

HB

232

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HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HB 232**

Prohibit Unsolicited Fax Transmissions

Received March 20, 1989
by Reps. Hoffman and Boucher

Heard April 6, 1989
Heard April 25, 1989
Heard January 24, 1990

Committee Substitute adopted January 24, 1990

Passed Out of Committee January 24, 1990
4 Do Pass
2 No Recommendation

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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 20, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 232

HOUSE BILL NO. 232

[PROHIBIT UNSOLICITED FAX TRANSMISSIONS]

"An Act relating to the use of facsimile devices for commercial solicitation."

RECOMMENDATIONS:

- be replaced with CS HB 232 (SA) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis Dept law

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

[Signature]
Gilbert P. Mashean
[Signature]
Chuck Doolley

SIGNING:	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

[Signature]
 Chairman's Signature

Item 2

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 232
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: January 18, 1990
Title: "An Act relating to the use of facsimile devices for commercial solicitation."
Sponsor: Repr. Hoffman
Requestor: House State Affairs

Agency Affected: Department of Law
BRU: Consumer Protection
Components: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

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

Phone: 465-3672
Date: January 18, 1990

Approved by Commissioner: *Richard I. Pegues / FOR /* Douglas B. Bailey, Attorney General
Agency: Department of Law

Date: January 18, 1990

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

This bill amends AS 45.50 by adding a new section that would make an unsolicited commercial transmission to a facsimile device a prohibited act under the Unfair Trade Practices and Consumer Protection Act. The bill also provides a private right of action, under AS 45.50.531, for persons who receive commercial solicitations in violation of the prohibition. Because of the private right of action provided in the bill, state enforcement is not anticipated. Consequently, there should not be a fiscal impact for the Department of law. In any event, state enforcement is unlikely because of the 63 percent reduction in the department's consumer protection activities since FY86, which has been caused by state budget reductions.

House bill attacks junk mail by fax

JUNEAU — The newest route for junk mail is through facsimile machines, and Rep. Lyman Hoffman wants to hang up on such unsolicited advertising. House Bill 232 would prohibit people from sending unsolicited advertisements through facsimile machines, and would establish a \$200 minimum civil penalty for violations of the ban. The Bethel Democrat said he introduced the legislation Monday at the request of a constituent. Machine owners must pay for the paper consumed by electronic junk mail and sometimes must wait to use their machines while unsolicited advertisements are coming in over the telephone line, Hoffman said.

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279-8170

Anchorage Daily News

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commercial FAX machines only.*



Backgrounder

038903

States Information Center
The Council of State Governments
Iron Works Pike
P.O. Box 11910
Lexington, KY 40578
(606) 252-2291

Date: March, 1989
Topic: JUNK FAX
Infokey: Communications
(NT) Telephone

FAX ATTACKS: "And now an unsolicited message from..."

Facsimile \ 'fak-sim-e-le\ "A unit that scans and encodes a document into electrical signals and sends them over telephone lines to the receiver where the signals are reconstructed to produce an exact duplicate of the document."¹

Junk Fax \ 'junk Fax\ "unsolicited advertising messages transmitted via facsimile machines."²

Facsimile systems - fast, convenient, comparatively inexpensive and reliable- are fast becoming a favorite method of communication. Two million fax machines have been sold in the United States³ in the last few years. More than four million are expected to be sold by 1991.³ Last year an estimated 785,000 units were installed, almost doubling the number in use.⁴

These machines tend to be turned on and hooked up to dedicated phone lines 24 hours a day. The Trojan horse of office equipment, they then receive any document that is sent to them. Although the sender pays for the phone call, the transmissions tie up the fax machine at an average of a minute a page, and the receiver has to pay for the thermal-coated paper on which the incoming document is printed. Such paper costs up to ten cents per page.

Fax machines are vulnerable to a rising tide of junk fax. Fax advertising presents endless opportunities for advertisers. One entrepreneur reports a 6.75 percent⁵ response rate to his fax advertisements, compared to the usual one percent. However, not all recipients of these ads are so enthusiastic. Representative Ken Jacobsen of Seattle, Washington terms the tactic the "ultimate in abusive use of a private communication system....You get a message you didn't want from people you don't know on paper they didn't buy."⁶ Consequently, a number of states are drafting legislation to restrict junk fax transmissions.

Connecticut:

HB-6620, introduced by Rep. Nania (R-63rd), prohibits "the transmittal of unsolicited commercial messages through the use of machines which send or receive facsimiles through the telephone."

*This CSG Backgrounder was compiled by Karen Marshall, Information Specialist, States Information Center, The Council of State Governments.

Note: *Backgrounder* information is the latest available at the time of publication, but for updates, you should contact the appropriate state or federal agency directly. This material does not represent the position of The Council of State Governments. Information is included based on relevance to the topic. Some material, as noted, is copyrighted and may not be reproduced further without permission of the original publisher. Contact the States Information Center or the writer at CSG.

CSG Backgrounder -- Junk Fax

HB-5396, co-sponsored by Rep. Tulisano (D-29th) and Rep. Taborsak (D-109th), states that "no person shall use a machine that electronically transmits facsimiles of documents through connection with a telephone network to transmit unsolicited advertising material which proposes a commercial transaction." It fines violators \$200 or more. In addition, HB-5396 declares a person guilty of harassment when "with intent to harrass, annoy or alarm another person, he electronically transmits a facsimile of a document through connection with a telephone network, in a manner likely to cause annoyance or alarm."

Maryland:

HB-1319, Consumer Protection - Unsolicited Facsimile Transmissions by adding to Section 14-1313 of the Commercial Law, sponsored by Delegates Gilbert Genn (D-16th) and Lawrence Wiser (D-18th). Violation of the section could initiate a civil action by the Attorney General with a penalty not to exceed \$1,000 per violation.

New Mexico:

HB-494, sponsored by Representative Leonard Lee Rawson (R-37th), as amended by the Judiciary Committee, prohibits transmittal of any unsolicited commercial facsimile messages "for the sale of any real property, goods or services." The civil penalty is one thousand dollars per violation. HB-494 differs in that the state corporation commission would enforce the provisions through the adoption of rules and regulations.

New York:

SB-3082, introduced by Senator Michael Tully (R-7th) as an act to amend the general business law. Unsolicited facsimile transmissions are those "without the express prior request of the person called". The court may impose a civil penalty of not more than one thousand dollars for each violation.

Oregon:

HB-2227, through the House Environment and Energy Committee and Senate Telecommunications and Consumer Affairs Committees, prohibits use of fax machines to "transmit unsolicited advertising material for the sale of any realty, goods or services." Violations would be prosecuted through the state attorney general's office under consumer protection statutes.

Washington:

HB-1513, introduced by Representatives Jacobsen, Todd, Anderson, Heavey, K. Wilson, Dellwo, Beck, Bowman and Appelwick, as amended by the Committee on Energy and Utilities, bans "transmission to a facsimile device for purposes of commercial solicitation"... "without making a request to the party who will receive the transmission, asking for permission to make the transmission. The transmission can only be made upon receipt of an affirmative response from the party who will receive the transmission." Violators would face a \$500 fine per offense. "Consent can be given by phone to a particular vendor or general consent can be given by notifying marketing-industry trade associations."

Alternatives to government intervention include unlisted fax numbers or antijunk technology such as a machine that would accept messages only from an approved list of callers. The news media are especially inundated by junk fax, largely from releases by public relations people. According to Frank Martinneau of

CSG Backgrounder -- Junk Fax

Association Trends magazine, the New York Times newspaper has dealt with this problem by changing its fax number every week. Reporters then give out the new number as needed. Martineau thinks that eventually it may be possible to implement a system similar to the Personal Identification Number (PIN) used with automatic bank tellers.¹¹

Junk fax may not be the only innovation to which facsimile machines can be put. Daniel Fishman, co-author of The Book of Fax,¹² envisions some enterprising person entering the business of fax-a-porn.

NOTES

1. Canon U.S.A., Inc., Quickstart, New York: Canon U.S.A., Inc., p.21.
2. Herb Kirchhoff, Ed., State Telephone Regulation Report, Vol. 7, No. 4, February 23, 1989, Alexandria, VA: Telecom Publishing Group, p. 1.
3. "Many Climb on Fax Bandwagon, But There Is Potential for Abuse," Lexington Herald-Leader, February 6, 1989.
4. "A Mounting Pile of 'Junk' Fax," Newsweek, July 25, 1988.
5. Ibid.
6. "Lawmakers Consider Ban on Unwanted Ads on Fax Machines," Lexington Herald-Leader, February 26, 1989, p. A8.
7. Herb Kirchhoff, Ed., State Telephone Regulation Report, p. 2-3.
8. Ibid., p. 3.
9. "A Mounting Pile of 'Junk' Fax."
10. "Lawmakers Consider Ban..."
11. Telephone conversation with Frank Martineau, Association Trends magazine, on March 17, 1989.
12. "Many Climb on Fax Bandwagon."

Price -- \$5.00
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From Junk Mail to Junk Fax in No Time at All

In a half dozen years, sales of facsimile machines have gone from next to nothing to more than half a million a year, and predictions are that 2.5 million of the mail-bypass marvels will be installed by 1990. "Will you fax it to me?" has become as common a request as "Mail me a copy" and the newer process is both faster and cheaper. Once the machine has been bought (for \$2,000 and up), all it takes to receive or send messages in a minute is a power line, a phone jack and a supply of paper. Thereafter, the only cost is the phone charge. Some of the new higher-priced models have memory chips to store phone numbers and automatic dialing instructions so they can be programmed to send documents at night when long-distance phone rates are cheapest.

Perhaps it was inevitable that about the time delicatessens began taking lunch orders off a fax machine from the office around the corner, some enterprising vendor would dream up the idea of putting advertising material right in the hands of fax machine owners, using their own paper supplies, and getting their attention in a way that junk mail does not. That's pretty hard to stop. Although some manufacturers supply "closed network" machines with a special built-in 4-digit access code, these systems are primarily for intracompany use in large organizations, not for blocking transmissions from the "outside." Such networks require

that a would-be advertiser acquire the network's special code number and then go into his own sending machine, change the standard code, and after the transmission, switch it back to standard for sending to other recipients—a cumbersome process. But for the ordinary fax user, there is no easy defense against unwanted receipts.

"Junk fax" may not be much of a problem yet, but

some state legislators see dire portents in the technology. Washington Representative Ken Jacobsen has sponsored a bill that would require senders of commercial solicitations to get advance permission from the intended receiver, or face civil action that could bring the unwilling recipient of the fax ad up to \$500. Jacobsen said, "This is the ultimate in abusive use of a private communication system. You get a message you didn't want from people you don't know on paper they didn't buy." The legislation didn't get out of the House before the March 15 deadline

and will be carried over to the next session.

At least five other states considered similar legislation this year—California, Connecticut, Maryland, New York and Oregon. Most would prohibit unsolicited transmission of messages to a facsimile device for purposes of commercial gain or sale of real property, goods or services. Three separate bills introduced in California would make sending unsolicited advertising to a facsimile machine a misdemeanor. At press time in mid-June none of the proposed bills had passed.

'Do it Yourself' Statutory Wills Honored in Four States

To encourage people to make wills and simplify the process, four states have legalized statutory, or standard form, wills.

Financial and legal experts warn that without a will the chances are high that your property will not end up in the hands of those you choose.

California was the first state to recognize a standard will in 1983, followed by Maine and Wisconsin in 1984 and Michigan in 1986. Representative Perry Bullard sponsored the Michigan law because he believed people are intimidated by the thought of visiting a lawyer, and too many people die each year without a will. "Popularity of the statutory will has exceeded our wildest expectations. Strong demand continues even today," he said.

New York is considering legislation now. "Wills should not be a mystery to people," said Assemblyman Jerrold Nadler, author of the New York bill. "This will substantially lower costs for people without complicated or huge estates."

A statutory will provides a basic last will and testament for those with uncomplicated estates who would not otherwise see a lawyer to have one drawn up. When completed and signed, it has the same power as one drawn up by a lawyer. Copies of the forms are usually available from state legislatures or the state bar association free, or for a nominal fee.

Those opposed to the standard forms fear that they might not be properly filled out and might lead to litigation

over the author's intent. For complicated estates, the standard form is inadequate.

Wills determine a number of questions including who gets your property and when they get it, as well as who your children's guardians will be. Wills can also minimize federal estate and state inheritance taxes.

There are certain limits to a will's power, though. For example, most states require that a spouse receive a minimum percentage of an estate unless a prenuptial agreement was signed by both. Also, property owned jointly usually falls to the sole ownership of the survivor, regardless of the provisions of the will. A will cannot change life insurance beneficiaries or the specifications for the use of a trust.

Lobbying backfires as two states thwart unwanted fax messages

The New York Legislature in June approved a bill to put a damper on junk fax by banning the facsimile transmission of all advertisements longer than five pages and restricting the sending of shorter ads to between 9 p.m. and 6 a.m. Violators would be subject to fines of \$100. Connecticut Governor William O'Neill made up his mind to sign similar legislation (which calls for a \$200 fine for sending an unwanted fax) after fax users jammed his office machine for hours with messages opposing the bill.

Court strikes down sales tax exemption on religious papers



The Supreme Court, in a highly divided opinion, has struck down a Texas statute that exempted religious publications from the state's sales tax. The tax was challenged by *Texas Monthly* magazine, which claimed that the exemption was unconstitutional. The magazine had paid about \$150,000 in sales tax under protest in 1985 and sued for a refund. The statute was ruled unconstitutional by a district court, upheld by a state appellate court that said it preserved the separation between church and state, and struck down by a Supreme Court majority of six justices in three separate opinions. Fourteen other states have similar laws giving tax breaks to religious books, magazines and news-

Missouri prepared to rent prison cells, has space to spare



While some states are struggling with prison overcrowding, Missouri is prepared to rent cell space temporarily at the newly constructed Western Missouri Correctional Center in Cameron, for about \$65 per day per inmate. The proposal, modeled after similar ones in Minnesota and Washington, could produce as much as \$10 million in revenue.

Connecticut has highest sales tax in the country

As of July 1, Connecticut's sales tax rose to 8 percent, making it the highest state rate in the United States. The highest total, combining state and local rates, according to *The Wall Street Journal*, is 10 percent at New Orleans International Airport.

Legislators nationwide leap on to flag wugon

All the states except Alaska and Wyoming have laws banning flag-burning, but lawmakers there have said the lack was an oversight. Within two weeks of the Supreme Court's wildly unpopular decision that to protect the principle of free political expression you can burn the flag, legislatures in five states passed resolutions supporting a constitutional amendment against flag-burning, and at least 10 other state legislatures have approved resolutions criticizing the ruling or calling for an amendment to re-

New study says rural families pay more excise tax

Rural families bear the greatest burden of excise taxes, according to a study by the American Agriculture Movement, Washington lobbying organization for farmers. The study concluded that rural families spend 33 percent more for taxes on gasoline, motor oil, tobacco products, utilities and public services than do other Americans.

Two states frown on free school program with commercials

"Channel One," a free 12-minute daily news program for school use created by Whittle Communications Inc., has gotten the cold shoulder from California and New York education officials because it contains two minutes of advertising. The program, tested in six high schools across the country last spring, will be offered free of charge to some 8,000 participating schools. Whittle provides satellite dish, a VCR, television monitors, wire and maintenance in return for an agreement by the school to broadcast the show daily, including two minutes of paid commercials. Greeted by some educators as a potentially valuable service, the program was banned in New York—and California plans to cut state aid to schools that use it.



How the mighty have fallen

bated by the political trauma surrounding Mr Dukakis himself. His popularity in Massachusetts, sky-high last year, has plumbed new depths since he lost the election. By saying he would not run again for governor shortly after announcing his plans for a tax increase, he doomed his package to irrelevance and lost what remained of his political clout. And blame for the budget mess sticks to him. He was deceived, or deceived himself, about revenues that were falling short of projections during last year. That means he was either dishonest or incompetent—either one a blow to his managerial reputation.

Meanwhile all sorts of minor scandals have been breaking around him: shady property deals, corrupt college presidents, vitriolic arguments between his lieutenants. The press fell with glee on the bad timing of Mr Dukakis's latest venture: raising \$100,000 of political funds—which may or may not be for a presidential run in 1992. A week before, Mr Dukakis had made his first political visit to New Hampshire since the election.

Haitians

Pride and prejudice

MIAMI

"FRED" EUGENE was an honours student, a member of the high-school choir, a cook at a nearby Burger King on the edge of Miami's inner city, the pride of his family. Then, in October 1984, he bought a gun and killed himself. The reason: "Fred", born Phede Eugene, was mortified that his girl friend had discovered his darkest secret. He was Haitian, one of those whose families

landed in rickety boats on the pricey sands of Miami Beach in 1980.

Today, Phede Eugene's tragedy serves as a marker against which current attitudes can be measured. With remarkable speed, Haitians have become a successful and valued addition to Miami's rich ethnic mix. With that success has come a pride that was all but missing just five years ago.

When the Eugene family arrived, Haitians were the butts of cruel prejudice. They were treated as unwanted refugees by the federal government; considered a social burden by Miamians; scorned by American blacks and ridiculed for their religious and cultural practices. Worst of all, and uniquely in the history of American immigrants, they were officially branded as a group at high risk of carrying the AIDS virus. Haitian youths like Phede Eugene became "cover-ups", claiming they were Bahamian or American-born blacks.

Today "cover-ups" are rare. The north-east Miami neighbourhood known as Little Haiti throbs with the Caribbean feel of its roots in Hispaniola. Buildings are splashed in bright, primary colours and signs are in

Creole. Some Haitians date the birth of self-esteem to February 7 1986, when Jean-Claude Duvalier, the Haitian dictator, was driven into exile. But probably more important has been the quiet daily successes of individual Haitians in businesses, in schools—indeed, wherever they have matched themselves against others.

Little Haiti began attracting the upper-class Haitian exiles—doctors, lawyers, academics—who had fled the country first to Canada and New York city. Soon a community that began with impoverished and illiterate boat people had accepted the graft of an upwardly mobile middle class. They, in turn, provided role models for others. Meanwhile the federal government apologetically repudiated its AIDS claim, dropping Haitians from the high-risk categories.

But success brings its own perils. Re-enacting the saga of past immigrant groups, the Haitians find that their tradition of tight-knit, highly disciplined families is being diluted in the American melting pot. Teens, who are proving to be stunningly adept at mastering American ways during school hours, are finding it impossible to re-

Stop me before I fax again

WASHINGTON, DC

FAX machines are wonderfully useful, which is why there are more than 2m of them in America. But they are useless or worse when someone is sending you a fax you don't want. "Junk fax"—consisting mostly of unsolicited advertisements and press releases—is the electronic equivalent of junk mail. But it is even more annoying than junk mail because it ties up your machine and uses up your paper. As a result, disgruntled fax owners are taking their case to sympathetic state and federal legislators.

In mid-May Connecticut's governor, Mr William O'Neill, signed a law that bars unsolicited advertising messages from being sent to fax machines in the state. A wave of protests against the

bill—faxed into the governor's office while he was awaiting urgent faxed flood reports from the state Office of Emergency Management—convinced Mr O'Neill to sign it. However, the law exempts political speech, so would not have prevented this fax attack.

A similar lobbying effort backfired in Maryland. The governor's office received more than 340 fax messages in a single day, prompting Mr William Schaefer to approve a law that outlaws fax advertising unless the advertiser already has a business connection with a prospective customer. Mr Steve Ridinger, who heads a fax-paper company, says he organised the protest at the request of his customers. His company, Mr Fax, rewards customers with a free camera for providing the company with 100 new fax numbers. So far, he has compiled a database of 500,000 fax numbers and sends 50,000 fax advertisements a week.

At least 15 other states and the federal government are considering legislation against fax advertising. Fax-industry supporters, such as Mr Ridinger, contend that these laws violate their constitutional right of free speech. But there is no constitutional right to tie up a stranger's fax machine, thereby denying him the ability to exercise his own right of faxed speech.



PCs now doubling as fax machines

By John Hinder
USA TODAY

Quicker than almost anyone expected, the personal computer is turning into a fax machine.

About a dozen firms — including AT&T, Western Union, CompuServe — now sell products that let you "fax" information from a PC to a fax machine.

This week, software giant Lotus Development teamed with MCI Communications to capitalize on this trend. Western Union made PC-to-fax the thrust of a major ad campaign. Western Union now sends 25,000 faxes a day from PCs to fax machines.

"It's become our fastest-growing business service," says Western Union spokesman Warren Bechtel.

The advantages are obvious. If you can fax from a PC, you no longer have to walk down the hall or wait in line to use a fax machine. The PC-to-fax products also let you simultaneously transmit a fax to up to 1,000 fax machines.

How the tech...

Western Union's other computer software programs — some at about \$100 each — convert computer information into a form a fax machine can understand.

If you're typing a letter that you want to fax, you type a few commands and the phone number of where you want the letter sent. Then you dial an electronic mail service, such as AT&T Mail or MCI Mail, and using a modem transmit the information to the service via phone line.

The mail service transmits your fax, but the products don't transmit from fax machines to PCs.

What effect will this have on fax machines?

"Everyone will still have fax machines," says Lotus Steve Smith. "But you'll see them less. It could slow the fax explosion down."

About 5% of today's faxes are sent from PCs to fax machines. Within five years, that figure will jump to 25%, predicts CAP International, a research firm.

