act for an overall decline in percentage rental. Some distributors have fared better during regulated periods than during unregulated periods. The decline of other distributors' percentage rental is more persuasively explained by factors other than the Act, such as the presence or absence of one blockbuster, or general decline in a company's fortunes.

Plaintiffs' study also fails to provide any information about the Act's effect on certain segments of the industry. Because the study was limited to films licensed by the plaintiffs, it does not show what effect, if any, the statute has on independent distributors. Furthermore, because the study was limited to six large areas, it provides no information about the effect of the statute on small towns. Plaintiffs' economics expert, in fact, testified that the study would have produced more accurate results had it been a random survey of 55% of the entire state, rather than an examination of certain metropolitan areas comprising 55% of the state's population.

Plaintiffs' expert also conducted a regression analysis to demonstrate the effect of the statute on percentage film rental. When the number of licenses on a particular film, the length of run, and the relative success of the film were held constant, the analysis showed that the presence of regulation correlated with a 2.9% decline in percentage film rental. As with plaintiffs' statistical study, the regression analysis was founded on the assumption that distributors attempt to maximize percentage film rental. Moreover, when one makes the assumption, which I find warranted, that the presence of regulation has not caused any distributor to switch from bidding to negotiation or to renegotiate license terms downward after the run, the regression analysis shows that any effect of regulation on percentage rental is, at most, incidental.<sup>23</sup>

There is no credible evidence that the Act causes a switch to either negotiation or renegotiation of licenses. Certainly on its face the Act does not mandate such procedures. In addition, there is no real evidence that the Act has indirectly had such an effect on the way distributors do business. Some of the distributors license more pictures by bid now than they did before the Act became effective. The decisions by other distributors to negotiate exclusively, to engage in competitive negotiation or to discount some licenses are business decisions unrelated to the Pennsylvania Act.

Defendants' statistical claim that some exhibitors in Pennsylvania paid higher percentage film rental to all distributors

<sup>23/</sup> When negotiation and renegotiation are factored out, the presence of regulation results in a decline in percentage rental of .94%.

after the Act than before is also flawed. The base of data for this claim includes both first run and subsequent run films, and thus fails to isolate the Act's primary impact on first run movies. The claim is also weakened by the fact that it treats as occurrences during a "regulated period" data from the period of about a year during which at least some distributors relied on the subsequently reversed ruling in AFD I that the Act was unconstitutional. More persuasive is evidence that indicates distributors did not receive higher percentage film rental in unregulated states than in regulated jurisdictions and evidence showing that regulation has had no impact on plaintiffs' market share in Pennsylvania as a percentage of nationwide film rental. Such evidence suggests that differences in percentage film rental, if significant at all as a measure, do not depend on whether the distributor is subject to the kind of trade practice regulation contained in the Pennsylvania Act.

#### V. Commerce Clause

Plaintiff claims that the Pennsylvania Feature Motion Picture Fair Business Practices Law violates the Commerce Clause of the United States Constitution. Article 1 §8, Clause 3. Even in the absence of federal legislation, the Commerce Clause places some limits on state regulation. Cooley v. Board of Wardens of the Port of Philadelphia, 53 U.S. (12 How.) 299 (1851). The plaintiff distributors contend that the law discriminates against and unconstitutionally burdens interstate commerce.

A state law whose purpose or effect is to discriminate against interstate commerce constitutes simple economic protectionism and is virtually invalid per se. See Bacchus Imports Ltd. v. Dias, 52

U.S.L.W. 4979, 4981 (1984); Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 471 (1981). The Supreme Court's definition of what constitutes a discriminatory law is narrow. Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978), involved a Maryland law which, in part, forced all producers and refiners of petroleum products to divest themselves of retail service stations in the state. The brunt of the statute fell completely on out-of-state companies because there were no local producers or refiners. The Court held that the statute was not discriminatory. First, it did not discriminate against out-of-state producers and refiners because there were no producers or refiners in Maryland to favor. Second, the Court rejected appellant's claim that the statute discriminated by protecting in-state independent dealers from out-of-state competition:

[I]n-state independent dealers will have no competitive advantage over out-of-state dealers. The fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce.  
437 U.S. at 126.

The Court also held:

If the effect of a state regulation is to cause local goods to constitute a larger share, and goods with an out-of-state source to constitute a smaller share, of the total sales in the market . . . the regulation may have a discriminatory effect on interstate commerce. But the Maryland statute has no impact on the relative proportions of local and out-of-state goods sold in Maryland and, indeed, no demonstrable effect whatsoever on the interstate flow of goods.  
427 U.S. at 126, n. 16.

The Pennsylvania statute at issue in this case is facially neutral. Exxon indicates that even if there were no Pennsylvania

distributors the law would not be considered economic protectionism because it draws no distinction between in-state and out-of-state distributors. In fact, there was testimony at trial that two independent distributors, albeit small ones, are located in this Commonwealth. Just as their out-of-state competitors, these local distributors must follow all the requirements of the Feature Motion Picture Fair Business Practices Law. The Pennsylvania statute does not discriminate against interstate commerce.<sup>24</sup>

Even a law which does not discriminate may be struck down if it unduly burdens interstate commerce. The applicable test was announced in Pike, v. Bruce Church, Inc., 397 U.S. 137, 142 (1970):

Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits .... If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

Pennsylvania's Act regulating the licensing of motion pictures satisfies the Pike test.

<sup>24/</sup> The Sixth Circuit held that Ohio's trade screening and movie regulation statute was not discriminatory under the Commerce Clause because of its facial neutrality. Allied Artists Picture Corp. v. Rhodes, 679 F.2d 656, 662 (6th Cir. 1982) (hereinafter Allied II). Also instructive is the Fourth Circuit's decision in American Motors Sales Corp. v. Division of Motor Vehicles of the Commonwealth of Virginia, 592 F.2d 219 (4th Cir. 1979). That case involved a Virginia statute which restricted the ability of automobile manufacturers or distributors to grant additional franchises for a particular line of vehicle in a trade area already served by one or more dealers carrying the same line. The Fourth Circuit held that because the statute drew no distinction between manufacturers within the state and those outside, it did not discriminate against interstate commerce.

Again, Exxon provides a useful comparison. There was evidence that the three refiners who marketed their product in Maryland solely through company-operated stations might withdraw from selling in Maryland completely if the statute in question were enforced. There was no evidence, however, that the statute would affect the total quantity of petroleum products shipped into Maryland. In finding that the statute imposed a permissible burden on interstate commerce, the Court stated:

The source of the consumers' supply may switch from company-operated stations to independent dealers, but interstate commerce is not subjected to an impermissible burden simply because an otherwise valid regulation causes some business to shift from one interstate supplier to another.

437 U.S. at 127.

Appellants in Exxon also claimed that the Maryland statute would burden interstate commerce by changing the market structure in the petroleum industry. The Court also rejected that claim.

We cannot . . . accept appellant's underlying notion that the Commerce Clause protects the particular structure or methods of operation in a retail market. . . . [T]he Clause protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations. It may be true that the consuming public will be injured by the loss of the high-volume, low-priced stations operated by the independent refiners, but again that argument relates to the wisdom of the statute, not to its burden on commerce.

437 U.S. at 127-28.

There is no credible evidence that the Pennsylvania statute at issue in this case has caused any diminution in the amount of film product flowing into the state. The evidence fails also to support

plaintiff's argument that the Act has delayed the introduction of some films into Pennsylvania. The benefits from the act are substantial and outweigh the minimal burdens created by the legislation.

The prohibition against trade screening serves the primary goal of reducing the risks of deceptive licensing practices by distributors. Such a goal protects not only theatre owners in the Commonwealth, but also the public. The anti-blind bidding provision facilitates exhibitors' ability to provide communities with the films they will more likely want to see. It encourages exhibitors to license films based on the merits of the product.

The burdens imposed by the trade screening requirement are minimal by comparison. There is no constitutional right to sell a pig in a poke. The financial costs of producing a trade screening print are small in comparison with the distributors' filming budgets. The trade screening requirement has not affected the quality of films, nor has it delayed their release. That a distributor may not have its picture ready in time to license it at a prime theatre is not a result of the Act. Another distributor, one who is able to produce a trade screening print more promptly, will win the theatre. As the Court made clear in Exxon, the Commerce Clause protects the interstate market, not particular firms.<sup>26</sup>

<sup>26/</sup> Some mention was made during trial of the practice of licensing films by blind bidding, but with a "48 hour cancellation clause." Such clauses allows exhibitors to cancel their licenses within 48 hours after actually viewing the film. Requiring the use of these clauses would not serve the public interest as successfully as the trade screening requirement. By the time the exhibitor actually sees the picture, it is generally too close to the exhibition date to license another film.

