

**HB**

**203**

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. HB 203

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to unlawful trade practices." BRU: Civil Division  
 Component: General Legal Services  
 Sponsor: Representative Dyson  
 Requester: House Labor and Commerce Committee COMPONENT SERIAL NO. 2087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY97) 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)

HB 203 amends Alaska's Unfair Trade Practices and Consumer Protection Act to enhance a private litigant's right, under AS 45.50.531, to bring an action in Alaska Superior Court.

Passage of this legislation would cause no new costs for the Department of Law. Section 5 may have the effect of increasing revenues, however, as it would require a court to award full attorney's fees and all allowable costs to a prevailing plaintiff (whether the state or a private plaintiff). Under current law, the prevailing plaintiff can only receive Rule 82 attorney's fees, set at approximately 20 percent. The amount of revenue that might accrue to the state is very speculative, depending on the level of effort expended by the state in pursuing actions brought under the Unfair Trade Practices and Consumer Protection Act.

Prepared by: Joan M. Kasson *Joan M. Kasson*  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce Botelho for*  
 Agency: Department of Law

Phone: 465-5370  
 Date: 4/1/97  
 Date: 4/1/97

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# FISCAL NOTE

Bill Version: CSHB 203(LS)

(H) Publish Date: 5/6/97

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Prepared by: Jean M. Kasson *Jean M. Kasson* Phone: 465-5370  
 Division: Administrative Services Division Date: 4/1/97  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/1/97  
 Agency: Department of Law

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April 23, 1997

House Labor and Commerce Committee

Public hearing on HB 203. "An Act relating to actions for unlawful trade practices."  
by Representatives Dyson and Croft Introduced 3/18/97

I am Peggy Mulligan of the Capital City Task Force, AARP.

Under AARP's Strategic Activities in 1997, Telemarketing Fraud ranks No. 7 in the Nation, but consumer and telemarketing fraud ranks No. 1 in Alaska. "Personal fraud and abuse" is one of 5 objectives to be studied under the Alaska State Legislative Committee 97-99 Long Range Plan.

House Bill 203 is supported by AARP. Since the Department of Law's Consumer Protection Section was eliminated in the late 1980's, Alaskan consumers have grown increasingly vulnerable costing an estimated \$10 million dollars a year. This bill empowers Alaskans to fight back fraud. We also support SSHB 49 (consumer protection section in the Department of Law; increasing penalties for violation relating to consumer protection; special accounting for money; efd). We appreciate this hearing during the final days of the legislature and look forward to hearings in Judiciary during the summer, or perhaps sooner.

In Alaska telemarketing fraud is addressed within the Trade and Commerce Section of the Alaska Code. The "Telephonic Solicitations" section regulates "telephone sellers". Registration is required; however there is a long list of businesses exempted from the law. Nor is a bond required. The law imposes a Class C felony for any violation. Prohibited: representing they are complying with State law; representing compliance with State law is endorsement from the state; representing they have a license or permission by the state; requesting or obtaining a waiver of "Buyer rights".

There are no civil penalties under Alaska law.

Grants have become available from AARP <sup>national</sup> federal and western region sources for use to educate Seniors and other Alaskans of current fraud practices in the state; to collect evidence of fraud attempts in the state; to encourage various groups to help Alaskans become aware of telemarketing and consumer fraud and such other activities as may seem appropriate. This is our priority activity for the summer.

I have a copy of a six page AARP model legislation which I will hand in to the committee.

I appreciate your listening to my comments..

Thank you.



Peggy Mulligan  
Capital City Task Force Member

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American Association of Retired Persons



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**SECTION 1: Purpose of Act**

*An Act requiring telemarketers to Register and establishes standards of conduct for those telemarketers. The Act provides penalties for violations of the Act.*

**SECTION 2: Short Title**

*This Act shall be known and is to be cited as "The Telemarketing Registration and Fraud Prevention Act."*

**SECTION 3; Definitions:**

*As used in this act, the following terms shall mean:*

- (1) "Consumer and/or Purchaser" means a person who is, or may be required to pay for goods or services offered by a telemarketer through telemarketing.
- (2) "Goods or Services" means any real property or any tangible or intangible personal property or services of any kind provided or offered to a person.
- (3) "Investment Opportunity" means anything tangible or intangible, that is offered, for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit or appreciation.
- (4) "Material Aspect or Element" means any factor likely to affect a person's choice of, or conduct regarding, goods or services, and includes currency values and comparative expressions of value including, but not limited to, percentages or multiples.
- (5) "Prize" means anything offered or purportedly offered and given or purportedly given to a person by chance.
- (6) "Prize Promotion" means a sweepstakes or other game of chance or an oral or written, express or implied representation that a person has won, has been selected to receive or is eligible to receive a prize or purported prize.
- (7) "Seller" means any person, who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.
- (8) "Solicitation" - means a written or oral notification or advertisement that meets any one of the following terms:

1 (a) the notification or advertisement is transmitted by or on behalf of the  
2 seller and by any printed, audio, video, cinematic, telephonic or electronic  
3 means.

4 (b) In the case of a notification or advertisement other than by telephone,  
5 either of the following conditions is met:

6 (i) the notification or advertisement is followed by a telephone call from a  
7 telemarketer or seller.

8 (ii) the notification or advertisement invites a response by telephone, and  
9 through that response, a telemarketer attempts to make a sale of goods or  
10 services.

11 (9) "Telemarketing" means a plan, program or campaign which is conducted  
12 to induce the purchase of goods or services by use of one or more telephones  
13 and which involves more than one telephone call.

14 (10) "Telemarketer" means any person who in connection with telemarketing,  
15 initiates or receives telephone calls to or from a consumer in this State, or  
16 when the person acting in connection with telemarketing is located within this  
17 State when such calls are initiated or received. A telemarketer includes, but  
18 is not limited to any such person that is an owner, operator, officer, director  
19 or partner to the management activities of a business.  
20

#### 21 *SECTION 4: Registration of Telemarketers*

22

23 (1) General Rule: No person shall act as a seller or telemarketer without first  
24 having registered with the {Attorney General or Department of Commerce}.

25 (a) The initial application for registration shall be made at least {60 days}  
26 prior to offering consumer goods or services, and or offering for sale  
27 consumer goods or services through any medium, and an application for  
28 renewal shall be made on an {annual} basis thereafter.

29 (b) The Application for a Certificate of Registration or Renewal shall  
30 include, but not be limited to, the following information:

31 (i) The true name, current address, telephone number and location of  
32 the seller, including each name under which the seller intends to engage in  
33 telemarketing;

34 (ii) Each occupation or business that the seller's principal owner has  
35 engaged in for two years immediately preceding the date of the application;

36 (iii) Whether any principal or manager has been convicted or plead  
37 guilty to or is being prosecuted by indictment for racketeering, violations of  
38 state or federal securities laws, or a theft offense;

- 1 (iv) Whether there has been entered against any principal or manager  
2 an injunction, temporary restraining order or a final judgment in any civil or  
3 administrative action, involving fraud, theft, racketeering, embezzlement,  
4 fraudulent conversion or misappropriation of property, including any pending  
5 litigation against the applicant;
- 6 (v) Whether the seller, at any time during the previous seven years, has  
7 filed for bankruptcy, been adjudged bankrupt or been re-organized because of  
8 insolvency;
- 9 (vi) The true name, current home address, date of birth, social security  
10 number and all other names of the following:
- 11 (a) Each telemarketer or other person to be employed by the seller;  
12 (b) Each person participating in or responsible for the management  
13 of the seller's business;
- 14 (c) Each person, (office manager, supervisor) principally  
15 responsible for the management of the seller's business;
- 16 (vii) The name, address and account number of every institution where  
17 banking or any other monetary transactions are done by the seller; and
- 18 (viii) A copy of all scripts, outlines or presentation material the seller  
19 will require the telemarketer to use when soliciting as well as all sales  
20 information to be provided by the seller to a purchaser in connection with any  
21 solicitation.
- 22 (2) Security Requirement: The application for registration or renewal shall be  
23 accompanied by a surety bond in the amount of {\$100,000}. The bond shall  
24 provide for the indemnification of any person suffering a loss as the result of  
25 violation of this Act. The surety for any cause may cancel the bond upon  
26 giving a 60-day written notice by certified mail to the principal and to the  
27 {Office of the Attorney General}. Unless the bond is replaced by that of  
28 another surety before the expiration of the 60- days notice of cancellation, the  
29 Registration of the principal of this Act shall be treated as lapsed.
- 30 (a) The surety bond shall remain in effect for three (3) years from the  
31 period the telemarketing business ceases to operate in this State.
- 32 (b) Any business required under this Act to file a Bond with a Registration  
33 Application, may file, in lieu thereof, a certificate of deposit, cash, or  
34 government bond in the amount of {\$100,000}.
- 35 (c) {The Office of the Attorney General} shall hold such cash, certificate  
36 of deposit or government bond for three (3) years from the period the  
37 telemarketing business ceases to operate (or registration lapses) in order to  
38 pay claims made against the telemarketing business during it's period of  
39 operation.

1 (d) The Registration of the telemarketing business will be treated as lapsed  
2 if at any time, the amount of the bond, cash, certificate of deposit or  
3 government bond falls below the amount required by this subsection.

4 (e) The aggregate liability of the surety company to all persons injured by  
5 a telemarketer's violations shall not exceed the amount of the bond.

6 (3) The following shall constitute a violation of this Act and shall be a felony:

7 (a) failure to register;

8 (b) failure to meet the above security requirement;

9 (c) failure to maintain a certificate of registration;

10 (d) including any false or misleading information on a registration  
11 application; and

12 (e) misrepresenting that a seller is registered.  
13

#### 14 *SECTION 5; Record Keeping Requirements* 15

16 (1) Any telemarketer shall keep for a period of 24 months from the date the  
17 record is produced, records of all financial transactions, written notices,  
18 disclosures and acknowledgments, in the form, manner, format or place as  
19 they keep such records in the ordinary course of business, including but not  
20 limited to:

21 (a) All substantially different advertising, brochures, telemarketing scripts  
22 and promotional materials;

23 (b) The name and last known address of each prize recipient and the prize  
24 awarded;

25 (c) The name and last known address of each customer, the goods or  
26 services purchased, the date such goods or services were shipped or provided  
27 and the amount provided, and the amount paid by the customer for the goods  
28 or services;

29 (d) The name, any fictitious name used, the last known home address and  
30 telephone number, and the job title for all current and former employees  
31 directly involved in telephone sales; provided, however, that if the seller  
32 permits fictitious names to be used by employees, each fictitious name must  
33 be traceable to only one specific employee; and,

34 (e) all written authorizations required to be provided or received under this  
35 Act.