01

USA Today 6/9/89
Steve Graff FXI



Abortion frenzy begins

Officials in several states hit the ground running after the U.S. Supreme Court ruling on abortion.

The July 3 ruling in *Webster vs. Reproductive Health Services*, which gave states more leeway in dealing with abortion, prompted Florida Gov. Bob Martinez to call on other states to enact laws restricting abortion. Martinez said he may call for a special session to consider tightening Florida's abortion laws.

Not every governor, however, shares Martinez' sentiments. New York Gov. Mario Cuomo said he would defend his state's current abortion law, which allows public dollars to be spent on abortions.

"My budget for 1990 will call for continued Medicaid funding and I will oppose the inevitable attempt by some legislators to deny fairness to poor people because the Supreme Court follows a lower standard," Cuomo said in a statement released from his office.

In Pennsylvania, Rep. Stephen Freind, R-Havertown, has launched a battle for legislation to tighten abortion laws. Freind said the Supreme Court ruling has opened the door for Pennsylvania to outlaw abortion performed on the basis of the child's sex, to require spousal notification, and to enact waiting periods except in the case of a medical emergency.

Political battles over abortion will be fierce, Freind predicted.

"The other side has been content to let the courts do their dirty work," he said. "You will see them gear up like they have never been geared up before. This battle will be waged at the grassroots level, at the campaign level and in the legislature."

The National Abortion Rights Action League and Right to Life agreed with Freind's prediction and said strategy is being laid.

Olivia Gans, director of American Victims of Abortion, an arm of Right to Life, said her organization will

concentrate in part on legislation prohibiting abortion as a means of birth control or as a way of controlling the sex of a child. Gans said pro-life advocates also want to see an increase in laws requiring parental and spousal notification.

Tamar Abrams, communications director of the National Abortion Rights Action League, said her organization already has earmarked key states where lobbying efforts will be the heaviest. Abrams said states viewed as heavily favoring restrictions on abortion include Alabama, Arkansas, Florida, Georgia, Idaho, Illinois, Missouri, Montana, Nebraska, New Jersey, Pennsylvania, Utah and West Virginia.

Those states believed to favor keeping abortion legal are Alaska, Hawaii, Colorado, Connecticut, Massachusetts, Maine, New Mexico, New York, North Carolina, Virginia and Washington.

Buyers beware: used car trick

Unscrupulous used car dealers have found a haven in South Dakota because of a quirk in a state law, says state Division of Motor Vehicles Director Larry Zwemke.

"We've become an auto washing state for people trying to unload damaged cars in other states," Zwemke said.

The one-year-old law was designed to protect car buyers by requiring the owners of vehicles with more than \$1,000 damage to file a detailed damage disclosure statement with the state, instead of just obtaining a damaged car title. The disclosure statement then must be presented to the new owner along with the title.

Since the law took effect in July 1988, however, Zwemke said the number of damaged out-of-state vehicles entering South Dakota has nearly doubled as unscrupulous damaged car dealers use South Dakota to obtain a clean title for damaged cars. The cars are then sold in states where damaged car

disclosure statements are not required.

"We've probably had 1,000 damaged cars come in from out of state last year," Zwemke said. "The majority have been from Rhode Island, New Jersey and New York."

An interim legislative study commission is examining the problem in preparation for possible legislative action in January.

Battling junk fax

Starting Oct. 1, companies that send unsolicited advertising via fax machine in Connecticut will be violating the law.

Rep. Richard Tulisano, D-Rocky Hill, who introduced the bill in January, received numerous complaints of junk fax attacks from across the country.

"As the number of fax users continues to proliferate, so does the potential for fax abuse," Tulisano said. "It is similar to the problem of junk mail, except junk fax creates a very real expense for the receiver in the form of electricity, special fax paper and occupying time where needed information cannot come in."

Opponents claim the legislation violates constitutional free speech rights, a contention Tulisano dismisses. "When someone's property rights are violated, limits can certainly be imposed," he said.

Tulisano said, however, that interstate faxing over telephone lines will pose an enforcement problem and that "any true regulatory success will ultimately depend on federal action."

Nevada's nonsexist assembly

A female Nevada assembly member struck back this year at the state practice of identifying all members of her legislative chamber as assemblymen.

Assemblywoman Jane Wisdom, D-Las Vegas, led a successful fight in June to change state law to allow her and her female colleagues to use the term assemblywoman on busi-

Aug '89

National Fax Users Committee

P.O. Box 2939
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The Tide Is Turning ...

Early in 1989 the tide seemed to be running in favor of restrictive fax legislation. But that has all changed. Fax users, and there are now 3,000,000 nationally, are complaining that these proposed restrictions will keep them from being able to run their businesses and make them less competitive with competitors in other states and other countries.

And government officials in those states which have passed legislation are beginning to find out that enforcement of these laws represents a huge effort and a multi-million dollar expense.

Nine states have dropped fax legislation, two states (Oregon and New York) have dropped restrictive bills in favor of measures which allow fax users to send messages until they are asked to stop by the recipient. A similar bill is pending in Congress. The Council of State Governments have also adopted model legislation along these guidelines.

Surveys now show more than 75% of fax users are against restrictive fax legislation. The tide has turned and we thought you would want to know.

San Francisco Examiner

Friday, July 14, 1989

Our Legislature is all faxed up

JOHN C. DVORAK

IN A technophobic frenzy, the state Legislature has been trying to outlaw a non-existent problem — the junk fax. That's any unsolicited Fax trying to sell you something. The junk fax doesn't exist, "but it might — someday!" say the legislators. So we'd better stamp it out with need-less legislation — AB 576.

But there's something fishy about AB 576. One of the big promoters of the current junk fax phobia are Assembly members Richard Katz, D-Panorama City, (who spent last Monday whining before the Senate Business and Professions Committee about how it's costing people whole nickels and dimes to receive these junk faxes). Nobody promoting this mania, including junk fax phobe state Sen. Quentin Kopp, I-S.F., can produce any examples of this plague. Nonetheless, a new law is about to be passed by a Legislature with nary a member who can describe how a fax even works. It's unbelievable.

AB 576 is a disaster. It says that you may not transmit an unsolicited fax which has anything to do with the "lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit." The wording is simple — too simple. There is no definition of "advertising material," for example. In the strictest reading it means I cannot fax my editor at the paper asking him if I can write an

extra column this week. My mother cannot fax me telling me that I have a birthday gift at her house and that she wants me to do some work. I pointed this out to the committee and one member said that this was ludicrous, who would complain about these faxes that I just described? In other words, I can break the law without worry. My Mom can break the law and it's OK! Scofflaw.

The fine for my mother is \$500, by the way.

And you small companies that like to fax press releases to the media. Forget it. It might be considered advertising.

So, the flow of information grinds to a halt. You can be sure the Japanese won't pass a law like this. The way I see the issue, if you don't want to receive a fax, then turn off your machine! We don't need laws like this. (A funny aspect to all this is that if I want to get a competitor in trouble I'll just send unsolicited faxes of the competitors flyer to everyone! These legislators have no concept of high-tech hijinks, either!)

One company lobbying against the law sent faxes to its customers, who in turn sent their views to the Legislature. South San Francisco's Jackie Speier, a Democrat, called the faxed messages from her constituents "drivel." She asked why these people didn't send letters like "normal" people. In other words, anyone who uses a fax is an abnor-

mal geek to be shunned. Hey, lady, we're nearing the end of the 20th Century. Check the calendar. Do you still use a quill pen?

The fax is a simple and fast way to get a message through, but be assured that the members of the Assembly do not want to see them. They hate them. They want letters sent that can be opened by assistants and filed away — i.e., ignored. They'd probably like to do away with the phone if they could. "Drivel," she said.

This blatant scorn of constituency because of its use of a modern communication technology is incredible especially in proximity to Silicon Valley. South City voters should oust this woman first chance they get.

Laws against technology and innovation are a bad idea, period. That's what this law is and it must be defeated. Katz says that if the law isn't passed then we'll be inundated by flyers from sandwich shops sent to our fax machines. Will a sandwich shop be going to hire someone full-time to fax out offers for turkey sandwich discounts? *Earth to Katz. Earth to Katz. Come in. Come in.*

Is the law really a cover for the interests of the arcane Postal Service, Federal Express, Purolator, and UPS?

A better law would be to make all legislators publish their fax numbers so the public could tell them what it really thinks.

Amoss, Murray release results of questionnaire sent to voters

CECIL WHIG 5-8-87

Senator William H. Amoss (D-35) and Delegate Ethel Murray (D-35B) recently announced the results of a legislative questionnaire sent to voters in District 5B. Over 1300 citizens voiced their opinions through the printed questionnaire which covered a variety of issues ranging from decriminalization of drugs to the cleanup of the Chesapeake Bay.

"I am pleased with the response to this survey," Senator Amoss said. "Delegate Murray and I use these questionnaires, which are not printed at government expense, to keep us abreast of how voters feel on a variety of important issues facing our district."

According to the survey, District 35B voters overwhelmingly oppose Mayor Schmoke's proposal for decriminalizing drugs. Respondents support mandatory AIDS testing to obtain a marriage license, and the closing of family values in public schools, voters support banning the use of corporal punishment in Cecil County schools.

Most favor an amendment requiring a balanced federal budget. Not surprisingly a majority of respondents support the state's light rail proposal which would provide service to Cecil County.

Respondents were divided on a number of issues including the Chesapeake Bay Cleanup, the use of nuclear power to generate electricity, and the increase in state funding to support child care for needy families.

Eighty-six percent of the respondents opposed Mayor Schmoke's proposal to decriminalize the use and possession of drugs. Ninety-two percent of the respondents, however, favor testing prisoners and law enforcement officials for drug abuse.

The results of the questionnaire indicate that sixty percent of the respondents oppose the effectiveness of the Chesapeake Critical Areas Programs.

Critical Areas Program is development of the Bay's shoreline. Forty percent of those responding, however, felt that Critical Areas Program is ineffective.

In addition, eighty-two percent of the respondents favor appropriations of additional money for Cecil County's Cultural Preservation Pro-

gram. Currently, the program shields certain agricultural lands from development.

On a related environmental issue, fifty one percent of the respondents oppose increasing our reliance on the use of nuclear power.

Seventy-six percent of those responding to the questionnaire rated the County's public school system as good or very good, while two percent rated the school system as excellent. The respondents favored (72 percent to 33 percent) the required teaching of family values, and abstinence from pre-marital sex as part of the school system's curriculum.

Most respondents (83 percent) would ride on the proposed light rail system which would start in Perryville and make stops in Aberdeen and Edgewood on its way to Baltimore. Senator Amoss noted that since the questionnaire was sent, Governor Schaeffer and Secretary of Transportation Richard Trainer have implemented the light rail project and have scheduled the service to begin in the Spring of 1991.

Finally, sixty-percent of Cecil County responses favor the NASCAR raceway.

County residents may contact Senator Amoss at 301-838-7555 or Delegate Murray at 395-8558 for additional information on the questionnaire.

A fax attack

Measure would put an end to electronic junk mail in Md.

By RODERICK ROYAL
The Journal Staff

The way state Del. C. Lawrence Wisner sees it, advertisers could tie up your fax machine with the same kind of junk mail that clogs your mailbox.

Wisner and a fellow Montgomery County Democrat, Del. Gilbert Genn, introduced a bill this year to prohibit unsolicited facsimile messages. Gov. William Donald Schaefer will have to sign the bill sometime this month for it to become a law by the start of the next fiscal year in July.

The bill would impose penalties of \$1,000 on a company that sends unsolicited fax messages.

The governor has not yet decided to sign the bill, but the state attorney general has ruled it constitutional, said Schaefer's press secretary, Louise Hayman.

Wisner is an attorney who said he cannot afford to have his fax machine tied up anymore than he can stand to have his tele-

phone tied up by recorded advertisements. While in the state Senate in 1978, Wisner introduced a bill that made recorded automatic solicitations illegal in Maryland.

Through fax directories and services, advertisers can have access to the fax numbers of companies, Wisner said.

A fax lobbying committee is trying to stir opposition to the bill. Not surprisingly, the National Fax Users Committee is faxing unsolicited messages about the bill and its effects. The committee urges concerned fax users to fax their dissatisfaction about the bill to Schaefer.

According to the committee, an average company sends about 4,000 messages annually. The telephone and labor costs to obtain permission to send messages would be at least \$1.50 per message, or \$6,000 annually, the committee estimates.

No one at the committee could be reached for comment yesterday.

*Journal
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90*

IN THE STATES -- Fax, Monitoring, Mail Lists, Credit Cards, AIDS

An ill-advised lobbying technique against a bill banning unsolicited facsimile messages backfired in Connecticut when the governor's fax machine was jammed for hours with unwanted messages. For 48 hours the machine in the office of Gov. William A. O'Neill's office spit out dozens of angry messages from businesses opposing the bill. The bill, HR 5396, would prohibit those businesses and others from doing exactly what they were doing -- sending fax advertisements without consent of the recipient.

At the time this occurred, the week of May 9, O'Neill had not decided whether to sign the bill. An aide to the governor pointed out that the telephonic lobbying campaign backfired because it proved how annoying unwanted fax messages can be. The governor's office shut down its machine May 12 and was unable to receive possibly important messages concerning state business. When the machine was turned on the next day, the angry lobbying letters kept coming in. "You could not have done a better job of bringing home the problem addressed in the bill that you oppose," one of the governor's aides said, in a fax message to the National Fax Users Committee, a California-based group that prompted the lobbying. The governor's office reported that no fax was received in response from California. But by May 16, Gov. O'Neill had decided to sign the bill, which is now P.A. 103. It calls for a \$200 fine for sending an unwanted fax message. The fax association now has a second opportunity to do it right; a similar bill (H 1319) is awaiting the governor's signature in Maryland.

The New York Assembly on May 8 approved legislation to require companies that monitor employees' phone calls to include a beep tone on the line. Employees would also have to be notified of the monitoring (A 4639A). Telephone company employees have appeared in the State Capitol wearing buttons saying, "Don't bug me." The Senate disapproved the measure in 1989. * * * Also in New York, relatives of celebrities testified May 15 in support of amending the state's privacy law to extend the "right of publicity" to 50 years beyond the death of a famous person. The right of publicity permits a person to control commercial uses of his or her name and image, but in most states this right expires at death. Appearing before Sen. Emanuel K. Gold, the sponsor, were John Wayne's son, Billie Holiday's sister, Fred Astaire's widow, Eabe Ruth's daughter, W.C. Fields' grandson, and an agent representing the estate of James Dean. Because of the concentration of advertising and publishing in New York City, a new state law would have nationwide effect.

The New York Assembly has been asked to prohibit merchants from having a credit-card customer provide address or telephone number on a credit-card sales form. Many merchants ask for this information, even after they have credit approval from the card company, and some merchants use the information to compile their own mailing and telephone sales lists. In supporting the proposal (A 7099), Attorney General Robert Abrams pointed out that this information is not necessary for the merchant (because credit-card companies guarantee payment after telephone approval) and that Visa regulations prohibit stores from doing this and American Express discourages it. MasterCard and other card issuers do not require it, contrary to what customers are led to believe. The sponsor, Assemblyman Daniel Feldman, has also introduced A 6525 to require all publishers of subscription periodicals to provide an opportunity, when a subscription or renewal is solicited, to prevent his or her name being sold or rented to mailers. Charities would have to do the same thing. So would issuers of credit or debit cards, under Feldman's proposed A 6526.

Michigan has enacted a comprehensive AIDS law that requires confidentiality of test results. PA 488, Laws of 1989. The Ohio Senate has approved a similar bill.

Item 4

STATE OF NEW YORK

3082

1989-1990 Regular Sessions

IN SENATE

March 2, 1989

Introduced by Sen. TULLY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to unsolicited facsimile transmission

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new article
2 32 to read as follows:

3 ARTICLE 32

4 UNSOLICITED FACSIMILE TRANSMISSION

5 Section 640. Definitions.

6 641. Unsolicited facsimile transmission.

7 642. Violation and penalties.

8 § 640. Definitions. As used in this article:

9 1. "Facsimile transmission" shall mean every process in which elec-
10 tronic signals are transmitted by telephone lines for conversion into
11 written text.

12 2. "Unsolicited facsimile transmission" means any facsimile transmis-
13 sion made by telephonic means to a telephone number without the express
14 prior request of the person called promoting goods or services for pur-
15 chase by the recipient.

16 3. "Facsimile solicitor" means any natural person, firm, organization,
17 partnership, association, or corporation who makes or causes to be made
18 an unsolicited residential facsimile transmission, including, but not
19 limited to, transmissions made by use of automated dialing or recorded
20 message devices.

21 § 641. Unsolicited facsimile transmission. No facsimile solicitor
22 shall make an unsolicited facsimile transmission to a telephone number.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

1 § 642. Violation and penalties. Whenever there shall be a violation
2 of this article, an application may be made by the attorney general in
3 the name of the people of the state of New York to a court or justice
4 having jurisdiction by a special proceeding to issue an injunction, and
5 upon notice to the defendant of not less than five days, to enjoin and
6 restrain the continuance of such violations; and if it shall appear to
7 the satisfaction of the court or justice that the defendant has, in
8 fact, violated this article, an injunction may be issued by such court
9 or justice, enjoining and restraining any further violation, without
10 requiring proof that any person has, in fact, been injured or damaged
11 thereby. In any such proceeding, the court may make allowances to the
12 attorney general as provided in paragraph six of subdivision (a) of sec-
13 tion eighty-three hundred three of the civil practice law and rules, and
14 direct restitution. Whenever the court shall determine that a violation
15 of this article has occurred, the court may impose a civil penalty of
16 not more than one thousand dollars for each violation. In connection
17 with any such proposed application, the attorney general is authorized
18 to take proof and make a determination of the relevant facts and to is-
19 sue subpoenas in accordance with the civil practice law and rules.
20 § 2. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law.

(4) Any sale, lease, or use of customer premises equipment except such equipment as is regulated on July 28, 1985;

(5) Private shared telecommunications services, unless the commission finds, upon notice and investigation, that customers of such services have no alternative access to local exchange telecommunications companies. If the commission makes such a finding, it may require the private shared telecommunications services provider to make alternative facilities or conduit space available on reasonable terms and conditions at reasonable prices.

Enacted by Laws 1985, ch. 450, § 9.

80.36.380. Reports

Subject to RCW 40.07.040, the commission shall provide the legislature with a biennial report through 1991 on the status of the Washington telecommunications industry. The report shall describe the competitiveness of all markets as defined by the commission; the availability of diverse and affordable telecommunications services to all people of Washington, particularly to customers in rural or sparsely populated areas; and the level of rates for local exchange and interexchange telecommunications service. The report also shall address the quality and extent of the state's telecommunications infrastructure. The report also shall address the question of whether competition in certain markets has developed to such an extent that the commission recommends additional regulatory flexibility such as detariffing or total deregulation and the evidence therefor; and the need for further legislation to achieve the purposes of RCW 80.36.300 through 80.36.370 and 80.04.010. The commission shall also monitor cost of service methodologies and shall recommend to the legislature whether cost of service ratemaking shall become a standard for telecommunications services.

Enacted by Laws 1985, ch. 450, § 41. Amended by Laws 1987, ch. 293, § 6; Laws 1987, ch. 505, § 78.

Reviser's Note: This section was amended by 1987, c 293, § 6 and by 1987, c 505, § 78, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

80.36.390. Telephone solicitation

(1) As used in this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

For purposes of this section, each individual real estate agent or insurance agent who maintains a separate list from other individual real estate or insurance agents shall be treated as a company or organization. For purposes of this section, an organization as defined in RCW 29.01.090 or 29.01.100 and organized pursuant to RCW 29.42.010 shall not be considered a commercial or nonprofit company or organization.

(2) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first thirty seconds of the telephone call.

(3) If, at any time during the telephone contact, the called party states or indicates that he or she does not wish to be called again by the company or organization or wants to have his or her name and individual telephone number removed from the telephone lists used by the company or organization making the telephone solicitation, then:

(a) The company or organization shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The company or organization shall not sell or give the called party's name and telephone number to another company or organization: *Provided*, That the company or organization may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(4) A violation of subsection (2) or (3) of this section is punishable by a fine of up to one thousand dollars for each violation.

(5) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general shall notify the company with a letter of warning that the section has been violated.

(6) A person aggrieved by repeated violations of this section may bring a civil action in superior court to enjoin future violations, to recover damages, or both. The court shall award damages of at least one hundred dollars for each individual violation of this section. If the aggrieved person prevails in a civil action under this subsection, the court shall award the aggrieved person reasonable attorneys' fees and cost of the suit.

(7) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by (a) annual inserts in the billing statements mailed to residential customers, or (b) conspicuous publication of the notice in the consumer information pages of local telephone directories.

Enacted by Laws 1986, ch. 277, § 2. Amended by Laws 1987, ch. 229, § 13.

Legislative finding—Laws 1986, ch. 277: "The legislature finds that certain kinds of telephone solicitation are increasing and that these solicitations interfere with the legitimate privacy rights of the citizens of the state. A study conducted by the utilities and transportation commission, as directed by the forty-ninth legislature, has found that the level of telephone solicitation in

this state is significant to warrant regulatory action to protect the privacy rights of the citizens of the state. It is the intent of the legislature to clarify and establish the rights of individuals to reject unwanted telephone solicitations." [Laws 1986, ch. 277, § 1.]

Cross References

Charitable solicitations, see ch. 19.09.

