

ALASKA LEGISLATURE

967

HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994

# Appendix

## Worksheet

For Fiscal Year 1994, States and other Jurisdictions (for convenience hereafter referred to as States) must be in compliance with the HIV mandatory testing standards for certain offenders established by Sec. 1804 of the Crime Control Act of 1990, 42 U.S.C. § 3756(f) (hereafter referred to as Section 1804) in order to receive continued full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The purpose of this worksheet is to assist the States in providing a self-assessment of their compliance with Section 1804. It need not be returned.

### 1. Victim Request.

Does the State statute require an HIV testing procedure at the request of any victim of a sexual act for which the person to be tested was convicted in State court (or make such a test mandatory for *all* persons thus convicted regardless of victim request)?

Yes     No    HB 109 exceeds this standard by providing for such testing on charged defendants.

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300

### 2. Administration of the Test.

Does the State statute require an agency of the State (such as a court, health department, correctional authority, etc.) to direct that a test be administered in such cases?

Yes     No

Does the State statute specifically require testing in these cases for the presence of acquired immune deficiency syndrome (AIDS) or its precursor, human immunodeficiency virus (HIV).

Yes     No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300(d)

AS 18.15.310(b)

3. The Person to be Tested.

Does the State statute require persons to be tested who have been convicted under State law of a defined sexual act?

Yes, in all cases  Yes, but only at the request of a victim  No

Does this either specifically or by definitional inclusion encompass persons found guilty of the offense by a jury or court, as well as those entering a pleas of guilty? (Note: Because Question 6 below concerns the definition of juveniles as persons "convicted," please disregard that issue for Question 3).

Yes  No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300 (cf. AS 11.41.410 - 11.41.440)

4. Disclosure of the Test Results.

Does the State statute provide for disclosure of the test results to ~~the~~ both the victim and the person tested?

Yes  No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300(e)

5. Victim Services.

Does the State statute provide for making the following services available to the victims of these sexual acts at their request:

1. Counseling regarding HIV disease?

Yes  No

2. HIV testing in accordance with applicable law?

Yes  No

3. Referral for appropriate health care and support services?

Yes  No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.310(h)

What are the sources of the funds to pay for these services?

Alaska Department of Health + Social Services  
(test paid by defendant by order of the court  
if the defendant is found guilty.)

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.310(h)

AS 18.15.900

AS 18.15.320

6. Definition of the term "convicted" as including Juveniles.

Does the State statute require HIV testing for juveniles who have been adjudicated under State law of committing sexual acts as it does with adults?

Yes     No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300

7. Definition of the term "Sexual Act."

Does the State statute define "sexual act" as having the meaning (either literal or approximate) as that given the term in 18 U.S.C. § 2245(2)(A) or (B)? (See Division 7 of the "Guide for the States").

Yes     No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 11.41.410 - 11.41.440

AS 11.81.900(b)(54)

**H B**

**1 1 3**

HFIN

FILE

# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 22, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/02/93

The FINANCE Committee considered:

HB 113

HOUSE BILL NO. 113

CHARITABLE & TELEPHONIC SOLICITING/SALES

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

RECOMMENDATIONS: [ ] the same title  
 be replaced with C.S.H.B. 113 (Fin) [ ] a new title  
 have attached amendments(s)  
 do pass  
 do not pass  
 no recommendations  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) PS 3/5/93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ronald J. Larson</i>	X				
<i>Paul R. Parrell</i>	X	<i>Mark Hanley</i> Hanley		X	
<i>Ben Grussendorf</i>	X	<i>Larry Martin</i> Martin		✓	
<i>Richard J. Hoff</i>	X	<i>Paul Hoffman</i> Hoffman		✓	
<i>John Theriault</i>	X	<i>Therriault</i> Therriault		X	
<i>Eileen P. Mulvan</i>		<i>Eileen P. Mulvan</i>			✓

*Ronald J. Larson*  
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

BILL NO. HB 113

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

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

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

EXPENDITURES/REVENUES:

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

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

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

FUNDING:

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

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

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

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

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 113

ANALYSIS: (continued)

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

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

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

Non-exempt telemarketers would be required to:

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

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

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

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

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

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

# Alaska State Legislature

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Representative Ronald L. Larson  
District 27

## POSITION PAPER HB 113

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

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

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

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



# ALASKA PACIFIC UNIVERSITY

Vice President  
University Relations

## M E M O R A N D U M

TO: The Honorable Ronald Larson

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

DATE: March 5, 1993

SUBJECT: House Bill No. 113

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

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

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

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

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

AJA:EAW:hws

# MEMORANDUM

State of Alaska  
Department of Law

TO: Honorable Ron Larson  
State of Alaska  
House of Representatives

DATE: January 29, 1993

FILE NO:

TEL NO: 269-5206

SUBJECT: House bill regulating  
telephonic and charitable  
solicitations

FROM:

*James Forbes*  
James Forbes  
Assistant Attorney General  
Fair Business Practices Section

Description of Bill

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

Section 1: Regulation of Telemarketers

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

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

Post-It brand fax transmittal memo 7671		# of pages	6
To	<i>Judy</i>	From	<i>Jim Forbes</i>
Co.	<i>( )</i>	Co.	<i>( )</i>
Dept.		Phone #	<i>269 5206</i>
Fax #		Fax #	

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Page 2

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

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

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

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

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

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

Honorable Ron Larson

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

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

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

#### Section II: Regulation of Charitable Solicitations

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

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

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

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

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

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

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

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

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

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

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

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

#### Section III: Relation to Consumer Protection Law

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

#### Section IV: Full Costs and Attorney's Fees

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

#### Conclusion

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

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

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

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

JF:bev

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

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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### MEMORANDUM

February 3, 1993

**SUBJECT:** Sectional summary of HB 113

**TO:** Representative Ron Larson  
Attn: Judy

**FROM:** Theresa L. Bannister <sup>JB</sup>  
Legislative Counsel

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

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

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

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

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

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

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

Representative Ron Larson

February 3, 1993

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Section 45.63.060 establishes a criminal penalty for violating the chapter.