36 (2) In the event of any dissolution or termination of the telemarketer's  
37 business, the principal of that telemarketer shall maintain all records as  
38 required under this section. In the event of any sale, assignment or other

1 change in ownership of the seller's business, the successor shall maintain all  
2 records required under this section.

3  
4 **SECTION 6; Acts and Practices Not Covered Under This Act:**

5  
6 (1) Telephone calls in which the sale of goods or services is not completed,  
7 and payment or authorization of payment is not required, until after a face-to-  
8 face sales presentation by the telemarketer; and

9 (2) Telephone calls initiated by a customer that are not the result of any  
10 solicitation by a seller or telemarketer.

11  
12 **SECTION 7; Disclosures and Contract Requirements:**

13  
14 (1) The telemarketer shall provide all of the following when contacting a  
15 consumer:

16 (a) Within the first minute of the call and prior to any sales pitch:

17 (i) that the true purpose of the telephone call is to make a sale;

18 (ii) the telemarketer's true name and the company on whose behalf the  
19 solicitation is being made; and

20 (iii) the identity the goods or services being sold.

21 (b) the total cost of the goods or services that are the subject of the  
22 telemarketing sales call;

23 (c) any restrictions, limitations, or conditions to purchase the goods or  
24 services that are the subject of a telemarketing sales call;

25 (d) any material aspect of the performance, quality, efficacy, nature or basic  
26 characteristics of goods or services that are the subject of a telemarketing  
27 sales call;

28 (e) any material aspect of the nature or terms of the refund, cancellation,  
29 exchange or repurchase policies;

30 (f) any material aspect of an investment opportunity being offered, including  
31 benefits, the price of the land or other investment, the location of the  
32 investment, and the reasonable likelihood of success of the investment  
33 opportunity;

34 (g) any material elements of a prize promotion, including:

35 (i) a description of the prize;

36 (ii) its market value;

37 (iii) all material conditions to receive or redeem the prize; '

38 (iv) the actual number of each prize to be awarded;

1 (v) the odds of being able to receive the prize and, if the odds are not  
2 calculable in advance, the factors and methods used in calculating the odds;

3 (vi) that no purchase or payment of any kind is required to win a  
4 prize or to participate in a prize promotion; and

5 (vii) the no-purchase or no-payment method of participating in the  
6 prize promotion, with either instructions on how to participate or an address  
7 or local or toll-free telephone number to which customers may write or call  
8 for information on how to participate.

9 (2) (a) The telemarketer's sales transaction shall only be considered final  
10 after the customer has received a notice as required by subsection 2 (b) of this  
11 Section.

12 (b) The telemarketer shall furnish the purchaser, in the same language  
13 as that principally used in the sales presentation, a written notice, which shall  
14 contain in not less than ten-point boldface type, a statement in substantially  
15 the following form:

16 "You, the purchaser, may cancel this transaction without any  
17 penalty or obligation at any time prior to midnight of the third business  
18 day after receipt of this notice. If you cancel, any payments made by you  
19 under the sale will be returned within ten business days following receipt  
20 by the seller of your written notice of cancellation and any security  
21 interest arising out of the transaction will be canceled.

22 If you cancel, you must make available to the seller at your  
23 residence, in substantially as good condition as when received, any goods  
24 delivered to you under this contract of sale; or you may, if you wish,  
25 comply with the instruction of the seller regarding the return shipment  
26 of the goods at the seller's expense and risk.

27 If you do make the goods available to the seller and the seller does  
28 not pick them up within twenty days of the date of your notice of  
29 cancellation, or agree to pay the expense for their return, you may retain  
30 or dispose of the goods without any further obligation. If you fail to  
31 make the goods available to the seller, or if you agree to return the goods  
32 to the seller and fail to do so, then you remain liable for performance of  
33 all obligations under the contract.

34 To cancel this transaction, mail or deliver a written notice of  
35 cancellation or send a telegram to (name of seller) at the following  
36 address (address of seller)."

37 (c) Pursuant to subsection 2(b) of this Section, the seller is required to  
38 furnish the purchaser with the seller's name, and the name of the person to  
39 whom any notice of cancellation is to be given if different from the seller's

- 1 name, the legal name of the company for whom the seller is soliciting, the  
2 seller's street address and the seller's phone number. The seller is  
3 additionally required to furnish the purchaser with the date of the telephone  
4 solicitation and a description of the telephone solicitation.  
5 (3) It is an unfair and deceptive act or practice to fail to or misrepresent the  
6 requirements of this section.  
7 (4) It is a violation of this Act for any seller or telemarketer to engage in any  
8 other unfair or deceptive conduct which will create a likelihood of confusion  
9 or misunderstanding to any reasonable consumer.  
10 (5) Failure to comply with the provisions of this section is a {Class 1  
11 misdemeanor}.

12

13 *SECTION 8: Prohibited Acts and Practices:*

14

- 15 (1) It is a prohibited telemarketing act or practice and a violation of this Act  
16 for any seller or telemarketer to engage in the following conduct:  
17 (a) Advertise or represent that registration as a telemarketer equals an  
18 endorsement or approval by any government or governmental agency of the  
19 state;  
20 (b) Assist, support, or provide substantial assistance to any telemarketer  
21 when the seller knew or should have known that the telemarketer was  
22 engaged in any act or practice under this section or Section 7;  
23 (c) Request a fee in advance to remove derogatory information from or  
24 improve a person's credit history or credit record;  
25 (d) Request or receive payment in advance from a person, to recover or  
26 otherwise aid in the return of money or any other item lost by the consumer in  
27 a prior telemarketing transaction;  
28 (e) Obtain or submit for payment a check, draft or other form of negotiable  
29 paper drawn on a person's checking, savings or bankcard account without the  
30 consumer's express written authorization; or  
31 (f) Procure the services of any professional delivery, courier or other pick-  
32 up service to obtain immediate receipt and/or possession of a consumer's  
33 payment, unless the goods are delivered with the opportunity to inspect  
34 before any payment is collected.  
35 (2) A violation of the provisions of subsection 3 shall constitute a {class 1  
36 misdemeanor.}

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39

1 **SECTION 9: Abusive Acts or Practices**

2

3 (1) It is an abusive telemarketing act or practice and a violation of this Act for  
4 any seller or telemarketer to engage in the following conduct:

5 (a) Threaten, intimidate or use profane or obscene language;

6 (b) Cause the telephone to ring more than five times in an intended  
7 telemarketing call;

8 (c) Engage any person repeatedly or continuously with behavior a  
9 reasonable person would deem to be annoying, abusive or harassing;

10 (d) Initiate a telemarketing call to a person, when that person has stated  
11 previously that he or she does not wish to receive solicitation calls from that  
12 seller;

13 (e) Engage in telemarketing to a person's residence at any time other than  
14 between 8:00 a.m. and 9:00 p.m. local time, at the called person's location; or

15 (f) Engage in any other conduct which would be considered abusive to any  
16 reasonable consumer.

17 (2) The State may seek injunctive or declaratory relief for any violations of  
18 this section.

19

20 **SECTION 10: Civil Remedies;**

21

22 (1) The sale of any goods or services by an unregistered telemarketer or  
23 seller shall be void.

24 (2) Any consumer that suffers a loss or harm as a result of an unfair and  
25 deceptive act or practice shall recover actual and punitive damages,  
26 attorney's fees, court costs, and any other remedies provided by law.

27 (3) Any consumer that suffers a loss or harm as a result of a prohibited act or  
28 practice shall recover actual and punitive damages, attorney's fees, and court  
29 costs.

30 (4) Any consumer that suffers harm as a result of an abusive act or practice  
31 shall receive injunctive or declaratory relief.

32 (5) The state, on behalf of its residents who have suffered a loss or harm as a  
33 result of a violation of this Act, may seek actual and punitive damages.

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# ALASKA STATE LEGISLATURE

## House of Representatives

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### Labor and Commerce Committee

#### MEMORANDUM

TO: Representative John Cowdery  
Representative Bill Hudson  
Representative Joe Ryan  
Representative Jerry Sanders  
Representative Tom Brice  
Representative Gene Kubina

FROM: Representative Norman Rokeberg, Chairman  
House Labor & Commerce Committee

DATE: April 23, 1997

**Additional Materials Provided  
To Committee After Bill Packets  
Delivered To Committee Members**

**HB 203**

# LEGAL SERVICES

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Juneau, Alaska 99801-2105

## MEMORANDUM

May 7, 1997

**SUBJECT:** Sectional Summary of CSHB 203(L&C) (Work Order No. 20-LS0553\P)

**TO:** Representative Fred Dyson  
Attn: Pat Harman  
*JB*

**FROM:** Theresa Bannister  
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. The descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

**Section 1.** Amends AS 45.50.473(c). This subsection provides a remedy for violating AS 45.50.473, which requires that certain disclosures be made for the costs of certain telephone services. The amendment shows how the subsection relates to AS 45.50.531(a) and its changes.

**Section 2.** Amends AS 45.50.531(a). AS 45.50.531 relates to private and class actions for unlawful acts and practices identified under AS 45.50.471. Allows a person who has lost money or property because of an unlawful act or practice to bring an action to recover damages. Allows the person to recover for each unlawful act or practice the greater of three times the actual damages or \$500. Removes the requirement that the violation be willful in order to receive triple damages. Allows a court to award other necessary and proper relief. States that the section does not prevent a person from pursuing other available remedies as well as bringing an action under this section.

**Section 3.** Adds two new sections to the article on unfair trade practices and consumer protection.

AS 45.50.535. Allows any person to bring an action in court to stop a seller or lessor from continuing to engage in an act or practice unlawful under AS 45.50.471. States that an

Representative Fred Dyson

May 7, 1997

Page 2

action under this section is in addition to any other right to bring an action under other law.

Establishes conditions for bringing the action. First, the person must give the seller or lessor written notice that the person will bring the action unless the seller or lessor promptly stops the unlawful act or practice. Second, the seller or lessor must fail to promptly stop the unlawful act or practice after the notice.

States that a person does not have to suffer damages or otherwise be injured in order to bring the action under this section.

AS 45.50.537. Establishes the rules for awarding attorney fees and costs in an action brought under AS 45.50.471 - 45.50.561. Unless another part of the section provides differently, directs a court to award a prevailing plaintiff (the person who brings the action and wins) costs as allowed by court rule and full reasonable attorney fees at the prevailing reasonable rate. Unless another part of the section provides differently, prohibits a court from requiring a private plaintiff who loses to pay attorney fees or costs to the defendant unless the action was frivolous.

If the action is frivolous, directs the court to award the defendant costs as allowed by court rule and full reasonable attorney fees at the prevailing reasonable rate.

If the plaintiff loses a case that was brought to obtain a competitive business advantage, directs the court to award the defendant costs as allowed by court rule, full reasonable attorney fees at the prevailing reasonable rate, and damages.