The prohibition of guarantees and advances serves the primary purpose of preventing large exhibitors from using their deep pockets to squeeze smaller exhibitors out of the market. This benefits both small theatre owners and the public, which gains by having a greater available choice of theatres and films.<sup>27</sup> The interests served by these clauses are legitimate ones. In Pike, the Court recognized a State's legitimate interest in "maximizing the financial return to an industry within it." 397 U.S. at 143. See also Parker v. Brown, 317 U.S. 341 (1943). Later, in New Motor Vehicle Board v. Orrin W. Fox, Co., 439 U.S. 96 (1978), the Supreme Court upheld a California statute which regulated the granting of automobile franchises. Although that decision was based on the due process clause, the Court did identify "the promotion of fair dealing and the protection of small business" as valid state interests. 439 U.S. at 102, n.7. Relying in part on this language, the Fourth Circuit held that a similar Virginia statute did not

<sup>27/</sup> There are some secondary benefits to the prohibition of guarantees and advances as well. The public benefits because exhibitors are less likely to stretch out the run of a film to try to recoup a guarantee. The prohibition also may help keep film prices in the Commonwealth stable.

unduly burden interstate commerce. American Motors Sales Corp. v. Division of Motor Vehicles of the Commonwealth of Virginia, 592 F.2d 219 (4th Cir. 1979).<sup>28</sup>

The burden imposed by the prohibition of guarantees and advance is not excessive in relation to the local benefits derived from the prohibition. Plaintiffs' own economics expert testified that the amount of unearned guarantee income was not substantial enough to affect film rental. In addition, advances are not the only effective means of dealing with slow payers or poor credit risks.

A provision merely prohibiting the solicitation of guarantees and advances, such as that in Ohio, does not serve the public interest as successfully as Pennsylvania's provision. Barring solicitation by distributors would not prevent large exhibitors from using guarantees to obtain films which might otherwise be licensed to small theatre owners.

The 42 Day provision also passes the Pike test. There is a legitimate and substantial benefit in promoting the faster dissemination of new films in rural and suburban areas. Once the distributors' misinterpretations of the provision are discounted, the burdens imposed by the clause are minimal. That a distributor may elect not to open

<sup>28/</sup> In Allied II the Sixth Circuit remanded the issue of the validity of Ohio's regulation of guarantees and advances. District Court Judge Duncan had found that the regulation primarily acted to correct a bargaining imbalance between exhibitors and distributors. Allied Artist Pictures Corp. v. Rhodes, 496 F.Supp. 408 (S.D. Ohio 1980) (hereinafter Allied I). The Court of Appeals, relying on Baldwin v. Seelig, Inc., 29 U.S. 571 (1935), concluded that "a state's interest in righting a bargaining imbalance, standing alone, is not sufficient under the Commerce Clause to permit direct interference with pricing where it burdens interstate commerce." 679 F.2d at 665. The Court remanded for determination of whether any other legitimate local public interest existed. I do not base my decision on a bargaining imbalance between local exhibitors and out-of-state distributors. I base it instead on the state's clearly legitimate interest in maintaining the vitality of its small theatre owners and in protecting them from being engulfed by powerful exhibitors, both local and national. Moreover, I read Baldwin v. Seelig, Inc. to reject a New York law which on its face amounted to economic protectionism.

a film in Pennsylvania on a given day because of the 42 day clause is a decision of marketing strategy, not an effect of the Act. The Commerce Clause does not protect the "methods of operation in a retail market," Exxon, 437 U.S. at 127, nor does it guarantee to distributors freedom from any regulation that might marginally influence their business strategy.

The Pennsylvania Act's provisions regulating bidding procedures also pass muster under the test announced in Pike. The open bidding and re-bidding requirements of the Act provide a substantial benefit to the public interest by discouraging deception by distributors and collusion between distributors and exhibitors and by encouraging honest bidding practices. The burdens imposed by these sections of the Act are minor. There was no credible evidence that the bidding procedure regulations caused any delay in the release of films or anything more than minor administrative expense.

The plaintiff's contention that the Pennsylvania Act reduced distributors' film rental does not change the balance under the Pike test. Cost is a factor to be taken into account when assessing burden in a Commerce Clause analysis. Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 445 n.21 (1978). Percentage film rental, however, is a term without any real meaning. Even if it did have significance, the Act is not the cause of declining percentage film rental.

Plaintiffs argue that the Act has caused some distributors to switch from bidding to negotiation and that, as a result, percentage film rental has declined. The decisions to negotiate or to renegotiate are, however, based on business judgment and are not caused by the Pennsylvania Act. In addition, when negotiation and renegotiation are

held constant, plaintiff's regression analysis demonstrated only a .91% decline in percentage film rental during periods of regulation.

The Pennsylvania Feature Motion Picture Fair Business Practices Law serves legitimate and substantial public purposes. The Act takes a small step against dishonest and unfair practices in the motion picture industry. A legislature

need not strike at all evils at the same time or in the same way .... [I]t may implement its program step by step, ... adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations.

Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 466 (1981)  
(citations omitted).

In contrast to its benefits, the burdens imposed by the Pennsylvania Act are incidental and are not "clearly excessive in relation to the putative local benefits." Pike, 397 U.S. at 142.

#### VI. The First and Fourteenth Amendments

The Pennsylvania Feature Motion Picture Fair Business Practices Law does not violate the First and the Fourteenth Amendments to the United States Constitution. In its opinion reversing AFD I, the Court of Appeals stated the test by which this Court must evaluate the statute. Associated Film Distribution Corp. v. Thornburgh, 683 F.2d 808, 813 (3d Cir. 1982). Although motion pictures are protected by the First Amendment, Interstate Circuit v. Dallas, 390 U.S. 676, 682 (1968), the Court held that the Pennsylvania Act is content-neutral trade practice legislation. As such, the applicable test is that set forth in United States v. O'Brien, 391 U.S. 367, 377, rehearing denied, 393 U.S. 900 (1968):

[A] government regulation is sufficiently justified if it is within the constitutional power of the Government, if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

The Court of Appeals remanded this case for a factual determination of the Act's actual threat to First Amendment values, the nature and weight of the state's interests in enacting the law and a balancing of the state's concerns against the impact on the First Amendment.

In fact, the Pennsylvania Act has had little or no impact on First Amendment values. There was no credible evidence that the Act has had or will have any effect on the quality or number of films being produced or being exhibited in the Commonwealth of Pennsylvania. There was also no evidence that the Act has caused a material delay in the exhibition of films in the Commonwealth. No evidence was offered which suggested that more films miss their release dates now than before the Act. The trade screening requirement, when combined with production delays, creates a minimal risk of delayed release. Distributors, however, accelerate post-production and have missed release dates in only a handful of cases. Even in these instances, it is not proven that the Act caused the delay. Plaintiffs claim that some distributors have chosen not to release certain films at an early date in Pennsylvania because of the 42-day clause. Although it may marginally influence a distributor's marketing decision, the clause does not compel the distributor to make such a decision.

The concerns which led the Commonwealth to enact the Act are substantial. The Act promotes fair dealing between distributors and exhibitors, helps preserve the viability of small exhibitors and promotes wider dissemination of films at diverse locations and at reasonable . . . . The statute, in fact, advances some of the interests underlying the First Amendment. The trade screening requirement encourages innovation by making it more likely that films will be licensed on merit rather than on the name of their producer, director or star. The abolition of guarantees and advances promotes competition among exhibitors, and promotes the exhibition of a variety of films at many locations. The 42 day provision makes it easier for people living outside cities to see films more quickly.

