

HB

403

JAN 18 1996

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 403

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...consumer protection involving...sale, transfer..." BRU: Civil Division
used motor vehicles and involving telephonic solicitations." Component: General Legal Services
 Sponsor: Representative Brown
 Requester: Representative Brown COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill makes two changes to the state's consumer protection laws. First, the bill amends the consumer protection statute at AS 45.45.400(a) to require a used car dealer to provide a buyer with a copy of a certificate of auto emissions compliance or noncompliance for a used vehicle before the buyer enters into a binding contract for sale, transfer, or assignment with a dealer. Under existing statute, a used car dealer is prohibited only from transferring title or ownership interest in a used vehicle without such a certificate. A sale contract is generally completed many days and sometimes weeks before title transfer paperwork is prepared. Used car dealers sometimes wait to either obtain or release the emissions certificate of compliance or noncompliance until after the buyer has signed a binding sales contract.

Currently, consumers often do not learn, until after entering into a binding sales contract, that the vehicle they just purchased does not comply with auto emissions standards. The cost to the buyer of bringing a used vehicle into compliance is often prohibitive, leaving many used car buyers saddled with monthly payments on an

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 1/17/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/17/96
 Agency: Department of Law

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 403

ANALYSIS CONTINUATION:

unregistered vehicle that cannot be lawfully driven. This simple statute change will protect buyers by informing them of the emission status of a used vehicle before a sale. This change will not have a fiscal impact for the Department of Law.

Second, the bill amends the mail order catalog exemption contained in Alaska's telemarketing laws. The state's telemarketing law contains a number of exemptions, one of which is for sales from a mail order catalog. Recently, a telemarketer headquartered outside Alaska attempted to rely on this exemption to avoid registration, asserting that the catalog exemption can be satisfied without mailing or distributing catalogs in Alaska. This bill requires a telemarketer relying on the exemption to have the indices of a legitimate mail order business (e.g., a catalog distributed in Alaska; name, address, telephone number, and ordering instructions included in the catalog; catalog company awaiting calls from consumers rather than initiating telemarketing sales calls to consumers). Legitimate mail order businesses should have no difficulty complying with the statutory clarifications contained in this bill. These clarifications will not have a fiscal impact on the Department of Law.

Sponsor Statement

HB 403

"An act relating to consumer protection involving contracts for the sale, transfer, or assignment of used motor vehicles and involving telephonic solicitations."

HB 403 would strengthen Alaska's consumer protection statutes in two ways.

First, it would crack down on used car dealers who withhold information about a car's ability to pass emissions tests until after a sales contract is signed. **Consumers often learn too late** that the vehicle they just purchased does not comply with auto emissions standards, and thus they face **large unanticipated additional expenses** to bring the vehicle into compliance.

Current law requires only that the dealer inform the buyer before transferring the vehicle title, yet sales contracts are commonly signed days before title transfer. HB 403 would require the dealer to provide the buyer with an auto emissions compliance or noncompliance certificate **before the contract is signed**.

Secondly, HB 403 would attack the fraudulent sales via telephone solicitation that are all too common in Alaska. Most telemarketers are required to register with the state so that they can be tracked down if they defraud consumers. This registration requirement is a **powerful enforcement tool** in the fight against telemarketing fraud. But some shysters have attempted to squirm around the requirement by claiming to be mail-order firms (which are exempt from registration). Recently, a telemarketer headquartered outside Alaska asserted that the mail-order exemption can be satisfied without mailing or distributing any catalogs to Alaska. HB 403 would require a telemarketer relying on the catalog exemption to operate a **legitimate mail-order business**.

Sectional Analysis

HB 403

"An act relating to consumer protection involving contracts for the sale, transfer, or assignment of used motor vehicles and involving telephonic solicitations."

BY REPRESENTATIVES BROWN, B. Davis

Section 1

Requires a used car dealer to provide a prospective buyer with a copy of a certificate of auto emissions compliance or noncompliance before the buyer enters into a binding contract for sale, transfer, or assignment of a vehicle.

Also requires the dealer to obtain the buyer's signature acknowledging receipt of the certificate before entering into the contract.