Section 4. Repeals AS 45.50.531(g). This is the current subsection on attorney fees and costs for private actions under AS 45.50.531.

If I may be of further assistance, please advise.

TLB:jdr:glc

97-306.glc

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300  
JUNEAU ALASKA 99811-0300  
PHONE (907) 465-3600  
FAX (907) 465-2075

April 13, 1997

The Honorable Eric Croft  
Alaska State House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

Re: Consumer Protection

Dear Representative Croft:

Thank you for your interest in the Department of Law's consumer protection function, staffing levels, and enforcement efforts. This letter will summarize the current situation with regard to these issues.

### Consumer Protection Staffing and Budget Constraints

As you know, because of declining budgets over the past ten years, Alaska's consumer protection staffing has shrunk dramatically. For the last six or seven years, the Attorney General's Office has, regrettably, not had the resources necessary to handle the many thousands of individual consumer complaints each year from Alaskans. In this last year we have shifted assignments to add one additional attorney position for antitrust and consumer protection litigation, which brings us to a total of two assistant attorneys general and a part-time paralegal focusing on this work. However, this compares unfavorably with 5 attorneys and 8 paralegals that were dedicated to consumer protection and antitrust litigation in the early to mid-1980s.

The Department of Law has experienced a substantial reduction in general fund funding in recent years, and this has negatively affected our ability to do consumer protection work. For FY 97, only 32 percent of the Civil Division's funding is unrestricted general fund. The majority of the work of assistant attorneys general is funded through reimbursable services agreements (RSAs) with client agencies. RSA funds

from these agencies may only be expended for legal services for those agencies. Aside from the consumer protection/antitrust staff, virtually all of the attorney positions in the Fair Business Practices and Commercial sections are RSA-funded positions. Since no one agency is responsible for consumer protection and antitrust investigation and enforcement, there is no source other than the general fund to support this type of work directly. I would point out, however, that a number of the functions of the agencies that have RSAs for legal services provided by the Fair Business Practices and Commercial sections do, in fact, involve consumer protection matters. These include occupational licensing cases, rate proceedings before the Alaska Public Utilities Commission, enforcement actions against insurance companies, proceedings against licensees before the Alcoholic Beverage Control Board, and charitable gaming licensing issues. This is in addition to our direct consumer protection enforcement efforts, which, as noted above, are supported by the general fund.

The Fair Business Practices and Commercial sections provide legal services for the following client agencies:

1. Department of Commerce & Economic Development
  - a. Division of Occupational Licensing
  - b. Alaska Public Utilities Commission (APUC)
  - c. Division of Insurance
  - d. Division of Investments
  - e. Division of Banking, Securities & Corporations
  - f. Division of Measurement Standards
  - g. Other agencies within the Department of Commerce & Economic Development.
2. Department of Education
  - a. Professional Teaching Practices Commission
  - b. Commission on Postsecondary Education
3. Department of Labor
  - a. Employment Security Division
4. Department of Natural Resources
  - a. Division of Agriculture / Agricultural Revolving Loan Fund (ARLF)
5. Department of Revenue
  - a. Alaska Housing Finance Corporation (AHFC)
  - b. Alcoholic Beverage Control Board (ABC)

- c. Income and Excise Audit Division (I&E)
  - d. Permanent Fund Dividend Division
  - e. Charitable Gaming Division
- 6. Department of Law
    - a. Antitrust
    - b. Consumer Protection
  - 7. Executive Branch Ethics Act for all departments

### How We Stretch Our Enforcement Dollars

Although our consumer protection/antitrust staffing is limited, through creative use of resources the department has been able to stretch its enforcement dollar significantly beyond current staffing levels. One prime example of our efforts in this regard is the close cooperative relationship between the Department of Law and the Better Business Bureau of Alaska. The State has an excellent working relationship with the Better Business Bureau and relies heavily on it for investigative leads on a whole host of consumer protection violations.

The Attorney General's Office began referring consumers to the Better Business Bureau in 1989, shortly after the virtual elimination of the department's individual complaint mediation function, which had been handled by paralegals. While it is extremely effective in resolving many consumer matters on an informal basis, the BBB has no enforcement powers and is, therefore, powerless to deal with fraudulent businesses bent on bilking consumers unless and until ordered by a court to cease operating illegally. In recognition of this fact, the Legislature restored a modest amount of consumer protection funding in FY 1991. With this new funding, the Attorney General's Office was able to hire one attorney and one investigator devoted to pursuing a few of the most serious fraud cases where a pattern of consumer fraud was identified. And, as noted above, during FY 97 we have been able to devote an additional attorney position for consumer protection. However, our resources still do not allow us to handle the complaints of individual consumers.

In order to make the most of the department's modest consumer protection resources, the Attorney General's Office entered into a complaint referral and information sharing agreement with the BBB in September 1991. The BBB receives and processes thousands of consumer complaints from Alaskans each year. Under the agreement between the department and the BBB, the Attorney General's Office refers consumer

complaints from individuals to the BBB for informal resolution. The BBB, from its complaint files, identifies serious patterns of consumer fraud and refers these matters to this department for enforcement. The department files enforcement actions in Superior Court in appropriate cases:

- that affect large numbers of consumers;
- where the victims are without adequate means to solve the problem on their own;
- where the magnitude of actual or potential financial loss to the consumers supports the expenditure of scarce state enforcement resources;
- where enforcement action is likely to do some good; (e.g., where obtaining injunctive relief is a distinct possibility, and/or where the defendant is financially solvent); and
- where the victims are not also violators.

The agreement with the BBB has been renewed annually, and it is in effect today because our resources remain insufficient to handle the complaints of individual consumers. Given recent reductions in funding for state agencies, and particularly in the department's general fund funding, the Attorney General's Office would not be able to handle the thousands of telephone calls from the public concerning consumer fraud and deception and have personnel resources available to enforce the law in larger cases where a widespread pattern of serious violations has occurred. This arrangement is, therefore, a way of providing the most critical consumer protection service -- law enforcement, through prosecution of lawsuits by an attorney -- while keeping costs down by privatizing other consumer protection services, such as the complaint processing function formerly handled by paralegals.

Since 1991 when we privatized the individual complaint mediation function, the department has used its paralegals in the consumer protection area only to assist the attorney responsible for litigating consumer protection lawsuits. Since we no longer handle individual consumer complaints, we refer individual complainants to the BBB as a matter of routine practice. Many consumers are quite surprised and disappointed to learn that Alaska -- unlike virtually every other state -- does not handle individual consumer complaints. These consumers often demand to know what they can do to restore the department's capability to handle consumer complaints.

In addition to referral to the BBB, we advise consumers (where appropriate) that they have a private right of action under Alaska law and can receive their actual damages trebled in cases of willful violations. Alaska Statute 45.50.531(a). Consumers may even be able to bring an action in small claims court if their potential damages are valued at \$5,000 or less. Persons need not hire an attorney in small claims cases in Alaska.

### Recent Successful Enforcement Actions

Although the State is forced to turn away many cases of consumer fraud because of the small size of our consumer protection staff, we have, nevertheless, been able to recover substantial amounts of money for consumers, and we have obtained a number of injunctions against deceptive and unfair practices. Working hand-in-hand with the BBB, we have had some recent successes in the areas of telemarketing fraud, used car sales, "bait and switch" bulk retail meat sales, deceptive home business opportunity seminars, and other areas. I have summarized some of these cases for you below; information on these and other cases is included regularly in the department's Monthly Report, which is distributed to all legislators.

**Telemarketing Fraud.** The Federal Trade Commission estimates that, nationwide, consumers and others lose approximately \$40 billion a year in telemarketing fraud. We have made illegal telemarketing a priority since September 1993, when the Legislature passed laws requiring telemarketer and charitable solicitors to register annually with the Attorney General's Office as a condition of operating in Alaska. In 1995 alone, the Department of Law recovered approximately \$30,000 in restitution to consumers who had fallen victim to illegal telemarketing operations. We have issued over 100 "Cease and Desist" letters to "Lower 48" based illegal telemarketing operations and have put them out of business in Alaska. We also obtained a permanent injunction, in March 1995, against a San Diego, California, telemarketer called Distributel, which illegally telemarketed advertising specialty promotional items to Alaska without registering as a telemarketer with the State. We recovered \$10,000 in attorney's fees and costs in that case and prevailed on appeal to the Alaska Supreme Court.

**Anchorage Nissan Consumer Protection Case.** In early 1995 the department won a three-week jury trial against Anchorage Nissan for engaging in unfair and deceptive practices arising from the sale of eight used cars. Anchorage Nissan was found to have accepted in trade several used cars that had been in major accidents causing structural damage. After making repairs that were mostly cosmetic, Anchorage Nissan sold the cars to consumers without notifying them that the cars had been in major accidents. Some of

the cars were unsafe to drive but sold anyway. The jury found that Anchorage Nissan had violated its duty to disclose to the purchasers the fact that the cars had previously been in accidents. On April 14, 1995, the court issued a permanent injunction against the illegal conduct, assessed Anchorage Nissan civil penalties of \$64,000, ordered that restitution be paid to the injured consumers, and awarded the state over \$70,000 in attorney's fees and costs. That case is also on appeal in the Alaska Supreme Court.

Additionally, my department settled a claim in February 1996 that Johnson/Nissan/Jeep/Eagle violated the terms of the court's April 1995 injunction. Johnson Nissan admitted that it had not complied with the injunction to the extent that it had continued to induce customers to sign an "As Is" disclaimer on the purchase order in those cases where a customer had purchased a used vehicle and paid for a service contract for that vehicle. Under the recent settlement, Johnson Nissan sent a letter on February 20, 1996, to the approximately 500 customers who had purchased a used car with a service contract since the April 1995 injunction. Each customer was advised that if the car they purchased had a material defect at the time of sale, the dealership would repair the defect free of charge. Customers were also advised that the "As Is" disclaimer on the sale is ineffective and that the customers have warranty coverage on the cars. Johnson Nissan also paid the State of Alaska \$2,000 to cover its attorney's fees in connection with the State's investigation and settlement of the injunction violation.

Thirty-three purchasers of used vehicles contacted Anchorage Nissan in response to the warranty coverage notices the company sent pursuant to the settlement. Anchorage Nissan submitted documentation indicating it provided to these consumers diagnostic checks, repairs, and rental car transportation totaling in excess of \$20,000.

