

HB

446

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-6592



Interim:
716 W 4th Avenue, Suite 430
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire
Chair, Judiciary Committee

SPONSOR STATEMENT HB 446

"An Act relating to the amount of a civil penalty for an unlawful act or practice in the conduct of trade or commerce."

The Federal Trade Commission recently reported that *Alaska topped the nation in fraud complaints last year: 249 per 100,000 people*. Unfortunately, Alaska's current consumer protection laws provide one of the lowest allowable civil penalties of any state. To strengthen Alaska's consumer protection law and send a message to those who prey on Alaska consumers, HB 446 seeks to increase the civil penalties authorized under Alaska's Unfair Trade Practices and Consumer Protection Act.

Under current law, when a person or company violates an injunction prohibiting unfair or deceptive business practices, it is subject to a maximum penalty of \$25,000. HB 446 will increase that maximum allowable civil penalty to \$50,000.

The current Act also provides for a \$5,000 civil penalty for each violation of the Act. HB 446 will increase this amount to a range between \$1,000 and \$25,000 per violation. The current \$5,000 penalty in the Act was established in 1970 when the Act was passed. Adjusting for inflation alone, this penalty should be \$20,200 (inflation from January 1970 to January 2005 was 405%). An increase to \$25,000 is a very modest increase.

Obtaining injunctive relief and civil penalties are the tools that enable the Attorney General to protect Alaska consumers against unfair and deceptive trade practices. These changes are vital enforcement tools that strengthen the Act. All civil penalties are assessed by a court only after a violation of the Act has been proven. All penalty payments go directly to the State of Alaska. Your support of this important legislation is appreciated.



America's Newspapers

Paper: Anchorage Daily News (AK)

Title: State tops in fraud gripes - PER CAPITA LEADER: Tips offered on identifying scams.

Date: February 7, 2006

Alaska topped the nation in fraud complaints last year: 249 per 100,000 people, according to the Federal Trade Commission. Identity theft topped the list of nationwide complaints for the sixth year in a row, according to the FTC's annual report on consumer fraud released recently.

Monday, Jeremy Zidek, a spokesman for the Better Business Bureau that serves Alaska, western Washington and Oregon, talked about the latest versions of common scams and how to avoid them.

Q. Do we know how many Alaskans are affected by fraud each year?

A. According to the FTC, 1,654 Alaskans complained about being a victim of fraud in 2005.

Q. How much does fraud cost consumers in a year?

A. Alaskans lost an average of \$1,062. We were one of the lowest. The national average was \$2,412.

Q. What are some current scams?

A. On Internet dating sites, scam artists may say, "I want to come and see you, can you send me money?" or "My mother's sick."

They may pose as an American citizen working in a foreign country, say they don't trust the banks in the country and want to send money to someone they trust in the United States and ask them to wire the money back.

Prizes, sweepstakes and lotteries generate a lot of inquiries at the BBB, often out of Great Britain and Canada.

A lot of prize sweepstakes go out targeting seniors. They might have to pay \$20 to enter, and be guaranteed a prize. The fine print shows the minimum prize might be 50 cents.

A counterfeit check is a favorite tactic.

People hesitant to put up their own money when dealing with a stranger are a little more willing to cooperate when they get what appears to be a cashier's check.

Checks may be used in an overpayment scam: If you're selling something online to be picked up later, they may send you a check for more than the amount then ask you to send back the difference.

If anyone asks you to cash a check and wire back money, you can be pretty sure it's a scam.

Anyone with time and determination and a few key tools can counterfeit identification, Web sites and checks and credit cards for that matter.

Q. What are a few key steps people can take to avoid fraud?

A. Ask detailed questions; don't accept elusive answers. Ask for written information. Don't be rushed into making a decision. Talk to a trusted friend or family member about the offer.

Monitor credit cards, banking and other accounts online for a better chance of catching identity theft faster.

Q. Is there any good news on the fraud front?

A. The numbers of identity theft cases seem to have declined in 2005. That's good news.

The federal government requires the three major credit report companies to provide a free credit report every year, so consumers can get three of them free a year. That may be helping consumers keep better track of their financial records, and that may be part of why we're seeing a decline in identity theft cases.

Several bills being considered in the state Legislature would require businesses to inform consumers if their personal information is lost or stolen. Some variations of the bill also enable consumers to put a freeze on their accounts.