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

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

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

Section 45.63.100 defines certain terms for the chapter.

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

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

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

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

Section 45.68.040 requires a paid solicitor who makes mail, radio, or television solicitations to mail written confirmation of contribution pledges to the contributors within a certain time. Requires the confirmation to include the disclosures required by sec. 45.62.030.

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

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

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

Representative Ron Larson

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

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

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

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

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

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

Section 45.68.900 defines certain terms for the chapter.

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

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

If I may be of further assistance, please advise.

TLB:pl

93-063.plm

Back-up



ALASKA DIVISION, INC.

*Nels Anderson, M.D.*  
President

*Jan Young, R.N.*  
Chairman of the Board

*Roland Gower, M.D.*  
Chairman, Executive Committee

*Barbara Kenney*  
Secretary

*Brent Ulmer*  
Treasurer

March 1993

*Diana Kuhns*  
Executive Vice President

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

Dear Representative Larson,

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

Sincerely,

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

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

**ALASKA DIVISION, INC.**

*Neil Anderson, M.D.*  
*President*

*Jan Young, R.N.*  
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*Chairman, Executive Committee*

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March 12, 1993

Representative Ron Larson  
State Capitol  
Juneau, AK 99801-1162

Dear Representative Larson,

The American Cancer Society, Alaska Division Public Issues Committee met on February 6, 1993, and reviewed your House Bill 113 regulating telephonic and charitable solicitations. The Committee recommended to the Division Board of Directors our organization support of the bill --- unanimous passage.

This bill is well drafted to be able to help eliminate look-alikes or sound-alike organizations and to regulate charity organizations that do not meet established standards. Alaskans have experienced too many fly-by-night charity promoters who have taken advantage of our good will and generosity, and then disappear with the take.

We are pleased that you have taken this legislation on as a priority. The American Cancer Society, Alaska Division, Inc. supports your endeavor. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diana Kuhns".

Diana Kuhns  
Executive Vice President

cc: Don Rogers, MD, Public Issues Chair

## REGULATE CHARITY PROMOTERS

# Squeeze out the con artists

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

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

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

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

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

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

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

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

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

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

# Bill targets phone scams

## Law requires written contracts, cooling-off period

By IAN MADER

The Associated Press

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

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

Typically, scam victims are told they have won a prize that they can claim after making an expensive credit-card purchase, Forbes said.

Either the prize never shows up or

it is worth much less than expected.

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

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

Please see Page D-6, PHONE

Anchorage Daily News Thursday, February 17, 1993

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

Continued from Page D-1

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

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

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

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

Rick Gilmore of the Better Business Bureau of Alas-

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

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

The bill also requires com-

panies that collect money for charities to file information with the state and prohibits them from misrepresenting their cause.

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

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

THE  
FOLLOWING  
DOCUMENTS  
ARE  
POOR  
ORIGINAL  
COPIES

2/24/93  
They're at it again: Telemarketers target Alaska

By ANNABEL LUND

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

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

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

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

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

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

He said International Marketing of Las Vegas was not connect-

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

That company was recently shut down by the Arizona attorney general's office after the company allegedly took \$25 from an 80-year-old Soldotna woman and promised to send her an anti-drug kit for her community, according to Jerry Williams, an attorney general's office investigator.

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

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

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

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

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

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

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

Art Krows, president of Main Line America, a telemarketing firm from Las Vegas, said his

Please see Scams, back page

# Scams...

Continued from Page 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Description of Bill

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

Section I: Regulation of Telemarketers

Purpose: to curtail high-pressure telephone sales.

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

Remedy proposed by bill:

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

Exemptions:

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

Section II: Regulation of Charitable Solicitations

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

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

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

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

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

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

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

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

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

Section III: Relation to consumer Protection Law

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

Section IV: Full Costs and Attorney's Fees

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

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

**HB**

**113**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/23/93

FURTHER:

DATE TURNED INTO OFFICE: 5-3-93

The Finance Committee considered CS FOR HOUSE BILL NO. 115 (FIN)

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

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ (FINANCE)
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
Dolan	7/2/93	<del>0</del>	

Appropriation No Fiscal Note

**DO PASS:**

Bert Mays  
Steve Rinn  
Greg Sells  
Tim Kelly  
Keith...  
...

**OTHER RECOMMENDATIONS:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. True Peace - 10/299

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 1  
Bill Version: HR 113  
(H) Publish Date: 3/5/93

Revision Date: February 12, 1993 Department Affected: Law  
Title: "...regulating the solicitation of charitable contributions...solicitation of sales by telephonic means..." BRU: Legal Services  
Sponsor: Representative Larson Component: Fair Business Practices  
Requestor: Representative Larson COMPONENT SERIAL NO. 1823

EXPENDITURES/REVENUES:

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

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

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

FUNDING:

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

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division  
Approved by Commissioner: Richard I. Peques / FBI  
Charles E. Cole, Attorney General  
Agency: Department of Law

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

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 113

AD. 1

ANALYSIS: (continued)

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

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

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

Non-exempt telemarketers would be required to:

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

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

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

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

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

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

5-3-93  
Withdraw

8-LS0344J.1  
Dierdorff  
5/3/93

AMENDMENT

OFFERED IN THE SENATE  
TO: CSHB 113(FIN)

BY SENATOR FRANK

Page 3, line 13:

Delete "Unless the"

Page 3, lines 14 - 19:

Delete all material.

Insert "Registration under this chapter does not constitute a license, consent, permit, endorsement, or other form of approval from the state.

(b) A telephonic seller that has registered under this chapter may state that fact to a prospective buyer, but may not, directly or indirectly, make a representation contrary to the provisions of (a) of this section."

