

ALASKA LEGISLATURE

1319

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

JULIE A. MATTHEWS

MAR 9 1995

P.M. 3/

March 7, 1995

Representative Mark Hanley, Co-Chair
House Finance Committee
The Alaska Legislature
State Capital, Room 507
Juneau, AK. 99801-1182

re:HB 106, An act Repealing the State Percent for Art
Program

Dear Representative Mark Hanley, Co-Chair:

I am writing to voice my opinion about the recent HB 106, an act repealing the State Percent for Art Program. HB 106 would negatively effect the two constituencies the Percent for Art program is designed to serve: the public and artists. Public Art is an aesthetic enrichment of the public environment that comments on who we are as Alaskans, and what it means to live, work and study in this place. The biggest public impact of the repeal would be on Alaska's schools and children. For students, the arts develop creativity and problem solving skills, act as a basis means of communication and enhance the study of other subjects. As an artist and parent who has completed several Percent for Art programs along with over twenty Artists-in-Schools programs in Alaska this repeal would weaken the quality of our artistic and cultural lives in this state.

I am well aware of controversial Percent for Art program projects but feel that they are only a few of the numerous awarded commissions. I am confident that there are projects for everyone to enjoy despite different artistic tastes.

According to the Department of Transportation and Public Facilities, repeal of the Percent for Art program would not effect the Capital budget. One percent is not added to the cost of capital projects, rather, once appropriated, it is dedicated to public art. If the program is repealed, this percent will be absorbed in other costs associated with the project.

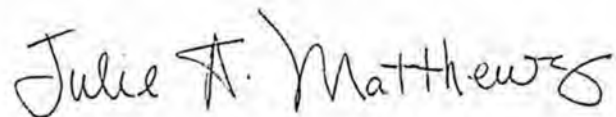
Percent for Art operates without direct administrative expense. Every dollar spent in the Percent for Art program goes directly to the art project. Art commissioned and installed under the program becomes a permanent part of the building. Amortized over the life of a building, the cost of public art is a modest investment in the enhancement of the public environment and the quality of life in Alaska.

131 W. Klatt Road
Anchorage, AK 99515
(907) 344-2520 (CLAY)

Today, there are over one hundred public percent for art programs in the United States. The federal government, twenty-nine states, and scores of cities operate percent for art programs. The art produced in the Percent for Art program becomes a testament to what we value as a state and as a people. PLEASE PLEASE PLEASE don't take this away from Alaska. It is a legacy for our future and for future generations.

Sincerely,

Julie A. Matthews

A handwritten signature in cursive script that reads "Julie A. Matthews". The signature is written in dark ink and is positioned below the typed name.

cc:Office of the Governor
Tony Knowles
PO Box 110001
Juneau, AK. 99811

Vivienne McConnell
P.O. Box 670791
Chugiak, Alaska 99567

RE: HB106

March 9, 1995

House Finance Committee
The Alaska Legislature
Juneau, Ak FAX 907-465-2418

Dear Representative Hanley and
Members of the House Finance Committee:

PLEASE do not repeal the art in public places law!

For those of us who can't afford art work and have little time to frequent the museums, this law guarantees that we the public will have artistic endeavors around us and in our communities.

By repealing the art in public places law, the public would not save an appreciable amount of money, if any. All monies allocated for a public building would be spent. 1% of those funds, if not spent on art, would be spent on construction and administrative costs. 1% would not be put back into the general fund. Instead it would be absorbed into the project and disappear.

The 1% For Art program has given Alaska many beautiful and worthwhile art works. We the public have these beautiful works to look at in our public places because a very important law has set aside a very small amount of funds to insure this. Don't pass HB106 and take away the public's ability to own art.

Sincerely,
V. B. McConnell
Vivienne B. McConnell

HB

107

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/24/95

FURTHER:

DATE TURNED INTO OFFICE: 5-6-95

The Finance Committee considered CS FOR HOUSE BILL NO. 107(FSH)

"An Act relating to restrictions attached to certain commercial fisheries limited entry permits."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>		<i>[Signature]</i>	✓		
Co-Chair: <i>[Signature]</i>					
Co-Chair: <i>[Signature]</i>			✓		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

DFPG	1/30/95	0	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: CS HB 107(fsh)
(H) Publish Date: 2/10/95

Revision Date: 1/30/95 Dept. Affected: Fish and Game
 Title: Relating to limited entry permits BRU: Commercial Fisheries (Limited) Entry Commission
 Sponsor: Rep. Grussendorf Component: Limited Entry Program Administration
 Requester: Rep. Grussendorf COMPONENT SERIAL NO. 0471

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

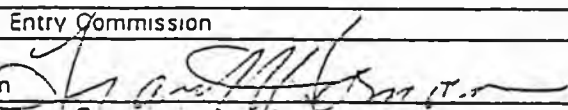
Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Roger Kolden Phone: 789-6160
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 1/30/95

Approved by Commissioner: Frank Homan 
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 1/30/95

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S. FIN
PRESS

SENATE CONCURRENT RESOLUTION NO. 15
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State
2 Legislature concerning House Bill No. 107, relating to restrictions attached to
3 certain commercial fisheries limited entry permits.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the
6 provisions of Rules 24(c), 35, 41(b), and 42(e) of the Uniform Rules, regarding changes to the
7 title of a bill, are suspended in consideration of House Bill No. 107, relating to restrictions
8 attached to certain commercial fisheries limited entry permits.

4/20/95

Already
introduced.

Alaska State Legislature

REPRESENTATIVE
BEN GRUSSENDORF
1221 HALIBUT POINT ROAD
SITKA, ALASKA 99836
(907) 747-8458

FINANCE COMMITTEE

DISTRICT 2
KUPREANOF
PETERSBURG
SITKA
WRANGELL

WHILE IN JUNEAU
STATE CAPITOL
JUNEAU, ALASKA 99901-1182
(907) 465-2824



House of Representatives

MEMORANDUM

TO: Senator Rick Halford
Co-Chairman
Senate Finance Committee

Senator Steve Frank
Co-Chairman
Senate Finance Committee

FROM: Representative Ben Grussendorf

DATE: April 22, 1995

RE: SCSHB 107 (RES), "An Act relating to restrictions attached to certain commercial fisheries limited entry permits."

I would appreciate your consideration in scheduling a hearing for SCSHB 107 (RES) in your committee. This bill has a zero fiscal note. HB 107 was introduced in response to concerns expressed by the Southeast Dungeness Crab Association and other southeast crabbers for the management of the dungeness crab fishery. The current 300 pot limit set by the Board of Fisheries allows any limited entry management of the crab fishery to actually increase the number of pots fished.

In 1991 the Legislature passed a bill allowing the Limited Entry Commission to place a temporary moratorium on the southeast dungeness crab fisheries and other developing fisheries (such as sea cucumbers). That moratorium expires January 2, 1996. Unless some mechanism is in place to limit entry into the fishery, this fishery will be open to all entrants when the moratorium expires on January 2, 1996. As the other western coastal states limit the entry into their crab fishery, more and more pressure will be put on Alaskan resources by non-resident fishermen.

There were two amendments adopted to the original bill. The House Special Committee on Fisheries deleted the sentence on page 2 lines 22-23 of the original bill: "The fishing capacity allowed under an entry permit

may not be changed after the permit is issued." The Department of Law suggested the amendment. It only clarifies that nothing in this bill shall limit the powers of the Board of Fisheries.

The Senate Resources Committee adopted an amendment to the title of the bill and to Section 2 and Section 4 at the request of Senator Taylor. The amendment allows the Limited Entry Commission to consider a "stacking" proposal for permits. Stacking allows permit holders to buy more than one permit. It does not allow fishing more than the limit established by the Board of Fisheries. For instance, in Southeast Alaska Dungeness crab fishery, the limit is 300 pots. If a permit is issued for 100 pots, the crabber could purchase additional permits up to the 300 pot limit.

Thank you for your consideration.

Alaska State Legislature

REPRESENTATIVE
BEN GRUSSENDORF
1221 HALIBUT POINT ROAD
SITKA, ALASKA 99836
(907) 747-6488

WHILE IN JUNEAU
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 485-3824

FINANCE COMMITTEE

DISTRICT 2
KUPARUK
METERSBURG
SITKA
WRANGELL



House of Representatives

RECEIVED
APR 25 REC'D

SPONSOR STATEMENT

SCS CS HOUSE BILL 107 (RES)

"An Act relating to commercial fisheries limited entry permits."

House Bill 107 was introduced in response to concerns expressed by the Southeast Dungeness Crab Association and other southeast crabbers for the management of the dungeness crab fishery. The current 300 pot limit set by the Board of Fisheries for Southeast dungeness crab allows any limited entry management of the crab fishery to result in an increase in the number of pots fished.

The legislature passed a bill in 1991 which allowed the Commercial Fisheries Limited Entry Commission to establish a temporary moratorium for the Southeast dungeness crab fishery. That moratorium expires January 2, 1996. Unless some mechanism is in place when the moratorium expires, this fishery will be open to all entrants. Since the dungeness crab fisheries in the rest of the western coastal states is already limited, that means out-of-state fishermen will be the main beneficiaries of not passing this bill. The resource is going to be put under increasing pressure.

HB 107 allows the Commercial Fisheries Limited Entry Commission to base any future limited entry plan on the historic use of the fishery. It does not mandate that the Commission adopt any one plan. The amendment adopted by the Senate Resources Committee allows these permits to be "stacked." The original bill allowed permits to be issued for 50 pots, or 100 pots based on the number of pots fished before the moratorium was put in place. The amendment allows the Commission to establish a program for purchasing more than one permit, as long as the 300 pot limit is not exceeded. It is the Commission's decision to adopt a plan or not.

HB 107 will allow the Commercial Fisheries Entry Commission to manage a natural resource and to preserve a local economically viable industry. I respectfully request your support.

**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 24, 1995

SUBJECT: Sectional summary of SCS CSHB 107(RES); An Act relating to commercial fisheries limited entry permits.

TO: Representative Ben Grussendorf

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of SCS CSHB 107(RES); An Act relating to commercial fisheries limited entry permits.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill sets out the findings of the Legislature regarding the need to restrict fishing capacity associated with entry permits in certain fisheries.

Section 2 of the bill amends AS 16.43.140(c) in order to allow a person to own more than one limited entry permit for a single fishery, if the Alaska Commercial Fisheries Entry Commission has exercised its authority under AS 16.43.27(d), added by sec. 4 of the bill, to issue entry permits restricting the amount of gear that a permit holder may use in the fishery. A person may only hold as many entry permits for the fishery as are necessary to authorize the use of an entire unit of gear. Regardless of how many entry permits the person may hold for the fishery, the person may not fish more than one unit of gear as defined by the Board of Fisheries.

