

HB

13

(11)

Date Referred: March 5, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-19-93

The JUDICIARY Committee considered:

HB 113

HOUSE BILL NO. 113

CHARITABLE & TELEPHONIC SOLICITING/SALES

"An Act regulating the solicitation of contributions by charitable organizations and paid solicitors and the solicitation of sales by telephonic means; and amending Alaska Rules of Civil Procedure 79 and 82."

RECOMMENDATIONS:

be replaced with CS HB113 (JUD)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note LAW 2-12-93

zero fiscal note(s) LAW 2-12-93

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | DNP | NR | AM |
|-----------------|----|-----------------------|-----|----|----|
| Brian S. Porter | ✓ | Jim Nordlund | | ✓ | |
| Gail Phillips | ✓ | | | | |
| Gannette Jones | ✓ | | | | |
| Bob [unclear] | ✓ | | | | |
| [unclear] | ✓ | | | | |
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| | | | | | |

Brian S. Porter
CHAIRMAN'S SIGNATURE

MEMORANDUM

State of Alaska

Department of Law

TO: Judy Mathis
Legislative Aide
Representative Larson's Office


DATE: February 25, 1993

FILE NO.:

TEL. NO.: 269-5206

SUBJECT: HB 113

FROM:


Jim Forbes

Fair Business Practices Section

I have attached the fax I received from Dan Barry of the Securities Industry Association. Mr. Barry wrote earlier to request that the exemption in AS 45.63.080 be written to exclude securities brokers in the sale of their services, in addition to the sale of their securities. I have no objection to his proposal, because I do not think it contradicts the intent of the bill. His proposed language is appropriate, in my opinion, and I think the resulting exemption should read as follows:

AS 45.63.080 Exemptions. This chapter does not apply to a sale or attempted sale

(1) of a security regulated under AS 45.55 or a security that is exempted by AS 45.55.140 from regulation under AS 45.55, or by a person registered with the United States Securities and Exchange Commission, when acting within the scope of his or her license.

Let me know if you have any questions about this.

enc.

cc: (w/o enclosures)
Charlie Cole
Bruce Botelho
Deborah Behr
Kris Lethin, Legislative Liaison
Daniel J. Barry

----- SYSM INBASKET MESSAGE REVIEW -----

ENTER COMMAND ==>

SCREEN 3.1

USER ID: LHSCJLM

09:31 - Mon, Feb 08, 1993

TO: LHSCJLM - Mathis, Judy

MESSAGE ID: 330140

FROM: WPFCJBF - Forbes, Jim

DATE SENT: 02/08/93

SUBJECT: HB 113 Crim Div amendments PRIORITY: 000

TIME SENT: 09:29

Class A misdemeanor.

Margot Knuth, who made these suggested changes (with advice and counsel of Dean Guaneli) believes that they will strengthen the bill by making the criminal penalties less vulnerable to a legal attack on the ground that the conduct is described too vaguely. Also, they believe that downgrading some of the conduct in the telemarketing part to misdemeanor status is appropriate. After due consideration, I agree with them. Let me know if more is needed, or if you need this info in a different format. As I mentioned, I will be speaking to the Association of Not for Profit Corporations this Wednesday, and to the National Society of Fund Raising Executives on February 25. I will be out on a deposition trip next week. Let me know when the committee hearings will be. We (Investigator Jerry Williams and I) have a multi media presentation to make to any interested committee which includes

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----- SYSM INBASKET MESSAGE REVIEW -----

ENTER COMMAND ==>

SCREEN 3.1

USER ID: LHSCJLM

09:30 - Mon, Feb 08, 1993

TO: LHSCJLM - Mathis, Judy

MESSAGE ID: 330140

FROM: WPFCJBF - Forbes, Jim

DATE SENT: 02/08/93

SUBJECT: HB 113 Crim Div amendments PRIORITY: 000

TIME SENT: 09:29

the taped confession of a reformed fund raising scam artist (in which he talks about the need for this kind of legislation), and some info on victims of telemarketing scams (mostly elderly people) that might be good to get into the legislative record. We can present it by teleconference if necessary, but I think it would be more effective in person. Thanks again for all your help. You can get messages to me while I am out of town by leaving them on my voice mail -- 269 5206. Talk to you soon. Jim

Sent to: LHSCJLM - Mathis, Judy (to)

* * * END OF MESSAGE * * *

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8-LS0344E
Bannister
3/18/93

CS FOR HOUSE BILL NO. 113(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE LARSON

A BILL

FOR AN ACT ENTITLED

1 "An Act regulating the solicitation of contributions by charitable organizations and
2 paid solicitors and the solicitation of sales by telephonic means; and amending
3 Alaska Rules of Civil Procedure 79 and 82."

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

5 * Section 1. AS 45 is amended by adding a new chapter to read:

6 CHAPTER 63. TELEPHONIC SOLICITATIONS.

7 Sec. 45.63.010. REGISTRATION. (a) A person may not sell or attempt to
8 sell property or services by telephonic means if the person makes substantially the
9 same offer on substantially the same terms to two or more persons, unless the
10 telephonic seller is registered with the Department of Law at least 30 days before the
11 solicitation campaign.

12 (b) To register under (a) of this section, a person shall file with the department

13 (1) a notice of intent to engage in a solicitation campaign; a separate
14 notice of intent shall be filed for each solicitation campaign;

1 (2) an irrevocable consent appointing the department the person's agent
2 for the receipt of service of process in a court action or other proceeding against the
3 person, or the successor in interest of the person, for a violation of this chapter; and

4 (3) a signed statement that the person has read and will comply with
5 this chapter and the regulations adopted under this chapter.

6 (c) Registration under (b) of this section is not complete until the telephonic
7 seller receives an acknowledgement from the department that the seller has complied
8 with (b) of this section.

9 (d) The notice of intent must be on a form provided and established by the
10 department by regulation. The notice of intent must include detailed information about
11 the nature of the solicitation campaign and the identity and business practices of the
12 telephonic seller, including information on the employees, agents, and officers
13 affiliated with the telephonic seller. The notice of intent must disclose criminal
14 convictions, civil judgments, orders, consent decrees, or administrative determinations
15 involving allegations of unfair or deceptive business practices by the telephonic seller.

16 (e) A person may not provide false information in a notice of intent.

17 Sec. 45.63.020. WRITTEN CONTRACT REQUIRED. Until a telephonic
18 seller receives from a buyer a signed, written contract for the purchase, the telephonic
19 seller may not solicit payment for the purchase, charge a credit card account for the
20 purchase, negotiate a check or other commercial instrument intended for payment of
21 the purchase, or accept a cash payment for the purchase. The written contract must
22 notify the buyer of the rights of the buyer under AS 45.63.030(a) and disclose the
23 information required by the department by regulation.

24 Sec. 45.63.030. CANCELLATION OR REPLACEMENT. (a)
25 Notwithstanding AS 45.01 - AS 45.09, a telephonic seller shall give the buyer a
26 refund, credit, or replacement, at the option of the buyer, if

27 (1) the property or services purchased are defective, not as represented,
28 or not received as promised by the seller;

29 (2) within seven days after receiving the purchased property, the buyer
30 returns the purchased property and makes a written request for the refund, credit, or
31 replacement; or

1 (3) within seven days after paying for the purchased services and before
2 the services are provided, the buyer makes a written request for the refund or credit.

3 (b) A return or request is timely under (a) of this section if the return or
4 request is made in person within the seven days or if the return or request is mailed,
5 properly addressed and postmarked, postage prepaid, within the seven days.

6 (c) Notwithstanding AS 45.01 - AS 45.09, a purchase of property from a
7 telephonic seller becomes final seven days after receipt of the property, unless the
8 buyer requests a refund, credit, or replacement under (a) of this section, or the
9 telephonic seller fails to obtain the contract required by AS 45.63.020.

10 (d) A purchase of services from a telephonic seller becomes final seven days
11 after receipt of the contract required by AS 45.63.020, unless the buyer requests a
12 refund or credit under (a) of this section.