SENATE FINANCE  
COMMITTEE  
Amendment Number: 1  
Bill Number: CSHB 113  
Sponsor: \_\_\_\_\_ Date: 5/2/93  
Logged In By: [Signature]

# Alaska State Legislature

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STATE CAPITOL BUILDING  
ROOM 502  
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FAX (907) 465-2293



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PALMER, ALASKA 99645  
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(907) 746-3560 - FAX  
(907) 376-8628 - Wasilla

**Representative Ronald L. Larson**  
District 27

## POSITION PAPER CSHB 113 (FIN)

I have introduced CSHB113 (FIN) in an effort to regulate telemarketers and Charitable Organizations who solicit donations by telephone. There has been a dramatic increase in fraudulent activity in this area. It has been brought to my attention that these scam artists have caused the loss of millions of dollars each year in Alaska -- money that would otherwise circulate among legitimate businesses in the local economy. Many of these victims are elderly or reside in native villages and once a solicitor has been successful in ripping these people off, their name is often sold to other solicitors, in order to continue the practice.

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

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

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



FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 113 (FIN)

Revision Date: April 20, 1993  
Title: "...regulating the solicitation of charitable contributions...solicitation of sales by telephonic means..."  
Sponsor: Representative Larson  
Requestor: Representative Larson

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

EXPENDITURES/REVENUES:

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

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

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

FUNDING:

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

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

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

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

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

Phone: 465-3672  
Date: April 20, 1993

Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Date: April 20, 1993

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## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 113 (FIN)

### ANALYSIS (Continued):

The House Finance Committee CS for HB 113 does not significantly alter the provisions of the bill. Consequently, the Department of Law's original fiscal note is repeated below.

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

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

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

Non-exempt telemarketers would be required to:

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

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

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

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

The staff time needed to file the registration documents will be

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 113 (FIN)

ANALYSIS (Continued):

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

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

# MEMORANDUM

State of Alaska

Department of Law

TO: Honorable Ron Larson  
State of Alaska  
House of Representatives

DATE: January 29, 1993

FILE NO:

TEL. NO: 269-5206

SUBJECT: House bill regulating  
telephonic and charitable  
solicitations

FROM:  James Forbes  
Assistant Attorney General  
Fair Business Practices Section

## Description of Bill

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

## Section 1: Regulation of Telemarketers

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

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

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

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

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

(1) It requires registration of telemarketers, including detailed information about exactly who they are, their histories, and the physical location from which they are operating;

(2) It mandates a "cooling off period" by prohibiting the telemarketer from taking the customer's money until the agreement is reduced to a written contract; and

(3) It provides criminal penalties for violators.

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

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

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

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

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

## Section II: Regulation of Charitable Solicitations

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

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

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

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

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

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

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

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

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

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

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

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

#### Section III: Relation to Consumer Protection Law

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

#### Section IV: Full Costs and Attorney's Fees

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

#### Conclusion

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

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

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

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

JF:bev

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

# National Society of Fund Raising Executives

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

VIA FAX

February 25, 1993

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

Dear Representative Larson:

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

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

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

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

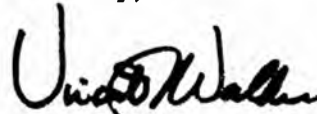
The National Society of Fund Raising Executives Alaska Chapter is one of several hundred NSFRE chapters nationwide. Nationally there are over 13,000 members; we have 32 in the Alaska Chapter, representing non-profits from Juneau, Fairbanks and Anchorage.

The Honorable Ron Larson  
February 25, 1993  
Page 2

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

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

Sincerely,



Vincent J. Walker  
Alaska Chapter President

President,  
Providence Health Care  
Foundation

vjw/ab

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

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

MEMORANDUM

April 19, 1993

**SUBJECT:** Sectional summary of CSHB 113(FIN)

**TO:** Representative Ron Larson  
Attn: Judy

**FROM:** Theresa L. Bannister *TB*  
Legislative Counsel

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

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

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

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

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

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

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

Section 45.63.060 establishes criminal penalties for certain violations of the chapter.

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

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

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

Section 45.63.100 defines certain terms for the chapter.

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

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

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

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

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

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

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

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

Representative Ron Larson

April 19, 1993

Page 3

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

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

Section 45.68.100 establishes a criminal penalty for a person who solicits contributions for a charitable organization for compensation without complying with the registration requirements of sec. 45.68.010.

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

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

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

Section 45.68.900 defines certain terms for the chapter.

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

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

If I may be of further assistance, please advise.

TLB:pl  
93-313.plm

Back-up

Description of Bill

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

Section I: Regulation of Telemarketers

Purpose: to curtail high-pressure telephone sales.

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

Remedy proposed by bill:

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

Exemptions:

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

Section II: Regulation of Charitable Solicitations

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

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

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

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

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

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

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

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

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

Section III: Relation to consumer Protection Law

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

Section IV: Full Costs and Attorney's Fees

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

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

HOUSE JOURNAL

1112

April 8, 1993

HB 59

The question being: "Shall CSHB 59(MLV) pass the House?" The roll was taken with the following result:

CSHB 59(MLV)

Third Reading

Final Passage

YEAS: 29 NAYS: 0 EXCUSED: 10 ABSENT: 1

Yeas: Barnes, Bunde, Carney, B.Davis, G.Davis, Finkelstein, Foster, Green, Hanley, Hudson, James, Kott, Larson, Mackie, MacLean, Martin, Menard, Moses, Mulder, Nicholia, Nordlund, Parnell, Phillips, Porter, Sanders, Therriault, Toohey, Vezey, Willis

Excused: Brice, Brown, Davidson, Davies, Grussendorf, Hoffman, Olberg, Sitton, Ulmer, Williams

Absent: Navarre

And so, CSHB 59(MLV) passed the House.