Section 3 of the bill amends AS 16.43.150(a) to conform with AS 16.43.270(d), as added by sec. 4 of the bill.

Section 4 of the bill adds a new subsection to AS 16.43.270 in order to authorize the Alaska Commercial Fisheries Entry Commission to restrict the fishing capacity that may be employed under certain kinds of entry permits. The commission determines the manner in which fishing capacity is to be limited. The maximum fishing capacity that may be allowed under an entry permit issued under this provision is based on the past fishing practices of the person who initially receives the permit. The restriction on fishing capacity that is attached to the permit

Representative Ben Grussendorf

April 24, 1995

Page 2

may not be exceeded by the permit holder or the permit holder's transferees. This provision may be applied only to fisheries that are subjected to limited entry after this bill takes effect.

Section 5 of the bill amends AS 16.43.990(9) by making technical and conforming changes to the definition of "unit of gear".

If I may be of further assistance, please advise.

GU:glc
95-299.glc

MEMORANDUM

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Representative Alan Austerman
Chair
House Special Committee on
Fisheries

DATE: February 3, 1995

FAX NO: 789-6170

TELEPHONE NO: 789-6160

SUBJECT: Position Statement for
HB 107

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
Bruce Twomley, Chairman
Frank Homan, Commissioner
Dale G. Anderson, Commissioner

CFEC POSITION STATEMENT

CFEC supports House Bill Number 107. Under Alaska's current limited entry program, CFEC can limit the number of persons (permit holders) in a fishery but does not have the explicit authority to limit the fishing capacity of similarly situated classes of entry permit holders within a fishery. The legislation is forward oriented and only applies to fisheries limited in the future after completion of the public hearing process. It will have no impact on established limited fisheries. This legislation does not alter or limit the powers of the Board of Fisheries to impose additional restrictions of fishing capacity. HB 107 would provide CFEC with improved resource conservation tools.

The impetus for this legislation was generated by the Southeast Alaska Dungeness crab fishers after public hearings and research during the current moratorium. The need for immediate action is in the impending expiration of the CFEC moratorium on new entrants into the fishery. By law (AS 16.43.227) this moratorium will expire on January 2, 1996. A majority of participants at the public hearings favored a limited entry program for this fishery. If CFEC does not move to limit the fishery before January 2, 1996 it will return to open access.

The current limited entry program has proven effective in limiting the growth in fishing capacity and effort when administered in salmon and herring fisheries when utilization is already maximized. However, the existing program thwarts the Commission's efforts to achieve effective resource conservation goals in Alaska's fisheries that employ a broad spectrum of vessel size and quantity of gear. Simply limiting the number of participants will fail to contain growth in fishing capacity and effort.

In such fisheries, smaller more part-time operations would tend to sell out to larger more full-time operations after limited entry. For example, this is true of the Southeast Alaska Dungeness crab fishery where many small boat participants currently fish a small number of pots on a part-time basis. This is also true in many of the state's other crab fisheries and state managed groundfish fisheries. By setting the fishing capacity of entry permits roughly at pre-limitation levels, entry limitation would do a better job of resource conservation by controlling the growth of excessive fishing capacity and effort.

This legislation would also help preserve the diverse nature of the fleet in such fisheries and help ensure that some of the entry permits in limited fisheries will be available and more affordable to smaller part-time and entry level operations.

Many of Alaska's valuable fisheries that coastal communities depend on may soon be facing an influx of new fishermen because of recent limitation programs and closures in other jurisdictions. In some of these fisheries, access restrictions may be needed in the near future to help conserve stocks and preserve the benefits of development for Alaska. This legislation would allow limitation programs better designed to fit the diverse nature of Alaska's fisheries.

S.E. DUNGENESS CRAB ASSOCIATION
Box 262, Petersburg, Ak. 99833

January 26, 1995

Representative Alan Austerman
Room 434, State Capital
Juneau, Ak. 99801-1182

Dear Rep. Austerman:

I would like to provide a few comments on HB 109 and hopefully win your support on this important legislation.

When the Limited Entry Act was passed in 1974 it was designed for salmon and herring fisheries. These fisheries use one unit of gear (i.e. a seine or a gillnet) and when a particular fishery was limited all the participants were using the same type and amount of gear; neat, simple, and predictable.

Other fisheries often use multiple units of gear (i.e. longline/skates, shrimp/pots, crab/pots) and in these fisheries the Limited Entry Act has posed problems.

In the S.E. dungeness crab fishery growth in the late 1980's created enough concern for the crab resource to prompt the Commercial Fisheries Entry Commission to study limited entry possibilities. The CFEC found that the fleet consisted of a large proportion of part-time fishermen (because of the passive nature of the fishery) who fished considerably less than the 300 pot limit and while qualifying for a limited entry permit would potentially increase the actual gear fishing over pre-limited entry levels. While seeing a real need for participant limitation CFEC could not grant limited entry because of this problem. The Board of Fish also cannot adequately address this situation. The fleet of 325 averages less than 150 pots with approximately 30-40,000 actual pots in the water. Even with a severe cut in pot limits of 50% to 150 pots there is potential to increase effort significantly as well as penalizing those

who do use this fishery as their main source of income. Instead, industry, ADF&G, and the CFEC worked with the 1991 Legislature to pass/create a moratorium for the S.E. dungeness crab fishery in order to study the possibilities of managing this resource.

In the fall of 1994 meetings were held in Juneau, Ketchikan, Sitka, Petersburg, and Wrangell and the overwhelming consensus was to try a tiered approach where fishermen would be given permits tied to gear levels consistent with their past participation. All agreed that this idea was fair because of its inclusive nature and yet provided a solid control for a multi-gear fishery.

This approach can be applied to many fishery resources and gear types as yet uncontrolled but in real need of conservation. The CFEC will be able to design specific limited entry programs that will solve many of the problems of fishery resource conservation as well as provide fair levels of participation.

We urge you to support this amendment and thank you for your time.

Sincerely,

William Flor, SEDCA

SOUTHEAST DUNGENESS CRAB ASSOCIATION

P.O. BOX 262

PETERSBURG, ALASKA 99833

907-772-9248

December 22, 1994

Dear Representative Grussendorf:

It's been almost four years since we passed the moratorium legislation which placed our S.E. Dungeness fishery in it's current moratorium status. This will expire Jan. 2, 1996.

At the request of the S.E. crab fleet the Commercial Fisheries Entry Commission held hearings this fall to try and work out a solution for a more permanent limited access scheme. Four main ideas were discussed: traditional limited entry, IFQ, tiered pot system, and fractional licensing. CFEC is reluctant to impose a traditional limited entry because of a possible increase in effort. (We currently fish a 300 pot limit but average 150 pots, hence the possibility to double the gear in the water.)

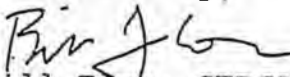
The other three ideas discussed required some type of legislative work. Both IFQ and fractional licensing were seen as too contentious and complicated with little possibility of success.

The tiered pot system was embraced by CFEC and the fleet both for it's fairness and possibility of achievement. Simply stated it places a crabber within a gear strata (i.e. 300/200/100) depending upon past effort. The fairness of this idea lies in that no one is excluded. There are many variations but our hope is that a sufficiently simple bill can be worked out that could achieve passage.

We have contacted CFEC to draft a proposed tiered system bill which we hope you would introduce and support.

Timing is critical. Our moratorium expires after this year and without further protection the S.E. Dungeness fishery will be in serious trouble (Ca., Or., and Wa. limited their dungeness fisheries this year.) We're counting on you to continue your support and looking forward to working with you.

Sincerely,


Bill Flor, SEDCA

c.c. Senator Robin Taylor,
C.F.E.C.

SOUTHEAST DUNGENESS CRAB ASSOCIATION
P.O. Box 262
Petersburg, Alaska 99833
907-772-9248

RECEIVED
DEC 27 1994
COMMERCIAL FISHERIES
ENTRY COMMISSION

December 21, 1994

Commercial Fisheries Entry Commission

Dear Mr. Twomley and staff:

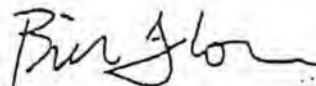
Enclosed is a copy of our letter requesting Rep. Grussendorf and Senator Taylor to introduce and support a tiered pot system bill. As we talked this fall we are counting upon you to draft a bill which will include the major ideas discussed in your hearings and embrace a sufficient simplicity so as to increase our chances of passage.

Our financial status this time around is such that we won't be able to hire a lobbyist to track the bill, therefore, we are also counting heavily upon your help in this area.

We are optimistic about this effort but hope you realize that if it fails a traditional limited access, even if it requires serious pot reductions, must be imposed before the moratorium expires as this fishery will never be able to withstand the certain flood of new participants.

Looking forward to hearing from you!

Sincerely,



Bill Flor, SEDCA

PETERSBURG FISHERIES

division of
ICICLE SEAFOODS, INC.
P.O. BOX 1147
PETERSBURG, ALASKA 99633
907-772-4294
FAX 907-772-4472



February 11, 1995

House Fisheries Committee
Alan Austerman, Chairman
Carl Moses
Kim Elton
Scott Ogan
Gary Davis

Dear House Fisheries Committee:

After having the opportunity to further review and asses new information presented to me regarding HB107, I would like to lend my support to the Bill at this time.

However, I would like to emphasize my belief that the C.F.E.C. should allow for a competitive fishery equitable to the investments of both large and small operators, with regard to their "grandfathered" participation.

It is important that the act allow for further restrictions on fishing capacity (ie. quantity of gear) should the stocks become stressed. In attempting to relieve this stress on the stocks I would hope that the C.F.E.C. would seriously consider the limitations put on the smaller capacities when establishing criteria in an effort to maintain economic viability for all harvesting participants.

Sincerely,

John G. Baird
S.E. Fleet Manager

cc: CFEC
Senate Resource Committee

DEPARTMENT OF FISH AND GAME

POSITION PAPER

Bill No. HB 107

Sponsor: Representative Grussendorf

Division: Commercial Fisheries Management and Development

Bill Title: Restrictions to Certain Limited Entry Permits

Department Position: Support

Background/Legislative Intent:

This legislation would allow CFEC to restrict the fishing capacity of fisheries entering into a limitation program. Limited entry was originally designed for salmon and herring fisheries where a single unit of gear, such as a seine or gillnet, is used. In crab, groundfish, and many developing fisheries, the unit of gear is variable and fishing capacity of the fleet is a function of vessel size - larger vessels carry more pots, shots of longline, or accommodate more divers. In some fisheries the fishing capacity has continued to increase following limitation due to increases in vessel size and corresponding increases in amount of gear fished. As a result, the biological and management advantages of limitation are significantly diluted.