13 Sec. 45.63.040. PROHIBITED REPRESENTATIONS. (a) Unless the
14 telephonic seller is asked for the information by the buyer, the seller may not state or
15 imply that the seller has a license, consent, or other form of permission from the state.

16 (b) A telephonic seller may not state or imply that

17 (1) the seller is complying with state law; or

18 (2) the seller's compliance with the laws of this state or a municipality
19 constitutes approval or endorsement by the state or municipality.

20 Sec. 45.63.050. WAIVER PROHIBITED AND VOID. A telephonic seller
21 may not request or obtain from a buyer a waiver of the rights of the buyer under this
22 chapter. A waiver of the rights of a buyer under this chapter is void.

23 Sec. 45.63.060. CRIMINAL PENALTIES. (a) A person who sells or attempts
24 to sell property or services by telephonic means by making substantially the same offer
25 on substantially the same terms to two or more persons without complying with the
26 registration requirements of AS 45.63.010, or who solicits, or receives, payment for
27 a purchase before receiving the written contract required by AS 45.63.020 is guilty of
28 a class C felony.

29 (b) A person who violates AS 45.63.030 - 45.63.050 is guilty of a class A
30 misdemeanor.

31 Sec. 45.63.070. REMEDIES NOT EXCLUSIVE. The remedies in this chapter

1 are in addition to other remedies available to a buyer or the department.

2 Sec. 45.63.080. EXEMPTIONS. This chapter does not apply to a sale or
3 attempted sale

4 (1) of a security regulated under AS 45.55 or a security that is
5 exempted by AS 45.55.140 from regulation under AS 45.55;

6 (2) by a person registered with the United States Securities and
7 Exchange Commission when acting within the scope of the person's Securities and
8 Exchange Commission license;

9 (3) by an issuer, or a subsidiary of an issuer, of a class of securities
10 that is

11 (A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act
12 of 1934); and

13 (B) either registered under 15 U.S.C. 78a - 78lll (Securities
14 Exchange Act of 1934) or exempt from registration under 15 U.S.C.
15 78l(g)(2)(A) - (C) or (E) - (H);

16 (4) by a real estate broker, associate real estate broker, or real estate
17 salesman licensed under AS 08.88 and acting in a capacity covered by the license;

18 (5) by a person who has a certificate of registration under AS 08.18 to
19 operate as a contractor and is acting in a capacity covered by the certificate of
20 registration;

21 (6) by an embalmer or funeral director licensed under AS 08.42 and
22 acting in a capacity covered by the license;

23 (7) by an insurance agent, general agent, broker, solicitor, or adjuster
24 licensed under AS 21.27 and acting in a capacity covered by the license;

25 (8) by a person who is primarily soliciting the sale of a subscription to,
26 or advertising in, a newspaper of general circulation;

27 (9) by a charitable organization or paid solicitor if the organization or
28 solicitor is registered to make charitable solicitations under AS 45.68 and is acting in
29 a capacity that is covered by the registration;

30 (10) by a person who is primarily soliciting the sale of a magazine,
31 periodical, sound recording, book, or membership in a book or record club

1 (A) where the club provides the buyer with a form that the
2 buyer may use to instruct the club not to ship the offered merchandise; and

3 (B) that is regulated by the Federal Trade Commission as a
4 negative option plan under 16 CFR 425;

5 (11) of services provided by a cable television system operating under
6 a franchise issued by a municipality;

7 (12) by a person who is soliciting for a business, or for an affiliate of
8 a business, that is regulated by the Alaska Public Utilities Commission;

9 (13) by a person whose solicitation is solely for telephone answering
10 services provided by the person or the person's employer;

11 (14) of property from a mail order catalog that is published on a
12 regular, periodic basis and that describes or pictures the items for sale and prominently
13 provides the specific price of each item;

14 (15) by a supervised financial institution or the parent, subsidiary, or
15 affiliate of a supervised financial institution; in this paragraph, "supervised financial
16 institution" means a commercial bank, savings bank, mutual savings bank, trust
17 company, savings and loan association, credit union, industrial loan company, personal
18 property broker, consumer finance lender, commercial finance lender, or other financial
19 institution if the financial institution is subject to regulation by this state or the United
20 States.

21 (16) by an insurer or the parent, subsidiary, or affiliate of an insurer;

22 (17) by a person who solicits a sale by a contact by telephonic means
23 without intending to complete the sales presentation during the contact, who does not
24 complete the sales presentation during the contact, and who only completes the sales
25 presentation at a later meeting in person, unless at the later meeting the solicitor
26 attempts to collect payment for property or services delivered before the later meeting.

27 Sec. 45.63.090. REGULATIONS. The department shall adopt regulations
28 under AS 44.62 (Administrative Procedure Act) to implement this chapter.

29 Sec. 45.63.100. DEFINITIONS. In this chapter,

30 (1) "buyer" means a person who buys from or is solicited by a
31 telephonic seller;

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(2) "department" means the Department of Law;

(3) "notice of intent" means the notice of intent required by AS 45.63.010 to engage in a solicitation campaign;

(4) "solicitation campaign" means a sale or attempt to sell property or services by telephonic means by making substantially the same offer on substantially the same terms to two or more persons;

(5) "telephonic means" means a telephone or another method using telephone lines, and includes a facsimile machine and electronic communication between electronic computing devices; "telephonic means" includes a letter, postcard, notice, or other written communication advising, requesting, motivating, or otherwise encouraging a person to contact a seller by telephonic means;

(6) "telephonic seller" means a person who is required to be registered under AS 45.63.010.

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

CHAPTER 68. CHARITABLE SOLICITATIONS.

Sec. 45.68.010. REGISTRATION. (a) A charitable organization may not solicit contributions of money or other property unless the charitable organization is registered with the Department of Law.

(b) A person may not solicit contributions of money or other property for a charitable organization for compensation unless the person is registered with the department.

(c) To register under this section, a charitable organization or paid solicitor shall file with the department

(1) a registration statement on a form provided and established by the department by regulation; and

(2) in the case of a paid solicitor, a bond in the amount and under the conditions established by the department by regulation.

(d) Registration under this section expires on September 1 of each year. To renew a registration, a charitable organization or paid solicitor shall file with the department a registration renewal statement established by the department by regulation and, in the case of a paid solicitor, evidence that a bond that satisfies (c)(2) of this

1 section will be in effect for the renewal period.

2 (e) A person who is required to register under this section shall report to the
3 department a material change in the information provided in the registration statement
4 or registration renewal statement filed under this section. The person shall report the
5 change within seven days after the change occurs.

6 Sec. 45.68.020. CONTRACT REQUIRED. (a) A paid solicitor may not
7 solicit contributions on behalf of a charitable organization unless the paid solicitor
8 executes a written contract with the charitable organization that clearly states the
9 respective obligations of the paid solicitor and the charitable organization, including

10 (1) a statement of the method to be used to calculate the compensation
11 of the paid solicitor; the statement must include a reasonable estimate of the expenses,
12 including the estimated compensation of the paid solicitor, to be incurred, directly or
13 indirectly, by the charitable organization in connection with the solicitation;

14 (2) a statement of the charitable purpose to be described in the
15 solicitation; and

16 (3) the percentage of the gross contributions that the charitable
17 organization is to receive.

18 (b) A copy of the contract required by (a) of this section shall be filed with
19 the department.

20 Sec. 45.68.030. DISCLOSURES. Except as provided by AS 45.68.040, before
21 soliciting a contribution, a paid solicitor shall clearly and conspicuously disclose the
22 following information to the person being solicited:

23 (1) the true name of the individual making the solicitation;

24 (2) the true name of the charitable organization for whom the
25 solicitation is being made;

26 (3) the true name of the paid solicitor;

27 (4) the true name of the person who is employing and compensating
28 the individual making the solicitation if the individual is employed for compensation
29 to make the solicitation;

30 (5) whether the individual making the solicitation is being paid for
31 making the solicitation or is an unpaid volunteer;

1 (6) the name and physical address of the principal headquarters of the
2 charitable organization for whom the solicitation is being made;

3 (7) a description of how and where the charitable contributions raised
4 by the paid solicitor are to be utilized for the charitable purpose; and

5 (8) that a financial statement of the charitable organization for whom
6 the solicitation is being made and a copy of the contract required under AS 45.68.020
7 will be provided upon request.