Representative Phillips moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 59(MLV) was referred to the Chief Clerk for engrossment.

HB 113

The following was read the second time:

HOUSE BILL NO. 113

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

with the:

Journal Page

JUD REFERRAL ADDED, FOLLOWING L&C 290  
L&C RPT SDP 542

HOUSE JOURNAL

April 8, 1993

1113

HB 113

-ZERO FISCAL NOTE (LAW) 3/5/93	542
JUD RPT CS(JUD) SDP 1NR	728
-PREVIOUS ZERO FN (LAW) 3/5/93	728
FIN RPT CS(FIN) SDP 4NR 1AM	927
-PREVIOUS ZERO FN (LAW) 3/5/93	928

Representative Phillips moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

CS FOR HOUSE BILL NO. 113(FIN)  
(same title)

There being no objection, it was so ordered.

Representative Phillips moved and asked unanimous consent that CSHB 113(FIN) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 113(FIN) was read the third time.

The question being: "Shall CSHB 113(FIN) pass the House?" The roll was taken with the following result:

CSHB 113(FIN)

Third Reading

Final Passage

YEAS: 29 NAYS: 0 EXCUSED: 10 ABSENT: 1

Yeas: Barnes, Bunde, Carney, B.Davis, G.Davis, Finkelstein, Foster, Green, Hanley, Hudson, James, Kott, Larson, Mackie, MacLean, Martin, Menard, Moses, Mulder, Nicholia, Nordlund, Parnell, Phillips, Porter, Sanders, Therriault, Toohey, Vezey, Willis

Excused: Brice, Brown, Davidson, Davies, Grussendorf, Hoffman, Olberg, Sitton, Ulmer, Williams

Absent: Navarre

And so, CSHB 113(FIN) passed the House.

**HB 113**

Representative Phillips moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the court rule changes. There being no objection, it was so ordered.

CSHB 113(FIN) was referred to the Chief Clerk for engrossment.

**RECONSIDERATION****HB 218**

Representative Mackie brought up reconsideration of the vote on CSHB 218(FSH) (page 1081):

The following was again before the House in third reading:

**CS FOR HOUSE BILL NO. 218(FSH)**

"An Act relating to the maximum length of salmon seine vessels; and providing for an effective date."

The Speaker placed a call of the House on the calendar.

\*\*\*Representative Phillips moved and asked unanimous consent that Representative Navarre be excused from a call of the House today. There being no objection, it was so ordered.

The call was satisfied.

The question to be reconsidered: "Shall CSHB 218(FSH) pass the House?" The roll was taken with the following result:

**CSHB 218(FSH) - RECONSIDERATION**

Third Reading

Final Passage

**YEAS: 21 NAYS: 8 EXCUSED: 11 ABSENT: 0**

Yeas: Barnes, Bunde, G.Davis, Foster, Green, Hanley, Hudson, James, Kott, Larson, MacLean, Martin, Moses, Mulder, Parnell, Phillips, Porter, Sanders, Therriault, Toohey, Vezey

**HB 218**

Nays: Carney, B.Davis, Finkelstein, Mackie, Menard, Nicholia, Nordlund, Willis

Excused: Brice, Brown, Davidson, Davies, Grussendorf, Hoffman, Navarre, Olberg, Sitton, Ulmer, Williams

And so, CSHB 218(FSH) passed the House on reconsideration.

Representative Phillips moved the effective date clauses.

The question being: "Shall the effective date clauses be adopted?" The roll was taken with the following result:

**CSHB 218(FSH) - RECONSIDERATION**

Third Reading

Effective Dates

**YEAS: 29 NAYS: 0 EXCUSED: 11 ABSENT: 0**

Yeas: Barnes, Bunde, Carney, B.Davis, G.Davis, Finkelstein, Foster, Green, Hanley, Hudson, James, Kott, Larson, Mackie, MacLean, Martin, Menard, Moses, Mulder, Nicholia, Nordlund, Parnell, Phillips, Porter, Sanders, Therriault, Toohey, Vezey, Willis

Excused: Brice, Brown, Davidson, Davies, Grussendorf, Hoffman, Navarre, Olberg, Sitton, Ulmer, Williams

And so, the effective date clauses were adopted.

CSHB 218(FSH) was referred to the Chief Clerk for engrossment.

**SECOND READING OF HOUSE BILLS**

(continued)

**HB 254**

The following was read the second time:

**HOUSE BILL NO. 254**

"An Act relating to open meetings of governmental bodies; and amending Rule 82 of the Alaska Rules of Civil Procedure."

## REGULATE CHARITY PROMOTERS

# Squeeze out the con artists

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

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

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

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

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

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

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

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

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

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

# Bill targets phone scams

## Law requires written contracts, cooling-off period

By IAN NADER  
The Associated Press

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

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

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

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

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

Please see Page D-6 PHONE

Anchorage Daily News Thursday, February 11, 1993

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

Continued from Page D-1

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

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

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

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

Rick Gilmore of the Better Business Bureau of Alas-

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

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

The bill also requires com-

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

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

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

2/24/93

# They're at it again: Telemarketers target Alaska

By ANNABEL LUND

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

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

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

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

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

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

He said International Marketing of Las Vegas was not connect-

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

That company was recently shut down by the Arizona attorney general's office after the company allegedly took \$25 from an 80-year-old Soldotna woman and promised to send her an anti-drug kit for her community, according to Jerry Williams, an attorney in the general's office.

The kit turned out to be a handful of bumper stickers, he said.

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

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

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

She did, and received a small box of cosmetics, Kalwara said.

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

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

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

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

Art Krows, president of Main Line America, a telemarketing firm from Las Vegas, said his

Please see Scams, back page

# Scams...

Continued from Page 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



ALASKA DIVISION, INC.