**Block & Cleaver Meats; Robert Brueggemeyer.** In October 1995, with the help of the BBB, we scored a victory against a Texas-based nationally notorious "bait and switch" meat seller, Bob Brueggemeyer, doing business in Anchorage as Block & Cleaver Meats. Brueggemeyer -- who was profiled nationally on ABC Television's 20/20 program in 1983 by ABC consumer correspondent John Stossel -- had operated a similar "bait and switch" operation in Alaska from 1987 through 1989. This time around, with the help of the BBB, Assistant Attorney General Daveed Schwartz obtained a preliminary injunction against Brueggemeyer and his company, essentially running them out of Alaska in just two months after they opened. The State won most of this case on summary judgment in February, and a short trial on the remaining issues is scheduled for May.

**Home Business Opportunity Seminar Companies.** With BBB help, the department enforced Alaska's five-business-day cooling off period in obtaining a court-approved Assurance of Voluntary Compliance with Financial Freedom Report, a Utah-based home

business opportunity seminar company that visits Alaska twice a year. We also obtained over \$20,000 in consumer refunds last Fall for 44 Alaskans who purchased products from a California-based home business opportunities seminar company that violated the same five-business-day cooling off law.

**Discount Airline Ticket Operations.** The Anchorage Police Department recently concluded an investigation of Ronald Downey's and Lucretia Dilena's involvement in an alleged airline discount ticket brokering scam. The Civil Division worked closely with the Office of Special Prosecutions and Appeals ("OSPA") on this issue, with the result being that OSPA filed criminal contempt of court charges against Downey and Dilena for their alleged violations of a 1993 superior court injunction against unfair and deceptive practices.

**Pyramid Schemes.** The Civil Division worked hand-in-hand with OSPA during a November 1994 criminal prosecution of persons involved in an illegal "gifting" chain distributor and pyramid scheme. In particular, the consumer protection attorneys made public announcements in the news media warning consumers that the "gifting" scheme was illegal and could result in criminal penalties. These announcements were actually heard by the defendants in the criminal cases and provided strong circumstantial evidence of the defendants' criminal intent, which is often difficult to prove in these types of cases.

**Stereo Speakers Sold by Van Drivers.** On August 14, 1996, the department and the BBB issued an alert warning consumers in Anchorage and the Mat-Su Valley about a Fresno, California, based company called United Audio Imaging ("UAI") that sells so-called high-quality stereo speakers supposedly at bargain prices from vans. These sales, occurring in Anchorage and Wasilla, were apparently been made in violation of Alaska's consumer protection laws requiring companies selling merchandise at a place other than their regular place of business to provide purchasers, at the time of sale, with a written notice of their right to revoke the purchase agreement within five (5) business days of the date of purchase. The van drivers misrepresenting the speakers as being valued at \$1,500 a pair when in fact the speakers appear, at best, to be worth \$150 a pair. The state filed a consumer protection suit against the company in October and obtained a \$75,000 default judgment and injunction in February.

### Conclusion

We have worked hard to maximize the impact of the limited resources we have for consumer protection by working closely with the BBB, as well as with the Federal

The Honorable Eric Croft  
Re: Consumer Protection

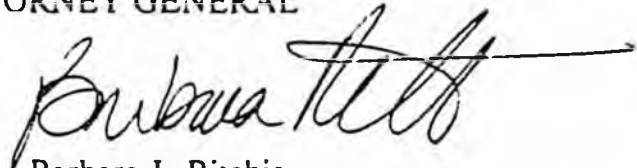
April 13, 1997  
Page 8

Trade Commission, state and federal criminal enforcement agencies, and consumer protection enforcement programs in other states.

Thank you again for expressing your concerns on consumer protection staffing and enforcement issues.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL



BY: Barbara J. Ritchie  
Deputy Attorney General

BJR:css

cc: Daveed Schwartz  
Pat Pourchot  
Chrystal Smith  
Deb Behr

# Legislative Research Services

APR 23 1997

Alaska State Legislature  
Legislative Affairs Agency  
Division of Legal & Research Services



130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196  
Phone: (907) 465-3991  
Fax: (907) 463-3351

April 22, 1997

## MEMORANDUM

TO: Representative Eric Croft

FROM: Gina Sparte   
Legislative Analyst

RE **The Number of Better Business Bureaus in Alaska and State Funding for Consumer Protection Services (FY86-FY97)**  
Research Request 97.085

You wanted to know how many Better Business Bureaus are currently operating in Alaska. You also asked for a breakdown of funding for consumer protection services within the state Department of Law from FY86 through FY97. The following is a brief description of state Better Business Bureaus. In addition we provide background on state funding for consumer protection services along with a table and chart illustrating this funding history.

### Better Business Bureaus in Alaska

The National Better Business Bureau is a private nonprofit organization began over 80 years ago. Business leaders join the organization by paying a membership fee and agreeing to respond to any complaints filed by consumers against their businesses. The Bureau does not enforce laws but rather mediates disputes between consumers and businesses. Consumers may file complaints against any business through the BBB. But nonmembers are not obligated to respond to these complaints. All complaints are kept on file and are open to the public, making the local chapters of the Bureau an excellent resource for consumers.

According to Blair Schaad, a representative of the Fairbanks Better Business Bureau, Alaska has four BBB offices, located in Anchorage, Kenai, Fairbanks, and the Matanuska-Susitna Valley (Wasilla). Currently only the Fairbanks and Kenai offices have a director. The former director of the Anchorage BBB, Rick Gilmore, is no longer working for the organization. That office is currently going through an internal reorganization but is still taking complaints from consumers. In addition, the Matanuska-Susitna office is working closely with the Anchorage office staff to assist consumers and is also concentrating on building its own membership in the Mat-Su Valley. Ms.

**Table 1**  
**Authorized Appropriations for Consumer Protection,**  
**Alaska Department of Law (FY86-FY97)**  
 (dollars in thousands)

Year	Consumer Protection Division	Antitrust Division	Fair Business Practices Division	Fair Business Practices Budget within General Legal Services	Total
FY86	873.9				873.9
FY87	623.9	168.3			792.2
FY88	316.2	252.8			569.0
FY89	321.5	463.6			785.1
FY90	304.9	485.6			790.5
FY91	0	497.5			497.5
FY92	171.6	511.5			683.1
FY93			571.4		571.4
FY94			571.4		571.4
FY95			575.6		575.6
FY96			415.6		415.6
FY97				349.5	349.5

Sources: Legislative Finance Division, *Operating Budget for Department of Law*, for FY86-FY96. Funding for FY97 provided by Division of Administrative Services, Department of Law.

Note: For the years FY86-FY92, Department of Law's (DOL) Consumer Protection Services funding and functions were shared with Antitrust Division. In FY93, the two divisions were combined into the Fair Business Practices Division. In FY97, the budget for Fair Business Practices was combined with the budget for DOL's General Legal Services. The \$349.5 figure for FY97 is an *estimated budget projection* for Fair Business Practices within the budget for General Legal Services.

APR 22 1997  
12:10p.m.

# FAX COVER SHEET

2 Pages (includes cover sheet)

TO: Legislative Information Office, Kenai, Alaska  
FAX: (907) 283-3075

RE: HB 203 - House Labor & Commerce Committee Hearing 4/23/97  
Please forward our written testimony to the committee - Thanks!

FROM: Thomas and Patricia Vincent  
P.O. Box 1485  
Kenai, Alaska 99611

PHONE: (907) 283-3378 home  
FAX: (907) 283-8072

DATE: April 23, 1997

WRITTEN TESTIMONY HB 203

APR 22 1997  
12:10pm

TO: The House Labor & Commerce Committee  
FROM: Thomas and Patricia Vincent  
P.O. Box 1485  
Kenai, Alaska 99611  
(907) 283-3378  
DATE: April 22, 1997

We are writing to urge your support of House Bill No. 203, "An Act relating to actions for unlawful trade practices". We have been unpleasantly introduced to the legal system and to the realization there is no protection available to consumers in this state. As consumers who have had to become involved in an expensive and still on-going litigation, we realize that there is no protection for the majority of the citizens in Alaska who are unfortunate enough to do business in good faith with someone who misrepresents themselves or their business or product. The laws stated in Article 03, UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION, Section 45.50.471, UNLAWFUL ACTS AND PRACTICES appear to be unenforceable without involving an attorney.

We sincerely feel that the State of Alaska has a duty to protect the consumers from many unlawful acts and practices in consumer-related issues. In our area, the local Better Business Bureau (BBB) is uncertain of their future in the community. At this time it is the only source our state offers for "consumer protection". If the BBB closes, everyone with small consumer complaints will be left completely out of the picture.

Our particular situation has left us with no recourse but to hire an attorney to represent our interests. There has been absolutely no other avenue available to us. We are now well into the second year of paying attorney fees, and are still awaiting a superior court date. It is our understanding that only 30% of our attorney fees can be awarded to us when and if we do win the law suit. Perhaps the most distressing thing to us is that the business/person named in our suit is continuing his trade with other unsuspecting consumers due to length of time it is taking to litigate the problem. While we certainly understand that a person is considered innocent until proven guilty, a great deal of damage can occur in the time it takes for the legal system to act. A consumer protection agency with the authority to deal with specific problems and to act on correcting them in a timely manner is needed immediately.

Please do your part to protect your constituents. We urge your support of this much needed legislation!

*Patricia A. Vincent*  
4/23/97



# **AKPIRG**

## **ALASKA PUBLIC INTEREST RESEARCH GROUP**

*Post Office Box 101093 / Anchorage, Alaska 99510-1093*

*(907) 278-3661 FAX (907) 278-9300*

Support HB 203

To members of House Labor and Commerce Committee

From: Steve Conn, AkPIRG 507 E. St. Suite 202

Anchorage, Alaska 99501

**APR 22 1997**

Representative Dyson offers a realistic solution to consumer protection by allowing victims to stop future acts of fraud and by assuring that victims have their legal expenses paid. The statute was written when the state was its chief enforcer. Now private parties do the job themselves. The changes recommended are needed.

APR 18 1997

# Alaska State Legislature

Committees  
Labor & Commerce  
Legislative Council  
World Trade  
Trade & Tourism  
Special Committee  
on Fisheries



**Representative Eugene Kubina**  
House Minority Leader

During Session:  
Alaska State Capitol  
Juneau, Alaska 99801-1182

During Interim:  
P.O. Box 2463  
Valdez, Alaska 99686

## MEMORANDUM

TO: Representative Norm Rokeberg, Chair  
Labor and Commerce Committee

FR: Representative Gene Kubina *Gene*

RE: HB 49/HB 203

DATE: April 8, 1997

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Please consider this a request to hear HB 49 and HB 203. As explained in the attached memo, the Alaska Commission on Aging is very interested in House Bill 49 and House Bill 203. Alaskans lose millions each year to fraudulent companies and seniors represent a group often targeted. Thank you for considering my request.