8 Sec. 45.68.040. CONFIRMATION OF PLEDGE. A paid solicitor who makes
9 a solicitation by mail, radio, or television, shall mail written confirmation of a
10 contribution pledge to the contributor within five days after the pledge is received.
11 The confirmation must include a clear and conspicuous disclosure of the information
12 identified in AS 45.68.030.

13 Sec. 45.68.050. UNLAWFUL PRACTICES. During a solicitation for a
14 charitable organization, a person may not

15 (1) use a deceptive act, including an act described in AS 45.50.471;

16 (2) without first being authorized in writing by the person, represent
17 or imply that a contribution is for or on behalf of a person, or use an emblem, device,
18 or printed matter belonging to or associated with the person;

19 (3) use a name, symbol, or statement so closely related or similar to
20 a name, symbol, or statement used by another charitable organization that the use may
21 confuse or mislead a person solicited for a contribution;

22 (4) use or exploit the fact of registration under this chapter to suggest
23 or imply that the registration constitutes an endorsement or approval by the state; or

24 (5) represent directly or by implication that a charitable organization
25 will receive from the contributions raised by a paid solicitor a greater percentage of
26 a contribution than allowed under the contract executed under AS 45.68.020.

27 Sec. 45.68.060. PUBLIC RECORDS. The registration statement, registration
28 renewal statement, contracts, and other documents required to be filed with the
29 department under this chapter are public records available for inspection and copying
30 under AS 09.25.110 - 09.25.220.

31 Sec. 45.68.070. RETENTION AND INSPECTION OF FISCAL RECORDS.

1 A charitable organization that is required to be registered under this chapter or that is
2 exempted from this chapter by AS 45.68.120 and a paid solicitor that is required to be
3 registered under this chapter or that is exempted from this chapter by AS 45.68.120
4 shall maintain the records required by this chapter for a period of five years in a form
5 that permits the department to make a complete audit of solicitations by the charitable
6 organization or paid solicitor.

7 Sec. 45.68.080. SUBSTITUTED SERVICE. (a) A charitable organization or
8 paid solicitor that is required to be registered under this chapter and that either has its
9 principal place of business outside of the state or is organized under the laws of
10 another state is considered to have irrevocably appointed the department as its agent
11 for the service of a summons, subpoena, or other process directed to the charitable
12 organization or paid solicitor, or to a director, officer, partner, or principal of the
13 charitable organization or paid solicitor in an action or other proceeding brought under
14 this chapter.

15 (b) Service under (a) of this section is complete if the department immediately
16 sends notice of the service and a copy of the process to the charitable organization,
17 paid solicitor, or other person to whom it is directed by registered mail, return receipt
18 requested, to the last address known to the department of the charitable organization
19 or paid solicitor.

20 Sec. 45.68.090. PRIVATE ENFORCEMENT. (a) A charitable organization
21 that suffers damages as a result of a violation of this chapter by another charitable
22 organization or by a paid solicitor may bring a civil action against the violator.

23 (b) A person who makes a contribution to a charitable organization or to a
24 paid solicitor that violates this chapter may bring a civil action against the violator.

25 (c) In an action under (a) or (b) of this section, a court may
26 (1) award damages for the violation;
27 (2) enjoin future violations;
28 (3) provide other relief that the court determines is necessary to restore
29 to the person damaged real or personal property that was acquired by the violator by
30 means of the violation;

31 (4) require the violator, under appropriate circumstances, to pay the full

1 attorney fees and costs incurred by the charitable organization or other person bringing
2 the action.

3 (d) A charitable organization or other person who brings an action under this
4 section shall serve a copy of the complaint on the department when the action is filed,
5 and, upon entry of an order or judgment in the action, shall mail a copy of the order
6 or judgment to the department.

7 Sec. 45.68.100. CRIMINAL PENALTY. A person who solicits contributions
8 for a charitable organization for compensation without complying with the registration
9 requirements of AS 45.68.010 is guilty of a class A misdemeanor.

10 Sec. 45.68.110. REMEDIES NOT EXCLUSIVE. The remedies in this chapter
11 are in addition to other remedies available to a person or the department for a violation
12 of this chapter.

13 Sec. 45.68.120. EXEMPTIONS FROM REGISTRATION REQUIREMENT.

14 (a) Registration is not required under AS 45.68.010 for

15 (1) a church or religious organization that is exempt from filing a
16 federal annual information return under 26 U.S.C. 6033(a)(2)(A);

17 (2) a candidate for national, state, or local office, and a political party
18 or other committee or group if the candidate, party, committee, or group is required
19 to file financial information with the Alaska Public Offices Commission under
20 AS 15.13 or with the Federal Election Commission under 2 U.S.C. 431 - 456 (Federal
21 Election Campaign Act);

22 (3) a charitable organization that does not intend to raise or receive
23 contributions, excluding government grants, in excess of \$5,000 during a fiscal year
24 of the charitable organization, or that does not intend to receive contributions from
25 more than 10 persons during a fiscal year of the charitable organization if, in either
26 situation,

27 (A) all of the organization's functions, including solicitation, are
28 performed by persons who are not paid for their services; and

29 (B) an officer or member of the organization is not paid or does
30 not otherwise receive all or a part of the assets or income of the charitable
31 organization;

1 (4) a person or municipality who has a permit under AS 05.15.100.

2 (b) A person who qualifies for an exemption under (a)(3) of this section shall
3 maintain for five years the records necessary to prove that the organization qualifies
4 for the exemption.

5 (c) Notwithstanding (a)(3) of this section, if a charitable organization actually
6 raises or receives more than \$5,000 in contributions during a fiscal year of the
7 charitable organization or receives contributions from more than 10 persons during the
8 same fiscal year, the charitable organization shall, within 30 days after the earlier
9 event, register with the department under AS 45.68.010.

10 Sec. 45.68.130. REGULATIONS. The department shall adopt regulations
11 under AS 44.62 (Administrative Procedure Act) to implement this chapter.

12 Sec. 45.68.900. DEFINITIONS. In this chapter,

13 (1) "charitable organization" means a nonprofit organization that

14 (A) is operated for the relief of poverty, distress, or other
15 condition of public concern in the state; or

16 (B) the Internal Revenue Service determines to be a tax exempt
17 organization under 26 U.S.C. 501(c)(3) (Internal Revenue Code);

18 (2) "contributions" means contributions of money or other property;

19 (3) "department" means the Department of Law;

20 (4) "paid solicitor" means a person who is required to be registered
21 under AS 45.68.010(b), and includes a person who is employed, procured, or engaged,
22 directly or indirectly, by a paid solicitor to solicit, if the person is compensated; "paid
23 solicitor" does not include

24 (A) an attorney licensed to practice law in this or another state,
25 an investment counselor, an insurance company, or a supervised financial
26 institution, to the extent the attorney, investment counselor, insurance company,
27 or supervised financial institution advises the person on whether to make a
28 contribution; or

29 (B) a bona fide salaried officer, employee, or volunteer of a
30 charitable organization;

31 (5) "solicit" means to request, directly or indirectly, and includes

1 (A) an oral or written request;

2 (B) a request made by an announcement to the news media or
3 by radio, television, telephone, telegraph, telefax machine, or other transmission
4 of images or information;

5 (C) a request made in a handbill or other written advertisement
6 that is distributed or posted;

7 (D) the sale of, or attempt to sell, a membership, an
8 advertisement, advertising space, or a tangible item by making a request for
9 financial support for a charitable organization or purpose, by using or referring
10 to the name of a charitable organization as a reason for making the request, or
11 by making a statement that all or part of the sale proceeds will be used for a
12 charitable purpose or benefit a charitable organization;

13 (6) "supervised financial institution" means a commercial bank, savings
14 bank, mutual savings bank, trust company, savings and loan association, credit union,
15 industrial loan company, personal property broker, consumer finance lender,
16 commercial finance lender, or other financial institution if the financial institution is
17 subject to regulation by this state or the United States.