Analysis of Bill/Program Effects:

Rational management to ensure conservation and maximize reproductive potential of a fish resource depends on: (1) effort levels that allow fisheries to be opened and managed without risk of overfishing; (2) fishing seasons of sufficient length to allow accumulation of adequate fishery performance data to validate preseason guideline harvest levels and assure that overfishing does not occur; and (3) reasonable control of gear to prevent loss. Excessive fishing capacity can lead to shortened seasons and fewer data upon which to make management decisions. Such derby style fisheries place both fishermen and resource at a higher level of risk.

Under this legislation, limitation should serve to set a ceiling on fishing capacity of a fishing fleet. It would enable CFEC to implement a program where limited entry permits would be tied to, for example, a vessel size, pot limit, or Board of Fisheries specified fixed or proportional quantity of gear.

Commissioner's Signature


Frank Rue, Commissioner

Date 2/27/95

SENATE COMMITTEE REPORT

DATE: 3/9/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-24-95

John

Resources Committee considered CS FOR HOUSE BILL NO. 107(FSH)

"An Act relating to restrictions attached to certain commercial fisheries limited entry permits."

FSH

and recommends:

- be replaced with S ^{CS} CS/HB 107 (RES)
- adopt previous CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical change
 new: SCR# _____
SCR coming

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Chris L. Taylor</i>	<input checked="" type="checkbox"/>	<i>Bob Hoffman</i>	<input checked="" type="checkbox"/>		
		<i>Phil Stafford</i>	<input checked="" type="checkbox"/>		
		<i>Irma [unclear]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Loren A. Lewis</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
<i>FISH + GAME / COM FISH</i>	<i>2/10</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

03/08/95

HOUSE JOURNAL

PAGE 0648

THIRD READING
FINAL PASSAGE

YEAS: 35 NAYS: 5 EXCUSED: 0 ABSENT: 0

YEAS: AUSTERMAN, BRICE, BROWN, BUNDE, DAVIES, B.DAVIS, G.DAVIS,
ELTON, FINKELSTEIN, FOSTER, GREEN, GRUSSENDORF, HANLEY, IVAN, JAMES,
KOTT, KUBINA, MACKIE, MACLEAN, MARTIN, MASEK, MOSES, MULDER,
NAVARRE, NICHOLIA, OGAN, PARNELL, PHILLIPS, PORTER, ROBINSON, ROKEBERG,
SANDERS, VEZEY, WILLIAMS, WILLIS

NAYS: BARNES, KELLY, KOHRING, THERRIAULT, TOOHEY

WILLIS CHANGED FROM "NAY" TO "YEA".
MASEK CHANGED FROM "NAY" TO "YEA".

AND SO, CSHB 107 (FSH) PASSED THE HOUSE AND WAS REFERRED TO THE
CHIEF CLERK FOR ENGROSSMENT.

SELECTION=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

SENATE COMMITTEE REPORT

DATE: 3/9/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-24-95

Full

Resources Committee considered CS FOR HOUSE BILL NO. 107(FSH)

"An Act relating to restrictions attached to certain commercial fisheries limited entry permits."

FSN

and recommends:

- be replaced with S ^{CS} CS/HB 107 (RES)
- adopt previous CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical change
 new: SCR# _____
SCR coming

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Adrian L. Taylor</i>	<input checked="" type="checkbox"/>	<i>Tom Huffer</i>	<input checked="" type="checkbox"/>		
		<i>Rick Stafford</i>	<input checked="" type="checkbox"/>		
		<i>Irma Leach</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Loren A. Lewis</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>FISH + GAME / COM FISH</i>	<i>2/10</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

03/08/95

HOUSE JOURNAL

PAGE 0648

THIRD READING
FINAL PASSAGE

YEAS: 35 NAYS: 5 EXCUSED: 0 ABSENT: 0

YEAS: AUSTERMAN, BRICE, BROWN, BUNDE, DAVIES, B.DAVIS, G.DAVIS,
ELTON, FINKELSTEIN, FOSTER, GREEN, GRUSSENDORF, HANLEY, IVAN, JAMES,
KOTT, KUBINA, MACKIE, MACLEAN, MARTIN, MASEK, MOSES, MULDER,
NAVARRE, NICHOLIA, OGAN, PARNELL, PHILLIPS, PORTER, ROBINSON, ROKEBERG,
SANDERS, VEZEY, WILLIAMS, WILLIS

NAYS: BARNES, KELLY, KOHRING, THERRIALT, TOOHEY

WILLIS CHANGED FROM "NAY" TO "YEA".
MASEK CHANGED FROM "NAY" TO "YEA".

AND SO, CSHB 107 (FSH) PASSED THE HOUSE AND WAS REFERRED TO THE
CHIEF CLERK FOR ENGROSSMENT.

SELECTION=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

HB

108

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 23, 1995

FURTHER REFERRALS:

Date of Committee Action: 3/8/95

The FINANCE Committee considered:

HB 108

HOUSE BILL NO. 108

USE PFD'S TO RECOVER WELFARE OVERPAYMENTS

"An Act relating to claims on permanent fund dividends for defaulted public assistance overpayments."

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

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

ADOPTS: _____ Letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

2 [✓] fiscal note(s) DHSS

[] fiscal note(s) _____

[] zero fiscal note(s) _____

[✓] zero fiscal note(s) Revenue: 2/23/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Edon Mulder</i>	MULDER	X			
<i>Terry Martin</i>	MARTIN	X			
<i>Vick Kohring</i>	Kohring	X			
<i>Ben Grussendorf</i>	Grussendorf	X			
<i>Mike Navarre</i>	Navarre	X			
<i>Fay Brown</i>	BROWN		✓	X	
<i>Pete Kelly</i>	Kelly	✓			
<i>Sean Parnell</i>	Parnell	X			
<i>Richard Hanley</i>	Hanley	X			
<i>Richard Foster</i>	FOSTER	X			

CO-CHAIR'S SIGNATURE

Richard Hanley
 Hanley

Richard Foster
 FOSTER

FISCAL NOTE

No. 1
 Bill Version: HB 108
 (H) Publish Date: 2/23/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Revenue
 Title: Use PFD's to Recover Welfare Payments BRU: Permanent Fund Dividend Division
 Component: Permanent Fund Dividend Division
 Sponsor: Reorepresentatives TOOHEY, Sunde
 Requester: House Judiciary COMPONENT SERIAL NO. 981

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This legislation would establish a procedure for serving attachments against dividends that is virtually identical to the process currently in place under AS 43.23.067 for the Alaska Commission on Postsecondary Education. Accordingly, the Division does not anticipate any significant additional costs to implement this legislation if enacted.

Prepared by: Thomas C. Williams, Director *Thomas C. Williams* Phone: 465-2323
 Division: Permanent Fund Dividend Division Date: 1/25/95
 Approved by Commissioner: *[Signature]* Date: 1/25/95
 Agency: Department of Revenue

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 108

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to claims on PFD's for
defaulted public assistance overpayments BRU: Assistance Payments
 Sponsor: Toobey Component: AFDC
 Requestor: House JUD COMPONENT SERIAL NO. 220
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGES IN REVENUES	16.5	27.5	30.2	27.5	27.5	24.7
---------------------	------	------	------	------	------	------

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY96	FY97	FY98	FY99	FY00	FY01
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
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 any current year (FY95) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHMENT

Prepared by: Jim Dalman, Acting Director Phone: 465-2680
 Division: Division of Public Assistance Date: 02/02/95
 Approved by Commissioner: Karen Perdue, Commissioner Date: 2/16/95
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):

HB 108 amends existing statutes to provide authority for the Department of Health and Social Services to collect delinquent public assistance overpayment debts by administrative garnishment of Permanent Fund dividends. This legislation results in increased debt collection by the Division of Public Assistance.

AFDC benefits are 50 percent state/50 percent federally funded. When the State recovers AFDC overpayments, it returns the federal share to the federal government and retains the state share.

Assumptions:

- All revenues are collections against prior years' costs
- The state retains 50 percent of AFDC collections as General Fund receipts
- 50 percent of AFDC collections are returned directly to the federal government
- Average claim collection via PFD garnishment = \$550
- Collections will rise in the first 3 years, then decline as backlog of delinquent claims is cleared.

Calculations:

	FY96	FY97	FY98	FY99	FY00	FY01
Claims collections	60	100	110	100	100	90
Total collected	33.0	55.0	60.5	55.0	55.0	49.5
Increased GF Receipts	16.5	27.5	30.2	27.5	27.5	24.7

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 108

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to claims on PFD's for BRU: Public Assistance Admin
defaulted public assistance overpayments Component: Public Assistance Admin
 Sponsor: Toohy COMPONENT SERIAL NO. 233
 Requestor: House JUD See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGES IN REVENUES	3.4	8.1	11.2	9.0	9.0	8.1
---------------------	-----	-----	------	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
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 any current year (FY95) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHMENT

Prepared by: Jim Dalman, Acting Director Phone: 465-2680
 Division: Division of Public Assistance Date: 02/02/95
 Approved by Commissioner: Karen Perdue, Commissioner Date: 2/6/95
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):

HB 108 amends existing statutes to provide authority for the Department of Health and Social Services to collect delinquent public assistance overpayment debts by administrative garnishment of Permanent Fund dividends. This legislation results in increased debt collection by the Division of Public Assistance.

Food Stamp Program overpayment collections generate revenue to the State. Although food stamps are 100 percent federally funded, states are allowed to retain collection incentives of 10 percent of recoveries of overpayments caused by inadvertent household error and 25 percent of recoveries of payments caused by recipient fraud. These recovery incentives will increase to 25 and 50 percent respectively in October, 1995.