80.36.400. Automatic dialing and announcing devices—Commercial solicitation by

(1) As used in this section:

(a) An automatic dialing and announcing device is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 19.86 RCW. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices.

Enacted by Laws 1986, ch. 281, § 2.

Legislative finding—Laws 1986, ch. 281: "The legislature finds that the use of automatic dialing and announcing devices for purposes of commercial solicitation: (1) Deprives consumers of the opportunity to immediately question a seller about the veracity of their claims; (2) subjects consumers to unwarranted

invasions of their privacy; and (3) encourages inefficient and potentially harmful use of the telephone network. The legislature further finds that it is in the public interest to prohibit the use of automatic dialing and announcing devices for purposes of commercial solicitation." [Laws 1986, ch. 281, § 1.]

80.36.410. Lifeline service—Legislative finding

The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service. Therefore, the legislature finds that it is in the public interest to take steps to mitigate the effects of these changes on low-income persons.

Enacted by Laws 1987, ch. 229, § 3.

Expiration

This section expires June 30, 1990. See Historical Note, post.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: "RCW 80.36.410 through 80.36.480 shall expire June 30, 1990, unless extended by the legislature." [Laws 1987, ch. 229, § 12.]

80.36.420. Lifeline service—Availability, components

Lifeline assistance shall be available to participants of department programs set forth in RCW 80.36.470. Lifeline assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate lifeline service rate for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single lifeline service rate for all local exchange companies operating in the state of Washington. The lifeline service rate shall include any federal end user access charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the lifeline service rate, consider all charges for local exchange service, including federal end user access charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The lifeline service rate shall only be available to eligible customers subscribing to the lowest available local exchange flat rate service, where the lowest local exchange flat rate, including any federal end user access charges and any other charges necessary to obtain local exchange service, is greater than the lifeline service rate.

(d) The cost of providing the lifeline service shall be paid, to the maximum extent possible, by a waiver of all or part of the federal end user access charge and, to the extent necessary, from the lifeline fund created by RCW 80.36.430.

Enacted by Laws 1987, ch. 229, § 4.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.430. Lifeline service—Surcharge

Costs associated with lifeline telephone service shall be recovered through a lifeline surcharge on all other switched access lines. The lifeline surcharge shall be applied equally to all residential and business access lines not to exceed sixteen cents per month. The surcharge collected by the telecommunications companies shall not be construed as gross income or gross receipts for purposes of state, county or municipal public utility taxes. All money collected from the lifeline surcharge shall be transferred to a lifeline fund administered by the department. Local exchange companies shall bill the fund for their expenses incurred in offering lifeline telecommunications services, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department shall recover its administrative costs from the fund.

Enacted by Laws 1987, ch. 229, § 5.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.440. Lifeline service—Rules

The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.480.

Enacted by Laws 1987, ch. 229, § 6.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.450. Lifeline service—Limitation

Lifeline service shall be limited to one residential access line per eligible household.

Enacted by Laws 1987, ch. 229, § 7.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.460. Lifeline service—Deposit waivers, connection fee discounts

Local exchange companies shall file tariffs with the commission which waive deposits on local exchange service for eligible subscribers and which establish a fifty percent discount on service connection fees for eligible subscribers. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered from the lifeline fund. Eligible subscribers shall be allowed one waiver of a deposit and one discount on service connection fees per year.

Enacted by Laws 1987, ch. 229, § 8.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.470. Lifeline service—Eligibility

Participants in the following department programs are eligible for lifeline assistance: Aid to families with dependent children, chore services, food stamps, supplemental security income, refugee assistance, and community options program entry system (COPES). The department shall notify the participants of their eligibility.

Enacted by Laws 1987, ch. 229, § 9.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.480. Lifeline service—Legislative review

The energy and utilities committees of the legislature shall review the results of the lifeline program and shall explore by December 15, 1989, whether additional lifeline measures are warranted.

Enacted by Laws 1987, ch. 229, § 10.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.500. Information delivery services through exclusive number prefix

(1) As used in this section:

(a) "Information delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix.

(b) "Information providers" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls.

(c) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's announcement machine, to use the caller's telephone device to access more specific information.

(2) The utilities and transportation commission shall by rule require any local exchange company that offers information delivery services to a local telephone exchange to provide each residential telephone subscriber the opportunity to block access to all information delivery services offered through the local exchange company. The rule shall take effect by October 1, 1988.

(3) All costs of complying with this section shall be borne by the information providers.

(4) The local exchange company shall inform subscribers of the availability of the blocking service through a bill insert and by publication in a local telephone directory.

Enacted by Laws 1988, ch. 123, § 2.

Legislative Finding, Intent—Laws 1988, ch. 123: "(1) The legislature finds that throughout the state there is widespread use of information delivery services, which are also known as informa-

tion-access telephone services and commonly provided on a designated telephone number prefix. These services operate on a charge-per-call basis, providing revenue for both the information

provider and the local exchange company. The marketing practices for these telephone services have at times been misleading to consumers and at other times specifically directed toward minors. The result has been placement of calls by individuals, particularly by children, who are uninformed about the charges that might apply. In addition, children may have secured access to obscene, indecent, and salacious material through these services. The legislature finds that these services can be blocked by certain local exchange companies at switching locations, and that devices exist which allow for blocking within a residence. Therefore, the legislature finds that residential telephone users in the state are entitled to the option of having their phones blocked from access to information delivery services.

"(2) It is the intent of the legislature that the utilities and transportation commission and local exchange companies, to the extent feasible, distinguish between information delivery services that are misleading to consumers, directed at minors, or otherwise objectionable and adopt policies and rules that accomplish

the purposes of RCW 80.36.500 with the least adverse effect on information delivery services that are not misleading to consumers, directed at minors, or otherwise objectionable." [Laws 1988, ch. 123, § 1.]

Investigation and report by commission: "By October 1, 1988, the commission shall investigate and report to the committees on energy and utilities in the house of representatives and the senate on methods to protect minors from obscene, indecent, and salacious materials available through the use of information delivery services. The investigation shall include a study of personal identification numbers, credit cards, scramblers, and beep-tone devices as methods of limiting access." [Laws 1988, ch. 123, § 3.]

Severability—Laws 1988, ch. 123: "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." [Laws 1988, ch. 123, § 4.]

80.36.510. Legislative finding

The legislature finds that a growing number of companies provide, in a nonresidential setting, telecommunications services necessary to long distance service without disclosing the services provided or the rate, charge or fee. The legislature finds that provision of these services without disclosure to consumers is a deceptive trade practice.

Enacted by Laws 1988, ch. 91, § 1.

80.36.520. Disclosure of alternate operator services

The utilities and transportation commission shall by rule require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

For the purposes of this chapter, "alternate operator services company" means a person providing a connection to intrastate or interstate long-distance services from places including, but not limited to, hotels, motels, hospitals, and customer-owned pay telephones.

Enacted by Laws 1988, ch. 91, § 2.

80.36.530. Violation of consumer protection act—Damages

In addition to the penalties provided in this title, a violation of RCW 80.36.510 or 80.36.520 constitutes a violation of chapter 19.86 RCW, the consumer protection act. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved.

Enacted by Laws 1988, ch. 91, § 3.

80.36.900. Severability—1985 c 450

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 by Laws 1985, ch. 450, § 42.

80.36.901. Legislative review—1985 c 450

The legislature shall conduct an intensive review of chapter 450, Laws of 1985 during the 1989-1991 biennium to determine whether the purposes of chapter 450, Laws of 1985 have been achieved and if further relaxation of regulatory requirements is in the public interest.

Enacted by Laws 1985, ch. 450, § 44.

CHAPTER 80.40—UNDERGROUND NATURAL GAS STORAGE ACT

Section

- 80.40.010. Definitions.
- 80.40.020. Declaration concerning the public interest.
- 80.40.030. Eminent domain.
- 80.40.040. Eminent domain—Application to oil and gas conservation committee prerequisite to eminent domain—Procedure.
- 80.40.050. Rights of company using storage—Rights of owners of condemned land and interests therein.
- 80.40.060. Leases by commissioner of public lands.
- 80.40.070. Leases by county commissioners.
- 80.40.900. Short title.
- 80.40.910. Chapter to be liberally construed.
- 80.40.920. Severability—1963 c 201.

80.40.010. Definitions

As used in this chapter, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" shall mean the Washington utilities and transportation commission;

"Committee" shall mean the oil and gas conservation committee established by RCW 78.52.020;

"Natural gas" shall mean gas either in the earth in its original state or after the same has been produced by removal therefrom of component parts not essential to its use for light and fuel;

"Natural gas company" shall mean every corporation, company, association, joint stock association, partnership or person authorized to do business in this state and engaged in the transportation, distribution, or underground storage of natural gas;

"Underground reservoir" shall mean any subsurface sand, strata, formation, aquifer, cavern or void whether natural or artificially created, suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom;

"Underground storage" shall mean the process of injecting and storing natural gas within and withdrawing natural gas from an underground reservoir: *Provided*, The withdrawal of gas from an underground reservoir



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Item 5

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 16, 1989

MEMORANDUM

TO: Representative Lyman Hoffman

ATTN: Bob Herron

FROM: Sandi Depue *S. Depue*
Administrative Officer

RE: Bills which Prohibit Facsimile Transmission of Unsolicited Advertising
Material
Research Request 89.315

Attached are copies of bills from Connecticut, Oregon and Washington which prohibit the facsimile ("FAX") transmission of unsolicited advertising material. Also attached are three articles relating to "junk FAX transmissions."

According to Steve Graff of the National Conference of State Legislatures, there are currently no state laws regarding junk FAX transmissions; the problem is a relatively new issue.

If you need further information, please let me know.

Attachments

cc: Terry Cramer
Division of Legal Services

STATE OF CONNECTICUT 3
Proposed Bill No. 6620 Page 1 of 1 4
Referred to Committee on ENERGY AND PUBLIC UTILITIES 5
LCO No. 3002 6
Introduced by REP. NANIA, 63rd DIST. 7
General Assembly 8
January Session, A.D., 1989 9

AN ACT PROHIBITING THE TRANSMITTAL OF UNSOLICITED COMMERCIAL 11
MESSAGES THROUGH THE USE OF MACHINES WHICH SEND OR RECEIVE 12
FACSIMILES THROUGH THE TELEPHONE. 13

Be it enacted by the Senate and House of Representatives in 15
General Assembly convened: 16

That the general statutes be amended to prohibit the 17
transmittal of any unsolicited commercial messages through the 18
use of a machine which sends or receives facsimiles through the 19
telephone. 20

STATEMENT OF PURPOSE: To protect owners of machines which send or 23
receive facsimiles through the telephone from receiving any 24
unsolicited commercial messages. 25

STATE OF CONNECTICUT 3
Proposed Bill No. 5396 Page 1 of 1 4
Referred to Committee on JUDICIARY 5
LCO No. 1049 6
Introduced by REP. TULISANO, 29th DIST. 7
General Assembly 8
January Session, A.D., 1989 9

AN ACT PROHIBITING UNSOLICITED FACSIMILE MACHINE MESSAGES. 11

Be it enacted by the Senate and House of Representatives in 13
General Assembly convened: 14

That the general statutes be amended to provide that no 15
person shall use a machine that electronically transmits 16
facsimiles of documents through connection with a telephone 17
network to transmit unsolicited advertising material for the sale 18
of any real property, goods or services. 19

STATEMENT OF PURPOSE: To prohibit the use of a fax machine to 22
transmit unsolicited advertising messages. 23

House Bill 2227

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Task Force on Telecommunications)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prohibits use of automatic dialing and announcing devices and recorded message for certain telephonic solicitations. Prohibits use of "fax" machines to transmit unsolicited advertising material.

A BILL FOR AN ACT

1 Relating to telecommunications; creating new provisions; and amending ORS 646.608.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1.** Section 2 of this Act is added to and made a part of sections 1 to 20, chapter 447,
4 Oregon Laws 1987.

5 **SECTION 2.** (1) No person shall use an automatic dialing and announcing device to call for any
6 purpose any unlisted, unpublished, emergency or toll free long distance number.

7 (2) As used in this section, "automatic dialing and announcing device" means equipment that
8 dials programmed telephone numbers and plays a recorded message when the call is answered.

9 **SECTION 3.** No person shall use a machine that electronically transmits facsimiles of docu-
10 ments through connection with a telephone network to transmit unsolicited advertising material for
11 the sale of any realty, goods or services.

12 **SECTION 4.** ORS 646.608 is amended to read:

13 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
14 ness, vocation or occupation the person does any of the following:

15 (a) Passes off real estate, goods or services as those of another.

16 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
17 proval, or certification of real estate, goods or services.

18 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
19 ciation with, or certification by, another.

20 (d) Uses deceptive representations or designations of geographic origin in connection with real
21 estate, goods or services.

22 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
23 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
24 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

25 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
26 reconditioned, reclaimed, used or second-hand.

27 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
28 or that real estate or goods are of a particular style or model, if they are of another.

29 (h) Disparages the real estate, goods, services, property or business of a customer or another
30

NOTE: Matter in bold face in an amended section is new; matter [italic and bracketed] is existing law to be omitted.

1 by false or misleading representations of fact.

2 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
3 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
4 a limitation of quantity.

5 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
6 or amounts of price reductions.

7 (k) Makes false or misleading representations concerning credit availability or the nature of the
8 transaction or obligation incurred.

9 (L) Makes false or misleading representations relating to commissions or other compensation to
10 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
11 stration purposes or in exchange for submitting names of potential customers.

12 (m) Performs service on or dismantles any goods or real estate when not authorized by the
13 owner or apparent owner thereof.

14 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
15 vides the information required under ORS 646.611.

16 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
17 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
18 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
19 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
20 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
21 tomer enters into the transaction.

22 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
23 cize a product, business or service.

24 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
25 not to deliver them as promised.

26 (r) Organizes or induces or attempts to induce membership in a pyramid club.

27 (s) Makes false or misleading representations of fact concerning the offering price of, or the
28 person's cost for real estate, goods or services.

29 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
30 known material defect or material nonconformity.

31 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

32 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
33 ORS 698.640, whether in a commercial or noncommercial situation.

34 (w) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

35 (x) Violates ORS 646.850 (1).

36 (y) Violates any requirement of ORS 646.661 to 646.686.

37 (z) Violates ORS 128.821, 128.836, 128.856 to 128.866 or 128.891.

38 (aa) Violates ORS 646.883 or 646.885.

39 (bb) Violates section 3 of this 1989 Act.

40 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
41 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

42 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
43 need not prove competition between the parties or actual confusion or misunderstanding.

44 (4) No action or suit shall be brought under paragraph (u) of subsection (1) of this section unless

HB 2227

1 the Attorney General has first established a rule in accordance with the provisions of ORS 183.310
2 to 183.550 declaring the conduct to be unfair or deceptive in trade or commerce.
3

HOUSE BILL NO. 1513

State of Washington 51st Legislature 1989 Regular Session
by Representatives Jacobsen, Todd, Anderson, Heavey, K. Wilson,
Dellwo, Beck, Bowman and Appelwick

Read first time 1/27/89 and referred to Committee on Energy &
Utilities.

1 AN ACT Relating to the use of facsimile devices for commercial
2 solicitation; and adding a new section to chapter 80.36 RCW.

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

4 NEW SECTION. Sec. 1. A new section is added to chapter 80.36
5 RCW to read as follows:

6 (1) As used in this section:

7 (a) A "facsimile device" is a device that is capable of receiving
8 and copying on to paper reasonable reproductions or facsimiles of
9 documents and photographs that have been transmitted electronically
10 or telephonically over telecommunication lines.

11 (b) "Commercial solicitation" means the unsolicited electronic or
12 telephonic transmission to a facsimile device for the purpose of
13 encouraging a person or persons to purchase property, goods, or
14 services.

15 (2) No person may make a transmission to a facsimile device for
16 purposes of commercial solicitation. This section applies to all
17 commercial solicitations intended to be received by facsimile devices
18 within the state.

19 (3) A violation of this section is a violation of chapter 19.86
20 RCW. It shall be presumed that damages to the recipient of
21 commercial solicitations transmitted to a facsimile device are five
22 hundred dollars.

23 (4) Nothing in this section shall be construed to prevent the
24 Washington utilities and transportation commission from adopting
25 additional rules regulating transmissions to facsimile devices.

LEGISLATIVE BILL DIGEST

HB 1513

Restricting the use of facsimile devices for commercial solicitation.

Prohibits transmissions to facsimile devices for the purpose of commercial solicitation.

Makes violations unfair business practices and presumes damages in the amount of five hundred dollars to the recipients of commercial solicitations transmitted to a facsimile device.

AMENDED BILL COMPARED TO ORIGINAL: The original bill contained an absolute prohibition of commercial solicitation through fax.

Fiscal Note: Not Requested.

House Committee - Testified For Original Measure in Committee:
Ravelie Brickman; Pauline Bowers.

House Committee - Testified Against Original Measure in Committee:
None Presented.

House Committee - Testimony For: It is a great inconvenience and costly to Fax machine owners to receive advertising over their machines.

House Committee - Testimony Against: None Presented.

Arch. News

LIFESTYLES

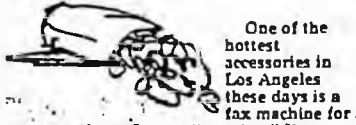
MONDAY

SECTION 3 March 13, 1989

A MATTER OF FAX

Hot gadget often just a high-tech headache

By DONNA FREEDMAN
Daily News reporter



One of the hottest accessories in Los Angeles these days is a fax machine for your car phone. It says "prestige." It says "status."

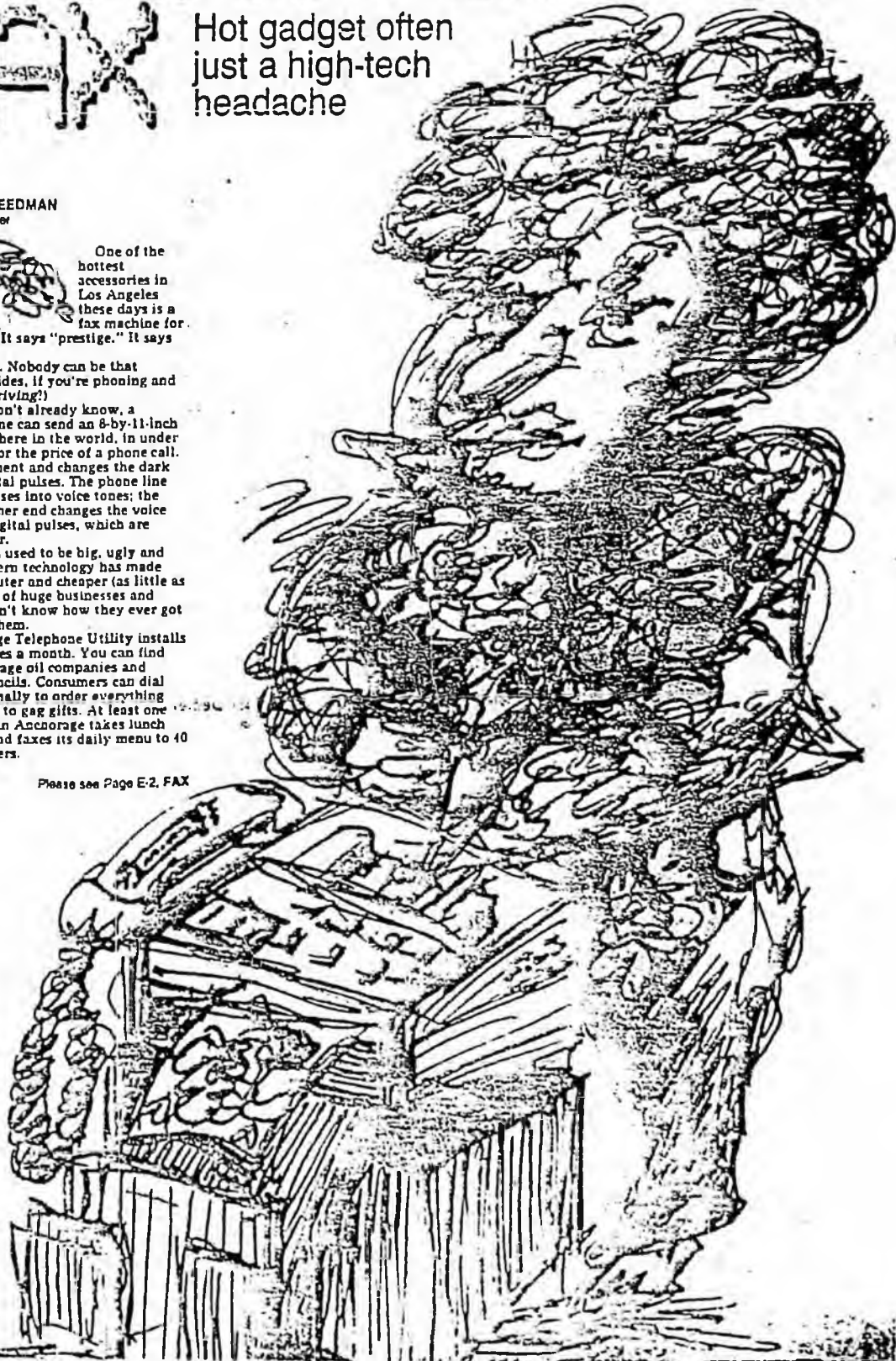
I say baloney. Nobody can be that important. (Besides, if you're phoning and faxing, who's driving?)