18 * Sec. 3. AS 45.50.471(b) is amended by adding new paragraphs to read:

19 (33) violating AS 45.63 (telephonic solicitations);

20 (34) violating AS 45.68 (charitable solicitations).

21 * Sec. 4. AMENDMENT OF COURT RULES. AS 45.68.090, enacted by sec. 2 of this
22 Act, amends

23 (1) Alaska Rule of Civil Procedure 79 by requiring the court to award full
24 costs where appropriate in certain actions under AS 45.68.090;

25 (2) Alaska Rule of Civil Procedure 82 by requiring the court to award full
26 attorney fees where appropriate in certain actions under AS 45.68.090.



ALASKA DIVISION, INC.

Nels Anderson, M.D.
President

Jan Young, R.N.
Chairman of the Board

Roland Gower, M.D.
Chairman, Executive Committee

Barbara Kenney
Secretary

Brent Ulmer
Treasurer

March 1993

Diana Kuhns
Executive Vice President

House of Representatives
Attn: Ron Larson
State Capitol, Room #502
Juneau, Alaska 99801-1182

Dear Representative Larson,

This letter is to inform you that on February 7, 1993, the Board of Directors of the American Cancer Society voted, with unanimous approval, to fully support House Bill #113.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nels Anderson".

Nels Anderson, M.D.
President
American Cancer Society,
Alaska Division, Inc.

HB 113 - Fact Sheet

Description of Bill

This bill would regulate solicitation for telephonic sales and charitable fund raising.

Section I: Regulation of Telemarketers

Purpose: to curtail high-pressure telephone sales.

Scenario: typical scam involves promise to consumer that (s)he has won a fabulous prize, seller uses high-pressure tactics to force consumer to make a quick decision to agree to purchase a high priced product, lest the opportunity to win the prize be lost. Victims of these scams are frequently elderly, once they agree to a sale they become the target of numerous telemarketers because their names are added to a "suckers list" which is sold for substantial sums of money to other telemarketers.

Remedy proposed by bill:

- 1..... Requires registration of telemarketers, who they are, their histories, and physical location. The state has no effective means of forcing individuals, who conduct sales by telephonic means across state lines, to identify themselves.
- 2..... Mandates telemarketer from taking the customer's money 'til agreement is reduced to written contract. This will put high-pressure telemarketers on more of an equal footing with local, established merchants who are accountable to their customers after the sale.
- 3..... Provides criminal penalties for violators. Criminal penalties at the felony level are necessary, fraudulent telemarketing operators build costs of defending civil suits into their profit structures. Misdemeanor penalties would not be adequate because they do not permit extradition, fraudulent telemarketing operators virtually always work across state lines. Considering the degree of theft observed in this area felony treatment is appropriate to the offense.

Exemptions:

The bill provides 16 exempt categories for sales operations which have not been perceived as a fraud problem. Those legitimate sellers not exempt will have no difficulty complying with the requirements of the bill.

Section II: Regulation of Charitable Solicitations

Purpose: Alaska is one of the few states without some form of charitable solicitation regulation.

Operation of the Section: Requires all non-exempt organizations to file a registration document with the Attorney General.

Disclosures: Paid solicitors required by bill to disclose identifying information; who is calling, who is represented, charitable purpose served. Upon request, paid solicitor required to provide financial statement of charitable organization and terms of the contract.

Mail and Broadcast Solicitations: Paid solicitors required by bill to send donor written confirmation of any pledge received, disclosure of identity of person making solicitation, charitable organization whose behalf solicitation is being made, purpose for which funds will be used.

Unlawful Practices: Bill prohibits use of any deceptive statement in the course of a solicitation.

Records: Bill provides registration statements, written contracts, other documents filed with Attorney General as public record. Charitable organizations required to maintain records for 3 years in form permitting them audit.

Enforcement and Penalties: Violations can be enforced privately by charitable organization, or by person making contribution to solicitor who violates law, also by Attorney General.

Exemptions: Church or religious organizations, political candidates, organizations that do not raise more than \$5,000 in contributions in a given year, charitable gaming operators licensed under AS 05.15.100

Regulations: Bill gives the Department of Law authority to adopt regulations to implement it.

Section III: Relation to consumer Protection Law

Violation of either Section I or II of bill would constitute a violation of the Consumer Protection Act.

Section IV: Full Costs and Attorney's Fees

By providing litigation under Sec. II could result in award of full costs & attorney's fees, bill conflicts with Civil Rules 79 & 82. Sec. 4 of bill resolves conflict by specifically providing that Rules 79 & 82 be amended to the extent provided in the bill.

Conclusion: Sec. I is largely patterned after existing statutes in OR and FL, there is belief that increase in telemarketing fraud in AK may be result, in part, of successful implementation of regs in other states. Sec. II balances between legitimate sales operations and society's need to regulate illegitimate scams without interfering unduly in legitimate sales operations. Sec. II is largely patterned after MI statute with certain provisions borrowed from CA and HI. Sec. II balances between noninterference with legitimate

ALASKA PACIFIC UNIVERSITY

Vice President
University Relations

M E M O R A N D U M

TO: The Honorable Ronald Larson

FROM: Albert J. Alvarez, Vice President, University Relations

DATE: March 5, 1993

SUBJECT: House Bill No. 113

I am writing in support of HB 113 which you have introduced to the Eighteenth Legislature of the State of Alaska.

As a fund raising professional for over 15 years, and in my capacity as the Chairman of the Association for Healthcare Philanthropy, I have followed the work done in other states regarding the registration, regulation and enforcement of telemarketing and charitable solicitations. The bill you have proposed takes the best of what has been learned in other parts of the country and should, once enacted, create an environment friendly to legitimate charitable solicitations, and unfriendly to fraudulent scams.

Jim Forbes, in his recent presentation to the Alaska Chapter of the National Society of Fund Raising Executives, stated that you will be looking for public input regarding the registration form for charities and other information in the near future. This recognition of the assistance those of us in the fund raising profession may provide you is appreciated.

The one suggestion I would like to make is that the language "paid solicitor" be changed to "contract solicitor". This will make a more clear distinction between those of us who are paid staff of legitimate charitable institutions and agencies, and those whose services are purchased for project work.

You and Assistant Attorney General Jim Forbes are to be commended for the good work represented by HB 113. As the former President, and member of the Alaska Chapter of the National Society of Fund Raising Executives, I stand ready to assist you in whatever way necessary to get this bill passed.

AJA:EAW:hws

Alaska State Legislature

Session Address:
STATE CAPITOL BUILDING
ROOM 502
JUNEAU, ALASKA 99801-1182
(907) 465-3878
FAX (907) 465-2293



Interim Address:
P.O. BOX 53
PALMER, ALASKA 99645
(907) 746-1048 - Palmer
(907) 746-3560 - FAX
(907) 376-8628 - Wasilla

Representative Ronald L. Larson
District 27

MEMORANDUM

TO: Representative Brian Porter, Chairman
House Judiciary Committee

FROM: Representative Ron Larson *RL*

DATE: March 5 1993

RE: Request for a hearing - HB113

I respectfully request that HB113, An Act regulating the solicitation of contributions by charitable organizations and paid solicitors and the solicitation of sales by telephonic means, be scheduled for a hearing in the Judiciary Committee. This bill passed out of the Labor & Commerce Committee on March 4, with a unanimous Do Pass.

There has been a dramatic increase in fraudulent activity in this area. This bill will regulate telemarketers and Charitable Organizations who solicit donations by telephone. These scam artists have caused the loss of millions of dollars each year in Alaska--money that might otherwise circulate among legitimate businesses in the local economy. Many of these victims are elderly or reside in native villages and once a solicitor has been successful in ripping these people off, their name is often sold to other solicitors.

These types of regulations are already in place in other states, it is time for Alaska to take the steps needed in regulating this type of activity. Attached you will a fiscal note, position paper, two section by section analyses, a letter of support and newspaper articles pertinent to the issue.