Assumptions:

- All revenues are collected against prior years' costs
- Average state retention rate = 15 percent in FY96
- Average state retention rate = 30 percent in FY97 through FY01
- State retentions are applied as GF receipts
- Balance after state retention is returned directly to the federal government
- State portion of recoveries is applied against prior years' costs for Public Assistance Administration
- Collections will rise in the first 3 years, then decline as backlog of existing claims is cleared

Collections:

	FY96	FY97	FY98	FY99	FY00	FY01
Claims collections	75	90	125	100	100	90
Total Collected	22.5	27.0	37.5	30.0	30.0	27.5
Increased GF Receipts	3.4	8.1	11.2	9.0	9.0	8.1

HELD

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: HB 108

1 Page 1, line 8:

2 Delete "is"

3 Insert "may be"

4 Page 1, after line 13:

5 Insert a new subparagraph to read:

6 "(A) the Department of Health and Social Services notified the
7 individual of the overpayment claim within 30 days after the overpayment was
8 made;"

9 Reletter the following subparagraphs accordingly.

10 Page 2, line 4:

11 Delete "(A)"

12 Insert "(B)"



OFFICIAL BUSINESS

Alaska State Legislature

House of Representatives

REPRESENTATIVE
CYNTHIA TOOHEY
DISTRICT 13

STATE CAPITOL ROOM 104
JUNEAU, ALASKA 99801-1123
19071 465-4910

718 WEST 4TH AVENUE, SUITE 330
ANCHORAGE, ALASKA 99501-2113
19071 298-6168

SPONSOR STATEMENT

House Bill 108

"An Act relating to claims on permanent fund dividends for defaulted public assistance overpayments"

House Bill 108 would give the Department of Health and Social Services the administrative authority to garnish permanent fund dividends of individuals who have received public assistance overpayments and are delinquent in repaying the debt.

Frequently persons receiving overpayments agree to repay the debt, but fail to do so. If a person is still on public assistance, the person's benefit can be reduced as a means of collection, but if a person is off assistance, collection becomes difficult. There is currently over half a million dollars in outstanding debt due the Department.

Collection through the court system can be time-consuming and costly, House Bill 108 would allow the Department to pursue in the same manner that delinquent student loans are pursued.

Your support would be appreciated.

SECTIONAL ANALYSIS OF HB 108

Sec. 1. The Alaska Exemptions Act (AS 09.38) does not apply to permanent fund dividends taken to satisfy the balance due on a defaulted public assistance overpayment claim. The provisions dealing with execution on claims do not apply and a method of executing on a dividend is set out.

Sec. 2. The permanent fund dividend of a former recipient of a public assistance program may be taken to satisfy the balance due on a defaulted overpayment claim.

HB

108

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/7/95

FURTHER:

DATE TURNED INTO OFFICE: 4-21-95

The Finance Committee considered HOUSE BILL NO. 108

"An Act relating to claims on permanent fund dividends for defaulted public assistance overpayments."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical change
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Steve Hein</i>	✓	<i>Paul F. Zharoff</i>	✓		
<i>Ross & Reed</i>	✓				
<i>Wendell Douglas</i>	✓				
<i>Ben Sharp</i>	✓				
Co-Chair: <i>[Signature]</i>	✓				
Co-Chair: <i>Rich Halford</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

#1	DOR	1/25/95	0	
#2	DHSS (Pub. Assis)	2/6/95	0	3.4 rev.
#3	DHSS (AFDC)	2/6/95	0	16.5 rev.

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 3
Bill Version: HB 108
(H) Publish Date: 3/9/95

Revision Date: _____
Title: An Act relating to claims on PFD's for defaulted public assistance overpayments
Sponsor: Toobey
Requestor: House JUD

Dept. Affected: Health and Social Services
BRU: Assistance Payments
Component: AFDC
COMPONENT SERIAL NO. 220
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGES IN REVENUES	16.5	27.5	30.2	27.5	27.5	24.7
---------------------	------	------	------	------	------	------

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
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 any current year (FY95) cost: 50.0

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHMENT

Prepared by: Jim Dalman, Acting Director
Division: Division of Public Assistance
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-2680
Date: 02/02/95
Date: 2/6/95

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ANALYSIS (cont.):

HB 108 amends existing statutes to provide authority for the Department of Health and Social Services to collect delinquent public assistance overpayment debts by administrative garnishment of Permanent Fund dividends. This legislation results in increased debt collection by the Division of Public Assistance.

AFDC benefits are 50 percent state/50 percent federally funded. When the State recovers AFDC overpayments, it returns the federal share to the federal government and retains the state share.

Assumptions:

- All revenues are collections against prior years' costs
- The state retains 50 percent of AFDC collections as General Fund receipts
- 50 percent of AFDC collections are returned directly to the federal government
- Average claim collection via PFD garnishment = \$550
- Collections will rise in the first 3 years, then decline as backlog of delinquent claims is cleared.

Calculations:

	FY96	FY97	FY98	FY99	FY00	FY01
Claims collections	60	100	110	100	100	90
Total collected	33.0	55.0	60.5	55.0	55.0	49.5
Increased GF Receipts	16.5	27.5	30.2	27.5	27.5	24.7

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 2
Bill Version: HB 108
(H) Publish Date: 3/9/95

Revision Date: _____
Title: An Act relating to claims on PFD's for defaulted public assistance overpayments
Sponsor: Toohy
Requestor: House JUD

Dept. Affected: Health and Social Services
BRU: Public Assistance Admin
Component: Public Assistance Admin
COMPONENT SERIAL NO. 233
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGES IN REVENUES	3.4	8.1	11.2	9.0	9.0	8.1
---------------------	-----	-----	------	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
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 any current year (FY95) cost: 50.0

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHMENT

Prepared by: Jim Dalman, Acting Director
Division: Division of Public Assistance
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-2680
Date: 02/02/95
Date: 2/6/95

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ANALYSIS (cont.):

HB 108 amends existing statutes to provide authority for the Department of Health and Social Services to collect delinquent public assistance overpayment debts by administrative garnishment of Permanent Fund dividends. This legislation results in increased debt collection by the Division of Public Assistance.

Food Stamp Program overpayment collections generate revenue to the State. Although food stamps are 100 percent federally funded, states are allowed to retain collection incentives of 10 percent of recoveries of overpayments caused by inadvertent household error and 25 percent of recoveries of payments caused by recipient fraud. These recovery incentives will increase to 25 and 50 percent respectively in October, 1995.

Assumptions:

- All revenues are collected against prior years' costs
- Average state retention rate = 15 percent in FY96
- Average state retention rate = 30 percent in FY97 through FY01
- State retentions are applied as GF receipts
- Balance after state retention is returned directly to the federal government
- State portion of recoveries is applied against prior years' costs for Public Assistance Administration
- Collections will rise in the first 3 years, then decline as backlog of existing claims is cleared

Collections:

	FY96	FY97	FY98	FY99	FY00	FY01
Claims collections	75	90	125	100	100	90
Total Collected	22.5	27.0	37.5	30.0	30.0	27.5
Increased GF Receipts	3.4	8.1	11.2	9.0	9.0	8.1

FISCAL NOTE

No. 1
 Bill Version: HB 108
 (H) Publish Date: 2/23/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Revenue
 Title: Use PFD's to Recover Welfare Payments BRU: Permanent Fund Dividend Division
 Component: Permanent Fund Dividend Division
 Sponsor: Representatives TOOHEY, Bunde
 Requester: House Judiciary COMPONENT SERIAL NO. 981

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1006 GF.MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This legislation would establish a procedure for serving attachments against dividends that is virtually identical to the process currently in place under AS 43.23.067 for the Alaska Commission on Postsecondary Education. Accordingly, the Division does not anticipate any significant additional costs to implement this legislation if enacted.

Prepared by: Thomas C. Williams, Director *Thomas Williams* Phone: 465-2323
 Division: Permanent Fund Dividend Division Date: 1/25/95
 Approved by Commissioner: *[Signature]* Date: 1/25/95
 Agency: Department of Revenue

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LEGISLATIVE COMMITTEE REPORT

DATE: 3/20/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-7-95

John

HESS Committee considered HOUSE BILL NO. 108

"An Act relating to claims on permanent fund dividends for defaulted public assistance overpayments."

Dist. 1/2/95

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical change
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>	<i>Andrew E. Selo</i>	<input checked="" type="checkbox"/>		
<i>Karen A. Leman</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Lyle Green</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
<i>H88</i>	<i>2/2/95</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>H88</i>	<i>2/6/95</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>DOR - PFDIS</i>	<i>1/25/95</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

03/15/95

HOUSE JOURNAL

PAGE 0750

ABSENT: BROWN

AND SO, AMENDMENT NO. 1 WAS NOT ADOPTED.

REPRESENTATIVE VEZEY MOVED AND ASKED UNANIMOUS CONSENT THAT HB 108 BE CONSIDERED ENGROSSED, ADVANCED TO THIRD READING AND PLACED ON FINAL PASSAGE. THERE BEING NO OBJECTION, IT WAS SO ORDERED.

HB 108 WAS READ THE THIRD TIME.

THE QUESTION BEING: "SHALL HB 108 PASS THE HOUSE?" THE ROLL WAS TAKEN WITH THE FOLLOWING RESULT:

HB 108
THIRD READING
FINAL PASSAGE

YEAS: 36 NAYS: 1 EXCUSED: 2 ABSENT: 1

YEAS: AUSTERMAN, BRICE, BUNDE, DAVIES, B.DAVIS, G.DAVIS, ELTON, FINKELSTEIN, FOSTER, GREEN, GRUSSENDORF, HANLEY, IVAN, JAMES, KELLY, KOHRING, KOTT, KUBINA, MACKIE, MARTIN, MASEK, MOSES, MULDER, NAVARRE, OGAN, PARNELL, PHILLIPS, PORTER, ROBINSON, ROKEBERG, SANDERS, THERRIAULT, TOOHEY, VEZEY, WILLIAMS, WILLIS

03/15/95

HOUSE JOURNAL

PAGE 0751

HB 108

NAYS: MACLEAN

EXCUSED: BARNES, NICHOLIA

ABSENT: BROWN

AND SO, HB 108 PASSED THE HOUSE.

REPRESENTATIVE KUBINA GAVE NOTICE OF RECONSIDERATION OF HIS VOTE ON HB 108.

SELECTION=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

HB

109

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/11/96

FURTHER: REPORTED OUT OF SFC 5/3/96

DATE TURNED INTO OFFICE: 5-3-96

The Finance Committee considered CS FOR HOUSE BILL NO. 109(JUD)

"An Act relating to telephone solicitations, advertisements, and directory listings."

*SFC(FIN)
coming*

and recommends:

be replaced with S CS CS HB 109 (FIN)

adopt previous CS ()

attached amendment(s)

adopt Letter of Intent by the House Judiciary Committee

further referral to the Committee

Senate Bill:
 same title
 new title
House Bill:
 same title
 technical change
 new: SCR# 32

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AI
<i>Steve Rein</i>	✓	<i>John E. P...</i>	✓		
		<i>W...</i>	✓		
		<i>Paul...</i>	✓		
		<i>Sen...</i>	✓		
Co-Chair:		Co-Chair: <i>[Signature]</i>	✓		
Co-Chair:		Co-Chair: <i>Rick Halsted</i>	✓		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

#	Department	Date	Zero	Fiscal
#2	DC&ED (APUC)	7/4/96	0	
#3	DOLaw	2/7/96	0	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

House Judiciary Committee Letter of Intent for CSHB 109 (JUD)

CSHB 109 was passed out by the House Judiciary Committee on February 14, 1996. The committee's intent is that this bill, which makes it a violation of Alaska's consumer protection laws to telephonically solicit residential telephone users under some circumstances, not result in liability for local exchange telecommunication companies for such violations.