On balance, the Feature Motion Picture Fair Business Practices Law satisfies the O'Brien standard. It was within the constitutional power of the state to enact the law.<sup>29</sup> The legislation furthers a substantial state interest which is content-neutral and, therefore, unrelated to the suppression of free expression. The impact of this law

<sup>29/</sup> I will discuss the validity of the statute under the Pennsylvania Constitution in a later portion of this opinion.

on First Amendment freedoms in de minimis and, in any event, is outweighed by the interests of the state in passing the statute.<sup>30</sup>

#### VII. Copyright Preemption

Plaintiffs' third claim is that the Federal Copyright Act, 17 U.S.C. § 101 et seq., and the Supremacy Clause of Article VI of the United States Constitution preempt the Pennsylvania statute. The district judge's original opinion in AFD I ruled that on its face the Pennsylvania Act was preempted by the copyright laws. 520 F.Supp. at 995. The Court of Appeals reversed and remanded for a determination of whether "the prohibitions contained in the Pennsylvania Act in fact stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.... The question of whether and to what extent the Pennsylvania Act interferes with attaining the 'purposes and objectives of Congress' is one which must be resolved before the trial court can decide, as a matter of law, whether the interference (if any) is such as to require invalidation of all or part of the Pennsylvania Act

30/ Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575 (1983), was decided after the Third Circuit's opinion in AFD II and the Sixth Circuit's opinion in Allied II. In that case, a newspaper challenged a Minnesota statute which imposed a use tax on ink and paper. The tax exempted the first \$100,000 spent by a publication on ink and paper in any calendar year. The Court stated that "differential treatment, unless justified by some special characteristic of the press, suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is presumptively unconstitutional .... Differential taxation of the press, then, places such a burden on the interests protected by the First Amendment that we cannot countenance such treatment unless the State asserts a counterbalancing interest of compelling importance that it cannot achieve without differential taxation." 460 U.S. at 585. The decision in Minneapolis Star is distinguishable. Pennsylvania has not imposed a tax on distributors. It is not proven that the legislation in the present case has had any impact on profits. Moreover, the differential treatment of the movie industry in Pennsylvania's laws is justified by the special problems of that industry. The Commonwealth's attempt to remedy these specific evils is not related to the suppression of free expression and is warranted by the state's interest in reforming the licensing process. Finally, the decision in Minneapolis Star rested, in part, on the fact that the Minnesota statute was not content-neutral in that its burden rested solely on large periodicals.

on preemption grounds." 683 F.2d at 816.

The Supreme Court has held recently that preemption of a state law will occur:

[f]irst, when Congress, in enacting a federal statute, has expressed a clear intent to pre-empt state law . . .; second, when it is clear, despite the absence of explicit pre-emptive language, that Congress has intended, by legislating comprehensively, to occupy an entire field of regulation. . .; and, finally, when compliance with both state and federal law is impossible . . . or when the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Capital Cities Cable, Inc. v. Crisp, \_\_\_\_\_ U.S. \_\_\_\_\_, 81 L. Ed. 2d 580, 588-89 (1984) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

Plaintiffs claim that the Pennsylvania Act fails to pass muster under the first and third tests.

For its argument that the Act violates the first test, plaintiffs rely on 17 U.S.C. § 301, which states:

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright . . . whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to --

...

(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106.

17 U.S.C. § 106 provides that the owner of a copyright has the

exclusive right to do any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies of phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of ... motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

The narrow question is whether the state statute grants any rights equivalent to the exclusive rights given to copyright owners. As the Court of Appeals stated in AFD II, "the Act does not take away from plaintiffs and give to another the right to reproduce the film, to prepare derivative works based on the film, to distribute the film, or to license its performance." 683 F.2d at 816. The statute does not create any rights equivalent to those enumerated in §106 on its face or in practice.

The purpose of § 301 was not to invalidate state trade practice legislation, but to eliminate the former system in which federal copyright law controlled published works and state law unpublished works.

Instead of a dual system of "common law copyright" for unpublished works and statutory copyright for published works. . . the bill adopts a single system of Federal statutory copyright from creation .... Common law copyright protection for works coming within the scope of the statute would be abrogated....

Notes of the Committee on the Judiciary, House Report No. 94-1476, 94th Cong., 2d Sess. (1976)(reprinted at pp. 271-72 of 17 U.S.C.A. (1977)).

As Professor Nimmer explains, § 106 identifies those rights which are within "the general scope of copyright." The copyright owner's right is the exclusive right "to prohibit reproduction, ... performance, distribution or display" of the copyrighted work. 1 Nimmer On Copyright, § 1.01[B] at 1-11, 1-12.

Thus, in essence a right which is "equivalent to copyright" is one which is infringed by the mere act of reproduction, performance, distribution or display .... If under state law the act of reproduction, performance, distribution or display, no matter whether the law includes all such acts or only some, will in itself infringe the state created right, then such right is pre-empted. But if other elements are required, in addition to or instead of, the acts of reproduction, performance, distribution or display, in order to constitute a state created cause of action, then the right does not lie "within the general scope of copyright," and there is no preemption.

id.<sup>31</sup>

Acts other than the acts of reproduction, performance, distribution or display are necessary elements of violations under the Pennsylvania statute.<sup>32</sup> The Act does not create any rights equivalent to those guaranteed to the copyright owner and is not pre-empted by 17 U.S.C. § 301.

31/ § 301(b) of the Copyright Act, as originally drafted stated: Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any state with respect to --

(3) activities violating rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106, including breaches of contract, breaches of trust, invasion of privacy, defamation, and deceptive trade practices such as passing off and false representation.

§ 301(b)(3), H.R. 4347, 89th Cong., 2d Sess. (1966).

The elimination of the illustrative clause in § 301(b)(3) was not intended as a substantive change in the meaning of the provision.

1 Nimmer on Copyright, § 1.01[B] at 1-14.3.

32/ In the Ohio litigation, Judge Duncan used this framework to find that the Ohio statute was not pre-empted by the federal copyright act. Allied I, 496 F.Supp. at 407-08.

I turn now to plaintiffs' contention that the Act is pre-empted because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941). The Court of Appeals in AFD II remanded because on its face the Act did not interfere with the purposes and objectives of the copyright laws. After full trial on the merits, this Court concludes that the Act does not stand as an obstacle to the federal copyright system in practice. As the Court stated in Mariniello v. Shell Oil Company, 511 F.2d 853, 857-58 (3d Cir. 1975):

In recent times, the Supreme Court has employed the Supremacy clause sparingly to strike down state law.... Where conflict is alleged between federal and state law, the specific purpose of the federal act must be ascertained in order to assess any potential erosion of the federal plan by operation of the state law.

Article I, § 8 of the United States Constitution, which confers on Congress the power to legislate in the field of copyright, explicitly declares that the purpose of copyright is "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive right to their respective Writings and Discoveries." The Copyright Act is "based on the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors," AFD II, 683 F.2d at 815 (quoting Allied I, 496 F.Supp. at 446); however, "[t]he copyright law, like the patent statutes, makes reward to the owner a secondary consideration." AFD II, 683 F.2d at 815 (quoting United States v. Paramount Pictures, Inc., 334 U.S. at 158).

In remanding this case, the Court of Appeals explicitly adopted the framework of analysis set forth by Judge Duncan in Allied I:

The Supreme Court has rejected the notion that because "a copyright is property derived from a grant by the United States," it is not subject to state regulation of the manner in which its product is marketed. Fox Film Corp. v. Doyal, 286 U.S. 123, 128 (1932). Further, the Supreme Court has rejected claims that the exclusive right granted by Congress to distribute copyrighted material included the exclusive right to distribute it in the manner deemed most desirable by the copyright holder. Watson v. Buck, 313 U.S. 387 (1941).

In Fox Film, supra, the Supreme Court upheld a state's direct taking by imposition of a tax of royalties derived from federal copyrights. Scarcely a more blatant, effective method of reducing the author's award can be imagined. Yet the Court stated:

The statute confers upon the author after publication the exclusive right for a limited period to multiply and vend copies and to engage in the other activities described by the statute in relation to the subject matter, U.S.C., Tit. 17. In creating this right, the Congress did not reserve to the United States any interest in the production itself, or in the copyright, or in the profits that may be derived from its use. Nor did the Congress provide that the right, or the gains from its exercise,

would be free of tax. The owner of the copyright, if he pleases, may refrain from vending or licensing and content himself with simply exercising the right to exclude others from using his property. The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors.

\* \* \*

. . . The nature and purpose of copyrights place them in a distinct category and we are unable to find any basis for the supposition that a nondiscriminatory tax on royalties hampers in the slightest degree the execution of the policy of the copyright statute.

Fox Film, supra, 286 U.S. at 127, 131 (citations omitted).

The authority of the states to regulate market practices dealing with copyrighted subject matter is well-established. Thus, for example, the Supreme Court has made it clear that the existence of a copyright does not permit its owner to contract concerning it in ways that suppress competition in violation of federal antitrust laws. 15 U.S.C. § 1, et seq. Interstate Circuit v. United States, 306 U.S. 208, 230 (1939). Similarly, ownership of a copyright does not entitle a company to abuse the market power it obtains thereby by engaging in a per se illegal tying arrangement, see e.g., United States v. Paramount Pictures Inc., 334 U.S. 131, 156-57 (1948), price fixing, see,

e.g., Watson v. Buck, 313 U.S. 387 (1941), or other fraudulent or deceptive practices, cf. Mariniello v. Shell Oil Co., 511 2d 853 (3d Cir. 1975); Hearing Aid Ass'n. of Kentucky, Inc. v Bullock, 413 F. Supp. 1032 (E.D. Ky. 1976).