INTERNET ADDRESS:  
acoa@admin.state.ak.us



P.O. BOX 110209  
JUNEAU, AK 99811-0209  
(907) 465-3250  
FAX: 465-4716

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## Alaska Commission on Aging

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April 4, 1997

The Honorable Gene Kubina  
Alaska State Representative  
Alaska State Legislature  
State Capitol, Room 404  
Juneau, AK 99801-1182

Dear Representative Kubina:

On March 10, 1996 the Alaska Commission on Aging transmitted Resolution 97-5 (copy attached) to the House Labor and Commerce committee. The resolution requested a committee hearing in support of the need to establish a Consumer Protection Division as stated in SB 6 and HB 49. Since then, HB 203 has been introduced by Representatives Croft and Dyson. The Commission again recently stated its interest in a committee hearing. Consumer protection is of increasing interest to seniors of the State of Alaska in that citizens of this state lose an average of \$10 million per year to telemarketing fraud alone and a great proportion of these victims are Alaska's elderly. The Commission feels that creation of a Consumer Protection Division would save the State money by making it more difficult for fraudulent solicitors to do business in the State of Alaska.

Please consider again the urgency in holding a hearing concerning HB 49. Thank you for your attention to this.

Sincerely,

A handwritten signature in cursive script that reads "Donald M. Hoover".

Don Hoover  
Chair

DH/nl  
Attachment



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## Alaska Commission on Aging

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### RESOLUTION 97-5

*In support of holding a hearing concerning the need for a consumer protection division  
within the Department of Law*

WHEREAS, consumer protection is of particular importance to seniors; and

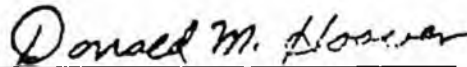
WHEREAS, fraudulent acts victimizing seniors and people of all ages in Alaska is occurring with increasing frequency; and

WHEREAS, there is a need to hear from the public on issues concerning fraudulent solicitations; and

WHEREAS, citizens of the State of Alaska would benefit from a consumer protection division;

**THEREFORE, BE IT RESOLVED** that the Alaska Commission on Aging requests the Labor and Commerce Committee hold hearings on this subject.

Adopted this 4th day of March, 1997.



---

Donald Hoover, Chair



Alaska State Legislature

- Interim (May-Dec.) -  
10928 Eagle River Rd., Suite 140  
Eagle River, Alaska 99577  
☎ (907) 694-6683  
FAX (907) 694-1015

- Session (Jan.-May) -  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
☎ (907) 465-2199  
FAX (907) 465-4587

Toll free (800) 342-2199

## REPRESENTATIVE FRED DYSON

**HB 203**

**Sponsor Statement**

**Consumer Protection from Unlawful Trade Practices**

**"An Act relating to actions for unlawful trade practices."**

Alaskan consumers have grown increasingly vulnerable to fraud since the Dept. of Law's Consumer Protection Section was eliminated in the late 1980s.

Knowing that our state's enforcement efforts are weak, swindlers prey heavily on our citizens, giving us a dubious reputation as easy targets, and costing us an estimated \$10 million a year in telemarketing fraud alone. We continue to lag far behind other states in providing protection to our consumers--especially elderly Alaskans, who are particularly vulnerable.

Though Alaska's state government consumer protection apparatus is inadequate to protect our citizens, we can empower ordinary Alaskans to fight back against consumer fraud. HB203 gives Alaskan's their own "teeth."

Typically, cheated citizens are daunted from pursuing claims against swindlers in civil court, because the scam artists can afford to hire lawyers to outgun the citizens. HB203 empowers citizens to attract attorneys to take their cases, because it awards prevailing plaintiffs full reasonable attorney fees at the prevailing rate.

HB203 also raises the ceiling for statutory damages--set in 1978 when first enacted--from \$200 to \$500, and provides for automatic triple damages. Private plaintiffs who lose a case against a shyster would not have to pay attorney fees unless their claim was frivolous.

The bill allows a person to pursue a claim on behalf of another person, so elderly or disabled people who have been cheated would not have to mount their own court cases.

No one could begin a lawsuit more than two years after an alleged violation of Alaska's consumer protection laws, and anyone bringing a lawsuit would have to first notify in writing the person they intended to sue.

HB203 would help to level the playing field again, giving the common Alaskan citizen some small advantage in protecting himself or herself from swindlers.

- E-mail -  
representative\_Fred\_Dyson  
@Legis.state.ak.us

- Internet -  
<http://www.akrepublicans.org>

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH 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

March 25, 1997

**SUBJECT:** Sectional Summary of HB 203 (Work Order No. 20-LS0553\K)

**TO:** Representative Fred Dyson  
Attn: Pat Harman

**FROM:** *TB*  
Theresa Bannister  
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. The descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

**Section 1.** Amends AS 45.50.473(c). This subsection provides a remedy for violating AS 45.50.473, which requires that certain disclosures be made for the costs of certain telephone services. The amendment shows how the subsection relates to AS 45.50.531(a) and its changes.

**Section 2.** Amends AS 45.50.531(a). AS 45.50.531 relates to private actions for unlawful acts and practices identified under AS 45.50.471. Expands who can bring an action under the section to include persons who are aggrieved (as a result of the unlawful act or practice). Allows a person to recover for each unlawful act or practice the greater of three times the actual damages or \$500. Removes the requirement that the violation be willful in order to receive triple damages. Allows a court to award other necessary and proper relief. States that the section does not prevent a person from pursuing other available remedies as well as bringing an action under this section.

**Section 3.** Amends AS 45.50.531(f). This subsection establishes how long a person has to bring an action under the section. The amendment states that the period of time allowed to bring the action starts when the person discovers or reasonably should have discovered that the basis for the action arose from an act or practice declared unlawful under AS 45.50.471. The person has two years to bring the action.

Representative Fred Dyson

March 25, 1997

Page 2

**Section 4.** Adds two new sections to the article on unfair trade practices and consumer protection.

AS 45.50.535. Allows any person to bring an action in court to stop a seller or lessor from continuing to engage in an unlawful act or practice. States that an action under this section is in addition to any other right to bring an action under other law.

Establishes conditions for bringing the action. First, the person must give the seller or lessor written notice that the person will bring the action unless the seller or lessor promptly stops the unlawful act or practice. Second, the seller or lessor must fail to promptly stop the unlawful act or practice after the notice.

States that a person does not have to suffer damages or otherwise be injured in order to bring the action under this section.

AS 45.50.537. Establishes the rules for awarding attorney fees and costs in an action brought under AS 45.50.471 - 45.50.561. Directs a court to award a prevailing plaintiff (the person who brings the action and wins) costs as allowed by court rule and full reasonable attorney fees at the prevailing price. Prohibits a court from requiring a private plaintiff who loses to pay attorney fees or costs to the defendant unless the action was frivolous.

**Section 3.** Repeals AS 45.50.531(g). This is the current subsection on attorney fees and costs for private actions under AS 45.50.531.

If I may be of further assistance, please advise.

TLB:jdr

97-219.jdr

# STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION  
DIVISION OF SENIOR SERVICES

Adult Protective Services  
Information & Referral  
Assisted Living Licensing  
CHOICE for the Elderly Home Care

Alaska Commission on Aging  
Long Term Care Ombudsman

*Tony Knowles, Governor*

Alaska Commission on Aging  
PO Box 110209  
Juneau, AK 99811-0209  
Phone (907) 465-3250  
FAX (907) 465-4716

March 10, 1997

The Honorable Norman Rokeburg  
Alaska State Representative  
Alaska State Legislature  
State Capitol, Room 24  
Juneau, AK 99801-1182

Dear Representative Rokeburg:

Attached please find Resolution 97-5 which was approved by the Alaska Commission on Aging March 4, 1997. This resolution is in support of holding a hearing concerning the need for a consumer protection division as stated in HB 49.

Sincerely,



Jane Pollard Demmert  
Executive Director

JD/nl  
Attachment



Alaska State Legislature

- Interim (May-Dec) -  
10928 Eagle River Rd., Suite 140  
Eagle River, Alaska 99577  
☎ (907) 694-6683  
FAX (907) 694-1015

- Session (Jan-May) -  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
☎ (907) 465-2199  
FAX (907) 465-4587

Toll free (800) 342-2199

## REPRESENTATIVE FRED DYSON

### MEMORANDUM

To: Representative Norm Rokeberg, Chairman  
House Labor & Commerce Committee  
From: Representative Fred Dyson *FHD*  
Date: April 9, 1997  
Re: HB203 *nmittee*  
*FHD*

I am respectfully requesting a hearing for HB203 at your earliest convenience.

It could be to the benefit of the Labor & Commerce Committee to hear SSHB49 and HB203 during the same meeting. Both SSHB49 and HB203 address the same issues and have similar witnesses testifying.

We would like the committee to hear teleconferenced testimony from potential witnesses including: The Department of Law; The Better Business Bureau; and consumers who have been defrauded.

Please find attached:

- Sponsor Statement
- Sectional Analysis
- Fiscal Note

Before the hearing, I will submit the Attorney General's description of the current consumer protection program.

If you have any questions please contact Pat Harman in my office at x2195

- E-mail -  
Representative\_Fred\_Dyson  
@Legis.state.ak.us

- Internet -  
<http://www.akrepublicans.org>



Alaska State Legislature

- Interim (May-Dec) -  
128 Eagle River Rd Suite 140  
Eagle River, Alaska 99577  
☎ (907) 694-6083  
FAX (907) 694-1015

- Session (Jan-May) -  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
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Toll free (800) 342-2199

# REPRESENTATIVE FRED DYSON

## MEMORANDUM

April 18, 1998

To: Majority Members of House Labor & Commerce Committee  
and House Judiciary Committee

From: Representative Fred Dyson *Frd*

Subject: CSHB 203(JUD)  
"An Act relating to actions for unlawful trade practices."

I am circulating Co-Sponsor slips to the majority members of the two committees that had hearings on this bill prior to it being sent to the floor for a vote. The Bill is supported by numerous seniors groups, and the State Chamber of Commerce has no objection to the Bill.

I would encourage you to consider co-sponsoring this Bill.

- E-mail -  
Representative\_Fred\_Dyson  
@Legis.state.ak.us

- Internet -  
<http://www.akrepublicans.org>

CS FOR HOUSE BILL NO. 203(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE DYSON

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to actions for unlawful trade practices."

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

3 \* Section 1. AS 09.60.015 is amended by adding a new subsection to read:

4 (c) This section is subject to AS 45.50.537.

5 \* Sec. 2. AS 45.50.473(c) is amended to read:

6 (c) A violation of this section constitutes an unfair or deceptive act or practice  
7 under AS 45.50.471. It [NOTWITHSTANDING AS 45.50.531(a), IT] is presumed  
8 that actual damages to the consumer under AS 45.50.531(a) are equal to the cost of  
9 the service provided plus \$200. Additional damages must be proved.