REQUEST FOR SCHEDULING

Alaska State Legislature

Session Address:
STATE CAPITOL BUILDING
ROOM 502
JUNEAU, ALASKA 99801-1182
(907) 465-3878
FAX (907) 465-2293



Interim Address:
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(907) 748-3580 - FAX
(907) 378-8628 - Wasilla

Representative Ronald L. Larson
District 27

POSITION PAPER HB 113

I have introduced HB113 in an effort to regulate telemarketers and Charitable Organizations who solicit donations by telephone. There has been a dramatic increase in fraudulent activity in this area. It has been brought to my attention that these scam artists have caused the loss of millions of dollars each year in Alaska -- money that would otherwise circulate among legitimate businesses in the local economy. Many of these victims are elderly or reside in native villages and once a solicitor has been successful in ripping these people off, their name is often sold to other solicitors, in order to continue the practice.

I would hope with regulations in place, the public, would have a renewed trust, again, in giving to legitimate charitable organizations, and that the immediate distrust when that telephone rings would be replaced with a confidence that a person is giving to a regulated charity, and indeed that their hard earned money is going to that organization and its charitable needs.

A mandated "cooling off period" prohibits the telemarketer from taking the customer's money until the agreement is reduced to a written contract. This will avoid hasty credit card transactions over the phone, without the consumer having the time to consider the donation.

These types of regulations are already in place in other states, it is time for Alaska to take the steps needed in regulating this type of activity.



DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 3, 1993

SUBJECT: Sectional summary of HB 113

TO: Representative Ron Larson
Attn: Judy

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 of the bill adds a new chapter regulating telephonic solicitations.

Section 45.63.010 requires a person selling property or services by telephonic means to register with the Department of Law before the solicitation campaign, if the person makes substantially the same offer on substantially the same terms to two or more persons. Establishes certain procedures and information requirements for registration. Prohibits the seller from giving false information in the notice of intent to engage in the solicitation campaign.

Section 45.63.020 requires a telephonic seller to obtain from the buyer a signed, written contract before finalizing a purchase payment. Requires the contract to notify the buyer of the buyer's cancellation and replacement rights under sec. 45.63.030.

Section 45.63.030 provides the buyer with certain cancellation and replacement rights. Establishes when the sale becomes final.

Section 45.63.040 prohibits the seller from making certain representations to the buyer.

Section 45.63.050 prohibits a waiver of the buyer's rights under the chapter. Makes a waiver void.

Representative Ron Larson

February 3, 1993

Page 2

Section 45.63.060 establishes a criminal penalty for violating the chapter.

Section 45.63.070 declares that the remedies in the chapter are in addition to other remedies that may be available to the buyer or the department.

Section 45.63.080 exempts certain sellers and types of sales from the chapter.

Section 45.63.090 directs the department to adopt regulations to implement the chapter.

Section 45.63.100 defines certain terms for the chapter.

Section 2 of the bill adds a new chapter regulating charitable solicitations.

Section 45.68.010 prohibits a charitable organization from soliciting contributions unless it is registered with the Department of Law. Prohibits a paid solicitor from soliciting contributions for a charitable organization unless the paid solicitor is registered with the department. Establishes the registration procedure. Establishes the duration and renewal of the registration. Requires that a material change in the information provided in the initial or renewal registration statements to be reported to the department within seven days after the change.

Section 45.68.020 prohibits a paid solicitor seller from soliciting contributions for a charitable organization without having a written contract with the organization. Indicates what the contract is to contain and requires a copy to be filed with the department.

Section 45.68.030 requires a paid solicitor to make certain disclosures to the person being solicited.

Section 45.68.040 requires a paid solicitor who makes mail, radio, or television solicitations to mail written confirmation of contribution pledges to the contributors within a certain time. Requires the confirmation to include the disclosures required by sec. 45.68.030.

Section 45.68.050 identifies certain practices that a person may not engage in when soliciting for a charitable organization.

Section 45.68.060 establishes that the documents required to be filed with the department under the chapter are public records.

Section 45.68.070 requires a charitable organization and a paid solicitor who are either subject to or exempted from the chapter under sec. 45.68.120 to maintain the records required by the chapter for three years.

Representative Ron Larson

February 3, 1993

Page 3

Section 45.68.080 establishes that charitable organizations and paid solicitors who have certain out-of-state connections and who are required to be registered under the chapter are considered to have appointed the department their agent for service of process in a proceeding under the chapter. Requires the department to deliver notice of the service and a copy of the process to the appropriate person in order to complete the service.

Section 45.68.090 authorizes a charitable organization that suffers damages because of a violation of the chapter by another charitable organization or a paid solicitor to bring a civil action against the violator. Authorizes a contributor to bring a civil action against a charitable organization or paid solicitor who violates the chapter. Indicates the type of relief that the court may provide. Requires the complainant to serve a copy of the complaint on the department and to mail a copy of an order or judgment in the action to the department.

Section 45.68.100 establishes a criminal penalty for violating the registration requirements of the chapter.

Section 45.68.110 declares that the chapter's remedies are in addition to other available remedies.

Section 45.68.120 exempts certain persons from the registration requirement. Requires exempt persons to maintain certain records relating to the exemption.

Section 45.68.130 directs the department to adopt regulations to implement the chapter.

Section 45.68.900 defines certain terms for the chapter.

Section 3 of the bill adds violations of the two new chapters to the list of unlawful trade practices prohibited by the Unfair Trade Practices and Consumer Protection Act (AS 45.50.471 - 45.50.561).

Section 4 of the bill describes how certain court rules are changed by the bill.

If I may be of further assistance, please advise.

TLB:pl
93-063.plm

MEMORANDUM

State of Alaska Department of Law

TO: Honorable Ron Larson
State of Alaska
House of Representatives

DATE: January 29, 1993

FILE NO:

TEL NO: 269-5206

SUBJECT: House bill regulating
telephonic and charitable
solicitations

FROM:

[Signature]
James Forbes
Assistant Attorney General
Fair Business Practices Section

Description of Bill

This bill would regulate solicitations for telephonic sales and charitable fund raising; areas which are, for the most part, unregulated. State consumer protection investigators have noticed a dramatic increase in fraudulent activity in this area. Most states have adopted legislation dealing with charitable solicitation fraud and telemarketing scams, but Alaska lags behind. As a result, scam artists are increasingly avoiding those states, and are concentrating their activities on unregulated states, such as Alaska. We believe that they cause the loss of millions of dollars each year in Alaska -- money which would otherwise circulate among legitimate businesses in the local economy. Many of the victims are elderly or reside in native villages, and we have documented cases where individual victims have lost substantial amounts of money -- in the tens of thousands of dollars.

Section 1: Regulation of Telemarketers

Purpose: This section is designed to curtail a rampant form of fraud which typically involves a high pressure sales pitch by telephone. The caller is almost invariably an out-of-state "boiler room" operator with minimal ties to any one locality, and with the ability to quickly close up shop, change identity, and re-open at another location.

The typical scam involves a promise to the consumer that (s)he has won a fabulous prize, usually including a new car, and all that is necessary to get the new car (or other fabulous prize) is that the consumer agree to purchase products (frequently vitamins or skin care products) for a high price, usually in the \$500 to \$750 range. The seller utilizes high pressure tactics

| | | | |
|--|------|------------|------------|
| Post-It [®] brand fax transmittal memo 7671 | | # of pages | 6 |
| To | Judy | From | Jim Forbes |
| Co. | | Co. | |
| Dept. | | Phone # | 269 5206 |
| Fax # | | Fax # | |

Honorable Ron Larson

January 29, 1993
Page 2

designed to force the consumer to make a quick decision to agree to the purchase, lest the opportunity to win the fabulous prize be lost. The consumer is usually required to make payment on the spot, either by authorizing a credit card charge over the telephone or, more recently, by writing out a check which is picked up within minutes by a courier, such as Federal Express, dispatched by the telemarketer. The consumer is promised that (s)he will receive the valuable prize after several weeks. By the time the consumer realizes that the prize is not forthcoming, the telemarketer has frequently moved on to a new location, with a new identity.