DATED: 2

By: Brian D. Porter

Brian Porter, Chairman House Judiciary Committee

HOUSE ADOPTED 3/8/96

FISCAL NOTE

No. 3

Bill Version: CSHB 109(JUD)

(H) Publish Date: 2/15/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date:		Dept. Affected:	Department of Law
Title:	<u>"An Act relating to telephone directory listings and solicitations."</u>	BRU:	Civil Division
Sponsor:	<u>Representative Brown</u>	Component:	General Legal Services
Requester:	<u>Representative Brown</u>	COMPONENT SERIAL NO.	<u>2087</u>

Expenditures/Revenues (Thousands of Dollars)

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

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

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME	0.01	0.01	0.01	0.01	0.01	0.01
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the state's consumer protection laws to make it unlawful to engage in telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directly as not wishing to receive telephone solicitations. The bill also requires local exchange telecommunication companies provide for the identification in their telephone directories of those residential customers who do not wish to receive telephone solicitations. Upon request by a person who engages in telephone solicitations, local exchange telephone companies would further be required to provide a list of all telephone numbers in their telephone directories of residential customers who do not wish to receive telephone solicitations. The bill should help reduce unwanted telephone solicitations once sufficient time has run to allow for the telephone directory identification process to occur. Nevertheless, some telephone solicitation organizations may choose to ignore the bill's prohibition against unwanted solicitations, resulting in complaints to the Better Business Bureau, which handles complaint taking for the state. The Department of Law is

Richard I. Peques

Prepared by: <u>Richard I. Peques, Director</u>	Phone: <u>465-3672</u>
Division: <u>Administrative Services Division</u>	Date: <u>2/7/96</u>
Approved by Commissioner: <u>Bruce M. Borelho, Attorney General</u>	Date: <u>2/7/96</u>
Agency: <u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 109 (JUD)

ANALYSIS CONTINUATION:

The bill should help reduce unwanted telephone solicitations once sufficient time has run to allow for the telephone directory identification process to occur. Nevertheless, some telephone solicitation organizations may choose to ignore the bill's prohibition against unwanted solicitations, resulting in complaints to the Better Business Bureau, which handles complaint taking for the state. The Department of Law is available for enforcement purposes if there is a large enough number of violations to warrant enforcement. At this point we believe that, once there is efficient directory identification of those who do not wish to receive telephone solicitations, the number of violations will not be sufficient to have a fiscal impact for the Department of Law.

FISCAL NOTE

CORRECTED FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill ² Version: CSHB 109(JUD)
(H) Publish Date: 2/15/96

Revision Date: _____ Department: Commerce and Economic Development
An act relating to telephone advertisements. BRU: AK Public Utilities Commission
Communications and directory listings Component: AK Public Utilities Commission
 Sponsor: Rep. Kay Brown
 Requestor: House Judiciary COMPONENT SERIAL NO. #364

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES

CHANGE IN REVENUES

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
4 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 This bill would have a zero fiscal impact on the Alaska Public Utilities Commission. Enforcement of this bill would be by the Department of Law.

Prepared by: Robert A. Lonn, Executive Director Phone: (907)276-6222
 Division: AK Public Utilities Commission Date: February 6, 1996
 Approved by Commissioner: William L. Hensley *W. L. Hensley* Date: 2-6-96
 by: Commerce and Economic Development

5/3/96

moved Sen. Rieger
w/o objection adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

9-LS042410
Cramer
5/2/96

moved Sen. Rieger

no { Frank
Sharp
Phillips

SENATE CS FOR CS FOR HOUSE BILL NO. 109()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BROWN, Navarre, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to telephone solicitations, advertisements, and directory listings
2 and relating to political polling and campaigning by telephone."

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

4 * Section 1. AS 15.13 is amended by adding a new section to read:

5 Sec. 15.13.095. FALSE STATEMENTS IN TELEPHONE POLLING AND
6 CALLS TO CONVINCING. (a) A candidate who is damaged as the result of a false
7 statement about the candidate made with knowledge that it was false, or with reckless
8 disregard for whether it was false or not, made as part of a telephone poll or an
9 organized series of calls, and made with the intent to convince potential voters
10 concerning the outcome of an election in which the candidate is running may recover
11 damages in an action in superior court under this section against the individual who
12 made the telephone call, the individual's employer, and the person who contracted for
13 or authorized the poll or calls to convince. However, the employer of the individual
14 or the person who contracted for or authorized the poll or calls to convince is liable

1 to the defamed candidate only if the employer or person authorized the statement to
2 be made, knowing that it was false or with reckless disregard for whether it was false
3 or not, as part of the poll or calls to convince.

4 (b) The court may award damages, including punitive damages. If the court
5 finds that the result of the statement places the integrity of the election process in
6 substantial doubt, the eligibility of the successful candidate to hold the office to which
7 elected shall be determined as provided in AS 15.56.110(b) or, in the case of a
8 candidate for governor or lieutenant governor, by impeachment under art. II, sec. 20,
9 Constitution of the State of Alaska.

10 * Sec. 2. AS 15.56 is amended by adding a new section to read:

11 Sec. 15.56.025. TELEPHONE CAMPAIGN MISCONDUCT. (a) A person
12 commits the crime of telephone campaign misconduct if the person makes a statement
13 about a candidate

14 (1) as part of an organized telephone poll or organized series of calls
15 to convince potential voters concerning the outcome of an election;

16 (2) that the person knows to be false; and

17 (3) that the person intends to affect the outcome of the election.

18 (b) Violation of this section is a corrupt practice. However, notwithstanding
19 AS 15.20.540, only a defeated candidate may contest the nomination or election of a
20 person for violation of this section.

21 (c) Telephone campaign misconduct is a class A misdemeanor.

22 * Sec. 3. AS 45.50.471(b) is amended by adding a new paragraph to read:

23 (41) failing to comply with AS 45.50.475.

24 * Sec. 4. AS 45.50 is amended by adding a new section to read:

25 Sec. 45.50.475. UNLAWFUL, UNWANTED TELEPHONE
26 ADVERTISEMENTS AND SOLICITATIONS. (a) A person is in violation of
27 AS 45.50.471(b)(41) if the person

28 (1) engages in the telephone solicitation of a residential telephone
29 customer of a telecommunications company and the customer is identified in the
30 telephone directory as not wishing to receive telephone solicitations; or

31 (2) originates a telephone call using an automated or recorded message

1 as a telephonic advertisement or solicitation.

2 (b) A local exchange telecommunications company and a company that
3 provides a telephone directory on behalf of a local exchange telecommunications
4 company shall provide for the identification in the telephone directory of those
5 residential customers who do not wish to receive telephone solicitations. The local
6 exchange telecommunications company may impose a reasonable charge for
7 identification in the directory. The charge shall be based on the cost of providing the
8 identification and is subject to the approval of the Alaska Public Utilities Commission.

9 (c) A local exchange telecommunications company shall, upon request, provide
10 to a person who engages in telephone solicitation a list of all telephone numbers
11 identified in the telephone directory as residential customers who do not wish to
12 receive telephone solicitations. If possible and if requested by the person who engages
13 in telephone solicitation, this list shall be provided in computer readable format. The
14 local exchange telephone company may impose a reasonable charge for the list. The
15 charge shall be based on the cost of providing the list and is subject to the approval
16 of the Alaska Public Utilities Commission.

17 (d) A person who employs individuals to engage in telephone solicitations is
18 not liable for the violation of AS 45.50.475 if an employee solicits a residential
19 telephone customer who is identified in the telephone directory as not wishing to
20 receive telephone solicitations if the person establishes that

21 (1) the person has adopted and implemented written procedures to
22 comply with (a) of this section including corrective actions where appropriate;

23 (2) the person has trained its personnel in the procedures established
24 under (1) of this subsection;

25 (3) the call that violated AS 45.50.475 was made contrary to the
26 procedures and policies established by the person; and

27 (4) calls on behalf of the person that result in violations of
28 AS 45.50.475 are infrequent.

29 (e) An individual who solicits a residential telephone customer who is identified
30 in the telephone directory as not wishing to receive telephone solicitations is not liable
31 for the violation of AS 45.50.475 if the individual establishes that the individual did

1 not intend to make a call in violation of AS 45.50.475 and did not recklessly disregard
2 information or policies and procedures that would have avoided the improper call.

3 (f) Local exchange telecommunications companies shall inform residential
4 customers of the provisions of this section. Notification may be made by

5 (1) annual inserts in the billing statements mailed to residential
6 customers; or

7 (2) conspicuous publication of the notice in the consumer information
8 pages of local telephone directories.

9 (g) In this section,

10 (1) "charitable organization" has the meaning given in AS 45.68.900;

11 (2) "customer" means a residential telephone customer of a
12 telecommunications company;

13 (3) "telephone solicitation"

14 (A) means the solicitation by a person by telephone of a
15 customer at the residence of the customer for the purpose of encouraging the
16 customer to purchase property, goods, or services, or make a donation;

17 (B) does not include

18 (i) calls made in response to a request or inquiry by the
19 called customer or communications made during a call made by the
20 customer;

21 (ii) calls made by a charitable organization, a public
22 agency, or volunteers on behalf of the charitable organization or public
23 agency to members of the organization or agency or to persons who,
24 within the last 24 months, have made a donation to the organization or
25 agency or expressed an interest in making a donation;

26 (iii) calls limited to ^[polling or] soliciting the expression of ideas,
27 opinions, or votes; *deleted*

28 (iv) business-to-business calls; or

29 (v) a person soliciting business from prospective
30 purchasers who have, within the last 24 months, purchased from the
31 person making the solicitation or from the business enterprise for which

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the person is calling but only if the person or business enterprise has not received a written request from the prospective purchaser asking that telephone solicitations cease; the person or business enterprise is presumed to have received a written request no later than 10 days after the prospective purchaser mailed it, properly addressed and with the appropriate postage;

* Sec. 5. AS 45.50.472 is repealed.