The State of Ohio is no more interfering with the legitimate rights of owners of copyrighted motion pictures by regulating the ways in which plaintiffs and other producer-distributors license their product in order to achieve fair and open bargaining than were the states in passing the legislation upheld in those cases.

AFD II, 683 F.2d at 815-16, (quoting Allied I, 496 F. Supp. at 446-47).

The Courts of Appeals for the Third and Sixth Circuits, in considering this issue, have stated:

we do not find authority for the argument that state trade regulation which affects distribution procedures and, indirectly, monetary returns from copyrighted property is invalidated implicitly or explicitly by the terms of the Copyright Act . . . or the copyright clause [of the United States Constitution].

AFD II, 683 F.2d at 816 (quoting Allied II, 679 F.2d at 661-63).

The question for this court is "whether the Pennsylvania Act in fact precludes the 'accomplishment and execution of the full purposes and objectives' of the Copyright Act." AFD II, 683 F.2d at 817.

Plaintiffs have not fulfilled their burden of demonstrating that the Pennsylvania Feature Motion Picture Fair Business Practices Law has interfered with the Federal Copyright Act. The evidence produced at trial showed that the Pennsylvania Act has had no effect on the incentive to make and distribute motion pictures. There was no evidence that fewer motion pictures are being made today or that the quality of pictures has declined. The Copyright Act does not guarantee an author maximum profit and, in any event, it is not proven that the Pennsylvania Act has reduced the distributors' reward.

The Pennsylvania statute does not dilute the distributors' ownership rights in their films. They maintain exclusive control over the decision whether to license as well as when to license and to whom to license. The Pennsylvania Act may change the way distributors do business. It does not, however, take from them the essential rights of ownership.

Plaintiffs argue that the statute interferes with the copyright owner's exclusive right "to distribute copies . . . of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease or lending." 17 U.S.C. § 106(3). This argument is misplaced. The Pennsylvania Act sets no limit on the financial terms at which films may be licensed. The Act in no respect prevents a distributor from selling a film to a theatre owner outright, nor does it interfere with the distributor's ability to license a film to an exhibitor. The Act does not prevent the distributor from assuring itself of a fixed amount of remuneration for a license. Distributors may still license films for fixed sums. The prohibition of guarantees means that the distributor cannot have it both ways where there are adverse consequences; it cannot

license a film on a percentage rental basis and at the same time receive guaranteed minimum payment.

The invalidation of advances does not restrict the distributors' right to license its films. The Copyright Act does not assure security for the copyright owner. An exclusive ownership right is not equivalent to a right to license without risk.

Plaintiffs have also contended that inherent in the exclusive right to distribute is the right to offer a film at the time which the copyright owner considers most advantageous. Plaintiffs' argument is that the Pennsylvania Act imposes a direct control on the timing of licensing by preconditioning it on trade screening. The evidence presented at trial, however, showed that the Act has not impaired distributors' ability to release their films on the dates they desire. Although it is true that the statute prevents distributors from contracting until a trade screening print is available, this has little effect on the essential rights of the copyright owner:

There is nothing in the federal Copyright Act prohibiting the state from exercising its police powers to rectify a market situation it perceives as inequitable. The comment by the Supreme Court regarding the practice of block booking in United States v. Paramount Pictures, Inc., 334 U.S. 131, 158 . . . is apropos:

It is said that reward to the author or artist serves to induce release to the public of the products of his creative genius. But the reward does not serve its public purpose if it is not

related to the quality of the copyright .... The [prohibited] practice tends to equalize rather than differentiate the reward for the individual copyrights.

Allied I, 496 F. Supp. at 447.

Blind bidding forces exhibitors to license on the basis of inadequate and misleading information. It rewards hype, not artistic merit. The right to sell in this manner is not related to the quality of the copyright.

Plaintiffs have also argued that the trade screening provision deprives copyright holders of their ownership rights by requiring them to display their product when they would not ordinarily wish to do so. As Judge Duncan noted in Allied I, the trade screening requirement does not impede the copyright owner's right to prohibit display or distribution. The distributor must only trade screen if it decides to license in Pennsylvania. Allied I, 496 F. Supp. at 447. The trade screening requirement does not interfere with the purposes of the Copyright Act.

The plaintiffs' next contention is that the Pennsylvania Act's 42 day clause interferes with the copyright owner's right to license exclusively for the life of the copyright. After hearing the evidence in this case and after discounting the distributors' misinterpretations of the statute, the Court concludes that the 42 day provision's interference with the exclusive rights of the copyright owner is minimal. The statute does not prevent distributors from contracting for runs of longer than six weeks. It merely says that if such a

contract is made, it must contain some provision for expanding the run within the geographical area after the forty-second day. The statute also does not prevent a distributor from entering into a series of exclusive licenses with one exhibitor as long as each license does not exceed 42 days. The facts produced at trial failed to show that the 42 day clause has in any respect dampened incentive in the motion picture industry, nor has it interfered with the purpose or execution of the Copyright Act.

In fact, the 42 day clause and the Pennsylvania statute as a whole promote the purposes underlying the Copyright Act. The Act improves the public's access to creative products. The 42 day clause benefits the public by quickening the wide dissemination of creative works. Similarly, the prohibition of guarantees and advances helps maintain the viability of small exhibitors, increasing the public's choice of theatres and films. Finally, the trade screening requirement allows exhibitors to differentiate pictures on the basis of factors relating to merit and, therefore, may afford independent, lesser known distributors a better chance to display their wares.

#### VIII. Pennsylvania Constitution

Plaintiffs' final claim is that the Pennsylvania Feature Motion Picture Fair Business Practices Law violates Article III, Section 32 of the Pennsylvania Constitution, which is the Commonwealth's version of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. It provides:

The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any

local or special law:

1. Regulating the affairs of counties, cities, townships, wards, boroughs or school districts:

7. Regulating labor, trade, mining or manufacturing. . . .

The Pennsylvania Act does not violate Section 32. First, the act does not constitute a "special law." In Commonwealth v. Webb, 1 Pa. Cmwlth. 151, 162, 274 A.2d 261, 267 (1971), the Commonwealth Court held:

[I]n the exercise of the police power, and in the interest and for the protection of the public, the state may, without denial of the equal protection of the laws, reasonably regulate a business, a useful trade, occupation, or profession which may prove injurious to the public, just so the legislation is not discriminatory in the sense of applying unequally to persons pursuing or engaged in the same calling, profession, or business under the same or like conditions and circumstances.

The Pennsylvania legislation at issue in this case benefits the public interest and is a valid and reasonable exercise of the police power.<sup>33</sup> While the Act distinguishes the motion picture industry

<sup>33/</sup> Plaintiffs rely heavily on Hertz Drivurself Stations, Inc. v. Siggins, 359 Pa. 25, 58 A.2d 464 (1948). For the purposes of this case, however, Hertz stands for the proposition that a law must bear a reasonable and substantial relation to an end which serves the public interest. 359 Pa. at 47, 58 A.2d at 476. The Pennsylvania Act satisfies this standard.

from other trades, it applies equally to persons and firms within that business. The Act, therefore, constitutes a general law not subject to the provisions of Article III, Section 32 of the Pennsylvania Constitution. Kroger Co. v. O'Hara Township, 481 Pa. 101, 392 A.2d 266 (1978) is not to the contrary. In Kroger, the Pennsylvania Supreme Court held unconstitutional Pennsylvania's Sunday Trading Laws, known also as blue laws. The Pennsylvania blue laws represented exactly that type of special legislation § 32 was meant to combat:

[W]hen a law which prohibits business activity is riddled with exception after exception, a time comes when the general scheme is so diluted that it violates the equal protection of the laws.

481 Pa. at 116, 392 A.2d at 273.

Even if the Pennsylvania statute is considered a "special law," it passes muster under Kroger. Kroger held that § 32 mandates careful scrutiny of any special law regulating trade. Although the Court explicitly deferred the question of what is the appropriate test, I have little doubt that the highest court of this Commonwealth would

hold that the legislative classification must have a (1) fair and substantial relationship to the object of the legislation and (2) must substantially further the statutory objective. The first part of the test is derived from previous pronouncements of the Court. See Mover v. Phillips, 462 Pa. 395, 400, 341 A.2d 441, 443 (1973) In re Estate of Cavill, 459 Pa. 411, 329 A.2d 503 (1974). A fair and substantial relationship is one which rests "upon some ground of difference which has a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike." Kroger, 481 Pa. at 119, 392 A.2d at 275.