Section 2

Requires a telemarketer seeking exemption to registration requirements to have the characteristics of a legitimate mail order business: a catalog distributed in Alaska; name, address, telephone number, and ordering instructions included in the catalog, catalog company awaiting calls from consumers rather than initiating telemarketing sales calls to consumers.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

SUMMARY OF TELEMARKETING ENFORCEMENT IN ALASKA

Prepared as background relating to House Bill 403

January 22, 1996

According to U.S. Congressional findings contained in the 1994 federal Telemarketing and Consumer Fraud and Abuse Prevention Act, (Public Law 103-297; 15 U.S.C. § 6101 et seq.), consumers and others are estimated to lose \$40 billion a year nationally in telemarketing deception and fraud. Based upon Alaska's population size, Alaskans are estimated to lose several million dollars annually in telemarketing deception and fraud. Alaska is essentially a "victim" state when it comes to telemarketing deception and fraud, since most telemarketers are headquartered outside of Alaska.

In 1993, the Alaska Legislature enacted the Telephonic Solicitations Act requiring telemarketers to register with the Department of Law before making most telemarketing sales in this state. The registration requirement is a powerful enforcement tool that allows the Attorney General's Office to gather important information about telemarketers before they are permitted to telemarket to Alaskans.

In 1995, the Attorney General's Office sent "cease and desist" warning letters to nearly 100 telemarketers who sold or attempted to sell products or services without first registering in Alaska, and obtained over \$30,000 in refunds to Alaskans victimized by telemarketers. Also in 1995, the Attorney General's Office obtained a permanent injunction against a California telemarketer who had refused to register in Alaska. The Attorney General's Office filed several Assurances of Voluntary Compliance in the Alaska Superior Court in 1995 and 1996 regarding various telemarketers based outside Alaska.

Older persons are particularly vulnerable to telemarketers, and many older Alaskans have been taken by unscrupulous telemarketers based outside our state. One recent case investigated by the Attorney General's Office illustrates this point, as well as the old consumer protection adage that "If something seems too good to be true, it probably is."

BACK UP
Department of Law

Telemarketing Enforcement Summary
(Continued)

In May of 1995, a 63-year-old Southeast Alaska consumer reported to the Attorney General's Office that a Eugene, Oregon-based telemarketer called to inform him that he had won "the largest cash prize ever given away by the company." The consumer -- who claimed to be "the poorest man in Hoonah" -- was told that to receive his cash prize, he would have to purchase a "water filtration system" for \$1,279. The consumer rushed to pay that sum of money to the telemarketer with the expectation of receiving a large cash award. What the consumer actually received for his money was a water filter with a fair market value of no more than \$50, and a cash prize of \$20.

Shocked and humiliated, the consumer called the company and demanded an explanation. A company representative explained that the \$20 award was indeed "the largest cash prize ever given away by the company." The company thereafter attempted unsuccessfully to telemarket yet another water filtration system to the same consumer for a price of \$2,989. The Attorney General's Office sent a letter to the telemarketer demanding that it cease and desist its illegal telemarketing and make a full refund to the consumer. The telemarketer quickly complied with our demand rather than risk being sued.

Many other Alaskans have lost much larger sums of money, and have not been able to obtain refunds. Fraudulent telemarketers often operate "fly-by-night" companies that disappear as soon as enforcement authorities get wind of them, only to re-appear under a different name and in a different city. The Better Business Bureau of Alaska and the Attorney General's Office handle a steady stream of consumer complaints regarding telemarketing deception and fraud. To the extent unscrupulous telemarketers attempt to unfairly hide behind Alaska's mail order catalog exemption, House Bill 403 will clarify the requirements associated with that exemption and will thereby allow the Attorney General's Office to more effectively combat telemarketing deception and fraud.

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 8, 1996

FURTHER REFERRALS: Labor and Commerce
Judiciary
Finance

Date of Committee Action: 4/10/96

The TRANSPORTATION Committee considered:

HB 403

HOUSE BILL NO. 403

CONSUMER PROTECTION:USED CAR & MAIL ORDER

"An Act relating to consumer protection involving contracts for the sale, transfer, or assignment of used motor vehicles and involving telephonic solicitations."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
[] fiscal note(s) _____ [] fiscal note(s) _____

X zero fiscal note(s) Law _____ [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Beverly Masetta			✓	
Janette James				✓
_____			X	
_____			X	
_____			✓	
D.K. D. Williams				X
Henry L. Davis	X			

CHAIR'S SIGNATURE Henry L. Davis