10 \* Sec. 3. AS 45.50.531(a) is amended to read:

11 (a) A person who suffers an ascertainable loss of money or property as a result  
12 of another person's act or practice declared unlawful by AS 45.50.471 may bring a  
13 civil action to recover for each unlawful act or practice three times the actual  
14 damages or \$500 [\$200], whichever is greater. [THE COURT MAY, IN CASES OF  
15 WILFUL VIOLATION, AWARD UP TO THREE TIMES THE ACTUAL DAMAGES

1 SUSTAINED.] The court may provide other relief it considers necessary and proper.  
2 Nothing in this subsection prevents a person who brings an action under this  
3 subsection from pursuing other remedies available under other law, including  
4 common law.

5 \* Sec. 4. AS 45.50.531 is amended by adding new subsections to read:

6 (i) If a person receives an award of punitive damages under (a) of this section,  
7 the court shall require that 50 percent of the award be deposited into the general fund  
8 of the state under AS 09.17.020(j). This subsection does not grant the state the right  
9 to file or join a civil action to recover punitive damages.

10 (j) The commissioner of administration shall separately account for money  
11 received under (i) of this section that is deposited in the general fund. The annual  
12 estimated balance in the account may be appropriated by the legislature for the  
13 expenses of the fair business practices section of the Department of Law.

14 \* Sec. 5. AS 45.50 is amended by adding new sections to read:

15 Sec. 45.50.535. Private injunctive relief. (a) Subject to (b) of this section  
16 and in addition to any right to bring an action under AS 45.50.531 or other law, any  
17 person who was the victim of the unlawful act, whether or not the person suffered  
18 actual damages, may bring an action to obtain an injunction prohibiting a seller or  
19 lessor from continuing to engage in an act or practice declared unlawful under  
20 AS 45.50.471.

21 (b) A person may not bring an action under (a) of this section unless

22 (1) the person first provides written notice to the seller or lessor who  
23 engaged in the unlawful act or practice that the person will seek an injunction against  
24 the seller or lessor if the seller or ~~lessor~~ fails to promptly stop the unlawful act or  
25 practice; and

26 (2) the seller or lessor fails to promptly stop the unlawful act or  
27 practice after receiving the notice.

28 Sec. 45.50.536. Mediation. Notwithstanding the other provisions of  
29 AS 45.50.471 - 45.50.561, a civil action under AS 45.50.531 or 45.50.535 may be  
30 submitted to mediation under the Alaska Rules of Civil Procedure. The mediation  
31 must begin within 30 days after the court's order for mediation. During mediation, the

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court may, if it is determined appropriate by the court, enjoin the defendant from engaging in the act or practice that is the subject of the civil action.

**Sec. 45.50.537. Attorney fees, costs, and damages.** (a) In an action brought by a private person under AS 45.50.471 - 45.50.561, a prevailing plaintiff shall be awarded costs as provided by court rule and full reasonable attorney fees at the prevailing reasonable rate.

(b) Unless the action is found to be frivolous, in an action brought by a private person under AS 45.50.471 - 45.50.561, a prevailing defendant shall be awarded attorney fees and costs as provided by court rule. If the action is found to be frivolous, the attorney fees to be awarded to the defendant shall be full reasonable attorney fees at the prevailing reasonable rate.

(c) Notwithstanding the other provisions of this section, in an action brought by a private person under AS 45.50.471 - 45.50.561, if the plaintiff is not the prevailing party and if the court finds that the action was brought by the plaintiff to obtain a competitive business advantage, the court shall award a prevailing defendant costs as provided by court rule, full reasonable attorney fees at the prevailing reasonable rate, and any damages suffered by the prevailing defendant as a result of the plaintiff's allegations.

(d) In this section, "frivolous" means

(1) not reasonably based on evidence or on existing law or a reasonable extension, modification, or reversal of existing law; or

(2) brought to harass the defendant or to cause unnecessary delay or needless expense.

\* **Sec. 6.** AS 45.50.531(g) is repealed.

\* **Sec. 7.** AS 45.50.536, enacted by sec. 5 of this Act, only applies to causes of action that accrue on or after the effective date of this Act.



*one of 4 State of  
Alaska positions  
for '98*

ALASKA STATE LEGISLATIVE COMMITTEE

TELEMARKETING FRAUD  
POSITION PAPER  
1998

**AARP POSITION:**

Promote adequate funding for the enforcement of consumer protection laws against telemarketing fraud.

**DISCUSSION:**

Although Alaska law does impose criminal penalties for telemarketing fraud, it is not adequately enforced for lack of funding. Alaska has a responsibility to protect its citizens from fraudulent activity. Additional staffing in the Attorney General's office is needed to receive and act on complaints from the public. Also, Alaskans need to be regularly warned of fraudulent activity taking place in the state.

Current statistics indicate that telemarketing fraud costs the people of Alaska approximately ten million dollars a year, and appears to be increasing.

The law should be amended to:

1. Require that telemarketers file a bond to compensate consumers who may be defrauded by the seller's acts;
2. Ban all courier pick-ups associated with telemarketing sales, unless the consumer has the opportunity to inspect the goods before any payment is collected;
3. Prohibit telemarketers from directly accessing any consumer's bank, savings, trust, stock, or bond account as a method of collecting payment for goods and services; and
4. Include a more substantial list of deceptive practices.

(Over, please)

**For further information, please contact:**

**Dan Keck, Chair**

State Legislative Committee

PO Box 938

Sitka, AK 99835-0938

(907) 747-3908

(907) 747-3908 Fax

**Ed Shellinger, Chair**

Telemarketing Fraud Subcommittee

904 Galena Street

Fairbanks, AK 99709-4826

(907) 474-0674

**Peggy Mulligan**

CCTF Coordinator

PO Box 240335

Douglas, AK 99824-0335

(907) 364-3144

**West Region Office**

9750 Third Avenue NE

Seattle, WA 98115

(206) 526-7918

(206) 513-8138 Fax

Adopted: 10/31/97



# NARFE

National Association of Retired Federal Employees

CHAPTER ~~1779, 2067, 2076~~  
and 2088  
(The Alaska Federation)

May 5, 1997

Rep. Gail Phillips  
House Speaker  
Alaska Legislature  
Juneau, Alaska

Sen. Mike Miller  
Senate President  
Alaska Legislature  
Juneau, Alaska

Dear Rep. Phillips:  
and Senator Miller:

The attached resolutions were approved at the recent National Association of Retired Federal Employees Alaska Federation convention held in Wasilla May 3-4, 1997.

The 1200 chapter members in Alaska represent approximately 5500 civilian federal annuitants in our state, and the items addressed in these resolutions are of critical importance to our retirees and their families.

We therefore hope you will give serious consideration to our recommendations.

Should you wish to discuss these topics further, I can be reached at the address and phone below, or you may contact our Federation President, Donald Peacock in Anchorage at 6623 Fairweather Drive, Anchorage, AK 99518 Phone 349-1714.

Sincerely,

*Marie Darlin*

Marie Darlin, Legislative Chair  
NARFE Alaska Federation  
415 Willoughby #506  
Juneau, Alaska 99801  
Phone 586-3637  
FAX 463-3580

Re-establish a Consumer Protection Office in the Department of Law.

WHEREAS:

Alaska is the only state with no functional Consumer Protection Office and Alaskans lose ten million per year to fraud, and retirees and seniors are most vulnerable to this type of fraud and in dire need of a fully staffed Consumer Protection office, therefore

BE IT RESOLVED:

The NARFE Alaska Federation request that the Legislature hold public hearings on bills related to this issue during the iterim, and

That the Governor and Legislature reconsider their budget actions on the Consumer Protection funding, and instead consider their responsibility to the citizens of Alaska.

---

Create a Long Term Care Task Force (SCR No. 11)

WHEREAS:

The Governor has received the report on Long Term Care from the Legislative Working Group, and SCR 11 has been introduced to create a Task Force, and

WHEREAS:

The Narfe Alaska Federation feels the issue of Long Term Care is critical to health care in Alaska, therefore

BE IT RESOLVED:

That the Alaska Federation of NARFE urges the Twentieth Legislature to pass SCR 11 this session, appoint the Task Force, and instruct them to hold public hearings before the second session. We also recommend the Governor ask for nominations before making his three appointments from the consumer public.

---

# FIGHT CONSUMER FRAUD

October 25, 1997

Juneau Municipal Assembly Chambers

9:00 am                      **WELCOME**                      **Beverly Rodewald**

   Juneau Commission on Aging  
   Judy Parrish, Chair                      Beverly Rodewald, Member  
   Marianne Mills, Vice Chair              Vera Gazaway, Member  
   Mary Jefferson, Recorder                Bea Shepard, Member

**PRESENT STATUS:**    **Peggy Mulligan**

   Alaska Statutes                      Pending legislation

**RESOURCE PANEL:**    **Peggy Mulligan**

   Mark Regan                                      Alaska Legal Services  
   Robert Tonkin                                  Merrill Lynch Investors  
   Larry Carroll                                    State Department of Commerce, Retired

**VICTIMS OF FRAUD/AUDIENCE PARTICIPATION:**      **Marie Darlin**

   Personal stories of scams or fraud

**BREAK**    **10:15 - 10:30**

**LEGISLATIVE PANEL:**    **Vera Gazaway**

   Representative Kim Elton  
   Representative Bill Hudson

**PLAN OF ACTION:**    **Mary Lou Meiners**

   Presented by Elizabeth Lucas. AARP

**EVALUATION AND WRAP UP:**    **Marie Darlin**

*Sponsored by Juneau Commission on Aging, AARP Community Council,  
and Juneau Borough Assembly*

Muriel H. Baker  
P.O. Box 210052  
Auke Bay, AK 99821  
January 18, 1998

Phone: 907-789-7631

To Whom it May Concern:

Last Monday morning, January 12, 1998, I received a telephone call from a very distinguished sounding woman with an unidentifiable accent, saying she represented Consumer Action Center. She explained that they were working to "secure" our credit cards for us to protect us from the "criminals who are getting into the computers and other electronics" and stealing from us and running our cards up to the max.

She had a few questions to ask me but first she would wait on the line while I got a paper and pencil to write down their toll-free number which she was going to give me. I did this and wrote down the number: 1-800-472-6640.

At this point I stopped her and asked her to tell me again, who she represented. She repeated the name and I asked her where she was located. She gave me the address of 688 Wacker Place, Chicago, 60601.

She spoke *very* rapidly and repeated her "line" a couple times again. She told me that in order for them to be sure of security we would have to set up a password and they usually used the last four digits of a phone number and repeated ours - 7631 - which is correct.

By this time I had the feeling she already had too much information about me but when she said she would need the expiration of my credit card I didn't have it in front of me and said I thought it was 11/99. It turned out to not be correct but by this time I was just answering to try and get a word in edgewise.