WANT TO KNOW more about common consumer scams? Need a credit report? For information on fraud and identity theft, log on to

www.adn.com/money

Copyright (c) 2006, Anchorage Daily News

Author: SARANA SCHELL Anchorage Daily News Staff

Section: Money

Page: F1

Copyright (c) 2006, Anchorage Daily News

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-8554

February 20, 2006

The Honorable Lesil McGuire
Chair
House Judiciary Committee
State Capitol, Room 118
MS 3100
Juneau, Alaska 99801

Re: HB 446, Civil Penalties in Consumer Protection Cases

Dear Representative McGuire:

Thank you for introducing HB 446. The Department of Law supports this important legislation. It would provide the department with more powerful enforcement tools by ensuring minimum penalties for violators of Alaska's Unfair Trade Practices and Consumer Protection Act (the "Act"), and increase the maximum penalty to a more meaningful amount. The current penalty of \$5,000 per violation is outdated. Several states have maximum penalties of \$100,000 or more, recognizing that in some cases, a single violation can have catastrophic consumer impacts that require severe penalties against larger corporate defendants.

The penalty provision of the Act requires the court to ultimately decide the amount of the penalty. Currently, this amount can range from \$0 to \$5,000. The court typically considers the nature of the alleged conduct, the harm involved, and other factors when considering an appropriate penalty. The amendments proposed by HB 446 will require the court to engage in this same analysis, except that the court must impose at least a \$1,000 penalty if a violation is found, and can impose up to \$25,000 per violation in appropriate cases. The proposed amendments will only affect state enforcement efforts because only the state can request penalties.

The Honorable Lesil McGuire
Chair
House Judiciary Committee

February 20, 2006
Page 2

The Act is a critically important law that allows consumers and the department to investigate and prosecute consumer fraud and deception. HB 446 strengthens the Act, and provides a greater deterrent to would-be violators.

If you need additional information, please contact me at (907) 269-5200.

Sincerely,

DAVID W. MARQUEZ
ATTORNEY GENERAL

By:



Clyde E. Sniffen, Jr.
Assistant Attorney General

cc: Kevin Jardell, Legislative Director
Office of the Governor

Randy Ruaro, AAG
Deborah Behr, AAG
Department of Law

CES/sjm

To: Housed Judiciary and Finance Committees

Re: AkPIRG Supports HB 446 - Penalty for Unlawful Trade Practice

AkPIRG urges support for HB 446 – Penalty for Unlawful Trade Practices. This bill is a concrete step toward better protection for Alaskan consumers by modernizing the penalties against those who commit consumer crime.

Alaska leads the nation in fraud complaints, according to the Federal Trade Commission. Alaska's current laws in regard to consumer protection however, provide one of the lowest allowable civil penalties of any state. HB 446 will strengthen the Unfair Trade Practices and Consumer Protection Act, sending the message that crimes against consumers will not be lightly punished.

The current penalty dates back to the 1970s, HB 446 will increase deterrence by increasing the penalties for consumer crimes. In cases involving a person or company violating an injunction prohibiting unfair or deceptive business practices, the maximum allowable civil penalty will be increased from \$25,000 to \$50,000 - for each violation. The bill will also allow a range of \$1,000 to \$25,000 to be employed for civil penalties – again, for each violation of the Act.

The Department of Law needs the proper tools to be able to protect consumers in Alaska. HB 446 is one step toward better protection. The Alaskan Legislature is making great strides in updating consumer protection laws in regard to Identity Theft and other fraud. Increasing the penalties for such crimes will serve as a needed deterrence to better protect Alaskans.

Thank you for your support of this legislation.
Sincerely,

Steve Cleary
A'PIRG Director

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB446-Courts-2-21-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Penalty for Unlawful Trade Practice RDU Alaska Court System
 Component Trial Courts
 Sponsor Representative McGuire
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 446.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/21/06 @ 2:30 pm
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 2/21/2006
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB446-LAW-2-22-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the amount of a civil penalty RDU CIVIL
for an unlawful act or practice in the conduct of trade..." Component Commercial & Fair Business
 Sponsor Representative McGuire
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill doubles the civil penalty imposed on someone who violates the terms of an injunction or restraining order issued to prevent the person from engaging in an unlawful act or practice in the conduct of trade or commerce, from \$25,000 to \$50,000 for each violation. It changes the penalty for the unlawful act or practice that is the subject of the injunction or restraining order, from the present level of \$5,000 to not less than \$1,000 nor more than \$25,000 for each violation.

Passage of this legislation will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 2/22/06 2:18 PM
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 2/22/2006
 Agency: Department of Law