AMENDMENT #1

OFFERED IN THE SENATE

TO: CSHB 109(JUD)

1 Page 2, line 10, after "(d)":

2 Insert "A person who employs individuals to engage in telephone solicitations is not
3 liable for the violation of AS 45.50.475 if an employee solicits a residential telephone
4 customer who is identified in the telephone directory as not wishing to receive telephone
5 solicitations if the person establishes that

6 (1) the person has adopted and implemented written procedures to
7 comply with (a) of this section; *including corrective action, where appropriate*

8 (2) the person has trained its personnel in the procedures established
9 under (1) of this subsection;

10 (3) the call that violated AS 45.50.475 was made contrary to the
11 procedures and policies established by the person; and

12 (4) calls on behalf of the person that result in violations of
13 AS 45.50.475 are infrequent.

14 (e) An individual who solicits a residential telephone customer who is
15 identified in the telephone directory as not wishing to receive telephone solicitations
16 is not liable for the violation of AS 45.50.475 if the individual establishes that the
17 individual did not intend to make a call in violation of AS 45.50.475 and did not
18 recklessly disregard information or policies and procedures that would have avoided
19 the improper call.

20 (f)"

21 Reletter the following subsections accordingly.

SR
Amend.
Adopted

Newspaper Marketing
Assoc. Amendment.
Rep. Brown

Sectional

Amendment 9-LS0424\G.23

Offered to HB-109 in Senate Finance Committee

prepared by staff to Senator Druc Pearce

March 26, 1996

1. The amendment adds “; and relating to political polling and campaigning by telephone” to the title of the bill.
2. It adds a new section to Alaska’s elections statute, title 15, that says a candidate defamed by negative telephone polling may recover damages in Superior Court from the individual who made the call, the individual’s employer, the person who contracted for or authorized the telephone calls, and the defaming candidate. Defendants are only liable if they authorized the calls knowing with reckless disregard the statement to be false.

Court ordered penalties can include fines up to \$5,000, one year in jail, and punitive damages. The elected official may suffer the potential loss of their seat. Elections covered include Municipal, Borough, State Legislative, up to Gubernatorial races. The loss of seat would occur if the individual was found guilty by the courts and their governing body voted by a 2/3 vote to expel the slandering individual. In the case of a Governor or Lt. Governor impeachment proceedings may be instituted as determined by the State Senate.

3. Adds a new section to Alaska’s Election Offense statute that defines as a corrupt practice “Telephone Campaign Misconduct.” The act is classified as a class A misdemeanor and only the defamed candidate may bring suit.

2

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSHB 109(JUD)

See p. 2 Amend by Sen. Frank - Adopted

1 Page 1, line 1, following "listings":

2 Insert "; and relating to political polling and campaigning by telephone"

3 Page 1, following line 2:

4 Insert new bill sections to read:

5 **"* Section 1.** AS 15.13 is amended by adding a new section to read:

6 Sec. 15.13.095. FALSE STATEMENTS IN TELEPHONE POLLING AND
7 CALLS TO CONVINCING. (a) A candidate who is damaged as the result of a false
8 statement about the candidate made with knowledge that it was false, or with reckless
9 disregard for whether it was false or not, made as part of a telephone poll or an
10 organized series of calls, and made with the intent to convince potential voters
11 concerning the outcome of an election in which the candidate is running may recover
12 damages in an action in superior court under this section against the individual who
13 made the telephone call, the individual's employer, and the person who contracted for
14 or authorized the poll or calls to convince. However, the employer of the individual
15 or the person who contracted for or authorized the poll or calls to convince is liable
16 to the defamed candidate only if the person authorized the statement to be made,
17 knowing that it was false or with reckless disregard for whether it was false or not,
18 as part of the poll or calls to convince.

see motion

for a violation of this section. Adopted

19 (b) The court may award damages, including punitive damages, ^λ If the court
20 finds that the result of the statement places the integrity of the election process in
21 substantial doubt, the eligibility of the successful candidate to hold the office to which
22 elected shall be determined as provided in AS 15.56.110(b) or, in the case of a
23 candidate for governor or lieutenant governor, ^{by} _λ impeachment under art. II, sec. 20,
24 Constitution of the State of Alaska.

1 * Sec. 2. AS 15.56 is amended by adding a new section to read:

2 Sec. 15.56.025. TELEPHONE CAMPAIGN MISCONDUCT. (a) A person
3 commits the crime of telephone campaign misconduct if the person makes a statement
4 about a candidate

5 (1) as part of an organized telephone poll or organized series of calls
6 to convince potential voters concerning the outcome of an election;

7 (2) that the person knows to be false;

8 (3) that the person intends to affect the outcome of the election; and

9 ~~(4) that damages the candidate's reputation for honesty, integrity, or~~
10 ~~the candidate's qualifications to serve if elected to office.~~

SF
moved
to delete
(4)
DD Obj
Adopted
4-3 RP
DD

11 (b) Violation of this section is a corrupt practice. However, notwithstanding
12 AS 15.20.540, only a defeated candidate may contest the nomination or election of
13 a person for violation of this section.

14 (c) Telephone campaign misconduct is a class A misdemeanor."

15 Page 1, line 3:

16 Delete "Section 1"

17 Insert "Sec. 3"

18 Renumber the following bill sections accordingly.

5FC-4/29/96

SR
moved
No Obj.
Adopted

3

AMENDMENT

TO: CSHB 109 (Jud)

Page 2, lines 2-3

Delete: "A residential customer who requests to be so identified shall pay for the cost of the identification."

Insert: "The local exchange telecommunications company may impose a reasonable charge for identification in the directory. The charge shall be based on the cost of providing the identification and subject to the approval of the Alaska Public Utilities Commission."

Page 2, line 9

After "list."

Insert: "The charge shall be based on the cost of providing the list and subject to the approval of the Alaska Public Utilities Commission."

4-29-96
Amend. #4
p. 2. line 2
SF motion
to remove
(iii).
Failed
3-4
SF
BS
RP
Amend. #5
SF p. 2 lines
2+3
pending at
a.m. 4/29/96
mtg.

CS FOR HOUSE BILL NO. 109(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/15/96

Referred: Rules

Sponsor(s): REPRESENTATIVES BROWN, Navarre, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to telephone solicitations, advertisements, and directory listings."

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

3 * Section 1. AS 45.50.471(b) is amended by adding a new paragraph to read:

4 (41) failing to comply with AS 45.50.475.

5 * Sec. 2. AS 45.50 is amended by adding a new section to read:

6 Sec. 45.50.475. UNLAWFUL, UNWANTED TELEPHONE
7 ADVERTISEMENTS AND SOLICITATIONS. (a) A person is in violation of
8 AS 45.50.471(b)(41) if the person

9 (1) engages in the telephone solicitation of a residential telephone
10 customer of a telecommunications company and the customer is identified in the
11 telephone directory as not wishing to receive telephone solicitations; or

12 (2) originates a telephone call using an automated or recorded message
13 as a telephonic advertisement or solicitation.

14 (b) A local exchange telecommunications company and a company that
15 provides a telephone directory on behalf of a local exchange telecommunications

1 company shall provide for the identification in the telephone directory of those
2 residential customers who do not wish to receive telephone solicitations. A residential
3 customer who requests to be so identified shall pay for the cost of the identification.

4 (c) A local exchange telecommunications company shall, upon request, provide
5 to a person who engages in telephone solicitation a list of all telephone numbers
6 identified in the telephone directory as residential customers who do not wish to
7 receive telephone solicitations. If possible and if requested by the person who engages
8 in telephone solicitation, this list shall be provided in computer readable format. The
9 local exchange telephone company may impose a reasonable charge for the list.

10 (d) Local exchange telecommunications companies shall inform residential
11 customers of the provisions of this section. Notification may be made by

12 (1) annual inserts in the billing statements mailed to residential
13 customers; or

14 (2) conspicuous publication of the notice in the consumer information
15 pages of local telephone directories.

16 (e) In this section,

17 (1) "charitable organization" has the meaning given in AS 45.68.900;

18 (2) "customer" means a residential telephone customer of a
19 telecommunications company;

20 (3) "telephone solicitation"

21 (A) means the solicitation by a person by telephone of a
22 customer at the residence of the customer for the purpose of encouraging the
23 customer to purchase property, goods, or services, or make a donation;

24 (B) does not include

25 (i) calls made in response to a request or inquiry by the
26 called customer or communications made during a call made by the
27 customer;

28 (ii) calls made by a charitable organization, a public
29 agency, or volunteers on behalf of the charitable organization or public
30 agency to members of the organization or agency or to persons who,
31 within the last 24 months, have made a donation to the organization or

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Amend.
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SF

agency or expressed an interest in making a donation;
(iii) calls limited to ~~polling or~~ soliciting the expression
of ideas, opinions, ~~or votes;~~
(iv) business-to-business calls; or
(v) a person soliciting business from prospective
purchasers who have, within the last 24 months, purchased from the
person making the solicitation or from the business enterprise for which
the person is calling but only if the person or business enterprise has
not received a written request from the prospective purchaser asking
that telephone solicitations cease; the person or business enterprise is
presumed to have received a written request no later than 10 days after
the prospective purchaser mailed it, properly addressed and with the
appropriate postage.

Amend
4
Delete
(iii).
Failed

* Sec. 3. AS 45.50.472 is repealed.

SENATE FINANCE
COMMITTEE
Amendment Number: 6
Bill Number: _____
Sponsor: Sharp Date: _____
Logged In By: _____

moved Sen. Sharp
na { Halford
Frank
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Donley
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Zharoff
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5/3/96

Proposed Amendment to CS for House Bill 109 (JUD)

Page 2, line 10: after "section" add (.) and of an industry sponsored preference service which is free consumer service to assist residential customers in decreasing unwanted commercial calls to their homes.

Page 3, line 4: after call; delete "or" and add a new subsection (V) calls made by a person regulated by and in compliance with 47 CFR part 64;

renumber existing subsection (V) as (VI).

RATIONALE FOR AMENDMENT TO CSHB 109

Alaska telephone customers are fully protected under the Federal Telephone Consumer Protection Act (TCPA) and FTC rules under the Telemarketing and Consumer Fraud and Abuse Protection Act (TSA):

1. These are tough laws and may result in a \$10,000 penalty per violation,
2. The State Attorney General has specific authority to enforce the federal law in each state,
3. It requires telemarketers to maintain "do not call" lists,
4. The Telephone Preference Service maintains a current up to date list of all customers who do not wish to receive calls and telemarketers subscribe to this service to assure compliance with the federal law,
5. Federal regulations basically require a telemarketer who receives a request from a residential telephone subscriber not to receive calls to "record the request and place the subscriber's name and telephone number on the do not call list at the time the request is made",
6. The federal law preempts state law concerning interstate telemarketing activity, this amendment simply brings CSHB 109 into compliance with federal law thereby limiting it's application to intra-state telemarketing,
7. This amendment would exempt those companies, including AT&T and MCI, who already must comply with the federal law,
8. The amendment would have the added benefit of encouraging Alaska intrastate telemarketers to comply with the federal act.