Her next paragraph began by telling me they needed to know what kind of card I had - Visa, Mastercard, Discovery, etc. and that the first four numbers would tell that. I told her I had a Visa card but I did not know the first four numbers and I would not give them out to *anyone* over the phone.

She began her "spiel" again, reiterating her argument about the "criminals that are out there." I interrupted her again saying that I did not give my number out over the telephone. She became quite persistent and I perhaps was a little rude as I said I was sorry, but i would not under any circumstances and abruptly hung up.

*Muriel H. Baker*  
1-18-98

## MEMORANDUM

**Date:** 2/9/98  
**To:** Joe Green  
**From:** Kevin Jardell  
**Re:** HB 203

What is does –

Presumes damages to the consumer of: (cost of service) + \$200.00.

Person who suffers an ascertainable loss of money or property as a result of consumer fraud (statutorily defined) may bring action to recover for each unlawful act or practice 3 times the actual damages or \$500.00 whichever is greater.

Private party may bring an action to to enjoin a sellor or lessor from engaging in an act of consumer fraud.

1. To enjoin a person must first provide written notice that the person will seek an injunction unless the actions are not stopped.
- 2) The sellor or leasor must fail to stop.

It is not necessary that a person suffer damages or otherwise be injured to bring an action to enjoin.

A prevailing plaintiff shall receive full reasonable attorney's fees. A private plaintiff who is not the prevailing party shall not be required to pay R. 82 costs and Atty's fees unless the action is frivolous.

If action is brought to obtain a competitive business advantage costs, full atty's fees and any damages suffered shall be awarded to defendant.

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. HB 203 | \_\_\_\_\_

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected Law  
 Title "An Act relating to unlawful trade practices" BRU Civil Division  
 Component Commercial  
 Sponsor Representative Dyson  
 Requester House Judiciary Committee Component Serial No. 2211

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

HB 203 amends Alaska's Unfair Trade Practices and Consumer Protection Act to enhance a private litigant's right, under AS 45.50.531, to bring an action in Alaska Superior Court.

Passage of this legislation would cause no new costs for the Department of Law. Section 5 may have the effect of increasing revenues, however, as it would require a court to award full attorney's fees and all allowable costs to a prevailing plaintiff (whether the state or a private plaintiff). Under current law, the prevailing plaintiff can only receive Rule 82 attorney's fees, set at approximately 20 percent. The amount of revenue that might accrue to the state is very speculative, depending on the level of effort expended by the state in pursuing actions brought under the Unfair Trade Practices and Consumer Protection Act.

Prepared by Joan M. Kasson *Joan M. Kasson*  
 Division Attorney General's Office  
 Approved by Commissioner Bruce M. Botelho, Attorney General  
 Agency Department of Law

Phone 465-5370  
 Date 1/28/98  
 Date 1/28/98

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. HB203 (L&C)

Revision Date: \_\_\_\_\_  
Title: Actions for Unlawful Trade Practices

Department: Commerce and Economic Development  
BRU: Banking, Securities and Corporations  
Component: Banking, Securities and Corporations

Sponsor: Rep. Dyson  
Requestor: House Judiciary

COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations  
Approved by Commissioner: Deborah B. Sedwick  
Agency: Commerce and Economic Development

Phone: 465-2521  
Date: 1-28-98  
Date: 1-28-98

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## NOTES TO DECISIONS

**Constitutionality.** — Absent a history or strong likelihood of uneven application, this article cannot be said to be unconstitutionally vague. *State v. O'Neill Investigations, Inc.*, 609 P.2d 520 (Alaska 1980).

Any defects in the constitutional sufficiency of the warning provided by this article is cured by authoritative administrative interpretations of the Federal Trade Commission which clarify obscurities or resolve ambiguities. *State v. O'Neill Investigations, Inc.*, 609 P.2d 520 (Alaska 1980).

**Article not applicable to sale of real property.** — This article does not apply at all to the sale of real property; rather, the entire thrust of this article is directed at regulating practices of relating to transactions involving consumer goods and services. *State v. First Nat'l Bank*, 660 P.2d 406 (Alaska 1982).

**Liberal construction.** — The provisions of this article should not be strictly construed, for it is basic that remedial civil statutes are to be accorded a liberal

construction. *State v. O'Neill Investigations, Inc.*, 609 P.2d 520 (Alaska 1980).

The act is remedial, and therefore it is to be liberally construed. *State v. First Nat'l Bank*, 660 P.2d 406 (Alaska 1982).

This article, as applied, is not a punishment. *State v. O'Neill Investigations, Inc.*, 609 P.2d 520 (Alaska 1980).

This article embraces independent collection practices. *State v. O'Neill Investigations, Inc.*, 609 P.2d 520 (Alaska 1980).

The exemption clause of AS 45.50.481(a)(1) withdraws the activities of independent collection agencies from the scope of the Unfair Trade Practices and Consumer Protection Act. *State v. O'Neill Investigations, Inc.*, 609 P.2d 520 (Alaska 1980).

Cited in *Vertecs Corp. v. Reichhold Chemicals, Inc.*, 671 P.2d 1273 (Alaska 1983); *Shooshanian v. Wagner, Borden, Inc.*, 672 P.2d 455 (Alaska 1983).

**Collateral references.** — When statute of limitations commences to run on an action under state deceptive trade practice or consumer protection act, 18 ALR4th 1340.

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

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

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

- (1) fraudulently conveying or transferring goods or services by representing them to be those of another;
- (2) falsely representing or designating the geographic origin of goods or services;
- (3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;
- (4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
- (5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;
- (6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (7) disparaging the goods, services, or business of another by false or misleading representation of fact;
- (8) advertising goods or services with intent not to sell them as advertised;
- (9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;
- (10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;
- (12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that

- (29) violating AS 45.45.910(a), (b), or (c);  
 (30) failing to comply with AS 45.50.473;  
 (31) violating the provisions of AS 45.45.400;  
 (32) knowingly selling a reproduction of a piece of art or handicraft to a resident of the state unless the reproduction is clearly labeled as a reproduction in a separate paragraph, "reproduction" means a copy of an original if the copy is  
 (A) substantially the same as the original; and  
 (B) not made by the person who made the original;  
 (33) violating AS 08.66.010 — 08.66.090 (motor vehicle dealers);  
 (34) violating AS 08.66.200 — 08.66.350 (motor vehicle buyers' agents);  
 (35) violating AS 45.63 (telephonic solicitations);  
 (36) violating AS 45.68 (charitable solicitations);  
 (37) violating AS 45.50.474 (on board promotions);  
 (38) referring a person to a dentist or a dental practice that has paid or will pay a fee for the referral unless the person making the referral discloses at the time the referral is made that the dentist or dental practice has paid or will pay a fee based on the referral;  
 (39) advertising that a person can receive a referral to a dentist or a dental practice without disclosing in the advertising that the dentist or dental practice to which the person is referred has paid or will pay a fee based on the referral if, in fact, the dentist or dental practice to which the person is referred has paid or will pay a fee based on the referral;  
 (40) violating AS 45.50.477(a) — (c);  
 (41) failing to comply with AS 45.50.475.
- (c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under any other state statutes.
- (d) [Repealed, § 21 ch 166 SLA 1978.] (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1971; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 1 ch 181 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978; am § 12 ch 181 SLA 1986; am § 2 ch 59 SLA 1990; am § 3 ch 82 SLA 1990; am § 1 ch 92 SLA 1992; am § 1 ch 118 SLA 1992; am § 6 ch 10 SLA 1993; am § 3 ch 60 SLA 1993; am § 4 ch 108 SLA 1994; am § 2 ch 22 SLA 1995; am § 1 ch 69 SLA 1995; am § 3 ch 142 SLA 1996)

**Revisor's notes.** — Paragraph (b)(24) was enacted as (b)(23) and paragraph (b)(25) was enacted as (b)(22); renumbered in 1976. Paragraph (b)(28) was enacted as (b)(27); renumbered in 1986. Paragraphs (b)(24) and (25) were enacted as (b)(23) and (b)(22), respectively; renumbered in 1976. Paragraph (b)(28) was enacted as (b)(27); renumbered in 1986. Paragraph (b)(30) was enacted as (b)(29); renumbered in 1990. Paragraph (b)(32) was enacted as (b)(31); renumbered in 1992, at which time "AS 45.45.400" was substituted for "AS 45.45.410" to correct a manifest error in § 2, ch. 118, SLA 1992. Paragraphs (b)(35) and (36) were enacted as (b)(33) and (34), respectively; renumbered in 1993. Paragraph (b)(40) was enacted as (b)(38); renumbered in 1995.

**Effect of amendments.** — The first 1990 amendment added paragraph (b)(29).

The second 1990 amendment added paragraph (b)(30).

The first 1992 amendment, effective October 1, 1992, added paragraph (b)(32).

The second 1992 amendment, effective September 20, 1992, added paragraph (b)(31).

The first 1993 amendment, effective May 5, 1993, added paragraphs (b)(33) and (b)(34).

The second 1993 amendment, effective September 16, 1993, added paragraphs (b)(35) and (b)(36).

The 1994 amendment, effective June 11, 1994, added paragraph (b)(37).

The first 1995 amendment, effective August 8, 1995, in subsection (b), added paragraphs (38) and (39).

The second 1995 amendment, effective September 3, 1995, added paragraph (b)(40).

The 1996 amendment, effective November 4, 1996, added paragraph (b)(41).

**Legislative history reports.** — For report on ch. 246, SLA 1970 (FCCS 2d HCS CSSB 352), see 1970 House Journal Supplement 10, following p. 743 of the 1970 House Journal; for report of the conference committee, see either 1970 House Journal, p. 1546, or 1970 Senate Journal, p. 1296.

#### NOTES TO DECISIONS

This statute did not chill constitutionally protected speech, where the speech in question in-

involved communications regarding alleged debts and thus fell within the rubric of commercial speech.

others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

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

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

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

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

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

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

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

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

(22) failing to comply with AS 45.02.350;

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

(24) counseling, consulting or arranging for future services relating to the disposition of property upon death whereby certain personal property, not including cemetery lots and funeral services, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, the money or property in the trust shall become part of that person's estate; provided that if the person on whose behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or other services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under the provisions of AS 21;

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

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

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

(28) failing to comply with AS 08.55;

**FISCAL NOTE**

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

BILL NO. HB 267

Revision Date: (Note if correction)  
 Title: An Act relating to domestic violence and sexual assault  
 Sponsor: Representative Kelly  
 Requestor: (H) JUD

Department Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1C37 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 98) cost: \$ none

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

This bill does not fiscally impact the Public Defender Agency.