State investigators have observed that the victims of these scams are frequently elderly, and once they agree to a sale by one telemarketer, they become the target of numerous telemarketers because their names are added to a "suckers list" which is sold for substantial sums of money to other telemarketers.

Remedy proposed by bill: Section 1 of the bill attacks the above-described problem in three important ways:

- (1) It requires registration of telemarketers, including detailed information about exactly who they are, their histories, and the physical location from which they are operating;
- (2) It mandates a "cooling off period" by prohibiting the telemarketer from taking the customer's money until the agreement is reduced to a written contract; and
- (3) It provides criminal penalties for violators.

The registration and identification requirements will allow the state to pinpoint the individuals who are operating high pressure telephonic sales, and determine whether they have prior criminal histories or significant other past problems dealing with sales fraud, making closer scrutiny appropriate. The state currently has no effective means of forcing individuals, who conduct sales by telephonic means across state lines, to identify themselves. Businesses operating within Alaska are required to obtain a state business license, but interstate telemarketers routinely fail to comply with this requirement -- and they are the operators the state has the most need to supervise.

The written contract requirement will put an end to the "high pressure" tactic which is so successful in separating consumers from their money when the promise of a valuable prize is involved. Consumers who have acquiesced to high pressure sales techniques frequently wish to cancel the sale after they have had time to calmly reflect on the transaction. But when they have already authorized a credit card sale by telephone, or a courier

Honorable Ron Larson

January 29, 1993
Page 3

has already picked up their payment, revocation of the sale is not always possible. The written contract requirement will put high pressure telemarketers on more of an equal footing with local, established merchants who are, on a day-to-day basis, accountable to their customers after the sale.

Criminal penalties at the felony level are necessary if the regulations are to be taken seriously by the telemarketers. In our experience, and in discussions with our counterparts in other states, we find that fraudulent telemarketing operators build the cost of defending civil suits into their profit structures, and are not the least bit deterred by the threat of civil litigation by state attorneys general. Misdemeanor penalties would not be adequate because they do not permit extradition, and fraudulent telemarketing operators virtually always work across state lines. Elevating the penalty to the felony level is, therefore, necessary in order to provide a credible deterrent to those who are otherwise disposed to violate the law. Considering the degree of theft we have observed in this area, and the vulnerability of many of the victims, felony treatment is appropriate to the offense.

Exemptions: This bill is noteworthy for the types of transactions not covered. The bill provides a total of 16 exempt categories. These categories exempt sales operations which we have not perceived as presenting a fraud problem. Most legitimate enterprises are exempt by the express language of the bill, but those legitimate sellers that are not exempt will have no difficulty complying with the requirements of the bill.

Section II: Regulation of Charitable Solicitations

Purpose: Alaska is one of the few states without some form of charitable solicitation regulation. Investigators for the Fair Business Practices Section have uncovered numerous recent examples of scam artists collecting money from the public by posing as charitable organizations. We believe this problem to be doubly pernicious because these scam artists divert the limited amount of money available for charitable giving from legitimate charities to their own pockets; and they poison the atmosphere for charitable giving by making members of the public cynical about donating money to charity. We believe that this bill will adequately address those problems.

Operation of the Section: Section II of the bill requires all non-exempt organizations to file a registration document with the Attorney General. In the case of a paid solicitor (an organization under contract with a charitable organization to raise money) a bond must also be filed. Organizations are required to re-register each year in September.

Honorable Ron Larson

January 29, 1993

Page 4

The registration statement will be on a form provided by the Attorney general, in accordance with regulations to be adopted under the bill. There will be no registration fee.

The bill requires that paid solicitors enter into a written contract with the charitable organization on whose behalf the solicitations are made. The contract must clearly spell out the respective obligations of the parties, including the method for calculating the compensation of the paid solicitor. A copy of that contract must be filed with the Attorney General.

Disclosures: Paid solicitors are required by the bill to disclose identifying information to the person solicited so that (s)he will have a clear picture of who it is that is calling, who it is that they represent, and what charitable purpose is served by the organization. Upon request, a paid solicitor is required to provide a financial statement of the charitable organization and the terms of the contract under which the solicitor is paid.

Mail and Broadcast Solicitations: Paid solicitors who raise money by means of mail, radio, or television are required by the bill to send the donor written confirmation of any pledge that is received, including disclosure of the identity of the person making the solicitation, the charitable organization on whose behalf the solicitation is being made, and the purpose for which the funds will be used.

Unlawful Practices: The bill prohibits the use of any deceptive statements in the course of a solicitation. State investigators have discovered that, particularly in the case of telephonic solicitations by phony or "sound alike" charities, deceptive or false information is frequently disseminated.

Records: The bill provides that the registration statements, written contracts, and other documents filed with the Attorney General are public records. Charitable organizations are also required to maintain their records for a period of three years in a form that permits them to be audited.

Enforcement and Penalties: Violations of this law can be enforced privately by either the charitable organization which sustains damages as a result of another organization or solicitor's violation of the section, or by a person who makes a charitable contribution to a solicitor who violates the law. It can also be enforced by the Attorney General. The bill provides a powerful private remedy in that it permits the court to: issue an injunction against further violations; award damages for the violation; and require the violator to pay 100% of the attorney's fees and costs incurred by the aggrieved party. In the case of a

Honorable Ron Larson

January 29, 1993
Page 5

willful violation, treble damages can be awarded under the Consumer Protection Act. The bill also provides a criminal misdemeanor penalty for nonexempt persons or organizations who fail to file the necessary registration papers.

Exemptions: The following are exempt from registration under this bill: church or religious organizations; political candidates; organizations that do not raise more than \$5,000 in contributions in a given year; and charitable gaming operators licensed under AS 05.15.100. The term "paid solicitor" under the bill does not apply to an individual who counsels a person or institution on whether to make a contribution, nor does it include a salaried officer, employee, or volunteer of a charitable organization.

Regulations: The bill gives the Department of Law authority to adopt regulations to implement it.

Section III: Relation to Consumer Protection Law

Violation of either Section I or Section II of this bill would constitute a violation of the Consumer Protection Act, AS 45.50.471(b). Under this section, both the Attorney General and private individuals would have authority to enforce provisions of the law with the mechanisms available under the Consumer Protection Act. These mechanisms include injunctive relief, and treble damages in the case of a "willful" violation.

Section IV: Full Costs and Attorney's Fees

By providing that litigation under Section II of the bill could result in an award of full costs and attorney's fees, the bill conflicts with Civil Rules 79 and 82. Section 4 of the bill resolves the conflict by specifically providing that Rules 79 and 82 be amended to the extent provided in the bill. Section 4 requires, therefore, passage by a two-third vote of the Legislature.

Conclusion

Section I of the bill dealing with telemarketing is largely patterned after existing statutes in Oregon and Florida. The Oregon and Florida laws have reportedly been helpful in deterring telemarketing fraud. In fact, we believe that the current increase in telemarketing fraud in Alaska may be the result, at least in part, of the successful implementation of regulations in other states. Telemarketers who find inhospitable conditions in other states due to effective legislation are probably turning their attention to states like Alaska which do not

Honorable Ron Larson

January 29, 1993
Page 6

have similar legislation. Law enforcement officers in other states who have executed search warrants on telemarketer "boiler rooms" report that they have seen signs on the walls reminding the sales agents not to make solicitation calls in certain states, due to the anticipated level of law enforcement.

We believe that Section I of the bill strikes the appropriate balance between legitimate sales operations and society's need to regulate illegitimate scam operations. We believe that Section I of the bill does so without interfering unduly in legitimate sales operations.

Section II of the bill is largely patterned after the Michigan charitable solicitation statute, with certain provisions borrowed from California and Hawaii. We believe that Section II strikes the appropriate balance between noninterference with legitimate charitable organizations' fund raising efforts and society's need to deal with scam artists who steal money that otherwise might be donated to legitimate charities. We anticipate that legitimate charitable organizations will support this bill.