MCI Telecommunications
Corporation

707 17th Street, Suite 3900
Denver, Colorado 80202
Phone 303 291 6206
Fax 303 291 6333

Thomas F. Dixon
Senior Attorney
Western Region

TO: Gail Garey
FROM: Tom Dixon
DATE: April 19, 1996
RE: CSHB 109

Legislation (CSHB 109) has been introduced that would prohibit Alaska-based telephone solicitation to consumers identified in telephone directories as not wishing to receive telephone solicitations.

This restriction would not apply to companies conducting telephone solicitations from another state. Such calls are governed by federal law and applicable Federal Communications Commission (FCC) regulations.

In passing the Telecommunications Consumer Protection Act of 1991 (TCPA), Congress found that federal law was needed to control interstate telemarketing practices because telemarketers could evade restrictions imposed by over half of the states by simply establishing interstate operations and making calls across state lines. *Public Law 102-243, Section 2. Findings.* Congress explicitly recognized that state laws restricting telemarketing practices could only apply to calls which both originated and terminated within a given state. At the same time, the TCPA did not preempt any state law that imposes more restrictive requirements or regulations on the making of intrastate telephone solicitations. *47 U.S.C. § 227 (e)(1).*

In accordance with directions from Congress, the FCC issued rules, found at 47 C.F.R. § 1200, restricting telephone solicitation. These rules require each telemarketing company to maintain "do-not-call lists". This means that when a person requests to be placed on a telemarketing company's do-not-call list, that company must place the person's name on the list and may not call the person for a period of 10 years.

In developing its rules, the FCC considered and expressly rejected the use of special directory markings, such as proposed in the legislation, to identify a customer as not wishing to receive telephone solicitation. The FCC found that "this option [of special markings in directories] combines the disadvantages of maximum cost to all participants with minimal potential effectiveness, and therefore is not a suitable means of accomplishing the goals of the TCPA". *Decision No. FCC 92-443, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Paragraph 18 (1992).*





**MCI Telecommunications
Corporation**

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MCI Mail ID: 368-8517
Internet: ggarey@mcimail.com

Gail Garey
Public Policy
West Division

April 24, 1996

Senator Rick Halford
Co-Chairman
Senate Finance Committee
Juneau, AK 99801

Dear Mr. Co-Chairman:

I am writing to express MCI's concerns about CSHB 109.

MCI is a long distance telecommunications provider and we view telemarketing as a vital marketing tool in providing competitive long-distance service. It is an essential outlet for businesses whose products are not sold in stores.

Telemarketing promotes one-on-one communication that gives customers time to ask questions, compare prices and select the best product. Consumers and companies alike rely on telemarketing and have a strong and mutual interest in honest and accurate telemarketing. Fraud, abuse and annoyance are in no one's best interest.

The telemarketing industry is undergoing tremendous growth with more and more businesses and organizations using telemarketing extensively. Telemarketing provides a low-cost, efficient method to advertise and educate consumers, particularly for small companies or new businesses. Without telemarketing, for example, MCI would not have been able to compete with AT&T's near-monopoly for residential long distance consumers.

MCI understands and supports a consumer's wish to not receive telephone solicitations, but CSHB 109 is unnecessary given the Federal Communications Commission (FCC) order implementing the telemarketing provision in the Telephone Consumer Protection Act of 1991.

The FCC order requires all telemarketers to maintain a list of consumers who have requested not to be called by the telemarketer. The Commission cites do-not-call lists as the most effective and efficient means for consumers to avoid unwanted telephone solicitations.

The order states that do-not-call lists allow the consumer to selectively halt calls from telemarketers from which they do not want to hear. Do-not-call lists are also the best alternative for protecting a consumer's confidentiality because do-not-call lists would not be universally accessible.



The FCC established the following minimum standards for do-not-call lists.

1. Companies telemarketing must have a written policy, available upon demand, for maintaining a do-not-call list.
2. Personnel engaged in any aspect of telephone solicitation must be trained in the existence and use of the do-not-call list.
3. When a consumer requests to be placed on the company's do-not-call list, the telemarketing personnel must register the request and place the consumer's name and telephone number on the do-not-call list at the time. The telemarketer cannot share the list with another person or entity without the express permission of the consumer.
4. The telemarketer must provide the called party with the name of the individual caller, the name of the person or entity for whom the call is being made, and the telephone number or address at which the person/entity may be contacted.
5. A consumer's request to be placed on the do-not-call list applies to the company making the call, but will not apply to affiliated entities unless the consumer reasonably would expect them to be included.
6. A telemarketer must maintain a do-not-call list for the purpose of future telephone solicitations.

The FCC also considered other methods for restricting telephone solicitations to consumers including markings in telephone directories such as proposed in CSHB 109. The Commission decided against this option for the following reasons:

- o the time lag between when a consumer elects the option and the annual printing of directories, during which time the consumer will receive unwanted calls
- o the tremendous burden and cost to telemarketers of acquiring and reviewing thousands of telephone directories
- o telemarketing firms compile calling lists from many sources other than telephone directories
- o the consumer would be required to make an all or nothing choice about receiving telemarketing calls
- o unpublished and unlisted number could not be included in such a system

In the order, the Commission stated that the option of directory markings "combines the disadvantages of maximum cost to all participants with minimal potential effectiveness."

Language in the Telephone Consumer Protection Act of 1991 also raises serious questions about the applicability of CSHB 109 to telemarketing firms conducting telephone solicitations to Alaska consumers from another state. A memorandum prepared by MCI on that point is attached for your review.

However, if it is the Committee's intent to go forward with CSHB 109, MCI encourages you to exempt from the legislation those persons who are in compliance with the FCC rules, found at 47 CFR Part 64 and 68, promulgated pursuant to the Telephone Consumer Protection Act of 1991.

Thank you for the opportunity to express MCI's concerns regarding CSHB 109.

Sincerely,


Gail Garey

cc: Members Senate Finance Committee
Representative Kay Brown

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

DEPARTMENT OF LAW

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May 1, 1996

The Honorable Kay Brown
House of Representatives
Room 517
State Capitol
Juneau, Alaska 99801-1182

Re: CSHB 109

Dear Representative Brown:

You have asked me to comment on an April 30, 1996 letter from Gail Garey of MCI Telecommunications to Senator Dave Donley. Ms. Garey's letter asserts that in my testimony before the Senate Finance Committee, I claimed that Alaska's jurisdiction over telemarketing regulation is based on the federal Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994. She further asserts that, since MCI is exempt from that act, the basis for any claim of state jurisdiction over MCI and similar entities is inaccurate.

I did not claim in my testimony that any particular federal law gives the state jurisdiction over telemarketing. It is our position that the State of Alaska has concurrent jurisdiction over telemarketing regulation unless that jurisdiction has been preempted by federal law. I stated that the issue of whether there is federal preemption falls into a grey area but that we have concluded that there is no federal preemption and that the state has jurisdiction to regulate these activities.

The reason for any doubt about this issue is that Congress has passed two federal laws regulating telemarketing: the 1991 Telephone Consumer Protection Act (TCPA) administered by the Federal Communications Commission and the 1994 Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act) administered by the Federal Trade Commission. The effect of these laws on state regulation is vague and uncertain.

The Honorable Kay Brown
House of Representatives

May 1, 1996
Page 2

The 1991 TCPA specifically provides that it does not preempt state adoption of more restrictive intrastate requirements on telemarketing activities. It is silent on state regulation of interstate activities. Other language in the statement of findings, however, has been construed by some as a congressional acknowledgement that states do not have the ability to regulate interstate activities. No state or federal court, however, has actually held that the TCPA preempts state jurisdiction.

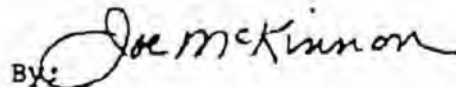
The 1994 Telemarketing Act is a much more comprehensive law regulating many aspects of telemarketing activities. The act expressly states that it does not prohibit state officials from proceeding in court to enforce the provisions of any state civil or criminal statute. When the FTC adopted the federal regulations implementing the act, it specifically stated that it agreed with the position of the National Association of Attorneys General that the 1994 act did not intend to preempt state action.

Our position is not that the 1994 Telemarketing Act provides a basis for jurisdiction, but merely that it does not preempt state regulation. The 1994 Telemarketing Act is a more recent and much more comprehensive statement of legislative purpose regarding telemarketing than the 1991 TCPA. The 1994 act expressly allows state enforcement of any state law regulating telemarketing. Because of that fact, we believe the courts would conclude that the earlier 1991 TCPA was not intended to preempt state regulation. If it had been, it is unlikely that Congress would have taken an inconsistent position in subsequent legislation addressing the same subject matter.

Our conclusion, therefore, is that neither the 1991 TCPA nor the 1994 Telemarketing Act preempt state jurisdiction. Because there is no federal preemption, the legislature may enact laws regulating out-of-state entities engaged in telemarketing activities in Alaska.

I hope this clarifies our position regarding this legislation. If you have any further questions, please do not hesitate to call me.

BRUCE M. BOTELHO
ATTORNEY GENERAL

BY: 

Joseph H. McKinnon
Assistant Attorney General

JHM/cw

FTC news

Federal Trade Commission Washington, D.C. 20580 (202) 326-2180

FOR RELEASE: 11:30 A.M., AUGUST 16, 1995

NEW FEDERAL TRADE COMMISSION RULE TO PROTECT CONSUMERS FROM DECEPTIVE AND ABUSIVE TELEMARKETING PRACTICES

Beginning Dec. 31, 1995, telemarketers must promptly tell the consumers they call several key pieces of information -- the fact that they're making a sales call, the nature of the products or services being offered, and in the case of prize-promotions, that no purchase is necessary to win. Telemarketers must also disclose cost and other information *before* they ask consumers for any money. In addition, telemarketers will be required to have consumers' express, verifiable authorization before debiting their checking accounts. The provisions are part of a new Telemarketing Sales Rule, announced by the Federal Trade Commission today, to protect consumers from deceptive and abusive telemarketing practices. The FTC promulgated the new rule pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, which was signed into law in August 1994.