*Nels Anderson, M.D.*  
*President*

*Jan Young, R.N.*  
*Chairman of the Board*

*Roland Gower, M.D.*  
*Chairman, Executive Committee*

*Barbara Kenney*  
*Secretary*

*Brent Ulmer*  
*Treasurer*

March 1993

*Diana Kuhns*  
*Executive Vice President*

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

Dear Representative Larson,

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

Sincerely,

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

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



ALASKA DIVISION, INC.

*Nels Anderson, M.D.*  
*President*

*Jan Young, R.N.*  
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*Chairman, Executive Committee*

*Barbara Kenney*  
*Secretary*

*Brent Uimer*  
*Treasurer*

*Diana Kuhns*  
*Executive Vice President*

March 12, 1993

Representative Ron Larson  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Larson,

The American Cancer Society, Alaska Division Public Issues Committee met on February 6, 1993, and reviewed your House Bill 113 regulating telephonic and charitable solicitations. The Committee recommended to the Division Board of Directors our organization support of the bill --- unanimous passage.

This bill is well drafted to be able to help eliminate look-alikes or sound-alike organizations and to regulate charity organizations that do not meet established standards. Alaskans have experienced too many fly-by-night charity promoters who have taken advantage of our good will and generosity, and then disappear with the take.

We are pleased that you have taken this legislation on as a priority. The American Cancer Society, Alaska Division, Inc. supports your endeavor. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diana Kuhns".

Diana Kuhns  
Executive Vice President

cc: Don Rogers, MD, Public Issues Chair

**H B**

**1 1 6**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: February 25, 1993

FURTHER REFERRALS:

Date of Committee Action: 3/10/93

The FINANCE Committee considered:

HB 116

HOUSE BILL NO. 116

STATE SHARE OF FEDERAL GAS ROYALTIES

"An Act directing the commissioner of natural resources to accept, under certain circumstances, the contract price agreed to between a lessee of federal land and a gas or electric utility as the value of the federal government's royalty share from natural gas production when royalty is payable to the state under applicable federal law; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 116 (Fin)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note DNR

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ronald J. Larson</i>	X	<i>Eileen P. Machean</i>		X	
<i>Mark P. Hanley</i>	X	<i>Ben Sanderson / Grosser</i>			
<i>Terry Martin</i>		<i>Lay Brown</i>			✓
<i>Sean P. Parzell</i>					
<i>Mike Davara</i>					
<i>James Theobald</i>					
<i>Richard J. Foster</i>	*	<i>Foster</i>			

*Ronald J. Larson*  
CHAIRMAN'S SIGNATURE

# FISCAL NOTE

## STATE OF ALASKA 1993 LEGISLATIVE SESSION

BILL NO. CSHB116 (FIN)

Revision Date 10-Mar-93 Department Affected: Natural Resources

Title: "State Share of Federal Gas Royalties" FRU: Resource Development

Components: Oil & Gas Development

Sponsor: Representative Hanley

Requestor: House Finance

Component Serial No. 439

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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						
---------	--	--	--	--	--	--

REVENUE fund source:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year (FY93) Impact: \$ See attached page

ANALYSIS:	(Attach a separate page if necessary)
SEE ATTACHED PAGE	

Prepared by: Jlm Eason, Director

Phone: 762-2547

Division: Oil & Gas

Date: 10-Mar-93

Approved by Commissioner: Glenn A. Olds

Date: 10-Mar-93

Agency: Department of Natural Resources

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For further distribution information call the Governor's Legislative Office

March 10, 1993

The retroactive application provisions of the bill make it difficult to evaluate the fiscal impact of the bill. It is not known, at this time, if any refunds, except for the one described below, will be due the federal lessees because of the proposed retroactive change in state policy. An audit of past federal/state royalty collection policies beginning in 1959, which will require a considerable amount of time and resources, would have to be completed in order to determine the full fiscal impact of this bill.

What is known today is that if the bill becomes law, the state will be barred from advocating for higher royalty values for gas production from federal leases in the Beluga River field for past production periods. The state believes that as of April 15, 1992, approximately \$10.4 million is owed for the audit period between October 1, 1984 through June 30, 1987. Because interest continues to accrue on the past due principle, the amount of the claim continues to grow.

As to the allocation of any royalty revenues which may be foregone as a result of the application of this proposed legislation, for leases issued on or before December 1, 1979, 74.5% would be allocated to the General Fund, 25% to the Permanent Fund, and 0.5% to the Public School Trust Fund. In the event of leases issued after December 1, 1979, 49.5% would be allocated to the General Fund, 50% to the Permanent Fund, and 0.5% to the Public School Trust Fund.

At this point in time, the amount owed is based on a claim by the state. However, the state's position in support of the area pricing theory or median value pricing theory, and the amount sought may or may not be sustained by a court with jurisdiction for this issue.

8-LS04420  
Chenoweth  
3/10/93

CS FOR HOUSE BILL NO. 116( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES HANLEY, Phillips, Larson, Green, Parnell, Navarre

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to royalty gas contracts, amending the manner of determining  
2 the royalty received by the state on gas production, and directing the  
3 commissioner of natural resources to accept, under certain circumstances, the  
4 contract price agreed to between a lessee of federal land and a gas or electric  
5 utility as the value of the federal government's royalty share from natural gas  
6 production on federal land from which the state is entitled under applicable  
7 federal law to receive a share of the royalty on gas production; and providing  
8 for an effective date."