In case you don't already know, a facsimile machine can send an 8-by-11-inch document anywhere in the world, in under half a minute, for the price of a phone call. It scans a document and changes the dark marks into digital pulses. The phone line converts the pulses into voice tones; the phone on the other end changes the voice tones back to digital pulses, which are printed on paper.

The machines used to be big, ugly and expensive. Modern technology has made them smaller, cuter and cheaper (as little as \$700). Managers of huge businesses and small offices don't know how they ever got along without them.

The Anchorage Telephone Utility installs about 25 fax lines a month. You can find faxes in Anchorage oil companies and village city councils. Consumers can dial locally or nationally to order everything from auto parts to gag gifts. At least one sandwich shop in Anchorage takes lunch orders by fax and faxes its daily menu to 40 regular customers.

Please see Page E-2, FAX



FAX: High-tech miracle, or waste of paper?

Continued from Page E-1

Not that faxes are strictly business. Rich kids in Beverly Hills fax each other their homework assignments. On television's "Murphy Brown," a character played by Candice Bergen once got tanked at a company party and faxed her chest to the West Coast.

Local disc jockey Greg Wilkinson asks listeners to fax him weird things. The strangest so far was a photocopy of someone's edible underwear. Nothing as good as the "Murphy Brown" stunt: "No body parts," Wilkinson says.

Etiquette specialists may have to incorporate fax facts into their next books. Is it acceptable to send wedding invitations by fax? What about RSVPs? And can the happy couple fax its thank-you notes?

Then there's fax flirting: If a faxer in another office seems funny and charming, are you allowed to strike up an electronic conversation,

or ask for a date?

At least one entrepreneur is making a buck on this sort of thing. SinglesFax, an electronic personals column in New York, matches up wary singles to exchange faxes before agreeing to date. It may be a new trend: "safe fax."

A potentially serious issue is fax advertising. Fax owners are a direct-marketer's dream: the ultimate captive audience. You can't hide from advertisers once they have your fax number. And it gets better: they tie up your line to send you something you never asked for — and you get to pay for the paper!

→ Luis Marquez owns a new Anchorage company specializing in fax-direct advertising. So far he has several customers, and a list of 1,600 fax numbers.

He says he doesn't send obnoxious ads, and only faxes after regular business hours. He invites people to fax him back if they'd like their number taken off his list.

"I'm being very responsible about this," Marquez insists. He says the cost of paper is negligible: two to four cents a page.

Sean Elder of The Office Place disagrees. Paper can cost from 4 to 7 cents a sheet, he says, and as much as 10 cents a sheet when you add the cost of regular fax machine maintenance.

He also says that after business hours is when some fax machines are busiest — phone rates are lower then. Someone trying to send legitimate documents "might not be able to get through because someone was flooding the lines with junk mail," Elder says.

Ken Longacre is one of Marquez's customers; he recently had 750 health insurance bidding proposals sent out. He says that about 25 people were interested, that two faxes were "completely irate" and that half a dozen asked to be excluded from future faxings.

"You're going to step on some toes," Longacre ad-

mits, "but you're also generating a lot of business."

As someone with toes, I'm concerned. I get hundreds of pieces of junk mail a year. It doesn't cost me anything to throw it away. But how much paper would all those pizza coupons and magazine solicitations use? When would the business stuff be able to get through?

And imagine calling all those advertisers and asking them to remove you from their lists. Sure sounds like a pleasant way to spend a couple of years — that is, assuming they agree to do it.

It's just another delightful consequence of technology. We got the wonders of computers, and viruses started cropping up. Now that the nation is hooked on faxes, we won't be able to escape from somebody who wants to sell us life insurance or slightly irregular pantyhose.

Chalk it up to the fax of life. And if you care to discuss the subject, feel free to call or write. Please don't fax.

els who are no less a... she says.

Researchers say that a shift in social attitudes — including changes in sexual mores and the family, and a redefinition of women's roles — has lessened the stigma of being an unmarried mother or single parent, which in turn has had a significant impact on the number of babies placed for adoption. That shift in social attitudes occurred during the time when abortion became legal.

The vast majority of babies who are placed for adoption are the children of teen-age mothers, but about 42 percent of teen-agers end their pregnancies with abortion.

No statistics are available on the number of married women or couples who place babies for adoption, but family-planning experts say that the number is small.

According to the Alan Guttmacher Institute, a non-profit group specializing in reproductive research, 19 percent of women who have abortions are married, and women over age 40 end 51 percent of their pregnancies with abortion. About 35 percent of women who have abortions have either one or two children, according to

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Computers/Communications

Wonders of technology brought cheap communications. Great, but one consequence is a bad case of information overload—a nuisance for consumers, a headache for marketers.

Prepare for E-mail attack

DIRECT MAIL OPERATORS send so many "urgent" mailgrams that most people don't even open the envelopes now. Solicitors hit you at night with so many phone solicitations that you shelled out the extra bucks for an unlisted number. Then they go through with random dialers. So you bought an answering machine. And now they've invaded your computer and your fax machine with junk mail. Is there no peace?

This is the information age that the futurists talked about, the day when telephone technology, fax machines and electronic mail would make communication cheap and plentiful. Too plentiful.

Says Mitchell Kapor, the former chairman of Lotus Development Corp.: "It's a well-known phenomenon in large corporations that when you come back from a long weekend you'll find 50 pieces of electronic mail in your mailbox, spend hours going through it, and end up with most of it being stuff you don't want to see." Kapor protects himself at home with an unpublished telephone number, and opts for a public electronic mail address for his computer. Yet the unwanted messages still come through.

By David Churback

So many unwanted messages are floating around that the wanted ones sometimes get lost in the shuffle. And so we have what could perhaps be called a war of access, fought on a battleground of chips and software. Everyone, it seems, is screaming for your attention. Among the callers' weapons are electronic white pages, power dialers that can do 20,000 calls a day, and systems that hunt down unpublished fax numbers.

Defensive strategies? These include pbx switchboards with software to route unwanted calls into answering machines and call blockers that reject calls from specific unwanted numbers. Tomorrow's strategies will include software that filters out sales pitches from electronic mail by looking for telltale words like "insurance" and "financial planner."

The ultimate gatekeeper for the busy executive or the very private individual is, of course, another human being. But secretaries and butlers are expensive. For most people, then, the answer to junk communications will be found in call blockers, software filters and screening devices that enable communication targets to dig an electronic moat around themselves.

The roots of this emerging electronic warfare are to be



found in the very success of semiconductors, which have made talk cheap. But with information, more can be less—a phenomenon once quantified by MIT Professor Itihel de Sola Pool. Tracking various media from 1960 to 1977, De Sola Pool found that there has been a rapid growth (9% annually) in data made available in the form of periodicals, television, radio, phone calls, mail, faxes and telexes. At the same time there has been a much slower growth (3% annually) in data consumed. Out there at the margin, in short, only about a third of the extra information is getting through. We are suffering from information overload. The transmission of information, while becoming cheaper, is becoming less efficient. The De Sola Pool study concluded that even while transmission costs are dropping, it is costing more to send a message and have it sink in.

While senders are spending more to reach out, some receivers are spending more not to be touched. Survey Sampling, a Fairfield, Conn. research firm, says 28% of all U.S. households have an unlisted number. Los Angeles is 56% unlisted.

New Jersey Bell, which already charges customers \$12.50 a year for the privilege of not having their numbers published, is offering another defense this year, Caller ID, in some parts of its territory. For \$78 a year plus a onetime charge of \$60 for a readout device, a residential customer sees the number of the caller when his phone rings. If he recognizes the number, he picks up; if he doesn't, he might ignore the call or maybe let an answering machine get it.

For \$48 a year New Jersey Bell will accept a list of up to six calling numbers that will be blocked from your phone altogether; the callers get a central-office recording telling them to buzz off. Depending on how many stockbrokers, bill collectors and ex-spouses you are trying to avoid, six may fall far short of your needs. But New Jersey Bell's services are just the opening wedge of call-blocking technology. If a \$60 device can capture phone-number data from the phone line for display, another device could sit between a telephone and a personal computer, trapping and storing incoming phone numbers. There it could be compared against an unlimited list of *numeri non grati*. Perhaps, as Caller ID spreads to other Bell companies (Nynex plans to offer the service as well), some entrepreneur will market software that can identify the sleazier phone solicitors—penny stock touts, for example—and cut them off.

Businesses are already figuring ways to turn Caller ID

into an offensive weapon, says a telephone consultant who is advising them. In New Jersey, commercial accounts can identify calling phone numbers for \$102 a year. Obvious scheme: Advertise, say, a free book on municipal bonds with a phone number to call, then capture the callers' numbers and feed them to ravening cold-call brokers.

Don't forget that the strongest weapon in the arsenal of people making calls is phone numbers. Getting those numbers along with your name, address, zip code and any other personal information (the more personal the better) is big business. List brokers thrive by leasing computer tapes containing magazine circulation lists, product warranty registration lists and other information to direct marketers.

Technology makes this process a bigger problem. Nynex is selling, for \$10,000, a compact disc containing 10 million white page listings for its New York and New England service area. The discs are updated monthly and include a little more information than the paper white pages: names, addresses, zip codes and, of course, phone numbers. Chief customers for Nynex' disc: bill collectors, banks and law enforcement agencies.

Once the marketer has a million numbers, what does he do with them? Feeds them into a power dialer, also known as a junk-call machine. About \$38 million worth of the power dialing equipment was sold in 1988, according to William Reed at Link Resources, a New York market research firm. This notwithstanding about 30 state laws supposedly restricting them. (Massachusetts has a law requiring phone companies to make available to operators of power dialers a list of phone customers who have asked to be spared such solicitations. But the law does not require the junk call operators to get the list, much less to honor it. In Florida a 1987 law bans phone machines from calling people with pitches for "tangible" goods like aluminum siding. "Tangible," however, does not cover the activities of stockbrokers and insurance salesmen.

Boston-area-based Davox Corp. says one purchaser of its CAS-1000 system, which supports 64 phone lines and 32 customer service representatives, was able to dial 20,000 numbers and make 4,000 contacts in one day. Those dialers aren't cheap. A midlevel Davox system—one that supports 16 lines and 8 to 10 agents—is priced at \$125,000.

As telemarketers spend more for offense, their audience will have to step up defensive outlays. One manager of a bed-and-breakfast in San Francisco uses a device called



Comp/Comm

PriveCode to stop his phone from ringing. "I was tired of being offered free dancing lessons," he says. "With a phone in every room, every time they rang the house sounded like it was taking off to the sky."

PriveCode asks callers for their access number, which they punch in with a touch-tone phone. The inn's guests have a code that makes the phone rings come in bursts of four. The booking agent uses a code that rings three times. The manager's friends have yet another code that sets off two rings. The single-ring code is for "special occasions," he says. Dance lesson pitchmen can't make the phone ring at all.

PriveCode was invented by T.M. Corp. in Philadelphia, which, alas, doesn't sell it anymore. It was a marketing failure, partly because of its high price (about \$300 for a single extension) and partly because it doesn't also have a message-taking option for people who don't know the code. But experts say it would be easy to build a ring-blocking device into the current generation of \$100 answering machines, which already use codes to read back messages to the owner calling in from another phone.

Another defensive technology has been around for a long while but is much more feasible with modern software-controlled PBXes, or switchboards. Keep two phone extensions. One rings when a stranger dials your company and asks to be connected to you. That extension is shunted to a secretary. The other extension is known to people you want to hear from. You pick up that extension yourself, saving the inconvenience of a screening by your secretary. Software-driven switchboards facilitate this dodge immensely. For one thing, they can easily change your private extension number if it leaks out to outsiders. For another, they can shunt the cold-callers to a low-cost dump such as a voice mailbox. If corporate executives of the future can win this little electronic battle, they can probably make do with fewer secretaries.

But marketing people, desperate for new leads, are fighting back: Offensive software is moving ahead. A Norcross, Ga. company, Digital Publications, is selling a program and 5,000-name database that allows publicists to mass-distribute faxed press releases automatically at night, at a



cost of 10 cents each, much cheaper than the average 80 cents paid per mailed press release. Mr. Fax, a fax supply company in Irvine, Calif., has accumulated a large database of fax numbers by offering cameras and Sony Walkmans for lists of fax numbers. Such lists are one reason fax users are inundated with mail—and paying for the insult, since suppliers are on them.

Defense against junk fax assaults: Don't let out your fax numbers. Soon, however, fax marketers will have a powerful retaliatory weapon, inspired by the "demon dialer" of the movie *War Games*. Zoom Telephonics in Boston plans to release in March a \$595 modem that can be programmed to randomly dial thousands of numbers, hunting for responses that betray the characteristic signals of a fax machine beginning to receive. The fax numbers are stored for later retrieval.

Now what do you do? So far only a few fax manufacturers have added a feature that demands an access code before permitting a transmission to begin. But such features may soon become standard on all machines rather than options.

Electronic mail—messages sent from computer to computer—presents a more complicated battlefield. It's more

powerful than letter mail and potentially more invasive. Why so? With a fax message, you don't know whether or not the intended recipient got the message or read it, but some electronic mail systems, for instance, permit the sender to attach a "receipt" to a message so he'll know when you've read it and can follow up with a phone call. Defense: Forward the message to yourself and then read it. The receipt won't be triggered.

E-mail still has a way to go before it replaces the post office—or snailmail, as its detractors call it. However, it is already formidable. The number of messages over public systems (such as CompuServe and MCI Mail) reached about 500 million in 1987. Coopers & Lybrand predicts that number will reach 2 billion in 1992. On private, corporate electronic mail systems, there were about 1 billion messages in 1988, and there could be over 10 billion by 1992.

When the first corporate electronic mail systems were installed in the 1970s, users noticed a disquieting phenomenon: unwanted messages. "Someone in a branch office hires a new salesman and sends a message to everyone in the company, including the chairman," says Walter Ul-

rich, a partner at Coopers & Lybrand in Houston. "That clutters everyone's mailbox. It is so simple to simply address the message to 'everyone' that there is abuse. Without electronic mail that branch manager would never think of making the same announcement, running off 10,000 Xerox copies and then mailing it out." As chairman of the privacy and security subcommittee of the Electronic Mail Association, Ulrich is monitoring ways to cope with this problem of overuse.

Help is on the way. Professor Thomas Malone at MIT's Sloan School of Management is leading a project called the Information Lens, a system of filters, defined by the user, that scans incoming mail and sorts it into "folders" according to user-defined criteria. Mail from the boss will be flagged as urgent if the user has so programmed the system. The Lens can also identify messages from electronic pests by the way the user handles them, and can route them into an electronic trash can or low-priority folder.

General broadcasts, like junk mail, can be regarded as useless by many recipients, who would prefer not to receive impersonal communications. The Lens, rather than posting a copy of a broadcast message in everyone's in-box, puts it into an electronic pool of other broadcast messages. Members of the system can tell the Lens to search the pool for items of interest, retrieve them, and save them in a personal file. In this system the receiver has more control over the communication channel than the sender.

"Imagine various kinds of pricing schemes," says Malone. "On a simple level a sender is charged for sending messages and charged more for sending a message to many people. You can imagine some more elaborate schemes: One would be a toll for getting information into your mailbox. You won't be willing to look at messages from random strangers unless they are willing to pay to get that information into your mailbox.

"That way I have a certain kind of filter that says it has to be worthwhile to the sender to get it to me. Such a system increases the incentive for the sender to target his communications more directly."

Professor Nicholas Negroponte, director of MIT's Media Lab, envisions a world of "reverse advertising." "I tell my computer to tell the world that I want to buy a windsurfer for under \$800, and the windsurfer world responds with bids." Don't call us, we'll call you. Now we're talking. ■



NYT 1/20/89

Heading Off 'Junk Fax' at the Wire

By KIRK JOHNSON
Special to The New York Times

HARTFORD, Jan. 19 -- Don't fax me, I'll fax you: Under a bill proposed in the Connecticut General Assembly, that would be the official message here to businesses, direct marketers and others who send unsolicited advertisements — "junk fax" — over the telephone wires.

The bill, proposed by a legislator who confesses to a philosophical dislike for facsimile technology, would make it a civil offense to bother people with unwanted fax messages. Fines could be \$200 or more, though details of the proposal have not been worked out.

What has furrowed a few brows is that not even the bill's author, Representative Richard D. Tulisano is sure that junk fax is much of a problem in Connecticut or anywhere else. And the ultimate fate of the bill is anyone's guess.

But Mr. Tulisano, a Democrat, said he thinks the proliferation of the machines, two million of which have been sold nationwide in the last few years, will sooner or later bring on fax attacks by people selling products or services — and tying up fax machines in the process. Similar bills are before the Washington and Oregon state legislatures this year.

"I don't want to wait until the horse has escaped, and then worry about it," Mr. Tulisano said.

Fax technology, which allows in-

stantaneous transmission of documents from one machine to another, has transformed business communication in thousands of offices. And though the use of the machines as a sales tool is apparently not widespread, marketing experts agree with Mr. Tulisano that the volume will grow.

For example, a company in Ir-

vine, Calif., called Mr. Fax, has compiled a data base of 500,000 fax numbers and is looking for more, even offering gifts to people who provide more numbers — a free Mr. Coffee for 100 numbers and a Sony Watchman for 1,000 numbers. Although Mr. Fax is now using its data base to market only its own fax paper, the fear is that

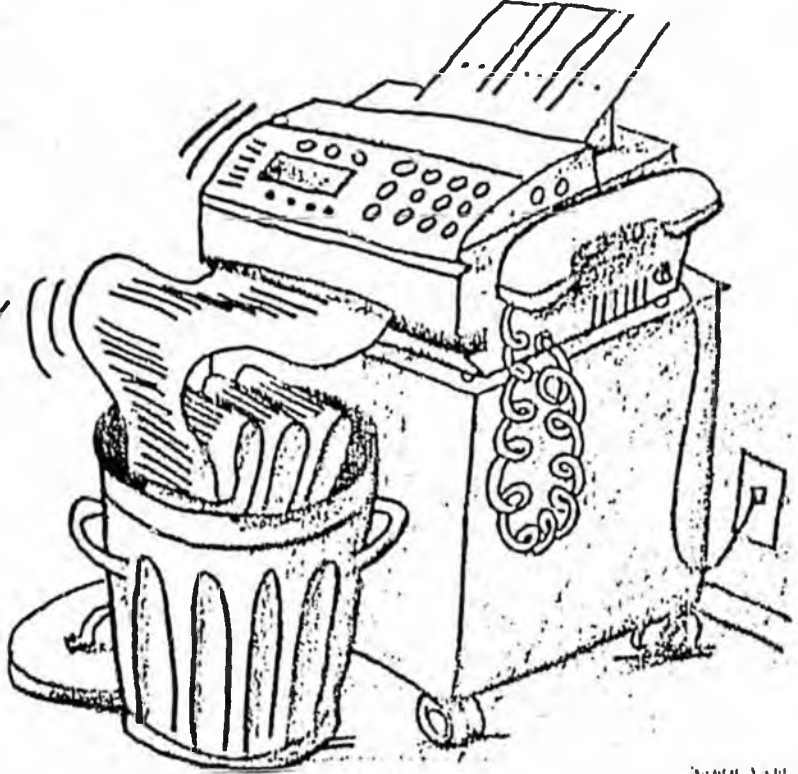
the company, and others like it, could allow other businesses to use their data bases.

"We feel that we aren't really participating in junk fax," said Elliott Segal, vice president in charge of marketing at Mr. Fax, which transmits about 60,000 fax sheets a week to its clients. Mr. Fax takes orders for its paper, quite naturally, by fax machine.

Already, some local businesses have begun advertising by fax. In Hartford, which has about 20,000 fax machines, according to an estimate by the Southern New England Telephone Company, such advertisements are sent occasionally by local car dealerships. One such ad says a dealer will take \$100 off on a Honda if a buyer brings in the fax sheet.

Meanwhile, the number of potential targets for advertisers is growing. At the city's largest employer, the Aetna Life and Casualty Company, the 1,000 people who work in the company's three office buildings communicate by fax, and an internal directory is published by the company to make it easier.

One problem that people like Mr. Segal see in the antifax bills is exactly how the laws should be worded so as not to violate free speech protections. In Connecticut, as well as in Washington and Oregon, no public hearings have been held and the final wording of the proposals has not been worked out.



By John V. Voight

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Philippe Favier

Blum Helman Galler
25 West 17th Street
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THE LAW

 From Goddesses to Dolphins

A New and Powerful Partner

ART

An Antic Hymn to City Life

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HB 232
Item 6



DIRECT
ADVERTISING

BOX 93057
ANCHORAGE
9 9 5 0 9

907-345-4490
FAX-345-2363

April 2, 1989

Dear Mr. Boucher,

I am directly opposed to your introduction of House Bill 232, "An Act relating to the use of facsimile devices for commercial solicitation."

I am opposed to this type of legislation for the very fact that I am in this type of "Business Advertising."

I believe that I am the only person in Anchorage, for that matter, the state of Alaska, that does fax advertising. As you can read from my letterhead, it is called Fax Direct Advertising. I do the very thing that you are trying to legislate by sponsoring House Bill 232.

Since I'm the opposition, and I've read your side of the story (HB 232), let me tell what my concerns are.

It is true fax user does pay for the paper cost. But the cost to the user is only \$.03 to \$.05 per page depending on the length of the message.