The Kroger case itself mandates that the legislation must substantially further the statutory objective to pass muster under §32. 481 Pa. at 121-22, 392 A.2d at 276.<sup>34</sup>

The Pennsylvania Feature Motion Picture Fair Business Practices Law presents a classification which bears a fair and substantial relationship to the legislative objective. I have described the problems specific to the movie industry which the Act addresses. The Act also substantially furthers the statutory objective. While it does not right every wrong, it takes a step toward remedying unfair and deceptive practices which often occur in the licensing of motion pictures.

<sup>34/</sup> Even if the Pennsylvania Supreme Court were to apply to Article III, Section 32 of the Pennsylvania Constitution the most stringent test under federal equal protection analysis, i.e., that the law must be necessary to the accomplishment of a compelling state interest, Palmore v Sidoti, 104 S.Ct. 1879, 1882 (1984), the Pennsylvania Act would satisfy that standard.

## IX. CONCLUSION

The effect of the Pennsylvania statute on the businesses of both exhibitors and distributors has been miniscule compared to the competing claims that it is a salvation and damnation. The Act has not materially affected the bottom lines of either the distribution or exhibition businesses. The ingenuity and adaptability of both retailers and wholesalers of movies has far outdistanced the modest proscriptions of the law. Trade screening of prints is a minor problem in the scheme of producing movies. The trade screening requirement seems to concern the middle management cost accountants of the wholesale movie business, but does not materially affect production, distribution or profitability of the business. Trade screening does, however, benefit those exhibitors who use it to select films on the merits of likely box office issues. The requirements of open bidding, prohibiting guarantees and advances and limiting exclusive first runs to 42 days work benefits by promoting wider dissemination of films and fairer trade practices, with little negative impact. Matters of importance in the film business turn on luck, market power, money, sharp dealing and other factors unrelated to the relatively minor and modest trade practice regulation of the Pennsylvania Act.

Marvin Katz

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ASSOCIATED FILM DISTRIBUTION  
CORPORATION, et al.

vs.

THE HONORABLE DICK THORNBURGH,  
et al.

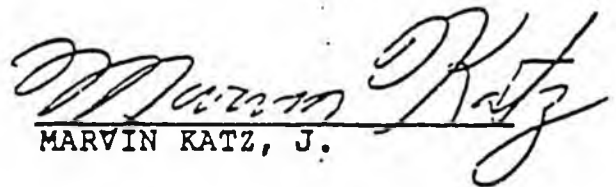
: CIVIL ACTION  
:  
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: NO. 80-1179

O R D E R

AND NOW, this 5<sup>th</sup> day of August, 1985, judgment is entered  
in favor of defendants and against plaintiffs, declaring that the  
Pennsylvania Feature Motion Picture Fair Business Practices Law is  
constitutional.

I direct entry of this final judgment under Rule 54(b), there  
being no just reason for delay.

BY THE COURT:

  
MARVIN KATZ, J.



March 24, 1986

Senator Pat Rodey  
Chairman  
Senate Judiciary Committee  
P.O.Box "V"  
Juneau, Ak. 99811

Dear <sup>Pat</sup> ~~Senator~~ Rodey:

As part-owner of the Fairbanks Entertainment Center, Inc. it has come to my attention that legislation has been introduced for a Fair Motion Picture Practices Act, House Bill 551.

I support this legislation as it promotes fair business practices in the motion picture industry in Alaska.

Sincerely,

Larry Carpenter  
Chief Executive Officer, Churchill Group, Lmtd.

LC:llv



March 24, 1986

Senator Pat Rodey  
Chairman  
Senate Judiciary Committee  
P.O. Box "V"  
Juneau, Ak 99811

Dear Senator Rodey:

As manager of the Picture Show Theater of the Fairbanks Entertainment Center, it has come to my attention that legislation for a Fair Motion Picture Practices Act, House Bill 551, has been introduced.

I support this legislation as it promotes fair business practices in the motion picture industry in Alaska.

Sincerely,

Stephen A. Crandall  
Manager, Picture Show

SAC:llv

# FTC

## FLETCHER THEATRES & COMMUNICATIONS

Theatres - Broadcasting

300 ADAMS ST., SEWARD, AK 99664 (907) 224-5973

March 21, 1986

Senator Pat Rodey  
P.O. Box V  
Juneau, AK 99811

*File  
SB 363*

Dear Senator Rodey:

I am writing you on behalf of House Bill 551.

I strongly believe in bidding fairness as is the case with bids for construction, state bids etc.

I support the House Bill 551 in that it eliminates the blind closed type of bidding I have had to contend with in past years.

Kindly give this matter your utmost attention giving us, the Exhibitor, and Citizen working in Alaska, your sincere consideration.

Thanking you, I am

Sincerely yours,

*[Signature]*  
W. E. "Skip" Fletcher  
Fletcher Theatres/Communications

CC: Mitch Gravo

TESTIMONY OF DAVE GROSS  
GROSS ALASKA THEATRES  
REGARDING  
HOUSE BILL 551, SENATE BILL 363  
BEFORE THE HOUSE LABOR AND COMMERCE COMMITTEE  
AND SENATE JUDICIARY COMMITTEE  
MARCH 26, 1986

REPRESENTATIVE NAVARRE, SENATOR RODEY, AND MEMBERS OF THE HOUSE LABOR AND COMMERCE COMMITTEE AND THE SENATE JUDICIARY COMMITTEE, MY NAME IS DAVE GROSS AND I AM HERE TODAY IN OPPOSITION TO HB 551, AND SB 363.

WHAT YOU HAVE BEFORE YOU ARE BILLS WHICH PURPORT TO "PROMOTE THE SURVIVAL OF SMALL, INDEPENDENT EXHIBITORS," BUT WHICH WERE DRAFTED AND INTRODUCED BY THE STATE'S LARGEST THEATRE CHAIN OWNER WITHOUT THE KNOWLEDGE OF OR ANY CONSULTATION WITH THE INDEPENDENT EXHIBITORS.

GROSS ALASKA THEATRES IS THE ONLY ALASKAN OWNED THEATRE CHAIN IN THE STATE. OUR THEATRES ARE LOCATED IN JUNEAU, SITKA, AND KETCHIKAN. THE COMPANY HAS BEEN OWNED AND OPERATED BY MY FAMILY SINCE THE GOLD RUSH DAYS WHEN MY GRANDFATHER AND CAP LATHROP WERE PARTNERS IN THE FIRST HAND-CRANKED MOVING PICTURE BUSINESS IN THE TERRITORY.

I CONSIDER MYSELF A SMALL, INDEPENDENT THEATRE OWNER IN COMPARISON TO TOM MOYER THEATRES AND FESTIVAL ENTERPRISES - BOTH LARGE OUT-OF-STATE OWNED CHAINS. I CERTAINLY DO NOT SEE MY SURVIVAL AS A LOCAL FAMILY - OWNED BUSINESS PROMOTED NOR PROTECTED BY THIS LEGISLATION. I AM SURE THAT THE OTHER LOCAL INDEPENDENTLY OWNED AND OPERATED THEATRES IN JUNEAU, KODIAK, PETERSBURG AND SOLDATNA ARE CONCERNED ABOUT THE REGULATORY RESTRICTIONS IMPOSED BY THIS PROPOSED LEGISLATION. IN FACT, I BELIEVE THAT THE PURPOSE OF THE LEGISLATION IS TO HELP THE LARGEST CHAINS, LIKE TOM MOYER THEATRES, USE THEIR DEEP POCKETS TO OUT BID SMALLER INDEPENDENT THEATRES OR TO PROVIDE AN ADDITIONAL BASIS FOR LITIGATION AGAINST THE FILM DISTRIBUTORS, ATTEMPTING TO FORCE THE BEST FILMS EXCLUSIVELY INTO THEIR THEATRES.

I BELIEVE THAT STRONG COMPETITION AMONG THEATRE OWNERS IS GOOD FOR THE CONSUMER, AND THAT IS PRECISELY WHAT WE HAVE TODAY IN ALASKA - STRONG COMPETITION WHICH BENEFITS BOTH THE STATE AND ALASKAN CONSUMERS, GIVING US STRONG BUSINESSES AND THE BEST PRICES. TOM MOYER THEATRES, UPON PURCHASING THE WOMETCO CHAIN IN ANCHORAGE, AND FAIRBANKS, THOUGHT IT WAS BUYING A MONOPOLY IN THOSE COMMUNITIES, BUT WAS LATER FACED WITH COMPETITION BY NEW THEATRES SUCH AS THE FESTIVAL SCREENS IN ANCHORAGE AND EAGLE RIVER. RATHER THAN TRYING TO PROMOTE COMPETITION, THIS LEGISLATION WOULD EVENTUALLY STIFLE IT AND RETURN US TO A NON-COMPETITIVE SITUATION.