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

10 \* Section 1. AS 38.05.180(aa) is amended to read:

11 (aa) Within 90 days after the written request of a lessee of a lease issued under  
12 this section or of a lessee of federal land from which the state is entitled under

1 applicable federal law to receive a share of the royalty on gas production, the  
 2 commissioner shall enter into an agreement with the lessee to use or accept the price  
 3 for the gas established in the contract between the lessee and a gas or electric utility  
 4 as the value of the state's royalty share of gas production sold by the lessee under the  
 5 contract

6 (1) but only if the primary function of the utility with which the  
 7 lessee has entered into the contract is to provide, either directly or by selling at  
 8 wholesale to another utility, gas or electricity to the general public, including  
 9 residential consumers, within the utilities' service areas, and the utility with which  
 10 the lessee has entered into the contract is not an affiliated interest, as that term  
 11 is defined in AS 42.05.990, with the lessee or with a subsequent purchaser of more  
 12 than 10 percent of the utility's gas or electricity; and

13 (2) unless the commissioner makes a written finding, based on clear  
 14 and convincing evidence, that

15 (A) [(1)] the contract price is unreasonably low;

16 (B) [(2)] the prospective reduction in royalty receipts would not  
 17 be balanced by increased benefits to in-state gas and electric consumers;

18 (C) [(3)] the lessee and the utility are related in management,  
 19 ownership, or other aspect; and

20 (D) [(4)] the contract price is not in the best interest of the  
 21 state.

22 \* Sec. 2. AS 38.05.180(bb) is amended to read:

23 (bb) In (aa) of this section,

24 (1) "gas or electric utility" includes an electric cooperative organized  
 25 under AS 10.25, a municipal utility, and a gas or electric utility regulated under  
 26 AS 42.05; provided that if the contract gas is transmitted to consumers through a  
 27 pipeline and the gas utility either owns the pipeline or is related in ownership to the  
 28 owner of the pipeline, then the gas utility qualifies as a "gas or electric utility" within  
 29 the meaning of this paragraph only if it is bound or agrees to be bound by the  
 30 covenants set out in AS 38.35.120;

31 (2) "price for the gas established in the contract" includes tax

1 reimbursement amounts, deliverability and other charges, and other forms of  
2 consideration paid by the gas or electric utility under the contract;

3 (3) "state's royalty share of gas production"

4 (A) includes payments on federal leases made to the state  
5 under 30 U.S.C. 191;

6 (B) does not include the state's royalty share of gas production  
7 from land patented to the state under

8 (i) [(A)] P.L. 84-830, 70 Stat. 709 (Alaska Mental  
9 Health Enabling Act);

10 (ii) [(B)] 38 Stat. 1214 (Act of March 4, 1915); or

11 (iii) [(C)] 43 U.S.C. 1635 in settlement of the claims of  
12 the state under 38 Stat. 1214.

13 \* Sec. 3. AS 38.05.180 is amended by adding a new subsection to read:

14 (cc) The provisions of (aa) of this section do not prohibit the commissioner  
15 from accepting any payment on a federal lease tendered by the federal agency  
16 responsible for determination and transmittal of the payment to the state under 30  
17 U.S.C. 191 or otherwise due the state as the state's royalty share of gas production  
18 irrespective of the state's acceptance of the use of the contract price for purposes of  
19 determining royalty share on gas production under that subsection.

20 \* Sec. 4. APPLICATION TO ROYALTY FROM EXISTING FEDERAL LEASES. (a)  
21 Notwithstanding AS 38.05.180(aa) and 38.05.180(bb), the provisions of this section apply to  
22 the state's share of royalty production of gas produced after January 2, 1959, and before the  
23 effective date of this section from a lease of oil or gas rights entered into under applicable  
24 federal law.

25 (b) If a lessee of a lease for federal land from which the state is entitled under  
26 applicable federal law to receive a share of the royalty on gas production makes a written  
27 request within 90 days of the effective date of this section, the commissioner shall enter into  
28 an agreement with the lessee to accept the price for the gas established in the contract between  
29 the lessee and a gas or electric utility as the value of the state's royalty share of gas  
30 production sold by the lessee under the contract

31 (1) but only if the primary function of the utility with which the lessee has

1 entered into the contract is to provide, either directly or by selling at wholesale to another  
 2 utility, gas or electricity to the general public, including residential consumers, within the  
 3 utilities' service areas, and the utility with which the lessee has entered into the contract is not  
 4 an affiliated interest, as that term is defined in AS 42.05.090, with the lessee or with a  
 5 subsequent purchaser of more than 10 percent of the utility's gas or electricity; and

6 (2) unless the commissioner makes a written finding, based on clear and  
 7 convincing evidence, that

8 (A) the contract price is unreasonably low;

9 (B) the reduction in royalty receipts is not balanced by increased  
 10 benefits to in-state gas and electric consumers;

11 (C) the lessee and the utility are related in management, ownership, or  
 12 other aspect; and

13 (D) the contract price is not in the best interest of the state.

14 (c) The provisions of (a) and (b) of this section do not prohibit the commissioner from  
 15 accepting any payment on a federal lease tendered by the federal agency responsible for  
 16 determination and transmittal of the payment to the state under 30 U.S.C. 191 or otherwise  
 17 due the state as the state's royalty share of gas production irrespective of the state's  
 18 acceptance of the use of the contract price for purposes of determining royalty share on gas  
 19 production under those subsections.

20 (d) In this section,

21 (1) "gas or electric utility" includes an electric cooperative organized under  
 22 AS 10.25, a municipal utility, and a gas or electric utility regulated under AS 42.05; however,  
 23 if the contract gas is transmitted to consumers through a pipeline and the gas utility either  
 24 owns the pipeline or is related in ownership to the owner of the pipeline, then the gas utility  
 25 qualifies as a "gas or electric utility" within the meaning of this paragraph only if it is bound  
 26 or agrees to be bound by the covenants set out in AS 38.35.120;

27 (2) "price for the gas established in the contract" includes tax reimbursement  
 28 amounts, deliverability and other charges, and other forms of consideration paid by the gas  
 29 or electric utility under the contract;

30 (3) "state's royalty share of gas production" includes payments on federal  
 31 leases made to the state under 30 U.S.C. 191.

1 \* Sec. 5. RETROSPECTIVE EFFECT OF SECTION 4. Section 4 of this Act is  
2 retroactive to January 3, 1959, and applies to the federal government's royalty share from  
3 natural gas production due the state after January 2, 1959.