JF:bev

cc: Attorney General Charlie Cole
Deputy Attorney General Bruce Botelho
Regulations Attorney Deborah Behr
Legislative Liaison Kris Lethin

National Society of Fund Raising Executives

Alaska Chapter
P.O. Box 230611
Anchorage, AK 99523-0611

VIA FAX

February 25, 1993

The Honorable Ron Larson
House of Representatives
State of Alaska
Juneau, Alaska

Dear Representative Larson:

The Alaska Chapter of the National Society of Fund Raising Executives is supportive of your efforts at curbing abuses in charitable solicitation in Alaska. Thank you for your sponsorship of HB #113.

Fraudulent charitable solicitation obviously hurts those individuals who unknowingly contribute to non-existent causes, but there is also a heavy impact on legitimate Alaska charities. To the extent that these scams are successful, they harm non-profits in two ways.

First, they take away monies which may very well have been contributed to real Alaska non-profits. Those funds are no longer available, obviously, to help the myriad Alaska non-profit organizations helping make this a better state in which to live.

The second impact is that, rightly or wrongly, fraudulent solicitation places a cloud of suspicion on all charitable solicitation, legitimate or otherwise. While the vast majority of Alaska's non-profits provide identified, needed services in a very efficient manner, they are able to do so only because of generous charitable support from citizens throughout the state. Yet in many cases these scams only serve to reinforce the all-too-common generalization that all fund raising is somehow tainted, and we do believe there is a direct impact on contributions as a result.

The National Society of Fund Raising Executives Alaska Chapter is one of several hundred NSFRE chapters nationwide. Nationally there are over 13,000 members; we have 32 in the Alaska Chapter, representing non-profits from Juneau, Fairbanks and Anchorage.

LETTER OF SUPPORT

The Honorable Ron Larson
February 25, 1993
Page 2

At our monthly luncheon meeting on February 24, we had the pleasure of listening to Assistant Attorney General Jim Forbes explain the background and specifics of HB #113. During that meeting the membership formally agreed to work with you in support of the bill.

Please let me know what additional help you may need. I would be happy to testify in person on behalf of HB #113, representing the many fund raising professionals in Alaska who feel this bill is necessary.

Sincerely,



Vincent J. Walker
Alaska Chapter President

President,
Providence Health Care
Foundation

vjw/ab

7)
Date Referred: February 1, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/04/93

The LABOR AND COMMERCE Committee considered:

HB 113

HOUSE BILL NO. 113

CHARITABLE & TELEPHONIC SOLICITING/SALES

An Act regulating the solicitation of contributions by charitable organizations and paid solicitors and the solicitation of sales by telephonic means; and amending Alaska Rules of Civil Procedure 79 and 82."

RECOMMENDATIONS: the same title
be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note LAW 2/12/93

zero fiscal note(s) _____

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | DNP | NR | AM |
|------------------------|-------------------------------------|-----------------------|-----|----|----|
| <i>Brian J. Porter</i> | <input checked="" type="checkbox"/> | | | | |
| <i>Joe Sittler</i> | <input checked="" type="checkbox"/> | | | | |
| <i>Edwin Hester</i> | <input checked="" type="checkbox"/> | | | | |
| <i>Gregory J. ...</i> | <input checked="" type="checkbox"/> | | | | |
| <i>Bill Hudson</i> | <input checked="" type="checkbox"/> | | | | |
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Bill Hudson
CHAIRMAN'S SIGNATURE

REGULATE CHARITY PROMOTERS

Squeeze out the con artists

WHILE THE Legislature struggles with budget cuts needed to keep Alaska's burgeoning bureaucracy from out-bloating itself, it may strike some as preposterous to even consider yet one more rule or regulation.

But when it comes to those fly-by-night charity promoters who take advantage of Alaskans' good will and generosity, and then disappear with the take, it's time to regulate.

Alaska, according to the Fair Business Practices Section of the Department of Law, is one of the few states that doesn't strongly regulate charity promoters and non-profits.

This was brought home last Christmas season when a group set out to raise money for presents for needy children. The group hired a promoter who, indeed, raised money for the cause. In fact, \$24,000 was donated. Of that hefty sum, only \$1,400 — or about 6 percent — actually reached the children.

In other words, well-meaning people donated 94 percent of their money to the promoter.

REP. RON LARSON, D-Palmer, drafted legislation in February that would have addressed this situation. It was circulated and discussed, but never introduced.

The proposed legislation would require registration of most charitable organizations involved in telephone, mail or any other kinds of charity solicitation. It would require audit information made public and bonding for promoters.

The need to regulate promoters takes on added importance as government and corporate funding sources dry up during the current economic crunch. Non-profit agencies that serve the needy depend more and more on the largesse of the public — people who answer a knock at the door or a telephone ring and give a dollar or two.

Those dollars mount up for the unscrupulous promoters who take advantage of Alaskans' unselfish impulse to share what they have.

This legislation should go to the top of the list during the 1992-93 session. Until then, check out those who solicit money — even if they say they're representing well-known organizations. And choose charities that give most of the money to the needy, not to promoters and their administrative costs.

Bill targets phone scams

Law requires written contracts, cooling-off period

By IAN MADER

The Associated Press

Telephone scam artists would face prison terms under a House bill aimed at combatting what officials say is rampant telephone fraud in Alaska.

There are no statistics available on how much money Alaskans lose to telephone fraud, but Assistant Attorney General Jim Forbes said it may be costing millions of dollars a year.

Typically, scam victims are told they have won a prize that they can claim after making an expensive credit-card purchase, Forbes said. Either the prize never shows up; or

it is worth much less than expected. No Alaska criminal laws deal with such activity, and civil lawsuits are difficult to pursue because the companies usually operate from the Lower 48 states. Scam outfits periodically change their names and move their operations to avoid lawsuits and prosecution, Forbes said.

House Bill 113, introduced by Rep. Ron Larson, D-Palmer, would require companies that solicit by mail and telephone in Alaska to file with the attorney general detailed information on their location and history.

Please see Page D-6, PHONE

Anchorage Daily News Thursday, February 11, 1993

PHONE SCAMS: State says it's multimillion-dollar problem

Continued from Page D-1

The bill would prohibit companies from taking any customer's money without a written contract. That would give customers a "cooling off" period after the high-pressure telephone pitches, Forbes said.

Criminal charges are needed because scam artists consider defending against civil lawsuits a routine part of their expenses, Forbes

said. The bill would allow suspects to be extradited from other states.

Forbes said tougher laws in other states are forcing more scam artists to focus on Alaska. One 89-year-old woman in the Matanuska-Susitna area gave more than \$35,000 in recent months to various fraudulent outfits from the West Coast, Forbes said.

Rick Gilmore of the Better Business Bureau of Alas-

ka said his office gets about 1,200 calls a month from residents complaining about such scams.

"This is the biggest problem we have in the state of Alaska, because of our geographic location," Gilmore said. "So many people order things through catalogs and telephones, that we're very susceptible to telephone and mail solicitations."

The bill also requires companies that collect money for

charities to file information with the state and prohibits them from misrepresenting their cause.

"It should cut down an awful lot of the unscrupulous actions that people have complained about," Rep. Bill Hudson, R-Juneau, said Tuesday.

Anti-crime bills are expected to receive favorable consideration this year by the Republican-led majorities in the Legislature.

2/24/93

They're at it again: Telemarketers target Alaska

By ANNABEL LUND

The JUNEAU EMPIRE

The attorney general's consumer protection office and Alaska Better Business Bureau are warning residents - particularly the elderly - to listen carefully to sales pitches from telemarketing companies canvassing the state for business.

Two elderly Juneau residents were contacted recently by out-of-state firms and both later called the Juneau police for help. There is little that can be done.

Ingrid Dull, 80, sent International Marketing of Las Vegas \$398 to

win what they said would be a cash prize. But instead she received a small box of pens and Frisbees with an anti-drug message written on them, according to Juneau Police Lt. Steve Kalwara.