THE PROBLEMS BEING ADDRESSED BY THE BILLS ARE NOT PROBLEMS FOR MOST THEATRE OPERATORS. TRADE SCREENING IS NOT A PROBLEM, AS WE ALL USE BOOKING AGENTS WHO PREVIEW FILMS FOR US IN SEATTLE. THE VAST MAJORITY OF FILMS WE SHOW ARE TRADE SCREENED IN THEIR ENTIRETY BEFORE WE BID OR NEGOTIATE FOR THEM WITH THE DISTRIBUTOR. WE SEE NO NEED FOR MANDATORY BID PROCESSES, THE DISTRIBUTORS SEEK TO MAXIMIZE THEIR RETURN ON FILMS IN EITHER CASE - THROUGH BID OR NEGOTIATION. THE DISTRIBUTOR MAY FAVOR A MANDATORY BID SYSTEM AS THEY WOULD REAP THE HIGHEST PROFIT POSSIBLE. THIS WOULD SEVERELY LIMIT THE ABILITY OF THE SMALL BUSINESS TO COMPETE FOR THE LARGER GROSSING FIRST-RUN FEATURE FILMS. THIS CONTRASTS WITH THE PRESENT OPEN MARKET WHERE THE SMALLER THEATRE OWNER CAN PROVIDE QUALITY ENTERTAINMENT AT A PRICE BOTH HE AND THE CONSUMER CAN AFFORD.

A PROBABLE RESULT OF THE BID PROCESS AS IT IS SET FORTH IN SB 363 AND HB 551 WILL LIKELY BE LITIGATION ON THE ACCEPTABILITY OF BIDS. THIS WOULD NOT BE IN THE BEST INTERESTS OF THE STATE AS IT FAVORS THE LARGE CHAINS WHO CAN AFFORD THE EXPENSE OF LENGTHLY LITIGATION - NOT THE SMALL OWNER.

ALL I WANT IS THE OPPORTUNITY TO SUCCEED OR FAIL AT A BUSINESS WHICH IS NOW IN THE FOURTH GENERATION OF MY FAMILY. I DO NOT WANT RULES AND REGULATIONS WHICH MAKE MY BUSINESS MORE VULNERABLE TO TAKE OVER BY OUT-OF-STATE CORPORATIONS NOR DO I WANT ANY SPECIAL ADVANTAGES OVER MY SMALLER COMPETITORS IN SOUTHEAST ALASKA. IF WE ARE GOING TO START REGULATING THE DISTRIBUTION OF MOVIES IN THIS MANNER, THEN THIS LIST OF PROSCRIBED PRACTICES IS JUST A START. ARE WE GOING TO REGULATE THE DISTRIBUTION OF OTHER COMMODITIES - FOOD, GAS, CLOTHING, BOOKS, OR HARDWARE? MY BUSINESS IS NOT SUBSTANTIALLY DIFFERENT THAN OTHER PROVIDERS OF GOODS OR SERVICES, SO LET'S USE THE FREE ENTERPRISE SYSTEM TO DETERMINE THE RULES.

THANK YOU FOR THE OPPORTUNITY TO SPEAK TO YOU TODAY. IF YOU HAVE ANY QUESTIONS, I WOULD BE GLAD TO ANSWER THEM.

FESTIVAL ENTERPRISES

TESTIMONY OF RICHARD JEHA BEFORE

THE HOUSE LABOR & COMMERCE

& SENATE JUDICIARY COMMITTEES  
regarding HB551 and SB363

MARCH 26, 1986

Senator Rodey, Representative Navarre, and members of the Judiciary and Labor & Commerce Committees, my name is Richard Jeha and I am here today on behalf of Festival Enterprises. Festival Enterprises is the second largest theatre operation in Alaska with 12 screens in Anchorage and Eagle River.

Our theatres, which were opened last year, are among the finest in the United States. We spent over \$10 million to construct the theatres, and employ 150 Alaskans in them. They have state of the art equipment, uniformed ushers, and ample lobbies. We made this investment because we felt that the Anchorage area was underserved given its demographics. We were convinced that new, modern facilities would be well received in a community which was predominantly served by outdated theatres. And after approximately 4 months of operation, we think we were right.

This proposed legislation is not intended to "promote the survival of small, independent exhibitors" or to "promote fair and effective competition in the theatre business". Its intent is to enhance the position of the largest exhibitor in Alaska which, by the way, is the very exhibitor that is proposing this legislation--Mr. Tom Moyer of Luxury Theatres. He presently has 24 screens in Alaska and has announced 11 more screens for 1986. He has also attempted to purchase other existing theatres in Alaska, including ours. Mr. Moyer has very deep pockets. He is the tenth largest exhibitor in the United States. He has the resources to out bid his smaller competitors. Once he forces his smaller competitors out of business, he has a monopoly.

We do not share the same concerns as the proponent of this bill, and we see absolutely no need for its passage. In fact, were this legislation in effect last year when we were evaluating the Alaska market, we would have decided against building our theatres here.

Our business is a highly competitive one. There are only a handful of films each year which are successful enough to produce a decent return for an exhibition. All theatres try

their best to get those films. Sometimes we get them by bids and sometimes by negotiation. We occasionally pay too much for a film, and lose money. But the important thing is that we all have the same chance to use our business skills to promote ourselves to the film producers and distributors.

The film companies consider factors other than the highest bid in granting exhibition rights to a particular theatre. These include grossing ability, location, quality of the theatre, cleanliness, employee service and courtesy, quality of the sound and projection, etc.

Unfortunately, some exhibitors operate their theatres in a manner that brings discredit to our industry. As a result, Paramount, Columbia, DeLaurentiis, Disney, Tri-Star and Twentieth Century Fox Film select the theatres that they will exhibit their films in. The criteria they use is based on patron comfort, quality of presentation and grossing capability. The highest dollar bid does not necessarily mean the best bid. We want to encourage the film companies to take a long term view of the business and not just go for the "quick buck" which may be profitable in the short term, but is not in the best interests of the industry on a long term basis.

This legislation takes away a good bit of the freedom to let the market place determine which theatres get the best pictures. It sets artificial rules that give an increased competitive advantage to the largest theatre chain owner. In Alaska, that is Moyer Theatres, which owns slightly over half the screens in the State and is the 10th largest chain in the United States.

Specifically, the bill requires:

(1) Trade screening of all films in Alaska. None of us need this -- we all preview our films in Seattle, Portland or San Francisco where our agents are located.

(2) Mandatory bidding at request of any theatre owner. We don't need a formal process, as the distributors already have plenty of incentive to get the best return on their product. The proposed process favors the deep pocket who can bid the highest. It will also encourage litigation by disgruntled theatre owners. This also benefits the people who can afford such litigation.

In summary, Chairmen and members of the committees, the free market system that we now enjoy in Alaska is the levellest playing field for competitors. Let's not tilt it to favor one or more players at the expense of the others. If we do, it will alternately be the consumer that suffers the consequences.

The Free Market System works exceedingly well -- Please do not impose unnecessary governmental restrictions that will interfere with free enterprise.

Thank you. I would be pleased to answer questions or provide additional information as you desire.

kn42.75

NEW ORPHEUM THEATRE  
TESTIMONY OF MARISSA TODD BEFORE  
THE HOUSE LABOR & COMMERCE  
& SENATE JUDICIARY COMMITTEES  
regarding HB551 and SB363

MARCH 26, 1986

Senator Rodey, Representative Navarre, and members of the Judiciary and Labor & Commerce Committees, my name is Marissa Todd, and I am here today on behalf of the New Orpheum Theatre of Juneau. The New Orpheum Theatre is a small, independently owned theatre with one screen, here in Juneau. I have owned and operated this theatre for eight years.

I strongly oppose the proposed legislation which you are considering here today because it does not "promote fair and effective competition" or "promote the survival of small, independent exhibitors" as Section 1 of the bill indicates. At the present time, I, as a small, independent theatre owner, am comfortable with the existing free market arrangements. I am free to book my films myself or through a booking agent, and have been able to fairly and effectively compete in that environment. If this proposed legislation is adopted, however, the bidding procedures and the prescreening procedures would dramatically increase my cost of doing business to the point that I would not long be able to compete with the large theatre chains in this State. I am pleased with the current arrangement. I see no need

for government intrusion in an area where the existing free market system is working effectively.

In my eyes this legislation is extremely unnecessary. What it is proposing is a situation that would make it impossible for small, independent theatres, such as mine, to exist. It tips the scales in favor of the very large owners and puts me and many other small independents in an extreme disadvantage. The costs alone, incurred in mandatory screenings held in other parts of Alaska, would be enough to put me out of business. It would make it impossible for someone like me to compete with the large owners.