4 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

AHahnunt + 2

3/1/93

8-LS0442J.2.

HB 116

Chenoweth

3/1/93

AMENDMENT I

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 116(RES)

Page 1, line 1, after "An Act":

Insert "relating to computation of the state's royalty share of natural gas production, and"

Page 2, lines 2 - 3:

Delete ", based on clear and convincing evidence,"

Insert "[, BASED ON CLEAR AND CONVINCING EVIDENCE,]"

Page 2, line 6:

After "and":

Insert "residential"

After "consumers;"

Insert "and"

Page 2, lines 7 - 9:

Delete "the lessee and the utility are related in management, ownership, or other aspect; and

(4)"

Insert "[THE LESSEE AND THE UTILITY ARE RELATED IN MANAGEMENT, OWNERSHIP, OR OTHER ASPECT; AND

(4)]"

Page 3, line 12:

Delete ", based on clear and convincing evidence,"

Attachment #3  
3/1/93  
8-LS0442N.4  
Chenoweth  
3/1/93  
HB 116

A M E N D M E N T I

OFFERED IN THE HOUSE  
TO: CSHB 116(RES)

BY REPRESENTATIVE BROWN

Page 1, line 1, after "An Act":

Insert "relating to computation of the state's royalty share of natural gas production, and"

Page 1, line 9 - page 2, line 2:

Delete "Within 90 days after the written request of a lessee of a lease issued under this section or of a lessee of federal land from which the state is entitled under applicable federal law to receive a share of the royalty on gas production. the commissioner shall enter into an agreement with the lessee to use or accept the price for the gas established in the contract between the lessee and a gas or electric utility as the value of the state's royalty share of gas production sold by the lessee under the contract unless"

Insert "The [WITHIN 90 DAYS AFTER THE WRITTEN REQUEST OF A LESSEE OF A LEASE ISSUED UNDER THIS SECTION, THE] commissioner shall enter into an agreement with the lessee to use the price for [THE] gas established in a [THE] contract between the lessee and a gas or electric utility as the value of the state's royalty share of gas production from a field that, on the effective date of this bill section, is in production, and that is sold by the lessee under the contract. In addition, the commissioner shall enter into an agreement with the lessee of a lease of federal land from which the state is entitled under 30 U.S.C. 191 to receive a share of the royalty of gas production to use or accept the price for gas established in a contract between the lessee and a gas or electric utility as the value of the state's royalty share of gas production from a field that, on the effective date of this bill section, is in production, and that is sold by the lessee under the contract. To obtain the benefit of this subsection, a lessee shall make a written request to the commissioner. When the commissioner receives the request, the commissioner shall enter into the agreement within 90 days. However, the commissioner

## ***Section-by-Section Analysis of HB 116***

**Section 1.** In 1986, the legislature directed the Department of Natural Resources ("DNR") to use, except in certain circumstances, the contract price of natural gas sold by a lessee to a gas or electric utility as the value of the state's royalty share of production from that lessee. AS 38.05.180(aa). Cook Inlet lessees sell natural gas to these utilities, and have historically paid royalties based upon that contract price. In March, 1985, DNR demanded that its lessees begin paying additional gas royalties, on the theory that the contract price did not represent the gas' "value." Had DNR prevailed, the liability for those additional royalties would have fallen on the utilities. That's because the utilities, as part of their contracts with the lessees, agreed to pay any additional royalty assessment made by the state.

Ultimately, of course, that would have meant that any additional royalties would be paid by the utility's customers.

The possibility of additional royalty demands therefore created considerable uncertainty and threatened to impose substantial burdens on consumers. These burdens, the legislature believed, outweighed any revenues the state might receive from a higher valuation of these royalties. Even DNR, which supported the 1986 legislation, concluded that "it is appropriate to accept a contract price as the royalty value for arms-length sales to regulated utilities...because Alaska consumers would be the direct beneficiaries of the certainty of the price provided by such a contract..." but felt that legislation was necessary to permit it to use the utility contract price.

The 1986 law was intended to remove these uncertainties and potential burdens by establishing (except in limited circumstances) the utility contract price as the "value" of the state's royalty share. The law, however, applied only to *state* leases. The state also receives 90% of natural gas royalties paid under *federal* leases, and the 1986 law neglected to resolve the problem with respect to the state's share of federal royalties. As a result, DNR currently feels obligated to encourage the federal government to reject the utility contract price as the "value" of federal royalty gas, even though the agency is compelled (absent special circumstances) to accept that price for state lease purposes.

Since substantial quantities of gas are sold to utilities from federal leases, this has created precisely the uncertainty and potential consumer liability that the 1986 law was intended to prevent.

Section 1 of HB 116 closes that unintended loophole by extending the reach of the 1986 legislation to the state's share of federal royalty gas. The

inserted words "*or a lessee of federal land for which state royalty share of gas production is payable under applicable federal law*" extend the section's protections to federal lessees. The inserted words "or accept" reflect the fact that the federal government will ultimately set the royalty "value" for its leases; DNR, however, would be required (under the standards of the section) to "accept" the federal government's use of the utility contract as the measure of "value," if the federal government itself proposed to use that value.

In fact, the Department of Interior's Minerals Management Service ("MMS"), in two recent audit decisions, decided to use arms-length utility contract prices as the value of Beluga River Field gas for the period 1984-87. DNR is attempting to appeal those rulings, claiming a higher "value" exists. Under Section 1 of the bill, and upon the lessee's application, DNR would be required (except in the circumstances articulated in existing §180(aa)) to withdraw those appeals and "accept" MMS' decision.