As to fax machines being occupied with unsolicited messages, the nature of most unsolicited messages is that they are sent by computer. These computers are usually programmed to take advantage of low night phone rates. Most fax users have little or no fax traffic during the night hours. Hence, the concern for tying up a fax machine with an unsolicited message may be overblown.

The Federal Communications Commission received a total of 8,000 complaints about various telecommunications problems during 1988. Only 20 of these complaints were directed at junk fax. (Reported in NOMDA "Hotline" Feb. 1989, page 2.) A spokeswoman for the American Facsimile Association, an association of fax users, says, "When fax users mention junk fax, I ask them how many pieces of junk fax they receive. They usually tell me one or two per week." In short, the problem of unsolicited fax messages is perhaps overblown.

If fax messages are illegal, it will mean that each fax user must obtain permission from the intended recipient prior to making a transmission. There are various problems with this;



DIRECT
ADVERTISING

BOX 93057
ANCHORAGE
9 9 5 0 9

907-345-4490
FAX-345-2363

1. More than 8 billion fax messages are sent in the U.S. each year. The labor cost to obtain permission to send (including costs for both the sender and the intended recipient) could easily exceed \$1 per message. Hence the cost to American businesses could exceed \$8 billion.
2. With so many billions of fax messages flying around, there could be potentially millions of disputes about whether verbal permission was given to transmit a message. Governments would need significant staffs and budgets in the tens or hundreds of millions of dollars in order to resolve these disputes.
3. Fax users have invested over \$4 billion in their fax equipment. Many of these are small business firms. When they purchased their fax equipment, many were motivated by the low labor cost of fax equipment, which features unattended operation. If fax users must obtain permission to send messages, many will need "Fax Machine Operators" to obtain permission to send messages to intended recipients and to give permission to other senders to transmit messages. To all firms this will represent a significant cost. To small firms, the cost may be prohibitive. It will result in many firms not getting the value out of the equipment that they have already purchased.
4. With such restrictions on fax usage and threats of large fines or law violations, fax will no longer be such a popular medium to the average business. As such, sales of new fax machines will drop. And in virtually every state of the U.S. there are sales offices for fax machine makers and a number of manufacturing plants. These will undoubtedly lay off thousands of workers.
5. While laws limiting telephone solicitations to residences have been upheld by the courts, the courts have never permitted any complete prohibition of the unsolicited mail or telephone sales pitches. And the standard of privacy is much higher for residential solicitation than it would be for businesses with fax machines. So it is highly likely that any complete prohibition of unsolicited fax messages would be ruled unconstitutional.

I would like to discuss this further with yourself or for that matter, your committee.

— LUIS MARQUEZ

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Item 7

Sec. 45.50.470. [Repealed, § 1 ch 246 SLA 1970.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting

out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

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

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

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

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

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

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

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

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

(22) failing to comply with AS 45.02.350;

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

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of that person's estate: upon demand by the person on whose

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behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

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

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

(27) failing to comply with AS 14.48.060(b)(13);

(28) dealing in hearing aids and failing to comply with AS 08.55.

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

(d) [*Repealed, § 21 ch 166 SLA 1978.*] (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1974; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 3 ch 197 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978; am § 5 ch 15 SLA 1986; am § 5 ch 64 SLA 1986; am § 12 ch 131 SLA 1986)

Revisor's notes. — Paragraph (b)(24) was enacted as (b)(23) and paragraph (b)(25) was enacted as (b)(22). Renumbered in 1976.

Paragraph (b)(28) was enacted as (b)(27). Renumbered in 1986.

Effect of amendments. — The first 1986 amendment added paragraph (26) of subsection (b).

The second 1986 amendment added paragraph (27) of subsection (b).

The third 1986 amendment added paragraph (28) of subsection (b).

Legislative history reports. — For report on ch. 246, SLA 1970 (FCCS 2d HCS CSSB 252), see 1970 House Journal Supplement 10, following p. 743 of the 1970 House Journal; for report of the conference committee, see either 1970 House Journal, p. 1546, or 1970 Senate Journal, p. 1296.

NOTES TO DECISIONS

This statute did not chill constitutionally protected speech, where the speech in question involved communications regarding alleged debts and thus fell within the rubric of commercial speech, which enjoys a lesser first amendment protection than noncommercial speech. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Subsection (a) not vague. — The words of subsection (a) of this section have a "well-defined" meaning in the area of trade regulation and are therefore not vague. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Two elements must be proved to establish a prima facie case of unfair or deceptive acts or practices under the act: (1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

When act or practice is deceptive or unfair. — An act or practice is deceptive or unfair if it has the capacity or tendency to deceive. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Actual injury as a result of the deception is not required. *State v. O'Neill Investigations Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Intent to deceive need not be proved. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Testimony of consumers that they were misled is sufficient to sustain a prima facie case of unfair and deceptive practices. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Prima facie case. — In a consumer protection action, a prima facie case is presented when the plaintiff establishes that the defendant engaged in trade or commerce and in the course of that business committed an unfair act or practice. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

An act or practice need not be deceptive to be unfair. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Unfairness will be determined by a variety of factors, including: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers or competitors or other businessmen. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Similarity to federal law. — The prohibition in this section against "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce" is substantially similar to that contained in section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). *Matanuska Maud, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Vandalizing a customer's property is an unfair trade act within the meaning of this section. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Deceptive and unfair acts by collec-

tion agencies. — Threats by debt collection agencies of imminent legal action when no such action is actually contemplated is a deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Harassment of debtors by telephone calls to them, their relatives or their employers constitutes an unfair act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

A misrepresentation by a debt collection agency that failure to pay an alleged debt will result in impairment of one's credit rating has been held to be an unfair and deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

The use by collection agencies of simulated legal documents or collector forms labelled "Final Demand Before Legal Action" when no legal action is in fact taken constitutes a deceptive act. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Investigation of acts violating both this article and article 4 of chapter. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561 would also violate the Restraint of Trade Act, AS 45.50.562 — 45.50.596, if an act does violate both statutes, an investigation pursuant to AS 45.50.495 would be appropriate. *Matanuska Maud, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an AS 45.50.562 violation, which is Alaska's equivalent of the Sherman Act, 15 U.S.C. § 1 et seq., it was appropriate for the state to investigate as well the possible violation of this section which is Alaska's equivalent of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. *Matanuska Maud, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

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vating, Inc. v. Truckweld Equip. Co., Sup.
Ct. Op. No. 200E (File No. 4288), 604 P.2d
1113 (1980).

Collateral references. — 32 Am. Jur.
2d, False Pretenses, § 1 et seq.; 37 Am.
Jur. 2d, Fraud and Deceit, § 41 et seq. 35
C.J.S. False Pretenses § 14; 37 C.J.S.
Fraud § 154; 37 C.J.S. Fraudulent Con-
veyances § 469.

Validity, construction, and effect of
state legislation regulating or controlling
"bait-and-switch" or "disparagement" ad-

Cited in O'Neill Investigations, Inc. v.
Illinois Employers Ins., Sup. Ct. Op. No.
2444 (File No. 4429), 636 P.2d 1170
(1981).

vertising or sales practices. 50 ALR3d
1008.

Scope and exemptions of state deceptive
trade practice and consumer protection
acts. 89 ALR3d 399.

Practices forbidden by state deceptive
trade practice and consumer protection
acts. 89 ALR3d 449.

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

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

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

Sec. 45.50.480. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.481. Exemptions. Nothing in AS 45.50.471 —
45.50.561 applies to

(1) an act or transaction regulated under laws administered by the
state, by a regulatory board or commission except as provided by AS
45.50.471(b)(27), or officer acting under statutory authority of the
state or of the United States, unless the law regulating the act or
transaction does not prohibit the practices declared unlawful in AS
45.50.471;

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

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or a
regulation adopted under the authority of those chapters. (§ 2 ch 246
SLA 1970; am §§ 2, 3 ch 53 SLA 1974; am § 6 ch 64 SLA 1986)

Effect of amendments. — The 1986 45.50.471(b)(27) and in paragraph (3)
amendment in paragraph (1) substituted substituted "a regulation adopted" for
"a" for "any" preceding "regulatory board" "any regulations promulgated" and in-
and inserted "except as provided by AS inserted "the" preceding "authority

NOTES TO DECISIONS

Applicability of paragraph (1) exemption. — Paragraph (1) of this section exempts only those acts or transactions which are the subject of ongoing, careful regulation. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).*

Unfair acts or practices are exempt under paragraph (1) of this section only where the business is both regulated and unfair acts and practices are prohibited. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).*

The exemption contained in paragraph (1) of this section was not intended to apply to acts proscribed by the Alaska Restraint of Trade Act, AS 45.50.562 — 45.50.596. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).*

Since the Restraint of Trade Act, AS 45.50.562 — 45.50.596, does not regulate the dairy industry within the meaning of paragraph (1) of this section, the exemp-

tion does not apply. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).*

Mere regulation under a separate and distinct statutory scheme satisfies only one prong of paragraph (1) of this section; unfair acts and practices are exempt from the purview of the act only where the business is both regulated elsewhere and the unfair acts and practices are therein prohibited. *State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).*

This article embraces independent debt collection practices. — See note under this catchline following the article analysis.

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).*

Collateral references. — Scope and exemptions of state deceptive trade prac-

tice and consumer protection acts. 89 ALR3d 399.

Sec. 45.50.490. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.491. Regulations. The attorney general, in accordance with the Administrative Procedure Act (AS 44.62), may adopt regulations interpreting and forms necessary for administering the provisions of AS 45.50.471 — 45.50.561. (§ 2 ch 246 SLA 1970; am § 4 ch 53 SLA 1974)

Sec. 45.50.495. Investigative power of attorney general. (a) If the attorney general has cause to believe that a person has engaged in, is engaging in or is about to engage in, a deceptive trade practice under AS 45.50.471, the attorney general may

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

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

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

Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).
 Under a separate scheme which satisfies paragraph (1) of this section, practices are excluded from the act only if they are regulated elsewhere and practices are not covered by Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2053 (File Nos. 4609, 4610), 620 P.2d 520 (1980).

is independent of the act. — See note following the article.

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provision following Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2591 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

action acts. 89

in accordance with the provisions of the act; am § 4 ch

general. (a) If a person has engaged in an act or practice

proceedings, under the act, all facts of property are to be taken into account in the sale or

book, documents necessary:

(4) make true copies of records, books, documents, accounts, or papers examined under (3) of this subsection which may be offered in evidence in place of the originals in actions brought under AS 45.50.471 — 45.50.561; and

(5) under an order of the superior court, impound samples of property which are material to the investigation and retain the sample until proceedings undertaken under AS 45.50.471 — 45.50.561 are completed.

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

NOTES TO DECISIONS

Investigation of acts violating both article 3 and article 4 of Chapter 5. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561, would also violate the Restraint of Trade Act, AS 45.50.562 — 45.50.596, if an act does violate both statutes, an investigation pursuant to this section would be appropriate. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).*

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an AS 45.50.562 violation, which is

Alaska's equivalent of the Sherman Act, it was appropriate for the state to investigate as well the possible violation of AS 45.50.471, which is Alaska's equivalent of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).*

The state cannot be expected to know with certainty the exact nature of a suspected violation. This uncertainty is the very reason for conferring precomplaint investigatory authority on the attorney general. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).*

Sec. 45.50.500. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.501. Restraining prohibited acts. (a) When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in AS 45.50.471, and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. The action may be brought in the superior court in the judicial district in which the person resides or is doing business or has the person's principal place of business in Alaska, or, with the consent of the parties, in any other judicial district in the state.

(b) The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property.

real or personal, which may have been acquired by means of an act or practice declared to be unlawful by AS 45.50.471. (§ 2 ch 246 SLA 1970)

NOTES TO DECISIONS

Article not applicable to sales of real property. — The scope of the consumer protection act does not enlarge to include sales of real property when suit is instituted by the state even though this section contains no limitation to "goods or services" comparable to that in such sections as AS 45.50.561(6) or AS 45.50.-

531(a). *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982). See note from this case following article analysis.

Cited in *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Collateral references. — Validity of express statutory grant of power to state to seek, or to court to grant, restitution of fruits of consumer fraud. 59 ALR3d 1222.

Sec. 45.50.510. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.511. Assurances of voluntary compliance. In the administration of AS 45.50.471 — 45.50.561, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be violative of AS 45.50.471 — 45.50.561 from a person who has engaged or was about to engage in such an act or practice. The assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has the principal place of business in Alaska. The assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under AS 45.50.501. (§ 2 ch 246 SLA 1970)

Sec. 45.50.521. When information and evidence confidential and nonadmissible. (a) *[Repealed, § 6 ch 53 SLA 1974.]*

(b) Subject to the provisions of AS 45.50.501(a), the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in AS 45.50.471 during an investigation conducted by the attorney general under AS 45.50.471 — 45.50.561, nor are the records of investigation or intelligence information of the attorney general obtained under AS 45.50.471 — 45.50.561 considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy which constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis. (§ 2 ch 246 SLA 1970; am § 6 ch 53 SLA 1974)

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Sec. 45.50.531. Private and class actions. (a) A person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of another person's act or practice declared unlawful by AS 45.50.471, may bring a civil action in the judicial district in which the seller or lessor resides or has the principal place of business or is doing business, to recover actual damages or \$200, whichever is greater. The jury or, if the action is tried without a jury, the judge may, in cases of wilful violation, award up to three times the actual damages sustained, and in all cases the court may provide equitable relief it considers necessary or proper.

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

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

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

(e) A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by AS 45.50.471.

(f) A person may not commence an action under this section more than two years after the person discovers or reasonably should have discovered that the loss resulted from an act or practice declared unlawful by AS 45.50.471.

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

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

NOTES TO DECISIONS

Opportunity to cure technical pleading deficiency. — Although defendant is a New Jersey corporation with its principal place of business in Ohio and plaintiffs failed to set forth in their amended complaint the essential allegation that defendant was "doing business" in Alaska within the meaning of subsection (a) of this section, dismissing the claim on the basis of this technicality was inappropriate; leave to amend the complaint should have been granted in order to afford the

plaintiffs the opportunity to cure their technical pleading deficiency. *Shooshanian v. Dennis E. Wagner, Borden, Inc.*, Sup. Ct. Op. No. 2747 (File Nos. 6841, 6874), 672 P.2d 455 (1983).

Applied in *Swenson Trucking & Excavating, Inc. v. Truckweld Equip Co.*, Sup. Ct. Op. No. 2008 (File No. 4288), 604 P.2d 1113 (1980); *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Collateral references. — Consumer class action based on fraud or misrepresentations. 53 ALR3d 534.

Right to private action under state consumer protection act. 62 ALR3d 169.

Reasonableness of offer of settlement under state deceptive trade practice and consumer protection acts. 90 ALR3d 1350.

Sec. 45.50.541. Nonnegotiability of consumer paper. (a) If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, the note, instrument or evidence of indebtedness shall have printed on its face the words "consumer paper," and the note, instrument or evidence of indebtedness with the words "consumer paper" printed on it is not a negotiable instrument within the meaning of the Uniform Commercial Code (AS 45.01 — AS 45.09).

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

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

NOTES TO DECISIONS

Stated in *Bendix Home Systems v. Jessop*, Sup. Ct. Op. No. 2503 (File Nos. 6087, 6110), 644 P.2d 843 (1982).

unity to cure their efficiency. Shooshan-agner, Borden, Inc., 47 (File Nos. 6841, 1983).
 n Trucking & Exca- field Equip. Co., Sup. No. 4288), 604 P.2d First Nat'l Bank, 91 (File Nos. 5006, 1982).

offer of settlement trade practice and sts. 90 ALR3d 1350.

paper. (a) If a as on credit en- requires or in- nt or other evi- t or evidence of "consumer pa- dness with the ble instrument AS 45.01 — AS

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not exceed the or defense is

Sec. 45.50.542. Waiver. A waiver by a consumer of the provisions of AS 45.50.471 — 45.50.561 is contrary to public policy and is unenforceable and void. (§ 7 ch 53 SLA 1974)

Sec. 45.50.545. Interpretation. In interpreting AS 45.50.471 due consideration and great weight should be given the interpretations of 15 U.S.C. 45(a)(1) (§ 5(a)(1) of the Federal Trade Commission Act). (§ 8 ch 53 SLA 1974)

NOTES TO DECISIONS

The Federal Fair Debt Practices Act, 15 U.S.C. § 1692 (Supp. 1977), expands already existing Federal Trade Commission jurisdiction over unfair or deceptive acts and practices of collection agencies; it is not written on a clean slate. The Federal Trade Commission's prior exercise of jurisdiction in this area is enti-

tled to great weight, and leads to the conclusion that the new act merely supplements the old. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Quoted in Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Sec. 45.50.551. Penalties. (a) A person who violates the terms of an injunction or restraining order issued under AS 45.50.501 shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and the cause shall be continued, and in these cases the attorney general acting in the name of the state may petition for recovery of the penalties.

(b) In an action brought under AS 45.50.501, if the court finds that a person is using or has used an act or practice declared unlawful by AS 45.50.471, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than \$5,000 per violation.

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

Sec. 45.50.561. Definitions. In AS 45.50.471 — 45.50.561

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

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

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

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

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200;

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

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

(8) "fresh" means a condition of food which has never been frozen;

(9) "hearing aid" has the meaning given in AS 08.55.200;

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

(11) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard. (§ 2 ch 246 SLA 1970; am § 10 ch 53 SLA 1974; am § 2 ch 138 SLA 1974; am § 13 ch 107 SLA 1984; am § 13 ch 131 SLA 1986)

Revisor's notes. — Reorganized in 1984 and 1986 to alphabetize the defined terms.

amendment added the definition of "cemetery lot."

Effect of amendments. — The 1984

The 1986 amendment added paragraphs (5) and (9).

Item 8

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 21, 1989

Office of Honorable H.A. "Red" Boucher
House of Representatives
Attn: Chad and Dennis
Pouch V
Juneau, AK 99811

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3687

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4879
PHONE: (907) 452-1568
FAX: (907) 458-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3800
FAX: (907) 463-5295

Re: Telephone and fax solicitations

Dear Chad and Dennis:

As you requested, I am providing further information on the Consumer Protection Section's experience with "junk telephone calls," "junk fax" solicitations, and telephone solicitations in general.

Statistics in these areas are somewhat hard to come by, for two reasons. First, the industry categories that we assign to complaints and investigative tips do not correspond directly to these forms of solicitations, so we have to do some manual sorting and estimating to locate the relevant data. Second, our investigative tip data base suffered a serious computer glitch, which caused about half the data to be destroyed, and we are still in the process of recovering the hard copy information to be re-entered into the data base.

Given those limitations, I can report the following. Out of the 613 written investigative tips currently in the data base -- representing approximately half of the tips received at the Anchorage office during the current and previous fiscal years -- about 75 involved telemarketing. Out of 320 written consumer complaints filed at the Fairbanks office so far this fiscal year, a minimum of 12 (and I suspect significantly more) involved telemarketing. The Fairbanks office reports receiving "masses" of phone calls in addition to the formal written complaints; the Anchorage office also receives many more phone calls than written tips.

One reason why the percentage of telemarketing "tips" is so much higher than the percentage of telemarketing "complaints" is that most of the tips we get on telemarketing are not from victims but from consumers who are suspicious of the solicitations and want to report them to us. When we interview consumers who have actually been "taken," we find that they have rarely taken any steps to recover their losses, either because they are

not aware of the existence of effective remedies or because they are embarrassed about their situation,

The vast majority of telemarketing problems that we have become aware of during the last couple of years involve outright scams, usually what I refer to as "prize scams." In this type of operation the initial contact does not appear to be a solicitation to buy something, but instead purports to be an announcement of a valuable award. (We have sued two such operations in the past year; see the enclosed press releases.) A second major category involves deceptive hard-sell tactics for overpriced merchandise, such as magazines, or bogus travel "clubs". Frankly we have seen very few instances of legitimate businesses doing telemarketing.

I should point out that the "prize scams" are generally switching from telephone to mail for the initial contact. Now the recipients are often asked to phone the telemarketer, rather than the other way around. This may be done in an effort to avoid telemarketing laws that a number of states have recently enacted.

Turning to the issue of "junk phone calls," or solicitations by recorded message, we have received only a handful of tips or complaints. With one exception, what we do hear about from time to time are local businesses using this technique for promotion. When we learn their identity and contact them, they report being unaware that junk phone calls are illegal and agree to stop once they learn of that fact. The exception was a nation-wide scam about a year ago that used computer-generated phone calls to make the initial contact. This operation ended when a number of law enforcement authorities, including our office, conducted investigations.

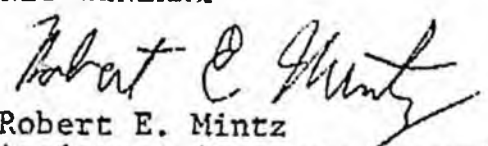
Recipients of junk phone calls generally seem very annoyed, irrespective of whether the business behind the calls is legitimate or not.

Finally, with respect to junk fax solicitations, we have as yet received no written complaints or tips and only one or two informal inquiries or complaints. The custodian of the fax machine in the Anchorage office of the Civil Division of the Department of Law does, however, report receiving such solicitations on the average of once a week.