Prepared by: Barb Brink  
 Division: Public Defender Agency

Phone: 264-4400  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 2/9/98

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LTN1100-R01  
01/30/98

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 01  
14:13:24

TCN: 80184 DATE & TIME: 01/30/98 13:00 TO 15:00 STATUS:5 IN PROG.

\*\*\*\* ORDER SUMMARY \*\*\*\*

SPONSOR: HJUD HOUSE JUDICIARY CHAIRS: GREEN  
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE  
CONTACT: KEVIN JARDELL TEL#: (907)645-4990  
CHAIRING SITE: JUNEAU CAPITOL CAP120  
TOLL FREE: (800)478-7612 DIAL-UP: LIO: (800)478-9908

SPONSOR REMARKS (PUB): TESTIMONY:Y ALLOWED 3 MINUTE LIMIT  
PUBLIC COMMENTS WILL BE TAKEN WITH A 3 MINUTE LIMIT.  
SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS (LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES: 5  
TESTIMONY BY INVITATION ONLY.  
OTHER SITES CAN ADD TO LISTEN IN.  
TCN REQUESTED ON 01/30/98 AND HAS 4 UPDATES

\*\*\*\* AGENDA \*\*\*\*

1 HB 203 ACTIONS FOR UNLAWFUL TRADE PRACTICES

\*\*\*\* PARTICIPATING LIOS \*\*\*\*

ANC ANCHORAGE 716 W 4TH, #200 LOCATION STAFF  
FBX FAIRBANKS 119 N CUSHMAN ST LOCATION STAFF  
\* JNU JUNEAU CAPITOL CAP120 LOCATION STAFF

\*\*\*\* VOLUNTEER & OFFNET SITES \*\*\*\*

ZZZ OF1 OFFNET 1 FAIRBANKS DEVILLE SCHULTZ (907)269-5265

PARTICIPANTS IN:ANCHORAGE

	ANCHORAGE	ANC		
1	THELMA LANGDON 2363 CAPTAIN COOK DR	ANCHORAGE	UNABL HB 203 AK 99517 (907)248-0834	* ✓
2	JAMES BEVERIDGE 507 E ST, #202	ANCHORAGE	UNABL HB 203 AK 99501 (907)278-3661	* ✓
3	LES GARA 1242 W 10TH	ANCHORAGE	UNABL HB 203 AK 99501 (907)274-6730	* ✓
4	RON HAMMETT 3512 STANFORD DR	ANCHORAGE	UNABL HB 203 AK 99508 (907)279-2339	* ✓
5	FLOYD E. HEIMBUCK 2140 SARATOGA	ANCHORAGE	OBSV. HB 203 AK 99517 (907)276-1059	* ✓
6	ELLA CRIS 1416 BIRCHWOOD	ANCHORAGE	OBSV. HB 203 AK 99508 (907)279-2818	* ✓
7	LOLA J. REED 831 W 19TH AVE	ANCHORAGE	OBSV. HB 203 AK 99503 (907)279-3006	* ✓

\*\*\*\* SCHEDULING NOTES \*\*\*\*

GAVE KEVIN 800# FOR OFFNET. BH

*For Kevin*

\*\*\*\* UPDATES \*\*\*\*

- 01 01/27/98 14:20:07 ANNOUNCING TELECONFERENCE
- 02 01/29/98 13:41:47 DROPPED INVITATION TESTIMONY ONLY.
- 02 01/29/98 13:41:48 TESTIMONY IS ALLOWED WITH A 3 MINUTE
- 03 01/30/98 12:07:28 FAIRBANKS ADDED ON
- 04 01/30/98 13:46:07 TELECONFERENCE HAS BEEN CANCELED

01/30/98  
13:15:53

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80184 SCHEDULED FOR:01/30/98 13:00 TO 15:00  
PUBLIC HEARING HOUSE JUDICIARY

LTN1150  
BY:ANC  
FOR:ANC

LOCATION: ANCHORAGE

HB 203	THELMA	LANGDON	TESTIFY
HB 203	JAMES	BEVEERIDGE	TESTIFY
HB 203	LES	GARA	TESTIFY
HB 203	RON	HAMMETT	TESTIFY

Floyd  
Heimbuck  
is present in  
Anchorage  
BUT does not  
WANT TO TESTIFY  
Today



COMMITTEE: House Judiciary

Subject of meeting:  
HB 203 - ACTIONS FOR UNLAWFUL TRADE PRACTICES

DATE: January 30, 1998

# SIGN-IN

PLEASE PRINT!  
NAME

ADDRESS (MAILING / ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

NAME	ADDRESS (MAILING / ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Vera A Gazaway	415 Willoughby Ave # 414 Juneau	586-1777	Older Persons Action Group	✓
Marie Darlin	415 Willoughby # 506 Juneau	586-3137	NARFE	✓
Bea Shepard	12565 Glacier Hwy Juneau 99801	789-7354	Juneau Co Aging	✓
Eugene Daw	Box 20995 Juneau 99802	586-3816	CARRP Eugene Daw	
Robin Lown	POB 33885 Juneau 99803	463-7188	Air Peace Officers Assn	

0-LS0553L  
Bannister  
4/24/97

CS FOR HOUSE BILL NO. 203( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES DYSON, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to actions for unlawful trade practices."

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

3 \* Section 1. AS 45.50.473(c) is amended to read:

4 (c) A violation of this section constitutes an unfair or deceptive act or practice  
5 under AS 45.50.471. It [NOTWITHSTANDING AS 45.50.531(a), IT] is presumed  
6 that actual damages to the consumer under AS 45.50.531(a) are equal to the cost of  
7 the service provided plus \$200. Additional damages must be proved.

8 \* Sec. 2. AS 45.50.531(a) is amended to read:

9 (a) A person who suffers an ascertainable loss of money or property, or who  
10 is otherwise aggrieved, as a result of another person's act or practice declared  
11 unlawful by AS 45.50.471 may bring a civil action to recover for each unlawful act  
12 or practice three times the actual damages or \$500 [S200], whichever is greater.  
13 [THE COURT MAY, IN CASES OF WILFUL VIOLATION, AWARD UP TO  
14 THREE TIMES THE ACTUAL DAMAGES SUSTAINED.] The court may provide  
15 other relief it considers necessary and proper. Nothing in this subsection prevents

1 a person who brings an action under this subsection from pursuing other  
2 remedies available under other law, including common law.

3 \* Sec. 3. AS 45.50.531(f) is amended to read:

4 (f) A person may not commence an action under this section more than two  
5 years after the person discovers or reasonably should have discovered that the cause  
6 of action arose [THE LOSS RESULTED] from an act or practice declared unlawful  
7 by AS 45.50.471.

8 \* Sec. 4. AS 45.50 is amended by adding new sections to read:

9 Sec. 45.50.535. Private injunctive relief. (a) Subject to (b) of this section  
10 and in addition to any right to bring an action under AS 45.50.531 or other law, any  
11 person may bring an action to obtain an injunction prohibiting a seller or lessor from  
12 continuing to engage in an act or practice declared unlawful under AS 45.50.471.

13 (b) A person may not bring an action under (a) of this section unless

14 (1) the person first provides written notice to the seller or lessor who  
15 engaged in the unlawful act or practice that the person will seek an injunction against  
16 the seller or lessor unless the seller or lessor fails to promptly stop the unlawful act  
17 or practice; and

18 (2) the seller or lessor fails to promptly stop the unlawful act or  
19 practice after receiving the notice.

20 (c) It is not necessary that a person suffer damages or otherwise be injured by  
21 the unlawful act or practice in order to bring an action under (a) of this section.

22 Sec. 45.50.537. Attorney fees, costs, and damages. (a) Notwithstanding  
23 AS 09.60.015 and except as provided otherwise in this section, in an action brought  
24 under AS 45.50.471 - 45.50.561, a prevailing plaintiff, whether the state or a private  
25 plaintiff, shall be awarded costs as provided by court rule and full reasonable attorney  
26 fees at the prevailing reasonable rate, and a private plaintiff, who is not the prevailing  
27 party, may not be required to pay attorney fees or costs to the defendant unless the  
28 court determines that the cause of action brought by the plaintiff is frivolous.

29 (b) In an action brought under AS 45.50.471 - 45.50.561, the court shall award  
30 the defendant costs as provided by court rule and full reasonable attorney fees at the  
31 prevailing reasonable rate if the action is found to be frivolous.

- 1 (c) In an action brought under AS 45.50.471 - 45.50.561, if the court finds that  
2 the action was brought by the plaintiff to obtain a competitive business advantage and  
3 the plaintiff is not the prevailing party, the court shall award the defendant costs as  
4 provided by court rule, full reasonable attorney fees at the prevailing reasonable rate,  
5 and any damages suffered by the defendant as a result of the plaintiff's allegations.  
6 \* Sec. 5. AS 45.50.531(g) is repealed.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 203

- 1 Page 1, lines 9 - 10:
- 2 Delete "or who is otherwise aggrieved."
  
- 3 Page 2, lines 3 - 7:
- 4 Delete all material.
  
- 5 Renumber the following bill sections accordingly.

OLDER PERSONS ACTION GROUP  
325 E. THIRD AVENUE, SUITE 300  
ANCHORAGE, ALASKA 99501

January 31, 1998

MEMO:

TO: HOUSE JUDICIARY COMMITTEE

✓ Joe Green, Con Bunde, Jeannette James, Brian Porter, Norman  
Rokeberg, Ethan Berkowitz, Eric Croft

FROM: Thelma P. Langdon, Co-Chair, OPAG Legislative Committee

*Thelma P. Langdon*

I was present along with Ella Craig, President of OPAG and Floyd Heimbuch, Executive Director of OPAG and others at the scheduled hearing for CSHB 203, Unlawful trade practices on Friday, Jan. 30 at 1PM. We were disappointed that it was cancelled and I wish to offer the testimony that I was prepared to present at that time as follows:

I AM THELMA LANGDON, CO-CHAIR OF THE OLDER PERSONS ACTION GROUPS LEGISLATIVE COMMITTEE.

OPAG IS COMMITTED TO STRENGTHENING CONSUMER PROTECTION IN THE STATE AND IN FAVOR OF THIS TYPE OF LEGISLATION.

WE HAVE NO DEFINITIVE STATEMENT ON THIS SPECIFIC BILL AS OUR COMMITTEE HAS NOT DISCUSSED IT, HOWEVER WE WILL BE DISCUSSING IT AT OUR MEETING NEXT TUESDAY.

OPAG HAS SUBMITTED A PROPOSAL TO THE LEGISLATURE OUTLINING OUR COMMITMENT TO CONSUMER PROTECTION/EDUCATION IN ALASKA AND WE ARE WILLING TO SPEND ENERGY AND RESOURCES TO THIS END.