**Section 2.** AS 38.05.180(aa) requires the use of the utility contract price as the value of "the state's royalty share of gas production," a term defined in existing §180(bb)(3). In order to extend that valuation rule to the state's share of federal royalties, it is necessary to amend that definition to include "payments on federal leases under 30 U.S.C. 191." 30 U.S.C. §191 is the federal statute under which 90% of federal gas royalties are distributed to the state.

**Sections 3.** Section 5 of the 1986 law (Ch. 55, SLA 1986) made it clear that, as to state leases, DNR was only required to use *new* utility contracts as the royalty "value." This was done for three reasons: (1) DNR, in its March, 1985 announcement, proposed to reject utility contracts as the royalty value only prospectively--beginning April 15, 1985; (2) DNR, during the 1986 session, had already settled with all its lessees under the then-existing utility contracts, pending passage of the law; and (3) even though the law applied prospectively only, DNR assured the legislature that it would use enactment of the law as statutory justification for completing its settlements under existing utility contracts.

In other words, the "valuation" issue with respect to then-existing utility contracts had already been taken care of amicably, and there was no need to reopen those matters.

None of those considerations exist with respect to the valuation of federal royalties. DNR is currently attempting to compel MMS to retroactively reject utility contract prices as far back as 1984. It has engaged in no settlement discussions that might amicably dispose of prior-year valuation issues. And, it has taken the position that, unless AS 38.05.180(aa) is amended to require use of the utility contract price for prior year federal royalties, it must continue to urge rejection of that price for those years.

As a result, Section 3 of HB 116 applies the rules of AS 38.05.180(aa) (as amended by Sections 1 and 2 of this bill) to gas production from federal leases that occurred prior to the effective date of this legislation. The wording used in Section 3 is identical to amended §180(aa) and (bb), except that

(1) the word "prospective" is deleted from subsection (b)(2). That's because this section is concerned not with prospective reductions in royalty due to accepting new contract prices, but rather with acceptance of the contract price for prior production from federal leases; and

(2) the definition of "state's royalty share of gas production" references only the federal revenue sharing provision of 30 U.S.C. §191, rather than also referencing revenues from state leases, because this special section is concerned solely with prior production from *federal* leases.

Section 3 has a very limited reach. It does not affect prior production from state leases at all--the introductory language of the section makes this clear by stating that it applies solely to leases "entered into under applicable federal law." Moreover, all significant federal royalty disputes involving Cook Inlet gas have already settled, and this legislation will not have any effect on binding settlement agreements. As a practical matter, the effect of Section 3 will be confined to federal royalty gas from the Beluga River Field that is sold to Chugach Electric Assn., Inc. for Railbelt power generation.

**Section 4.** Under AS 01.10.090, "no statute is retrospective unless expressly declared therein." Because Section 3 is intended to define what the state must accept (under certain conditions) as its share of *past* federal royalty production, an explicit retroactivity clause is necessary.

Section 4 should create no legal problems. Governmental policies towards defining royalty "value" have changed over the years, without any serious argument that the changes constitute unilateral amendments to pre-existing leases. Moreover, here the use of the utility contract price is at the lessee's option.

**Section 5.** This section gives the legislation an immediate effective date.



## **Representative Mark Hanley**

### **Alaska State Legislature**

#### Memorandum

To: Rep. Ron Larson  
Rep. Eileen MacLean  
Co-Chairs, House Finance Committee

From: Rep. Mark Hanley

Re: Request to schedule a hearing for CS for HB 116, (Resources)  
"An act directing the commissioner of natural resources to accept, under certain circumstances, the contract price agreed to between a lessee of federal land and a gas or electric utility as the value of the federal government's royalty share from natural gas production when royalty is payable to the state under applicable federal law; and providing for an effective date."

Date: February 24, 1993

This memo is to respectfully request that CS for House Bill 116 be scheduled for a hearing in the Finance Committee at your earliest possible convenience.

CS HB 116 is necessary because the Department of Natural Resources is pressuring the federal government to retroactively increase the value of the gas it sold to a level above the price agreed to in long term contracts signed by the utilities. The higher price would immediately be passed along to consumers in the form of higher utility rates.

This bill will require the Department of Natural Resources to use the same standards for valuation of natural gas from federal lands as it currently uses on gas from state lands. Under existing law, the Department uses the contract price of natural gas sold to a gas or electric utility as the value for figuring the state's royalty on production from state leases. This bill would require the Department to also use the contract price when determining the value of gas sold to utilities from federal leases.

Attached with this memo is a copy of the bill, a brief sectional analysis, and a comprehensive briefing paper prepared by Chugach Electric. Also included is a copy of all the attachments for the briefing paper.

I would appreciate your consideration on scheduling this bill for a hearing as promptly as possible.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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The Honorable Bill Williams, Chairman  
House Resources Committee  
Alaska State Legislature  
State Capitol Building, Room 128  
Juneau, Alaska 99801-1182

Dear Representative Williams:

I am responding to your request for additional information concerning whether HB 116 is precedential in any nature and how any royalty revenues that might be foregone through implementation of that legislation would otherwise have been distributed.

The proposed legislation is precedential on at least two points. First, passage of this legislation would result in the requirement that the department accept contract prices for certain gas produced from federal leases regardless of whether or not those values represent the full royalty value to which the state would otherwise be entitled absent this legislation. Secondly, to the best of my knowledge, making the effective date of HB 116 retroactive to January 3, 1959 would also be precedential.

The 1986 amendments to AS 38.05.180 were similar to the proposed legislation in their effect on the royalty valuation for production from state-owned lands. However, the 1986 amendments differ in the timing of their applicability. Unlike the proposed amendments, the 1986 amendments were not retroactive. The contract price for the gas was not binding for royalty purposes until a new contract was negotiated, in this case after 1986. The 21 cents per MCF contract price in effect in 1986 was not accepted as the royalty value. Rather, a settlement value of 75 cents per MCF was used as the royalty value until 1989 when Chugach negotiated a new contract with the Beluga River field lessees.