I hope this information is helpful. Please feel free to contact me if we can provide any further assistance.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL



By: Robert E. Mintz
Assistant Attorney General

BY FAX

STEVE COWPER, GOVERNOR

XX REPLY TO

1031 W. 4TH, SUITE 110
ANCHORAGE, ALASKA 99501

PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN SUITE 600
FAIRBANKS, ALASKA 99701
PHONE: (907) 456-8388

S.S. FULLER BLDG.
4th & HARRIS, SUITE 214
P.O. BOX K
JUNEAU, ALASKA 99811
PHONE: (907) 485-3892

STATE COURTHOUSE, ROOM 28
P.O. BOX 671
VALDEZ, ALASKA 99686
PHONE: (907) 835-2462

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

Consumer Protection Suit
Filed Against Las Vegas
Telemarketer
June 2, 1988

For further information
contact Scotty Dawkins
276-3550

FOR IMMEDIATE RELEASE

JUNEAU - A Las Vegas telemarketing firm has been misleading Alaska consumers to get them to buy grossly overpriced vitamins, according to a lawsuit filed Tuesday by the Attorney General's Consumer Protection Section. The State is asking the superior court to bar Continental Sales, Inc., a Nevada corporation, and its principals from violating Alaska's consumer protection act, Attorney General Grace Berg Schaible announced today. The lawsuit also seeks civil penalties of \$5,000 per violation from each defendant and an order requiring the defendants to refund money to purchasers.

The defendants, using the name "Vita-Life," allegedly phoned consumers to say they had been "selected" to participate in a "super bonus bonanza" and were "guaranteed to receive" one of five "fabulous awards." The awards supposedly included a 1988 Ford pickup, an RCA 48" big screen TV, \$3,000 in cash, a 7-day trip to Hawaii for two, and an AM-FM home stereo system. The State's complaint alleges that this "award" offer was part of a solicitation in which Vita-Life charged consumers' credit cards at least \$399 for the sale of vitamins, and that the only "awards" actually provided to consumers were low quality, low value items or items with substantial and costly conditions on their use.

The complaint gives as examples of actual awards a dyed rabbit-fur jacket with a wholesale price of about \$30, and a ticket for a 7-day Caribbean cruise requiring consumers to pay for travel from Alaska to dockside and back. The complaint also alleges that in some cases consumers got no "award" at all.

Among the violations of law claimed in the lawsuit are Vita-Life's failure to notify consumers of their five-day right to cancel under Alaska's door-to-door solicitation act. The complaint also claims that the "super bonus bonanza" program constitutes a lottery, which is prohibited by Alaska law.

In addition to Continental Sales, Inc., the lawsuit names as defendants two corporate officers, Eugene L. Bowen and David Wetherill, and general manager John Wood.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

STEVE COWPER, GOVERNOR

REPLY TO
XX
1001 W. 4th. SUITE 110
ANCHORAGE, ALASKA 99501
~~276-3550~~
276-3550
111 NATIONAL CENTER
100 CUSHMAN, SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 458-8388

Consumer Protection Lawsuit Filed
Against Florida Telemarketer
April 20, 1989

For more information
call Robert E. Mintz
276-3550

FOR IMMEDIATE RELEASE

Anchorage. A Florida-based company that sends postcards to Alaskans promising them "valuable awards" has violated Alaska's consumer protection laws, according to a lawsuit filed in Anchorage by the Attorney General's Consumer Protection Section. The lawsuit names as defendants Copy Supply Corp. of America, which does business as "Bonus Awards," and the company's president, Marcia Josowitz.

Consumers who called the defendants' Florida phone number to claim their awards were allegedly told that they had to purchase a water filter for \$389 but that they were guaranteed to receive a 1989 Ford Mustang convertible, a \$5,000 U.S. savings bond, a 40" RCA television, a vacation in places like the Bahamas or Mexico, or a \$1,000 cashiers check. However, the lawsuit claims, consumers were not told that the water filter was worth at most \$50 and that the only "awards" actually given were vacation certificates that had little or no practical value.

For instance, the so-called "Bahamas Cruise" award allegedly did not include airfare between Alaska and Florida, meals, transfers, hotel taxes, or shipboard accommodations, and it required advance payment of a non-refundable \$25 processing fee as well as a supposedly refundable \$100 reservation deposit.

According to papers filed in court, the defendants got at least 107 Alaska consumers to give them their credit card numbers, collecting a total of \$35,027. In some instances, when consumers balked at paying the \$389 price, the defendants allegedly agreed to sell the water filter for \$195.

In addition to charging that "Bonus Awards" misled consumers into buying grossly overpriced merchandise, the Consumer Protection Section alleges that the company's "award" offer, contingent on consumers' making a purchase, amounts to a lottery, which also violates the consumer protection statute. Another violation alleged in the lawsuit is the company's failure to notify consumers of their right to cancel the purchase under Alaska's door-to-door solicitation law. This law gives consumers a "cooling-off period" of five business days to cancel purchases made either in ordinary door-to-door sales or in telephone sales.

- more -

In bringing the suit, which was filed on Wednesday in Superior Court, the state is asking for an injunction prohibiting the defendants from continuing their illegal practices and for an order requiring them to make refunds to injured consumers. The court is also being asked to assess civil penalties of \$5,000 for each violation.

Assistant Attorney General Robert E. Mintz, who heads the Consumer Protection Section, urged consumers who believe they have been "taken" in telephone solicitations to exercise their rights under Alaska's cooling-off law and the federal Fair Credit Billing Act. The section can provide forms and information to persons needing assistance. "The one consolation in most of these cases is that since the consumers used their credit cards, they have a good chance of getting their money back from the card issuer -- if they act promptly," he said.

- 30 -

Department of Law
OFFICE OF THE ATTORNEY GENERAL
Consumer Protection Section
1031 West 4th Ave., Suite 110
Anchorage, Alaska 99501
Phone 279-0428

Item 9

STATE OF ALASKA THE LEGISLATURE



LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

P.O. Box Y
Juneau, AK 99811

September 26, 1989

MEMORANDUM

TO: Dennis Burns
Rep. Boucher's Office

FROM: Peggy Simons *PS*
Manager, Division of Public Services

RE: Fax procedures in the LIO's

In response to your inquiry regarding our fax policies and procedures, I would first like to point out that fax usage is increasing every year. In 1985, all LIO's sent and received 25,422 pages of materials as compared to 1988, when the total was 86,227. During the 1989 legislative session, the total sent and received was 42,591. I will have a year-end figure available in January of 1990.

We have only one written, in-house policy specifically addressing fax usage and that is regarding non-legislative usage: "LIO's may accept non-legislative telecopy for transmission on a time-available basis, if we have a charge-back number. The telecopy must conform to the policy on use of LAA equipment, space and staff." It has been our practice to send and receive fax for legislators and staff in order to facilitate their work and this comes out of our Division budget. We do not always know what materials a legislator has requested so we will generally forward any fax received to the appropriate recipient. We do sometimes receive lengthy documents with instructions to duplicate to all 60 legislators. We try to verify this type of transaction before duplicating and distributing, since this is costly in both time and materials.

Very little of the "unsolicited" fax that we receive is of a commercial nature. It is more likely to be letters or other types of messages to legislators, from business establishments and individuals. As you probably know, all the fax numbers for the LIO's are published in the Directory of State Officials and are given out readily upon request.

I would be happy to provide further information on our fax procedures. You can reach me at the Juneau LIO, ph. 465-4648. Thank you.

cc: Warren Endicott
Executive Director

MEMORANDUM

November 3, 1988

TO:
FROM: Legislative Council Staff
SUBJECT: Junk Fax

The number for fax machines installed since 1984 has increased almost tenfold -- from 89,000 in 1984 to an estimated 864,000 in 1988. 1/ The total number of machines in use could reach 2.5 million by the end of 1990. 2/ As the number of facsimile machines has grown, fax use as a method of transmitting advertisements, or junk fax, has also expanded. According to The Economist, junk fax is problematic because, "unlike mail, it ties up machines, blocks more important messages, and costs the recipient electricity and paper -- chemically coated thermal paper that costs almost 10 cents a sheet."

In response to your request, staff contacted the American Facsimile Association, the National Conference of State Legislatures, and the Colorado Public Utilities Commission to determine whether other states have taken any steps to regulate junk fax. None of these organizations was aware of any state initiatives in this area. However, it was suggested that similarities exist between junk fax and unwanted telephone solicitations, and states have acted to regulate certain types of telephone solicitations. For example, Arizona, Maryland, and Washington have banned the use of automatic dialing and announcing devices (ADADs). Laws in Michigan prohibit the use of prerecorded messages in telephone solicitations. Other states, such as Colorado and Wisconsin, require that the person called consent to listen to a prerecorded message. Colorado law also requires an existing business relationship be present. These statutes may provide some precedent and ideas for the regulation of certain fax transmissions. Although the Federal Communications Commission (FCC) decided in 1980 that it lacked jurisdiction to regulate telephone solicitations, it has been suggested that the FCC may eventually be forced to regulate fax machine usage. 2/

According to a spokesperson for a Denver fax dealership, fax owners can reduce the receipt of junk fax by being circumspect about distributing their numbers. For example, placing a fax number on stationery increases the circulation of the number. Some technological advances may also reduce junk fax. Fax manufacturers

1/ "Not just the fax -- its junk mail, to ," USA Today, Wednesday, October 26, Section B, p. 1.

2/ "Cold-fax and fouler," The Economist, October 8, 1988, p. 70.

are experimenting with methods of screening or blocking unwanted fax messages through unique fax compression algorithms and closed fax networks. 3/ A machine that blocks fax transmissions that do not have an access code is currently available. With these machines, senders must call to receive approval for a transmission. 4/

For further information, please contact
Deborah Godshall, 866-4782.

3/ USA Today, Ibid.

4/ Fax Focus, American Facsimile Association, Vol. I, Issue 9, October 17, 1988.

danger of serious physical injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

D. A person who violates this section is guilty of a class 1 misdemeanor.

Added by Laws 1986, Ch. 25, § 1.

1986 Reviser's Note:

Laws 1986, Ch. 359, § 1 added another new § 13-2918 which was renumbered as § 13-2919, pursuant to authority of § 41-1304.02.

* § 13-2919. Automated telephone solicitation; violation; classification

A. A person shall not use an automated system for the selection and dialing of telephone numbers and the playing of a recorded message for the purpose of soliciting persons to purchase goods or services or requesting survey information if the results are to be used directly for the purpose of soliciting persons to purchase goods or services.

B. A person who violates this section is guilty of a class 2 misdemeanor.

Added as § 13-2918 by Laws 1986, Ch. 359, § 1. Renumbered as § 13-2919.

1986 Reviser's Note:

Pursuant to authority of § 41-1304.02, this section, added by Laws 1986, Ch. 359, § 1 as § 13-2918, was renumbered as § 13-2919.

Library References

Telecommunications § 361 et seq.
C.J.S. Telegraphs, Telephones, Radio, and Television § 104 et seq.

CHAPTER 30.--EAVESDROPPING AND COMMUNICATIONS

§ 13-3001. Sending threatening or anonymous letter; classification

Library References

Extortion and Threats § 26.

C.J.S. Threats and Unlawful Communications § 12 et seq.

§ 13-3005. Wiretapping and eavesdropping; classification; exception

Notes of Decisions

1. In general

Because defendant had no reasonable expectation of privacy with respect to his conversation with girl friend in police interview room, tape

recording of the conversation by police officers using a listening device did not violate this section prohibiting the recording of conversations. State v. Hauss (App.1984) 142 Ariz. 159, 688 P.2d 1051.

§ 13-3007. Obtaining information by trick, false representation or impersonation from telegraph or telephone company, officer or employee; obtaining access to premises by trick, false representation or impersonation; classification

A person is guilty of a class 2 misdemeanor who:

1. By trick or false representation or impersonation, knowingly obtains from any telegraph or telephone company, or any officer or employee thereof, information concerning identification or location of any wires, cable lines, terminals or other apparatus used in furnishing telegraph or telephone service, or any information concerning any communication passing over telegraph or telephone lines of any such company, or the existence, content or meaning of any record thereof; or

2. By trick or false representation or impersonation, knowingly obtains access to any premises or to installations of any telegraph or telephone company upon such premises. Added as § 13-1054 by Laws 1968, Ch. 126, § 1. Renumbered as § 13-3007 by Laws 1977, Ch. 142, § 93, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 186, eff. Oct. 1, 1978.

§ 13-3010. Ex parte order for wiretapping and eavesdropping

A. An ex parte order for wiretapping or eavesdropping may be issued by any justice of the supreme court, judge of the court of appeals or judge of the superior court upon

Maryland

SENATE BILL No. 29
(81r0035)

Introduced by Senator Wiser 25

Read and Examined by Proofreader: 28

Proofreader. 30
31

Proofreader. 33
34

Sealed with the Great Seal and presented to the Acting 36

Governor, for his approval this _____ day of _____ 38

at _____ o'clock; _____ A. 40

42
43

APPROVED
BY THE GOVERNOR 6

CHAPTER — 22

BY ACT concerning 50

Automated Dialing Systems 53

MAY 16 '78

FOR the purpose of prohibiting the utilization of an 57
automated dialing or push-button or tone-activated 58
address signaling system for the purpose of soliciting 59
customers or sales.

BY adding to 61

Article 78 - Public Service Commission Law 64

Section 55C to be under the new subheading "Telephone 66
Companies"

Annotated Code of Maryland 68

(1975 Replacement Volume and 1977 Supplement) 69

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 73
MARYLAND, That section(s) of the Annotated Code of Maryland 74
be repealed, amended, or enacted to read as follows:

Article 78 - Public Service Commission Law 77

TELEPHONE COMPANIES 79

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

55c.

82

A PERSON MAY NOT UTILIZE AN AUTOMATED DIALING OR
PUSH-BUTTON OR TONE-ACTIVATED ADDRESS SIGNALING SYSTEM WITH
A PRERECORDED MESSAGE FOR THE SOLE PURPOSE OF SOLICITING
PERSONS TO PURCHASE GOODS OR SERVICES.

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SECTION 2. AND BE IT FURTHER ENACTED, That this Act
shall take effect July 1, 1978.

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Approved:

_____ Acting Governor.

_____ President of the Senate.

_____ Speaker of the House of Delegates.

80.36.380 Reports. Subject to RCW 40.07.040, the commission shall provide the legislature with a biennial report through 1991 on the status of the Washington telecommunications industry. The report shall describe the competitiveness of all markets as defined by the commission; the availability of diverse and affordable telecommunications services to all people of Washington, particularly to customers in rural or sparsely populated areas; and the level of rates for local exchange and interexchange telecommunications service. The report also shall address the quality and extent of the state's telecommunications infrastructure. The report also shall address the question of whether competition in certain markets has developed to such an extent that the commission recommends additional regulatory flexibility such as detariffing or total deregulation and the evidence therefor; and the need for further legislation to achieve the purposes of RCW 80.36.300 through 80.36.370 and 80.04.010. The commission shall also monitor cost of service methodologies and shall recommend to the legislature whether cost of service ratemaking shall become a standard for telecommunications services. [1987 c 505 § 78; 1987 c 293 § 6; 1985 c 450 § 41.]

Reviser's note: This section was amended by 1987 c 293 § 6 and by 1987 c 505 § 78, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

80.36.390 Telephone solicitation. (1) As used in this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or non-profit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

For purposes of this section, each individual real estate agent or insurance agent who maintains a separate list from other individual real estate or insurance agents shall be treated as a company or organization. For purposes of this section, an organization as defined in RCW 29.01.090 or 29.01.100 and organized pursuant to RCW 29.42.010 shall not be considered a commercial or non-profit company or organization.

(2) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first thirty seconds of the telephone call.

(3) If, at any time during the telephone contact, the called party states or indicates that he or she does not wish to be called again by the company or organization or wants to have his or her name and individual telephone number removed from the telephone lists used by the company or organization making the telephone solicitation, then:

(a) The company or organization shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The company or organization shall not sell or give the called party's name and telephone number to another company or organization. *Provided*, That the company or organization may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(4) A violation of subsection (2) or (3) of this section is punishable by a fine of up to one thousand dollars for each violation.

(5) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general shall notify the company with a letter of warning that the section has been violated.

(6) A person aggrieved by repeated violations of this section may bring a civil action in superior court to enjoin future violations, to recover damages, or both. The court shall award damages of at least one hundred dollars for each individual violation of this section. If the aggrieved person prevails in a civil action under this subsection, the court shall award the aggrieved person reasonable attorneys' fees and cost of the suit.

(7) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by (a) annual inserts in the billing statements mailed to residential customers, or (b) conspicuous publication of the notice in the consumer information pages of local telephone directories. [1987 c 229 § 13; 1986 c 277 § 2.]

Legislative finding—1986 c 277: "The legislature finds that certain kinds of telephone solicitation are increasing and that these solicitations interfere with the legitimate privacy rights of the citizens of the state. A study conducted by the utilities and transportation commission, as directed by the forty-ninth legislature, has found that the level of telephone solicitation in this state is significant to warrant regulatory action to protect the privacy rights of the citizens of the state. It is the intent of the legislature to clarify and establish the rights of individuals to reject unwanted telephone solicitations." [1986 c 277 § 1.]

Charitable solicitations: Chapter 19.09 RCW

80.36.400 Automatic dialing and announcing devices—Commercial solicitation by. (1) As used in this section:

(a) An automatic dialing and announcing device is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 19.86 RCW. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices. [1986 c 281 § 2.]

Legislative finding—1986 c 281: "The legislature finds that the use of automatic dialing and announcing devices for purposes of commercial solicitation: (1) Deprives consumers of the opportunity to immediately question a seller about the veracity of their claims; (2) subjects consumers to unwarranted invasions of their privacy; and (3) encourages inefficient and potentially harmful use of the telephone network. The legislature further finds that it is in the public interest to prohibit the use of automatic dialing and announcing devices for purposes of commercial solicitation." [1986 c 281 § 1.]

80.36.410 Lifeline service—Legislative finding. (Effective until June 30, 1990.) The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service. Therefore, the legislature finds that it is in the public interest to take steps to mitigate the effects of these changes on low-income persons. [1987 c 229 § 3.]

Expiration date—1987 c 229 §§ 3-10: "RCW 80.36.410 through 80.36.480 shall expire June 30, 1990, unless extended by the legislature." [1987 c 229 § 12.]

80.36.420 Lifeline service—Availability, components. (Effective until June 30, 1990.) Lifeline assistance shall be available to participants of department programs set forth in RCW 80.36.470. Lifeline assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate lifeline service rate for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single lifeline service rate for all local exchange companies operating in the state of Washington. The lifeline service rate shall include any federal end user access charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the lifeline service rate, consider all charges for local exchange service, including federal end user access charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The lifeline service rate shall only be available to eligible customers subscribing to the lowest available local exchange flat rate service, where the lowest local exchange flat rate, including any federal end user access charges and any other charges necessary to obtain local exchange service, is greater than the lifeline service rate.

(d) The cost of providing the lifeline service shall be paid, to the maximum extent possible, by a waiver of all or part of the federal end user access charge and, to the extent necessary, from the lifeline fund created by RCW 80.36.430. [1987 c 229 § 4.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.430 Lifeline service—Surcharge. (Effective until June 30, 1990.) Costs associated with lifeline telephone service shall be recovered through a lifeline surcharge on all other switched access lines. The lifeline surcharge shall be applied equally to all residential and business access lines not to exceed sixteen cents per month. The surcharge collected by the telecommunications companies shall not be construed as gross income or gross receipts for purposes of state, county or municipal public utility taxes. All money collected from the lifeline surcharge shall be transferred to a lifeline fund administered by the department. Local exchange companies shall bill the fund for their expenses incurred in offering lifeline telecommunications services, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department shall recover its administrative costs from the fund. [1987 c 229 § 5.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.440 Lifeline service—Rules. (Effective until June 30, 1990.) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.480. [1987 c 229 § 6.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.450 Lifeline service—Limitation. (Effective until June 30, 1990.) Lifeline service shall be limited to one residential access line per eligible household. [1987 c 229 § 7.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.460 Lifeline service—Deposit waivers, connection fee discounts. (Effective until June 30, 1990.) Local exchange companies shall file tariffs with the commission which waive deposits on local exchange service for eligible subscribers and which establish a fifty percent discount on service connection fees for eligible subscribers. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered

discrimin

REGULATION OF TRADE

REGULATION OF TRADE

134.75
Repealed

1989

services.

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J. 1988] after publication.

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s. (2), (4) and (7) of the
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marks . . .

urchase or exchange, any secondhand firearm, whether smooth bore, shotgun, rifle or
and gun or any secondhand article made in whole or in part, of gold, silver, precious
stones, copper, lead or brass, shall, within 24 hours after receiving the article, report to
the chief of police or the sheriff of the county the fact that it has been received, with the
time, address and description of the person from whom the article was received, together
with a description of the article and " . . . shall not destroy or alter the form of the article
until . . . 24 hours after it was received . . ."

(2) The dealer or manufacturer shall enter, in ink, in a book to be kept for that purpose
a correct description, in the English language, of all secondhand articles composed, in
whole or in part, of gold, silver, precious stones, copper, lead or brass so received . . .
and the name and residence and description of, the person from whom the articles were
received, and no entry made in the book shall be erased, obliterated or defaced.

(3) The book and entries as well as every such secondhand article received by the dealer
or manufacturer, shall, at all reasonable times, be open to the inspection of the sheriff or
the chief of police or any police officer designated by the chief for this purpose.

(4) The sheriff or chief of police may cause any article referred to in sub. (1) which he
or she has reason to believe was sold or exchanged by some person other than the owner,
to be held for the purpose of identification by its owner, for such reasonable length of
time as deemed necessary.