Barry Walden, a customer services representative with International Marketing, told the Empire his company never guaranteed which award Dull would receive.

"It was her choice to do it, to help her community fight drugs. If that's what she wanted to do, what can we say?" Walden said.

He said International Marketing of Las Vegas was not connect-

ed in any way to International Marketing of Phoenix, Ariz., which also sells items with anti-drug messages.

That company was recently shut down by the Arizona attorney general's office after the company allegedly took \$525 from an 80-year-old Soldotna woman and promised to send her an anti-drug kit for her community, according to Jerry Williams, an attorney general's office investigator. The kit turned out to be a handful of bumper stickers, he said.

The woman sent a check for \$3,000 more at the company's re-

quest, but authorities managed to put a stop on it and Soldotna police are assisting Arizona authorities with their case against the firm, Williams said.

Dull was also contacted by Worldwide Marketing of San Diego, which said she would be eligible for several prizes, including \$25,000 in cash and vacation trips to Hawaii or Mexico, if she would send them \$399. She did, and received a small box of cosmetics, Kalwara said.

Nicole Miles of Worldwide Marketing in San Diego told the Empire the company would not return

Dull's money, but that the shampoo, conditioner and lotion was worth \$400.

Miles said Dull must have misunderstood if she thought she was going to get a \$25,000 prize. "We said she was eligible. Eligible: That's the key word."

Miles said her company, and other telemarketing firms like hers, make their phone calls from lists of people who respond to other promotions and contests.

Art Krows, president of Main Line America, a telemarketing firm from Las Vegas, said his
Please see Scams, back page

Scams...

Continued from Page 1

company is legitimate and the complaint filed against him Tuesday by 83-year-old Jan Woodring of the Juneau Pioneers' Home was "because she obviously didn't listen to what we said. She only heard what she wanted to hear." Woodring told police she was called Monday evening by a company identifying itself as Main Line America. She said company spokesman Robert Chesmore told her she had won \$20,000 worth of prizes that she could collect as soon as she sent them \$2,100, Federal Express.

"They said the \$2,100 was supposed to take care of costs associated with the award. I turned it down and they called me again. They really have pressure tactics. They make you feel guilty," Woodring told the Empire.

Krows said Woodring was guaranteed one of several awards: a 1993 Saturn, a Chevy S-10 pickup, a certified lithograph by Adolph Shering valued at \$2,500, or a 41-inch TV. Krows said Woodring's \$2,100 would have purchased either cleaning supplies or a security system that Main Line America markets.

Woodring laughed when told what Krows had said. "That's not what they said. I live in the pioneers' home, why would I want \$2,100 worth of cleaning supplies? That doesn't make sense."

Krows said his industry provides a service. "There are some people who sit by their phone all night and dial all these 800 numbers because these people are so lonely. It's a true but pathetic fact. We brighten their day.

"Why does telemarketing work? Telemarketing is based on greed, the greed of the American people. People want to get something for nothing but there is no free lunch. We're not con men, we're just plain human beings selling to people who buy because of greed," Krows said.

Woodring disagreed. "I'm not greedy. I'm not lonely. It's not just a matter of being elderly. But I have had a series of mini-strokes. I don't need this harassment, this stress."

Dora Conway of the Las Vegas Better Business Bureau said Main Line America had been in business since March 1992 and had recently signed a voluntary compliance agreement with the state of Oregon, agreeing not to engage directly or indirectly in solicitation there and to pay restitution to any Oregonian requesting it.

"Did I go to Alaska and put a gun to (Woodring's) head and tell her to send a check? No. She does it of her own free will," Krows said.

Another Las Vegas telemarketing company apparently targeting Alaska's elderly calls itself Corporate Bank Services. Last week, a 73-year-old Anchorage woman sent \$1,225 to the company by Federal Express, according to Williams. The telemarketer said the money would be used to pay taxes she owed for a \$50,000 prize the company claimed she would receive the next day. She hasn't heard from them since.

"This company has a long history of scams. They move into a motel one day and they're gone the next. It appears to be a structured criminal operation," Williams said.

Conway said Corporate Bank Services had gone out of business months ago but some unscrupulous people may be using its name when they call out-of-state residents.

Rick Gilmore, president of the Anchorage-based Alaska Better Business Bureau, said, "Ripping off the elderly seems to be the fashionable thing to do. People should know that when they are called by any of these companies, they should first invest a couple of dollars in a long-distance phone call to the Better Business Bureau because we can tell consumers whether companies are legitimate or not."

Assistant Attorney General Jim Forbes, who works on consumer protection issues for the state, said telemarketing is almost completely unregulated in Alaska and fraudulent schemes cost Alaskans millions of dollars each year. Many of the victims are elderly or live in Native villages, he said.

Meanwhile, Rep. Ron Larson, D-Palmer, is sponsoring legislation this session that would regulate telemarketers, mandate a cooling-off period by requiring a written contract, and make it a felony to violate the law. The bill, which would also govern solicitations by charitable groups, is patterned after laws in Oregon and Florida.

Forbes said one reason Alaskans are targeted by so many out-of-state telemarketers is because "of the successful implementation of regulations in other states. Telemarketers who find inhospitable conditions in other states ... are turning their attention to states like Alaska which do not have similar legislation."

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 113

Revision Date: February 12, 1993
Title: "...regulating the solicitation of charitable contributions...solicitation of sales by telephonic means..."
Sponsor: Representative Larson
Requestor: Representative Larson

Department Affected: Law
BRU: Legal Services
Component: Fair Business Practices
COMPONENT SERIAL NO. 1823

EXPENDITURES/REVENUES:

| OPERATING | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-----------------|-------|-------|-------|-------|-------|-------|
| PERSONAL | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| REVENUE FUND SOURCE: | | | | | | |
|----------------------|--|--|--|--|--|--|

FUNDING:

| | | | | | | |
|-----------------|---|---|---|---|---|---|
| 1002 Federal | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Approved by Commissioner: Richard I. Pegues/FBI
Agency: Department of Law

Phone: 465-3672
Date: February 12, 1993
Date: February 12, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 113

ANALYSIS: (continued)

This bill would amend Title 45 by adding regulatory provisions to address abuses in charitable fundraising and telemarketing solicitations.

Under this bill, non-exempt charities would be required to:

1. File registration papers with the attorney general identifying the party making the charitable solicitation, and describing the charitable purpose to be served with the proceeds;
2. Execute written contracts with any paid fundraisers establishing the method of payment for the paid fundraiser, including the amount of any contingent fee; and
3. Provide certain information to donors.

Non-exempt telemarketers would be required to:

1. Register with the attorney general; and
2. Execute written contracts with customers as a condition of closing any sales. This provision creates an enforceable "cooling off period" that is currently lacking in these high pressure sales situations.

The bill provides criminal penalties for charitable solicitors who refuse to honor the consumer's right to revoke a deal, or who take the consumer's money without observing the cooling off period under the written contract provision.

This bill is an attempt to solve the related problems presented by high pressure charity fundraisers who make misrepresentations regarding their fundraising purposes; and telephone sales artists who use high pressure tactics to sell merchandise at greatly inflated prices with false promises of extravagant prizes, and other illusory inducements.

Because there is no regulatory scheme now in effect, the Department of Law cannot say with certainty how much additional staff time will be required to meet the paperwork generated by this bill. But we estimate that the initial year's filings will not greatly exceed 250 charities, and 100 telemarketers.

The staff time needed to file the registration documents will be partially offset by a time savings in the investigation sphere, because the files will contain data that significantly reduces investigative effort in cases involving charitable fundraisers and telemarketers. Both types of cases currently involve significant investigative time spent identifying the people and organizations involved. Of course, to the extent that the bill deters illegal conduct, it will result in additional reductions of investigative time, due to the reduction in law violations requiring investigation. Investigators will be free to devote resources to those other pressing matters needing their attention which currently go unaddressed because of reduced funding.

In the event that the time estimates are inaccurate, the Department of Law may need to return with a request for additional funding in the future. Until such time, however, this bill does not require an increased appropriation.