There are many things wrong with this legislation, as you have heard from the testimony given here. The point that I would like to stress is that the status-quo is fair to both in-state and out-of-state distributors, agents and theatre owners, large and small. There is clearly no reason to adopt unnecessary legislation and regulation on problems that do not even exist.

Small movie theatres provide a service to their communities here in Alaska. Please safeguard their existence by opposing this legislation in any form.

kn42.76

MOTION PICTURE ASSOCIATION OF AMERICA, INC.

TESTIMONY OF SIMON BARSKY BEFORE

THE HOUSE LABOR & COMMERCE

& SENATE JUDICIARY COMMITTEES  
regarding HB551 and SB363

MARCH 26, 1986

Senator Rodey, Representative Navarre, and members of the Judiciary and Labor & Commerce Committees, my name is Simon Barsky, and I am here today on behalf of the Motion Picture Association of America, Inc.

Motion pictures in Alaska, as in most other states, are licensed to theatre owners either by bidding or by negotiated agreements. In negotiations, the distributor seeks the best price and terms for the rights to exhibit a movie, and is free to consider all other relevant facts to a successful business arrangement. In addition to price, the distributor may also take into account theatre quality, maintenance, location, past performance, seating capacity, advertising, parking facilities, and other factors which contribute to a pleasurable public viewing experience. In fact, as the attached movie patron survey indicates, adult movie goers consider factors such as a clean theatre, comfortable seats, and good sound quality to be very important.

In the overwhelming majority of cases, motion pictures are screened for the exhibition prior to the time the motion picture is licensed for exhibition. In 1985, 94 out of 104

films, 93 percent of all motion pictures released by members of the Motion Picture Association of America, Inc. (MPAA) for exhibition in Alaska were trade screened prior to licensing. On occasion, and in particular when a film has a number of special effects or is scheduled for release during the highly competitive Christmas, summer or Easter season, film clips and descriptive materials are used in lieu of the full film preview. The process is termed advance bidding (sometimes misnomered "blind bidding"). The highest grossing picture released in 1985, BACK TO THE FUTURE, was advance bid. 1/ THE COLOR PURPLE, which received 11 Academy Award nominations was also advance bid. For the Alaska market, film previews usually take place in Seattle or Portland, where some of the Alaska theatre chains and the booking agents which handle most of the remainder of the independently-owned Alaskan theatres are headquartered. It makes little sense to require costly duplicate in-state trade screenings when films are already evaluated before licensing takes place.

Alaska now has 54 theatre screens in operation. Sixty-seven percent (36 screens) are owned by out-of-state chain;

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1/ Other high-grossing advance bid films released in 1985 include THE RIVER, SPIES LIKE US, YOUNG SHERLOCK HOLMES, and WHITE NIGHTS.

19 percent (10 screens) by an Alaska-based chain; and 14 percent (nine screens) by other Alaskan independent owners. Tom Moyer Theatres, based in Portland, is the largest out-of-state owner with 24 screens in Anchorage and Fairbanks. Festival Enterprises from California owns 12 screens in Anchorage and Eagle River. Gross-Alaska Theatres, based in Juneau, owns 8 screens in Juneau, Sitka and Ketchikan. The remaining screens are small independents located in Petersburg, Seward, Kodiak, Juneau and Soldotna.

#### ISSUE

The Moyer Theatre chain has requested introduction of SB 363 and HB 551, which would for the first time establish state regulation of motion picture licensing. These bills, which have provisions nearly identical to legislation sponsored by Moyer Theatres that have already been rejected in the state of Washington, would require that all films licensed in Alaska be first trade screened in the state and that when requested by any theatre owner, all licensing be on an open bid basis. The Washington State Commerce and Labor Committee turned down this proposal after the rest of the exhibition community, fearful that this legislation would force them out of the market place, rose in opposition to the bill.

While the proposed legislation has been portrayed as beneficial to all theatre owners, including the Alaska-based businesses, this is not the case. In reality, while purporting to fix problems that do not exist, the proposal favors the Moyer chain at the expense of other owners. This special interest legislation should be viewed as a "Trojan Horse" designed to give the largest theatre chain in the state the competitive edge.

The 310 screen Moyer chain is the tenth largest in the U.S., currently owns 44% of all Alaskan theatres, and therefore has the financial resources to outbid the other theatres in the short run, thus preventing them from getting the best films. It is also in an aggressive takeover posture, having offered to purchase many of the remaining Alaskan based theatres. Passage of SB 363 and HB 551 would facilitate this chain's drive to become a monopoly in Alaska by requiring costly bidding wars that would drive the smaller exhibitors out of the marketplace and lessen the quality of motion picture exhibition. Motion picture distributors would no longer be able to choose to license a motion picture to an exhibitor who takes pride in his theatre.

While creating a competitive advantage for Moyer Theatres, these bills create disadvantages for other theatre owners. These measures will create bidding wars for motion pictures which will harm the local exhibition industry and benefit the large out-of-state chains. They increase the potential for litigation, when most independent owners do not

have the resources for expensive court fights as do the large chains like Moyer Theatres. They would also hurt the movie-going public by risking delay in the opening of films and increasing the cost of admission tickets. In fact, under the requirements of these bills, a film could not safely be licensed in Alaska until it had been licensed in every other state to ensure that the distributor did not accept a bid anywhere else in the country that was lower than the bid rejected in this state. The bill would force the special nature of the Alaska market to be ignored in licensing motion pictures, and would make deep pockets, rather than decent theatres, the key to success in Alaska.

The current unregulated environment of the motion picture business in Alaska has worked well since territorial days when Cap Lathrop and W. D. Gross first showed hand-cranked moving pictures to frontier saloon patrons. The status quo is fair to both in-state and out-of-state distributors, booking agents, and theatre owners. It has even allowed Moyer Theatres to prosper in the Anchorage and Fairbanks market. Let's not spend time imposing unnecessary regulations on problems which do not exist.

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## Movie Study Highlights

"Newsday," the Long Island, New York, daily newspaper, recently conducted a "Movie Study," making telephone calls to a sampling of adults and teenage residents of Nassau and Suffolk Counties. Below, are some of the highlights from that study.

### ADULTS

#### ● PRICE INFORMATION

● On average, moviegoers spend \$4.25 to see a film and \$1.80 at the theatre's concession stand (on themselves).

● Seven out of ten moviegoers report having paid full price (or \$5.00) to see a film in the past three months.

● 28% of all moviegoers mention having attended movies at a discount price (between \$1.50 and \$2.50 per ticket) in the past three months. Slightly more than half the movies these people have attended in the past three months have been at discounted prices.

● 45% of discount ticket moviegoers claim they would wait several weeks to see a movie at a discount price rather than spend full price, while 30% would buy a full price ticket in order to see a movie sooner. 15% report their decision would depend on the movie.

#### ● DESCRIPTIVE RATINGS

● The following list of items associated with movies and moviegoing are considered to be "very important" by adult moviegoers:

A clean theatre	74%	A movie's rating, such as PG or R	33%
Comfortable seats	71%	Special rates for children	31%
Good sound quality	71%	Matinees	30%
Separate sections for smokers & non-smokers	66%	Dolby stereo	29%
A safe neighborhood	65%	A director	19%
Plenty of parking	59%	First-run or premiere showings	18%
Convenient location	59%	A well stocked concession stand	17%
A large screen	49%	Ushers	15%
An actor or actress	44%	The Academy Awards	15%
Discount prices	42%	A producer	15%
		Midnight show times	9%

● Moviegoers were asked their degree of agreement or disagreement with a list of items dealing with more subjective feelings about movies. The percentage of adult moviegoers who strongly agreed with each statement is shown below:

There should be more films for the whole family	53%	Movies are a good way to spend a few hours away from home	43%
Movies should be less violent	52%	I like movies that make me think	38%
I just want to be entertained when I go to the movies	49%	I like movies that show a realistic view of life	37%
		I like movies with special effects	36%

● DESCRIPTIVE RATINGS (continued)

I feel movies are an excellent form of family entertainment	35%	Movies should be a cultural experience	22%
Going to the movies is a social event	33%	Movies are a good value for the money	19%
There's too much sex in movies	31%	I go to the movies to escape the everyday pressures of life	15%

● MOVIE INFORMATION

The demographic characteristics of adult moviegoers are as follows:

- 50% male/female
- 43% 18-34 years old; 37% 35-54 years old; 20% 55 years or older
- 20% have annual family incomes of \$40,000 or more; 27% have family incomes between \$25,000 and \$40,000
- 65% have at least some college education
- 42% live in households where the chief wage earner has a professional/managerial job
- 62% are married; 26% are single, never married.