(5) Any person violating this section may be fined not more than \$100 nor less than \$10,
or imprisoned not to exceed 6 months, or both.

See =

- L.1901, c. 372.
- L.1909, c. 210.
- L.1911, c. 663, § 265.
- St.1911, § 1584cn.
- L.1923, c. 291, § 3.
- St.1923, § 129.18.
- L.1935, c. 550, § 387.
- L.1959, c. 145.

- St.1967, § 129.18.
- L.1969, c. 336, § 30, eff. Jan. 29, 1970.
- St.1975, § 440.95.
- L.1977, c. 29, § 1503, eff. July 1, 1977.
- 1985 Act 135, §§ 46 to 49, eff. March 20, 1986.

Library References

- Consumer Credit ☞ 16.
- C.J.S. Interest and Usury; Consumer Credit
§ 302.



134.72. Prohibition on the use of prerecorded messages in telephone solicitation

(1) Definition. As used in this section "telephone solicitation" means the unsolicited
initiation of a telephone conversation for the purpose of encouraging a person to purchase
property, goods or services.

(2) Prohibition. No person may use an electronically prerecorded message in tele-
phone solicitation without the consent of the person called.

(3) Territorial application. (a) *Intrastate*. This section applies to any intrastate
telephone solicitation.

(b) *Interstate*. This section applies to any interstate telephone solicitation received by
a customer in this state.

(4) Penalty. A person who violates this section may forfeit up to \$500.

Source:

- L.1977, c. 301, § 1, eff. May 12, 1978.

C.J.S. Trade-Marks, Trade-Names, and Unfair
Competition § 237.

Library References

- Trade Regulation ☞ 62.1.

WESTLAW Electronic Research
See WESTLAW Electronic Research Guide fol-
lowing the Preface.

134.75. Repealed by 1985 Act 120, § 199em, eff. July 1, 1986

The repealed section, relating to renewable
energy resource system dealers, was derived
from 1985 Act 29, § 1888g, etf. July 20, 1985.

Additions in text are indicated by underlining; deletions by asterisks . . .

18-9-311. Automated dialing systems prohibited. (1) No person shall utilize an automated dialing system with a prerecorded message for the purpose of soliciting another person to purchase goods or services unless there is an existing business relationship between such persons, and the person being called then consents to hear the prerecorded message.

(2) Any person who violates this section commits a class 1 petty offense.

Source: L. 79, p. 745, § 1.

18-9-312. Hostages in geographical area - cutting, rerouting, or diversion of telephone lines. (1) Notwithstanding the provisions of sections 18-9-302 to 18-9-311, any supervising representative of a law enforcement agency who has probable cause to believe that one or more hostages are being held in the geographical area in which he has jurisdiction shall have the authority to order a previously designated telephone company security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by the holder of such hostages with any person other than a peace officer or a person authorized by the peace officer.

(2) The serving telephone company within the geographical area of a law enforcement agency shall designate a telephone company security official and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section.

(3) Good faith reliance on an order by any supervising representative of a law enforcement agency shall constitute a complete defense to any action brought against a telephone company or any of its employees or agents in connection with actions taken under this section.

Source: L. 81, p. 976, § 17.

ARTICLE 10

Gambling

Cross references: For the power of municipalities to regulate gambling, see § 31-15-401 (1)(o).

18-10-101.	Legislative declaration - construction.	18-10-105.	Possession of a gambling device or record.
18-10-102.	Definitions.	18-10-106.	Gambling information.
18-10-103.	Gambling - professional gambling - offenses.	18-10-107.	Gambling premises.
18-10-104.	Gambling devices - gambling records - gambling proceeds.	18-10-108.	Exceptions.

18-10-101. Legislative declaration - construction. (1) It is declared to be the policy of the general assembly, recognizing the close relationship between professional gambling and other organized crime, to restrain all persons from seeking profit from gambling activities in this state; to restrain all persons from patronizing such activities when conducted for the profit of any person; to safeguard the public against the evils induced by common gamblers and common gambling houses; and at the same time to preserve the freedom



Alaska State Legislature

House

Official Business

P.O. BOX V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: House State Affairs Committee Members

FROM: Representative H.A. "Red" Boucher, Chair
House State Affairs

DATE: January 23, 1990

RE: HB 232

You will recall the House State Affairs Committee held two hearings on HB 232 last session. The following summarizes the testimony and comments from those hearings:

Testimony

1. Rick Lauber, Pacific Seafood Processors Association

Stated he received unsolicited Fax advertising which he opposes. His concern, however, related to situations where fish processors sell to brokers by Fax. Would they be violating the provisions in HB 232?

Commercial solicitation under HB-232 means unsolicited electronic or telephone transmission. The process used by Mr. Lauber was unsolicited, however, it seemed appropriate and legitimate.

Companies which have a business relationship with a customer could easily receive the customer's permission to, and in the future, use the customer's Fax for unsolicited advertisements. The real problem was unsolicited, unwanted transmissions and this included automatic dialing machines.

2. Julie Barney, staff New York Assembly

Similar legislation was pending before the New York Assembly. Ms Barney indicated that the costs and losses incurred to the recipient of "junk" Fax transmission was the impetus behind the legislation.

Ms Barney testified that she believed companies which had a business relationship with a customer could easily receive the customer's permission to use the customer's machine for unsolicited advertisements from the company.

3. Anne Darr, Direct Marketing Association (DMA)

Supported HB 232. She testified that DMA deleted any person from the national mailing lists who wished to be removed.

Ms Darr said the DMA had established a special task force look into unsolicited Fax transmissions. She testified that DMA was urging and supporting a regulatory approach to unsolicited Fax transmissions.

4. Luis Marquez, Direct Advertising

Testified against HB 232. Mr. Marquez indicated that his business sent Fax advertising to 2,000 Fax machines throughout Alaska.

Mr. Marquez discussed his policy for Fax transmissions. He stated he did not sell his database list and that he had only received complaints from 1 to 2 percent of his customers. Mr. Marquez indicated he did not believe Fax advertising had become a problem in Alaska.

Mr. Marquez testified he believed the industry should be self-policing.

5. Robert Mintz, Assistant Attorney General

Testified that national studies showed that people generally did not voice their objections to unsolicited transmissions. Those studies showed that only 1 out of 26 dissatisfied customers on average would actually take the time to communicate a complaint to a company.

Mr. Mintz testified that he believed it was better public policy to stop a problem before it became a widespread.

b. Example / Checklist Contact Sheet

LEGISLATIVE SPONSOR: HAWSO State Affairs

TC DATE/DAY: Thursday April 6

Pub. Hear Work Ses. Inv. Hear

TIME: 8.30-10.00 AM

LEGISLATIVE REFERENCE: HB232/HJR34/HJR35

JUNEAU ROOM: Cap 102

SUBJECT: Prohibit Unsolicited Fax Trans

BRIDGE: _____

State Sovereignty

OF PORTS: _____

Coop w/ Foreign Nations

CONTACT: Dennis PH: 4963

DATE TAKEN/BY: Wendi per Dennis

TELECONFERENCE SITES:

LIO'S

LTC'S

VTS'S

- Anchorage
- Barrow *
- Bethel
- Delta Junction *
- Dillingham *
- Fairbanks
- Glennallen *
- Juneau
- Ketchikan
- Kodiak
- Kotzebue
- Mat-Su
- Nome
- Petersburg *
- Sitka
- Soldotna
- Valdez *

- Homer
- Wrangell

See List on Reverse Side

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

↑ HB232
Julie Barney/ny
OFFNETS: 518-455-4881

HJR34/35 } Ed Mendic
Fairbanks

CHAIRING SITE: Juneau

CHAIRPERSON: Boucher

[] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

SPECIAL INSTRUCTIONS

*
 * DELIVER TO: LTCCJNU
 *
 * ORIGINAL
 * SENT: 04/03/89 TIME: 14:28
 * SUBJECT: TELECONFERENCE 89-04-009
 * PRINT DATE: 04/03/89 TIME: 14:31
 *

TELE# 89-04-009 LEGISLATIVE PUBLIC HEARING
 04/06/89 THURSDAY 8:30AM THRU 10:00AM

SPONSOR : (H) STATE AFFAIRS
 JNU ROOM: CAPITOL ROOM 102

BRIDGE: 562-2867
 PORTS : 5
 CHAIR : REP. ROUCHER
 SITE : JUNEAU

NOTES : OFFNET IS JULIE BARNEY IN NEW YORK AT 510-455-4801.
 CONTACT: DENNIS 465-4963
 TAKEN : LONDI SENT BY: BECKY 4-3-89

===== SUBJECT =====

HJR 34: CONST. AMENDMENT: STATE SOVEREIGNTY
 HJR 35: COOPERATION WITH FOREIGN NATIONS
 HB 232: PROHIBIT UNSOLICITED FAX TRANSMISSIONS
 ***** TESTIMONY WILL BE TAKEN *****

SITES : *JNU, KOT OFFNET: JULIE BARNEY (N.Y.)

SOLDOTNA
 VALDEZ

CHAIRING SITE: Juneau
 CHAIRPERSON: Rep. Roucher

[] CONFORMS TO LEGISLATIVE COUNCIL
 POLICY (4/85) AND PUBLIC HEARING LAWS

Dennis Burns 4/3/89
 SIGNATURE OF SPONSOR/CONTACT PERSON DATE

SPECIAL INSTRUCTIONS:

* SPONSOR OR DESIGNEE MUST BE IN ATTENDANCE DURING THE TELECONFERENCE.

TESTIMONY TO BE TAKEN: YES NO INVITATION ONLY

*Will be doing
 other sites
 for HJR 34 & 35
 for Dennis
 4/3/89*

*When calling
 Julie Barney in N.Y.
 pls ask if she
 received the material
 that was sent to
 her from [unclear]
 in Rep Edward's office
 via the FBI. Then
 call Dennis & let him know*

b. Example / Checklist Contact Sheet

LEGISLATIVE SPONSOR: House State Affairs
 (Pub. Hear) Work Ses. Inv. Hear
 LEGISLATIVE REFERENCE: HB 280
 SUBJECT: Admin Adjudication /
Claims Against State
 CONTACT: Ann PH: 4963

TC DATE/DAY: Tues, Apr 25
 TIME: 8:30-10:00
 JUNEAU ROOM: C-102
 BRIDGE: _____
 # OF PORTS: _____
 DATE TAKEN/BY: Roger 4/20/89

TELECONFERENCE SITES:

- | | | |
|------------------|--------------|--------------|
| <u>LIO'S</u> | <u>LTC'S</u> | <u>VTS'S</u> |
| Anchorage | Homer | See List on |
| Barrow * | Wrangell | Reverse Side |
| Bethel | | |
| Delta Junction * | | |
| Dillingham * | | |
| Fairbanks | | |
| Glennallen * | ALL LIO'S | |
| <u>Juneau</u> | | |
| Ketchikan | | |
| Kodiak | | |
| Kotzebue | | |
| Mat-Su | | |
| Nome | | |
| Petersburg * | | |
| Sitka | | |
| Soldotna | | |
| Valdez * | | |

OTHER SITES WELCOME WITH PRIOR NOTIFICATION



DIRECT ADVERTISING



907-345-4490
 FAX-345-2363
 BOX 93057
 ANCHORAGE
 9 9 5 0 9

Juneau
Boucher

LEGISLATIVE COUNCIL POLICY 4/85

SPONSOR/CONTACT PERSON _____ DATE _____

SPECIAL INSTRUCTIONS

HB 280 Greg Edmiston
 OFFNETS: 274-1151 Arch
 1029 W. 3rd Ave, Suite 500
 Anchorage, 99501
 HB 280 Luis Marquez
 245-4490
 Robert Mirtz
 276-3550 (DOL)
 Consumer Prot. Section
 1031 W. 4th Ave, Sitka 110
 A/A 99501
 HB 280 Harry Blanas
 96 Veco 659-4604
 or Mrs. Blanas 561-8580

* SESSION ONLY

DeHART and DARR
TELECOPIER COVER MEMORANDUM

DATE 4-7-89

- (1) TO: Rep Boucher
(2) COMMENT: re AK HB 232
(3) ADDRESSEE: House State Affairs Committee
(4) ADDRESSEE CITY & STATE: _____
(5) ADDRESSEE FAX: 907 465 2186
(6) CONFIRMATION TELEPHONE: _____
(7) TOTAL NUMBER OF PAGES: 4 INCLUDING COVER MEMORANDUM
(8) FROM: Anne Darr

McLEAN OFFICE

1360 Beverly Road
Suite #201
McLean, VA 22101
Main Phone: 703/448-1000
FAX No.: 703/790-3460

as promised

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE AT THE CONFIRMATION TELEPHONE.

WE ARE TRANSMITTING FROM A SHARP

MODEL NO. FO-640

OPERATOR: _____ TIME: _____

TRANSMISSION CONFIRMED: [] TRANSMISSION CONFIRMED: [] TIME: _____

CF _____

ISS _____

S _____

JN _____

DeHart and Darr

Comments prepared by Anne Darr

DeHart and Darr Associates, Inc has represented the direct marketing industry in the state legislatures for twenty years.

On behalf of the Direct Marketing Association (DMA) we thank Chairman Boucher and each member of the State Affairs Committee for the opportunity to share our views with you regarding House Bill 232.

The members of DMA bring you goods and services, manufactured and offered by others, through direct mail advertising and telecommunications.

We have 3,000 companies nationwide and we employ millions of Americans.

We make it possible for any American, including the elderly and the handicapped, to live alone, in rural or metropolitan areas, and have access to goods and services by phone and by mail. Maybe in the future -- by fax.

As an industry, the DMA has been particularly responsive to consumer needs as well as to those of our member companies. DMA and its president, Jonah Gitlitz, believe in being responsible, ethical, and helpful business people.

For example,

1. DMA instituted the Mail Preference Service (MPS) in 1971. This means that any American can send his/her name and address to MPS and be deleted from national mailing lists. It is interesting to note that more people have asked to get ON lists than to get off.
2. DMA instituted the Telephone Preference Service (TPS) in 1978. This means that any person can send his/her telephone number to TPS and be deleted from national telephone calling lists.

We have not taken any steps regarding facsimile transmission as yet. That is because it is so new and such an exploding and innovative communication channel, that we have not been able to develop a responsible position as yet. We have been able to identify only a few examples of marketers using fax at this time.

DMA does plan to review the fax issue during 1989 -- so that we can report to you, our lawmakers, what we have learned and what we recommend.

In the meantime, we urge restraint in your approach -- in the approach of any state legislature.

FAX may turn out to be the best and the most efficient way to do business ---
or it may turn out to be the the worst!

Until we can determine together who is using fax and who might use fax, we urge
you to REGULATE, not ban.

DMA's proposal at this time is this:

1. prohibit fax UNLESS
 - a. it is between two persons or entities who have a previous relationship
 - OR
 - b. the fax connection occurs between the hours of 6 pm and 9 am, local time
- AND
- c. any faxor agrees, and indeed establishes an inhouse system and procedure, to delete the name of any faxee, upon request.

DMA believes this solves your problem to curb any runaway abuses and gives you a
vehicle to amend when more facts about FAX are available.

Finally, we would like to mention that the exploding technological aspects of
facsimile should not be ignored.

1. "regular" paper is now available
2. a new "gizmo" is on the market this month which enables anyone with a
fax to attach it and this means that any other person desiring to fax
to him or her will need an "access" number

Sometimes, 50% of a problem solves itself as the invention is perfected.

Thank you for the opportunity to communicate with the Alaska legislature!

If you have further questions, please contact Margaret Gottlieb
Director of State Legislative Affairs
Direct Marketing Association (DMA)
(in Washington)
at 202 347 1222

#



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

TO: Julie Barney
(518) 455-4380 FAX

FROM: Dennis J. Burns
(907) 465-2186 FAX

DATE: April 21, 1989

Attached FYI transcript APSC meeting in Cordova.

Regarding the FAX legislation, do you have statistics/data showing frequency of consumer complaints for both FAX and automatic dialing-announcing devices? If so, could you send that information?

Joint interim task force on Telecomm.
Environment and energy comm. (503) 378-8828

(503) 378-5183 Kathryn

Someone brought article about potential abuses.
Dead Bill in House.

Senate Cheri Cappelard 378-5781

Anticipated

Jam up lines / Business competition.

Frequency of complaints Basic telephone situation.
unsolicited tele + Fax.

Rob
Mintz St. Consumer 279-0428

or
Sally
Whitkins

Mike McCarty
Telemarketing Task Force - (202) 326-3303

Sarah Cooper (202) - 639-8140

AS. 45.50.472

Number 294

LUIS MARQUEZ, FAX Direct Advertising, ANCHORAGE, spoke against HB 232. He discussed his business venture, which sent fax advertising to a data base of 2,000 fax machines throughout Alaska. He discussed his policy for fax transmissions, the process he used when faxing advertising, and the positive aspects of this type of business. He said that he did not sell his data base list, and that he had only received complaints from 1-2% of his data base, which he then removed from his list. Mr. Marquez did not think that faxing advertising had become a problem in Alaska. He talked about the negative ramifications of HB 232 to his business.

Number 398

Rep. Finkelstein commented that he was concerned with the number of people who could begin operating this type of business in the future. He said he believed in preventative legislation before a problem got out of hand.

Number 410

Mr. Marquez remarked that only two companies from Alaska would be sending faxes to the Lower 48, and perhaps only on a once-a-month type basis. He said that his list received something from him once or twice a week, at the most. He commented this was important for his target marketing. Mr. Marquez stated that he believed the provisions in HB 232 should be a self-policing action by the industry, not a statute by the state.

Number 433

ROBERT MINTZ, Assistant Attorney General, Consumer Protection Agency, Department of Law, ANCHORAGE, spoke in support of HB 232. He said that national studies showed that for every complaint made to a company, 26 people were dissatisfied but did not voice their complaint. He said if this were applied to Mr. Marquez' testimony, it would mean more people were unhappy with the service than were coming forward to say so. Mr. Mintz said that some people used their fax machines at night, and there was a direct cost to the recipient of a junk fax. He discussed the use of fax versus the use of a telephone or mail system. Mr. Mintz discussed the legislation being proposed in other states.

Number 481

Mr. Marquez restated that a fax transmittal was a phone call, and a fax transmission via phone line and a phone call were one and the same. He talked about the negative

aspects of banning the use of fax machines. He proposed a that there be a study of this issue in Alaska for at least a year.

Number 495

Mr. Mintz added that he agreed there appeared to be a wide use of fax advertising. He said that he believed it was better public policy to stop a problem before it became a widespread problem. He talked about the negative perception of unsolicited ads, either by mail, telephone or fax machine.

Number 513

Mr. Marquez said that he did not believe his business was tying up a person's time, because a machine was being used after hours.

Number 526

Rep. Finkelstein asked Mr. Mintz to explain the perception of the number of complaints and how it was interpreted by some to be a larger group.

Number 531

Mr. Mintz restated that, in a number of studies done in the past, it was the perception that consumer behavior showed that only 1 out of 26 dissatisfied customers on average would actually take the time to communicate a complaint to a company.

Number 542

Rep. Finkelstein asked Mr. Mintz what the level of funding was in the proposed House budget for consumer protection.

Number 547

Mr. Mintz said that he believed it was essentially the same as the current fiscal year, which was \$324,000.

Number 549

Rep. Finkelstein asked Mr. Mintz, in the area of unsolicited advertising, did Mr. Mintz feel that his division was able to follow up on complaints in that area, or would those complaints have to be dropped because of lack of staff.

Number 554

Mr. Mintz said that the area of complaint mediation had

been cut by over 80% the last few years because of elimination of those offices in Anchorage and Juneau. He said that the division was more directed towards law enforcement action in selected cases.

Number 569

Chairperson Boucher noted that HB 232 would be held over for further discussion at a time unspecified.

Chairperson Boucher recessed the meeting at 10:02 a.m. until a call of the chair. The meeting was called back to order at 12:03 p.m. by Chairperson Boucher.

Number 584

Chairperson Boucher read SB 144.

Number 591

MILTON LENTZ, Chief Right-of-Way of Land Acquisitions for the Department of Transportation/Public Facilities (DOT/PF), JUNEAU, spoke in support of SB 144. He explained that SB 144 would change Title 34, Chapter 60, of the relocation assistance act to conform with the 1987 amendments of the Service Transportation Uniform Relocation Act. He discussed the technical changes made by Congress in 1987. Mr. Lentz talked about the zero fiscal note, but noted that the program would cost the federal government about \$50,000 per year to meet these new requirements. He said that the cost would be spread over \$180 million and would be nominal. He noted that the changes in the statute included the minimums changing to maximums and the benefit amounts. He gave examples of these changes.

Rep. Hanley asked if SB 144 included changes for businesses.

Number 641

Mr. Lentz talked about the payments that would apply to businesses going out of business that could not be relocated, or businesses held in lieu. Mr. Lentz said that the DOT/PF already used the particular process as set out in SB 144 on federal aid projects by statutory authority of federal requirements.

Rep. MacLean moved that SB 144 pass out of committee with individual recommendations. There being no objection, SB 144 passed: 3 DO PASS, 1 NO RECOMMENDATION.

There being no further business, the meeting was adjourned at 12:09 p.m.

Number 423

Rep. Boucher indicated that he would be pleased to have additional co-sponsors for both resolutions.

Number 445

Rep. Boucher read HB 232.

Number 455

BOB HERRON, Legislative Aide to Rep. Hoffman, JUNEAU, spoke as the sponsor of HB 232. He explained HB 232, and noted that there were currently no laws in any state that dealt with this issue. He added that there were five states that were considering legislation at this time.

Number 474

Rep. Hanley said that she had reviewed this issue and that she appreciated the foresight of Rep. Hoffman for introducing HB 232.

Number 479

Rep. MacLean asked if HB 232 provided for solicitation only, that it did not include ordering or purchase of goods via facsimile.

Number 483

Mr. Herron said that HB 232 was intended to limit unsolicited "junk" Fax transmissions; it was not intended to preclude businesses from conducting affairs necessary to operate with their clients and customers. He noted that this issue was very new. Mr. Herron said HB 232 was a right to privacy versus freedom of speech issue.

Number 516

RICK LAUBER, Pacific Seafood Processors Association, (PSPA) JUNEAU, was neutral regarding HB 232. He said that he received unsolicited Fax advertising, which he opposed. He discussed the difference between unsolicited mail and unsolicited Fax transmissions. Mr. Lauber noted that PSPA used the facsimile machine for several purposes, from signing orders to communicating with their operations throughout Alaska, as well as offering product to their customers. Mr. Lauber was concerned that a fish processor selling to brokers via Fax machine would be harassed under the provisions of HB 232. He said that if this concern could not be addressed in HB 232, he would rather have HB 232 pass as it was and they (the processors) would run the risk of complaints being filed against PSPA's members.

Number 542

Rep. Hanley asked if PSPA used the Fax transmissions for their orders or for product sales.

Number 545

Mr. Lauber clarified that they used the Fax to solicit orders and sales. He explained the process they used with sales, orders, final contracts, and the Fax machine.

Number 559

Rep. Hanley clarified that commercial solicitation meant unsolicited electronic or telephone transmission. She concurred that the process used by Mr. Lauber was unsolicited, yet that it seemed appropriate and legitimate. She was concerned if this activity was covered or if it was prohibited under HB 232.

Number 564

Mr. Lauber said that it was almost as though one who was in the business of brokering, there could be an implication that there was consent to be solicited. He noted several different arguments related to this issue and other industries.

Number 599

JULIE BARNEY, NEW YORK, spoke in support of HB 232. She noted that the New York assembly had drafted similar legislation to HB 232. She discussed the reasons this issue was addressed in New York, and the costs and losses that could be incurred to the recipient of "junk" Fax transmissions. She noted the potential problems of companies which provided private Fax numbers to businesses for unsolicited transmissions.

Number 626

Mr. Herron concurred with Ms. Barney's remarks that this problem had not hit Alaska yet, but that the industry needed to be aware of the possible abuse and consequences of abuse of the Fax transmission system.

Number 632

Rep. Boucher discussed his experience with computer networking and the growth of the telecommunications industry. He noted that there needed to be a balance with electronic media and the right to privacy.

TAPE 50, SIDE B
Number 005

Ms. Barney commented that she believed HB 232 was heading in the right direction, because it prohibited the unsolicited transmission of facsimiles. She said she believed that companies which had a business relationship with a customer could easily receive the customer's permission to, in the future, use the customer's machine for unsolicited advertisements from the company. She noted that the real problem was unsolicited, unwanted transmissions. She commented on automatic dialing machines and about the legislation that was enacted in New York last year.

Number -043

Rep. Boucher said he would like to see the New York legislation that dealt with automatic dialing machines.

Number 053

ANNE DARR, Direct Marketing Association (DMA), VIRGINIA, spoke in support of HB 232. She explained the purpose and membership of DMA, and the Mail Preference Service (MPS) began by DMA. She said MPS deleted any person in America from the national mailing lists. She noted that the Telephone Preference Service (TPS) was instituted in 1978 which did the same service as MPS, only with telephone numbers. She said that DMA had not taken any steps regarding facsimile transmissions. Ms. Darr said DMA had established a special task force to look into Fax transmission abuses, and said they hoped to have a report available at the end of 1989. She said DMA was urging and supporting a regulatory approach to unsolicited facsimile transmissions. She discussed the regulatory proposal. She also discussed the rapid changes occurring in the Fax industry.

Number 143

Rep. Boucher asked Ms. Darr about "Mr. Fax" from California.

Number 150

Ms. Darr said that Mr. Fax was a member of DMA. She said that Mr. Fax faxed during nighttime hours a one-page solicitation about a special purchase of facsimile paper.

Number 158

Rep. Boucher exchanged Fax numbers with Ms. Barney and Ms. Darr. He asked for their numbers so they could transmit information about this issue.

Number 269

Rep. Boucher noted that there would be amendments offered for HB 232, and he assigned HB 232 to a subcommittee. He assigned Rep. MacLean to chair the subcommittee. He will assign others in the future.

#HB 45
Number 298

Rep. Boucher read SSHB 45.

Number 304

LISA MCLAREN, Legislative Aide for Rep. Koponen, JUNEAU, spoke as the sponsor of SSHB 45. She read the sponsor's statement from Rep. Koponen (Item 3 in committee bill packets).

Number 328

SALLY SMITH, Division of Retirement and Benefits, JUNEAU, spoke to SSHB 45. She noted that there would be a small fiscal impact because there were only two people who qualified for the provisions of SSHB 45. She noted that the only thing that would be out of sync would be the two people in the system that were vested with only three years.

Number 338

Rep. Spohnholz asked how many years state employees needed to vest.

Number 341

Ms. Smith said that state employees eligible for Public Employees Retirement System (PERS) needed five years to vest. Ms. Smith clarified that if SSHB 45 said "five years" instead of "three," the two people would not be allowed benefits as they would not be vested in the program. She noted that the two people each had a total aggregate of three year's service.

Number 346

Ms. McLaren said that Rep. Koponen would not have a problem with a provision that allowed the provision of SSHB 45 to be taken off the books after a particular date.

§ 45.50.460

§ 45.50.470

TRADE AND COMMERCE

§ 45.50.471

Sec. 45.50.470. [Repealed, § 1 ch 246 SLA 1970.]

ight law. [Re-
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Nos. 4109, 4165),

le to sale of real
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of relating to
consumer goods
irst Nat'l Bank,
(File Nos. 5006,
82).

p. v. Reichhold
o. No. 2730 (File
1273 (1983);
is E. Wagner,
o. No. 2747 (File
2d 455 (1983).

ction acts. 18

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting

out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

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

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

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

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

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

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

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

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

(22) failing to comply with AS 45.02.350;

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

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of that person's estate; upon demand by the person on whose

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behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

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

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

(27) failing to comply with AS 14.48.060(b)(13);

(28) dealing in hearing aids and failing to comply with AS 08.55.

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

(d) [Repealed, § 21 ch 166 SLA 1978.] (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1974; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 3 ch 197 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978; am § 5 ch 15 SLA 1986; am § 5 ch 64 SLA 1986; am § 12 ch 131 SLA 1986)

Revisor's notes. — Paragraph (b)(24) was enacted as (b)(23) and paragraph (b)(25) was enacted as (b)(22). Renumbered in 1976.

Paragraph (b)(28) was enacted as (b)(27). Renumbered in 1986.

Effect of amendments. — The first 1986 amendment added paragraph (26) of subsection (b).

The second 1986 amendment added paragraph (27) of subsection (b).

The third 1986 amendment added paragraph (28) of subsection (b).

Legislative history reports. — For report on ch. 246, SLA 1970 (FCCS 2d HCS CSSB 252), see 1970 House Journal Supplement 10, following p. 743 of the 1970 House Journal; for report of the conference committee, see either 1970 House Journal, p. 1546, or 1970 Senate Journal, p. 1296.

NOTES TO DECISIONS

This statute did not chill constitutionally protected speech, where the speech in question involved communications regarding alleged debts and thus fell within the rubric of commercial speech, which enjoys a lesser first amendment protection than noncommercial speech. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Subsection (a) not vague. — The words of subsection (a) of this section have a "well-defined" meaning in the area of trade regulation and are therefore not vague. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Two elements must be proved to establish a prima facie case of unfair or deceptive acts or practices under the act: (1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

When act or practice is deceptive or unfair. — An act or practice is deceptive or unfair if it has the capacity or tendency to deceive. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Actual injury as a result of the deception is not required. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Intent to deceive need not be proved. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Testimony of consumers that they were misled is sufficient to sustain a prima facie case of unfair and deceptive practices. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Prima facie case. — In a consumer protection action, a prima facie case is presented when the plaintiff establishes that the defendant engaged in trade or commerce and in the course of that business committed an unfair act or practice. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

An act or practice need not be deceptive to be unfair. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Unfairness will be determined by a variety of factors, including: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers or competitors or other businessmen. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Similarity to federal law. — The prohibition in this section against "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce" is substantially similar to that contained in section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Vandalizing a customer's property is an unfair trade act within the meaning of this section. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Deceptive and unfair acts by collec-

tion agencies. — Threats by debt collection agencies of imminent legal action when no such action is actually contemplated is a deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Harassment of debtors by telephone calls to them, their relatives or their employers constitutes an unfair act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

A misrepresentation by a debt collection agency that failure to pay an alleged debt will result in impairment of one's credit rating has been held to be an unfair and deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

The use by collection agencies of simulated legal documents or collection forms labelled "Final Demand Before Legal Action" when no legal action is in fact taken constitutes a deceptive act. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Investigation of acts violating both this article and article 4 of chapter. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561 would also violate the Restraint of Trade Act, AS 45.50.562 — 45.50.596, if an act does violate both statutes, an investigation pursuant to AS 45.50.495 would be appropriate. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an AS 45.50.562 violation, which is Alaska's equivalent of the Sherman Act, 15 U.S.C. § 1 et seq., it was appropriate for the state to investigate as well the possible violation of this section which is Alaska's equivalent of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

§ 45.50.471

§ 45.50.472

TRADE AND COMMERCE

§ 45.50.481

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4109, 4165). 609

Quoted in Swenson Trucking & Exca-
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1113 (1980).

Cited in O'Neill Investigations, Inc. v.
Illinois Employers Ins., Sup. Ct. Op. No.
2444 (File No. 4429), 636 P.2d 1170
(1981).

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vestigations, Inc.,
File Nos. 4162,
980).

Collateral references. — 32 Am. Jur.
2d, False Pretenses, § 1 et seq.; 37 Am.
Jur. 2d, Fraud and Deceit, § 41 et seq. 35
C.J.S. False Pretenses § 14; 37 C.J.S.
Fraud § 154; 37 C.J.S. Fraudulent Con-
veyances § 469.

vertising or sales practices. 50 ALR3d
1008.

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practice. State v.
Inc., Sup. Ct. Op.
9, 4165), 609 P.2d

Validity, construction, and effect of
state legislation regulating or controlling
"bait-and-switch" or "disparagement" ad-

Scope and exemptions of state deceptive
trade practice and consumer protection
acts. 89 ALR3d 399.

Practices forbidden by state deceptive
trade practice and consumer protection
acts. 89 ALR3d 449.

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Nos. 4109, 416

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

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

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

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Sec. 45.50.480. [Repealed, § 1 ch 246 SLA 1970.]

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2591 (File Nos.
106 (1982).

Sec. 45.50.481. Exemptions. Nothing in AS 45.50.471 —
45.50.561 applies to

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State, Sup. Ct.
4640, 4641), 620

(1) an act or transaction regulated under laws administered by the
state, by a regulatory board or commission except as provided by AS
45.50.471(b)(27), or officer acting under statutory authority of the
state or of the United States, unless the law regulating the act or
transaction does not prohibit the practices declared unlawful in AS
45.50.471;

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

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or a
regulation adopted under the authority of those chapters. (§ 2 ch 246
SLA 1970; am §§ 2, 3 ch 53 SLA 1974; am § 6 ch 64 SLA 1986)

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C. 41 et seq.
State, Sup. Ct.
4640, 4641), 620

Effect of amendments. — The 1986
amendment in paragraph (1) substituted
"a" for "any" preceding "regulatory board"
and inserted "except as provided by AS

45.50.471(b)(27)" and in paragraph (3)
substituted "a regulation adopted" for
"any regulations promulgated" and in-
serted "the" preceding "authority"

NOTES TO DECISIONS

Applicability of paragraph (1) exemption. — Paragraph (1) of this section exempts only those acts or transactions which are the subject of ongoing, careful regulation. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Unfair acts or practices are exempt under paragraph (1) of this section only where the business is both regulated and unfair acts and practices are prohibited. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

The exemption contained in paragraph (1) of this section was not intended to apply to acts proscribed by the Alaska Restraint of Trade Act, AS 45.50.562 — 45.50.596. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Since the Restraint of Trade Act, AS 45.50.562 — 45.50.596, does not regulate the dairy industry within the meaning of paragraph (1) of this section, the exemp-

tion does not apply. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Mere regulation under a separate and distinct statutory scheme satisfies only one prong of paragraph (1) of this section; unfair acts and practices are exempt from the purview of the act only where the business is both regulated elsewhere and the unfair acts and practices are therein prohibited. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

This article embraces independent debt collection practices. — See note under this catchline following the article analysis.

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Collateral references. — Scope and exemptions of state deceptive trade prac-

tice and consumer protection acts. 89 ALR3d 399.

Sec. 45.50.490. [Repealed, § 1 ch 245 SLA 1970.]

Sec. 45.50.491. Regulations. The attorney general, in accordance with the Administrative Procedure Act (AS 44.62), may adopt regulations interpreting and forms necessary for administering the provisions of AS 45.50.471 — 45.50.561. (§ 2 ch 246 SLA 1970; am § 4 ch 53 SLA 1974)

Sec. 45.50.495. Investigative power of attorney general. (a) If the attorney general has cause to believe that a person has engaged in, is engaging in or is about to engage in, a deceptive trade practice under AS 45.50.471, the attorney general may

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

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

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

Matanuska Maid, Inc. 2223 (File Nos. 4640, 4641) (1980).
 See also a separate scheme satisfies paragraph (1) of this section. Practices are excluded from the act only if regulated elsewhere and practices are not in violation of the act. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2053* (1980), 609 P.2d 520.

See also independent cases. — See note regarding the article.

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online following *State v. First Nat'l Bank, 2591 (File Nos. 4640, 4641) (1982)*.

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in accordance with the regulatory provisions of the act; see also § 4 ch

general. (a) If a person has engaged in an unfair trade practice

proceedings, under the act, all facts of property are relevant to the sale or

book, documents necessary;

(4) make true copies of records, books, documents, accounts, or papers examined under (3) of this subsection which may be offered in evidence in place of the originals in actions brought under AS 45.50.471 — 45.50.561; and

(5) under an order of the superior court, impound samples of property which are material to the investigation and retain the sample until proceedings undertaken under AS 45.50.471 — 45.50.561 are completed.

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

NOTES TO DECISIONS

Investigation of acts violating both article 3 and article 4 of chapter. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561, would also violate the Restraint of Trade Act, AS 45.50.562 — 45.50.596, if an act does violate both statutes, an investigation pursuant to this section would be appropriate. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980)*.

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an AS 45.50.562 violation, which is

Alaska's equivalent of the Sherman Act, it was appropriate for the state to investigate as well the possible violation of AS 45.50.471, which is Alaska's equivalent of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980)*.

The state cannot be expected to know with certainty the exact nature of a suspected violation. This uncertainty is the very reason for conferring precomplaint investigatory authority on the attorney general. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980)*.

Sec. 45.50.500. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.501. Restraining prohibited acts. (a) When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in AS 45.50.471, and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. The action may be brought in the superior court in the judicial district in which the person resides or is doing business or has the person's principal place of business in Alaska, or, with the consent of the parties, in any other judicial district in the state.

(b) The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property.

real or personal, which may have been acquired by means of an act or practice declared to be unlawful by AS 45.50.471. (§ 2 ch 246 SLA 1970)

NOTES TO DECISIONS

Article not applicable to sales of real property. — The scope of the consumer protection act does not enlarge to include sales of real property when suit is instituted by the state even though this section contains no limitation to "goods or services" comparable to that in such sections as AS 45.50.561(6) or AS 45.50.-

531(a). *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982). See note from this case following article analysis.

Cited in *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Collateral references. — Validity of express statutory grant of power to state

to seek, or to court to grant, restitution of fruits of consumer fraud. 59 ALR3d 1222.

Sec. 45.50.510. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.511. Assurances of voluntary compliance. In the administration of AS 45.50.471 — 45.50.561, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be violative of AS 45.50.471 — 45.50.561 from a person who has engaged or was about to engage in such an act or practice. The assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has the principal place of business in Alaska. The assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under AS 45.50.501. (§ 2 ch 246 SLA 1970)

Sec. 45.50.521. When information and evidence confidential and nonadmissible. (a) *[Repealed, § 6 ch 53 SLA 1974.]*

(b) Subject to the provisions of AS 45.50.501(a), the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in AS 45.50.471 during an investigation conducted by the attorney general under AS 45.50.471 — 45.50.561, nor are the records of investigation or intelligence information of the attorney general obtained under AS 45.50.471 — 45.50.561 considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy which constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis. (§ 2 ch 246 SLA 1970; am § 6 ch 53 SLA 1974)

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Sec. 45.50.531. Private and class actions. (a) A person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of another person's act or practice declared unlawful by AS 45.50.471, may bring a civil action in the judicial district in which the seller or lessor resides or has the principal place of business or is doing business, to recover actual damages or \$200, whichever is greater. The jury or, if the action is tried without a jury, the judge may, in cases of wilful violation, award up to three times the actual damages sustained, and in all cases the court may provide equitable relief it considers necessary or proper.

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

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

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

(e) A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by AS 45.50.471.

(f) A person may not commence an action under this section more than two years after the person discovers or reasonably should have discovered that the loss resulted from an act or practice declared unlawful by AS 45.50.471.

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

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

NOTES TO DECISIONS

Opportunity to cure technical pleading deficiency. — Although defendant is a New Jersey corporation with its principal place of business in Ohio and plaintiffs failed to set forth in their amended complaint the essential allegation that defendant was "doing business" in Alaska within the meaning of subsection (a) of this section, dismissing the claim on the basis of this technicality was inappropriate; leave to amend the complaint should have been granted in order to afford the

plaintiffs the opportunity to cure their technical pleading deficiency. *Shooshanian v. Dennis E. Wagner, Borden, Inc.*, Sup. Ct. Op. No. 2747 (File Nos. 6841, 6874), 672 P.2d 455 (1983).

Applied in *Swenson Trucking & Excavating, Inc. v. Truckweld Equip. Co.*, Sup. Ct. Op. No. 2008 (File No. 4288), 604 P.2d 1113 (1980); *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 66C P.2d 406 (1982).

Collateral references. — Consumer class action based on fraud or misrepresentations. 53 ALR3d 534.

Right to private action under state consumer protection act. 62 ALR3d 169.

Reasonableness of offer of settlement under state deceptive trade practice and consumer protection acts. 90 ALR3d 1350.

Sec. 45.50.541. Nonnegotiability of consumer paper. (a) If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, the note, instrument or evidence of indebtedness shall have printed on its face the words "consumer paper," and the note, instrument or evidence of indebtedness with the words "consumer paper" printed on it is not a negotiable instrument within the meaning of the Uniform Commercial Code (AS 45.01 — AS 45.09).

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

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

NOTES TO DECISIONS

Stated in *Bendix Home Systems v. Jessop*, Sup. Ct. Op. No. 2503 (File Nos. 6087, 6110), 644 P.2d 843 (1982).

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Sec. 45.50.542. Waiver. A waiver by a consumer of the provisions of AS 45.50.471 — 45.50.561 is contrary to public policy and is unenforceable and void. (§ 7 ch 53 SLA 1974)

Sec. 45.50.545. Interpretation. In interpreting AS 45.50.471 due consideration and great weight should be given the interpretations of 15 U.S.C. 45(a)(1) (§ 5(a)(1) of the Federal Trade Commission Act). (§ 8 ch 53 SLA 1974)

NOTES TO DECISIONS

The Federal Fair Debt Practices Act, 15 U.S.C. § 1692 (Supp. 1977), expands already existing Federal Trade Commission jurisdiction over unfair or deceptive acts and practices of collection agencies: it is not written on a clean slate. The Federal Trade Commission's prior exercise of jurisdiction in this area is enti-

led to great weight, and leads to the conclusion that the new act merely supplements the old. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Quoted in *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Sec. 45.50.551. Penalties. (a) A person who violates the terms of an injunction or restraining order issued under AS 45.50.501 shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and the cause shall be continued, and in these cases the attorney general acting in the name of the state may petition for recovery of the penalties.

(b) In an action brought under AS 45.50.501, if the court finds that a person is using or has used an act or practice declared unlawful by AS 45.50.471, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than \$5,000 per violation.

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

Sec. 45.50.561. Definitions. In AS 45.50.471 — 45.50.561

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

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

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

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

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200;

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

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

(8) "fresh" means a condition of food which has never been frozen;

(9) "hearing aid" has the meaning given in AS 08.55.200;

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

(11) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard. (§ 2 ch 246 SLA 1970; am § 10 ch 53 SLA 1974; am § 2 ch 138 SLA 1974; am § 13 ch 107 SLA 1984; am § 13 ch 131 SLA 1986)

Revisor's notes. — Reorganized in 1984 and 1986 to alphabetize the defined terms.

Effect of amendments. — The 1984

amendment added the definition of "cemetery lot."

The 1986 amendment added paragraphs (5) and (9).