TEENAGERS

● MOVIEGOING BEHAVIOR AMONG TEENS

● Ninety-six percent of all teenage respondents have gone to the movies in Nassau-Suffolk in the past 12 months.

● Of these moviegoers, 42% say they are going "more often compared to a year ago," 36% "about the same" and 22% "less often."

● Among the teenagers who are going "more often" the volunteered reasons center around:

Good/better movies	43%
Being older/having a driver's license	12%
Having money to go	7%

● Among the 22% going to the movies "less often," the reasons offered are:

Being too busy/no time	28%
Not too many good movies/quality of movies decreasing	10%
Films not interesting/compelling	10%
Because of a job	10%

● 58% of all teenage moviegoers have gone more than once a month. The average number of times all moviegoers have attended in the past three months is 5.4.

● Eight out of ten moviegoers report usually going to the movies with friends, 26% with family and 14% with a date. (Multiple answers were allowed).

● 31% of all teen moviegoers attend a movie within a week after it opens on Long Island, 37% between one and two weeks, 15% between two and three weeks and 10% three weeks or longer.

(continued)

●PRICE INFORMATION

●Teen moviegoers spend, on average, \$4.00 to attend a movie and \$2.60 at the theatre's concession stand (on themselves).

●Seventy-seven percent of moviegoers say they have paid full price or \$5.00 to see a film in the past three months.

●Thirty-six percent of all teen moviegoers mention having attended movies at a discount price (between \$1.50 and \$2.50 per ticket) in the past three months.

●An average of 44% of all movies seen by these discount ticket moviegoers in the past three months have been at a discount price.

●Fifty-seven percent of discount ticket moviegoers would rather buy a full price ticket to see a movie sooner rather than wait several weeks to see it at a discount price; 27% would wait, while 10% say it depends on the movie.

●DESCRIPTIVE RATINGS

●Teen moviegoers rate the following list of moviegoing items as "very important":

A clean theatre	54%	A movie's rating such as PG or R	23%
Comfortable seats	65%	Special rates for children	23%
Good sound quality	67%	Matinees	19%
Separate sections for smokers & non-smokers	52%	Dolby stereo	40%
A safe neighborhood	48%	A director	17%
Plenty of parking	24%	First-run or premiere showings	18%
Convenient location	55%	A well stocked concession stand	32%
A large screen	53%	Ushers	11%
An actor or actress	45%	The Academy Awards	12%
Discount prices	37%	A producer	16%
		Midnight show times	15%

●"Strongly agree" feelings were generated by this list of items:

There should be more films for the whole family	43%	Movies are a good way to spend a few hours away from home	64%
Movies should be less violent	14%	I like movies that make me think	31%
I just want to be entertained when I go to the movies	51%	I like movies that show a realistic view of life	39%
I feel movies are an excellent form of family entertainment	42%	I like movies with special effects	53%
Going to the movies is a social event	41%	Movies should be a cultural experience	9%
There's too much sex in movies	14%	Movies are a good value for the money	27%
		I go to the movies to escape the everyday pressures of life	13%

●MOVIE INFORMATION

●43% of teen moviegoers find friends or family to be their main source of movie information; 39% newspapers; 38% T.V.; and 6% radio. (Multiple answers were accepted.)

Bradley  
1/31/86

Original sponsor: Judiciary Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 363 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Motion Picture Fair Competition."

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

8 \* Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is

9 (1) to establish fair and open procedures for bidding and  
10 negotiation for the right to exhibit motion pictures in the state in order  
11 to prevent unfair and deceptive acts or practices and unreasonable  
12 restraints of trade in the business of motion picture distribution and  
13 exhibition within the state;

14 (2) to promote fair and effective competition in that business;

15 (3) to prevent the award of motion picture licenses on other  
16 than an individual, picture-by-picture, theatre-by-theatre basis;

17 (4) to promote the survival of small, independent exhibitors;

18 and

19 (5) to ensure that an exhibitor has the opportunity to view a  
20 motion picture and know its contents before deciding to exhibit the motion  
21 picture in the community.

22 \* Sec. 2. AS 45 is amended by adding a new chapter to read:

23 CHAPTER 51. EXHIBITION OF MOTION PICTURES.

24 Sec. 45.51.010. PROHIBITED AND REQUIRED PRACTICES. (a) The  
25 buying or selling of the right to exhibit a motion picture by blind  
26 bidding or blind selling is prohibited in the state.

27 (b) Bids may not be returnable, negotiations for the licensing  
28 or exhibition of a motion picture may not take place and a license  
29 agreement and its terms may not be agreed upon for the exhibition of a

1 motion picture in the state before the motion picture has been trade  
2 screened.

3 (c) A distributor shall provide reasonable and uniform written  
4 notice to each exhibitor in the state at least 72 hours before a trade  
5 screening.

6 Sec. 45.51.020. SOLICITATION OF BIDS. (a) When a bid is solici-  
7 ited from exhibitors relating to the exhibition of a motion picture in  
8 the state,

9 (1) the invitation to bid shall specify

10 (A) whether the bid being solicited is a first, sec-  
11 ond, or subsequent run;

12 (B) whether the run is an exclusive or nonexclusive  
13 run and the geographic area for the run;

14 (C) the name of each exhibitor who is being solicited;

15 (D) the date and hour the invitation to bid expires;

16 and

17 (E) the time, date, and the address in the largest  
18 city in the state where the bids will be opened;

19 (2) all bids shall be submitted in writing and shall be  
20 opened at the same time and in the presence of the exhibitors who  
21 submitted bids or their agents who attend the bid opening;

22 (3) immediately upon being opened, the bids shall be ex-  
23 amined by the exhibitors who submitted bids or their agents who attend  
24 the bid opening;

25 (4) within 10 business days after the bids are opened, the  
26 distributor shall advise each exhibitor who submitted a bid

27 (A) of the name of the highest bidder; and

28 (B) the name of the bidder who received the award of

29 exhibition rights; or

1 (C) that each bid submitted was unacceptable

2 (b) Once bids are solicited under (a) of this section, the  
3 distributor may solicit rebids only if each bid is unacceptable.

4 (c) If an exhibitor notifies a distributor that it wishes to  
5 submit bids for motion pictures released by the distributor in a  
6 particular area of the state designated by the exhibitor, the exhibi-  
7 tor and each competing exhibitor shall be solicited for bids for the  
8 first or second run of each motion picture to be released by the  
9 distributor in the designated area.

10 Sec. 45.51.030. REJECTION OF BIDS. The decision of a distribu-  
11 tor that a bid is an unacceptable bid is conclusive unless a  
12 reasonable person could not have made that judgment.

13 Sec. 45.51.040. VIOLATION. A person aggrieved by a violation  
14 of this chapter may bring a civil action in superior court to enjoin  
15 further violations and to recover damages.

16 Sec. 45.51.050. DAMAGES. If the violation of this chapter is  
17 determined to be intentional, an aggrieved exhibitor may recover  
18 punitive damages necessary to deter a similar violation in the future.

19 Sec. 45.51.060. WAIVER. A purported waiver of rights estab-  
20 lished by this chapter is void and unenforceable and this chapter  
21 shall be liberally construed to achieve its purpose.

22 Sec. 45.51.100. DEFINITIONS. In this chapter

23 (1) "blind bidding" means an exhibitor's bid or negotiation  
24 for or the exhibitor's offer or agreement to terms for the license to  
25 exhibit a motion picture at a time either before the motion picture  
26 has been trade screened in the state or before the motion picture has  
27 been otherwise made available for viewing in the state by all exhibi-  
28 tors;

29 (2) "blind selling" means the distributor's agreement to

1 license a motion picture before an exhibitor has been afforded an  
2 opportunity to view the motion picture by trade screening;

3 (3) "buying" or "selling" of the right to exhibit a motion  
4 picture means the licensing of a theatre to show the motion picture  
5 for a specified number of days for a specified price;

6 (4) "distributor" means a person engaged in the business of  
7 distributing more than one motion picture during a calendar year to  
8 exhibitors by rental, sale, licensing, or other agreement;

9 (5) "motion picture" means a feature motion picture exceed-  
10 ing 60 minutes in showing time;

11 (6) "run" means the continuous exhibition of a motion  
12 picture in a defined geographic area for a specific period of time;

13 (7) "trade screening" means an exhibition of a motion  
14 picture, before its release for public exhibition by a distributor;

15 (8) "unacceptable bid" means a bid that is inferior to the  
16 lowest bid the distributor would accept for the same run of the same  
17 picture in an area having a population equal to or greater than the  
18 population of the area for which the inferior bid was made.  
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