The new rule will prohibit telemarketers from calling before 8 a.m. and after 9 p.m., and from calling consumers who have said they don't want to be called. It will prohibit misrepresentations about the cost, quantity and other aspects of the offered goods or services. And it will ban telemarketers who are offering to arrange loans, provide credit repair services or to recover money consumers lost in a telemarketing scam from seeking payment before rendering the promised services, and will prohibit credit card laundering and other forms of knowing assistance to deceptive telemarketers.

"This rule will allow consumers to choose whether telemarketers can continue calling them, and give them information that is helpful in deciding whether an offer is legitimate and the seller is above board," said FTC Bureau of Consumer Protection Director Jodie Bernstein. "Its language is flexible so that it allows us to target the deceptive and abusive practices we know

(Telemarketing Sales Rule--08/16/95)

about as well as those we have not yet seen. But it's also concise so that we've minimized the regulatory burdens on legitimate industry. The final rule reflects extensive FTC experience in targeting telemarketing fraud as well as many of the more than 700 comments we received, and the ensuing discussion at a public workshop, on our earlier drafts of the rule. This process gave all parties -- consumers, industry and other law enforcers -- a role in its development, resulting in a tough but well-targeted tool for protecting consumers from telemarketing fraud."

The Telemarketing Sales Rule will cover most types of telemarketing calls to consumers, including calls to pitch goods, services, "sweepstakes" and prize-promotion and investment opportunities. It also will apply to calls consumers make in response to postcards or other materials they receive in the mail (except catalogs), unless the materials contain the information required to be disclosed under the rule. Violations of the new rule may result in civil penalties of up to \$10,000 per violation. It is enforceable by the FTC, and also the 50 state attorneys general who, for the first time, will be able to get orders that apply nationwide against fraudulent telemarketers.

Required Disclosures:

Under the new rule, telemarketers will have to promptly disclose to consumers the fact that it's a sales call, the identity of the seller, the nature of the goods or services being offered and, if it's a prize-promotion, the fact that no purchase is necessary to win. In addition, before telemarketers can ask consumers for any credit card or bank account information or before they make arrangements for a courier to pick up payment, they will have to disclose to consumers (either orally or in writing):

- the total costs of the goods or services being offered and any material restrictions or conditions on obtaining or using them;
- the terms and conditions of any refund, exchange or repurchase policy mentioned in the offer or the fact that the sale is final and nonrefundable; and
- how to enter any prize promotion and the odds of winning.

Prohibited Misrepresentations:

The new rule contains broad prohibitions against misrepresentations regarding any of the information required to be disclosed and regarding any material aspect of the performance, efficacy, nature or central characteristics of the goods or services.

According to the FTC, almost 75 percent of its cases against telemarketing fraud since 1991 have involved either prize promotions or investment opportunities. To help combat these frauds, the new rule will impose additional prohibitions against misrepresentations in these situations. Specifically, it will prohibit telemarketers from misrepresenting any material aspect of:

- a prize promotion, including the odds of winning, the nature or value of the prize, or that payment is required to win; and
- investment opportunities, including the risk, liquidity, earnings potential or profitability.

(Telemarketing Sales Rule--08/16/95)

Collecting Payment from Consumers:

A new provision (not included in draft versions of the rule) will prohibit telemarketers from debiting a consumer's checking account without the consumer's express, verifiable authorization. For example, the authorization could be in writing, or a telemarketer could tape record the sales call, but in that instance the tape will have to evidence that the consumer received certain disclosures and the telemarketer will have to make the tape available to the consumer's bank on request. (Debiting involves using a "demand draft," a check created by the seller and imprinted with the account number provided by the consumer, to be presented to the consumer's bank for payment.)

Telemarketers will be prohibited from making false or misleading statements to induce consumers to pay for goods or services, regardless of the payment method consumers use. This provision will give law enforcers the flexibility to address new ways that telemarketers engaged in fraud might attempt to take consumers' money.

As noted above, the new rule will mandate that telemarketers make the required disclosures before making arrangements for a courier to pick up payment from a customer. The rule also retains from the earlier proposals prohibitions against seeking payment before rendering credit repair services, obtaining or arranging credit or loans, or recovering money lost or prizes not received in a prior telemarketing scam.

Assisting Telemarketing Fraud:

The Telemarketing Sales Rule will bar anyone from giving substantial assistance — such as providing "sucker" lists, scripts or promotional materials, or providing appraisals of gems, metals, art, or other goods — to a telemarketer when the person "knows or consciously avoids knowing" that the telemarketer is engaged in conduct that would violate the rule. The final rule also retains the prohibition against credit card laundering, which is how fraudulent telemarketers gain unauthorized access to the credit card system using another entity's merchant account. Fraud operators cannot get their own merchant accounts with reputable financial institutions, so they must use launderers.

Finally, the rule will require telemarketers to maintain various records that will assist the FTC and state attorneys general in enforcing the rule, but retains provisions that afford industry substantial flexibility to minimize their recordkeeping requirements. Telemarketers selling office and cleaning supplies will be exempt from these requirements so as to minimize any disparate impact the rule's requirements have on legitimate sellers in this industry compared with other business-to-business telemarketers not covered by the rule.

The Telemarketing Sales Rule will exempt calls where the transaction is completed after a face-to-face sales presentation or where the call is subject to extensive requirements under other FTC rules (such as the 900 Number Rule and the Franchise Rule), as well as calls initiated in response to advertisements in general media such as newspapers. Catalog sales also will be

(Telemarketing Sales Rule--08/16/95)

exempt, as will business-to-business calls except those involving the sale of office or cleaning supplies.

The Commission vote to issue the final rule and approve a statement of basis and purpose in support of it was 5-0, with Commissioner Mary L. Azcuenaga issuing a separate concurring statement in which she said that, although she joins the Commission in promulgating the rule, she remains concerned about the legal basis for the exemptions to the rule. She noted that the statute does not give the Commission the express authority to grant exemptions and that the better reading of the statute is that the commission does not have the authority to grant some of the exemptions included in the rule. "Although the exemptions may be reasonable as a matter of policy, the Commission does not have the authority to second-guess the Congress," she said.

The rule and statement will be published in the Federal Register shortly.

Free copies of an FTC "Tips Sheet" and a "Bookmark" containing information about the new rule and consumers rights under it are now available, along with copies of several consumer brochures on related issues -- "Swindlers are Calling," "Telemarketing: Reloading & Double-Scamming Frauds," and "Automatic Debit Scams."

Copies of these consumer materials, the new Telemarketing Sales Rule, the statement of basis and purpose for the rule, and Commissioner Azcuenaga's statement are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580: 202-326-2222; TTY for the hearing impaired 202-326-2502. To find out the latest FTC news as it is announced, call the FTC's NewsPhone recording at 202-326-2710. FTC news releases and other materials also are available on the Internet at the FTC's World Wide Web Site at: <http://www.ftc.gov>

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Judith Nixon, 202-326-3173
or
David Torok, 202-326-3140

(FTC File No. R411001)
(trule.fin)

FEDERAL COMMUNICATIONS COMMISSION
Common Carrier Bureau
Enforcement Division
Informal Complaints and Public Inquiries Branch
Stop Code 1600A2
Washington, D.C. 20554
202-632-7553

In Reply Refer To:
ICB-IB-TCPA
March 1995

INDUSTRY BULLETIN

TELEPHONE CONSUMER PROTECTION ACT

TELEPHONE SOLICITATIONS, AUTODIALED AND ARTIFICIAL OR
PRERECORDED VOICE MESSAGE TELEPHONE CALLS, AND
THE USE OF FACSIMILE MACHINES

The Telephone Consumer Protection Act (TCPA) is a federal statute that was enacted on December 20, 1991, to address concerns about the growing volume of unsolicited telephone marketing calls and the increasing use of automated and prerecorded telephone calls. The TCPA imposes restrictions on the use of automatic telephone dialing systems ("autodialers"), artificial or prerecorded voice messages, and telephone facsimile machines to send unsolicited advertisements. The TCPA also directs the FCC to adopt regulations to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object.

The FCC adopted rules and regulations, effective December 20, 1992, implementing the TCPA.¹ The FCC will be monitoring complaints about automated calls and unwanted telephone solicitations to determine whether additional action to limit or to prohibit such calls would be appropriate.

¹ On December 18, 1992, the United States District Court for the District of Oregon issued a preliminary injunction enjoining the Commission from enforcing §227(b)(1)(B) of the Telephone Consumer Protection Act of 1991 pending judicial action on a lawsuit challenging the constitutionality of the section (§227(b)(1)(B) prohibits calls using artificial or prerecorded messages to residential telephone subscribers). The injunction applied nationwide, and affected only FCC enforcement of §227(b)(1)(B). On May 21, 1993, the District Court ruled that §227(b)(1)(B) violated the First Amendment. The United States Court of Appeals for the Ninth Circuit reversed the District Court's ruling and upheld the constitutionality of §227(b)(1)(B) in an opinion issued on February 6, 1995.

Different rules and regulations apply to calls placed to residences and calls placed to businesses. Therefore, you should carefully read this entire bulletin which is intended to assist your organization in complying with the TCPA and the FCC's rules and regulations.

HOW IS THE TERM "TELEPHONE SOLICITATION" DEFINED?

The term "telephone solicitation" is defined as the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person. The term does not include a call or message (1) to any person with that person's prior express invitation or permission, (2) to any person with whom the caller has an established business relationship, or (3) by a tax-exempt nonprofit organization.

WHAT IS AN "ESTABLISHED BUSINESS RELATIONSHIP?"

You have an "established business relationship" with a residential subscriber if the subscriber has made an inquiry, application, purchase or transaction with respect to your business' products or services. An established business relationship cannot be formed solely on the basis of a prior solicitation. A residential subscriber can end an established business relationship by stating that he or she does not want to receive any more calls or solicitations from your business.

HOW IS THE TERM "AUTODIALER" DEFINED?

An "autodialer" is defined as equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator.

WHAT RESTRICTIONS APPLY TO THE USE OF AUTODIALERS OR ARTIFICIAL OR PRERECORDED VOICE MESSAGES?

1) Except in emergencies or with the called party's prior express consent, autodialers or artificial or prerecorded voice message devices may not be used to call:

- * emergency telephone lines, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency

- * guest or patient rooms of a hospital, health care facility, elderly home, or similar establishment
- * paging and cellular telephone numbers or other radio common carrier services (cellular service providers may send prerecorded messages to their subscribers -- for example to "roamers" leaving the service area -- if subscribers are not charged for the call)
- * any service for which the called party is charged for the call.

2) Except in emergencies or with the called party's prior express consent, artificial or prerecorded voice message telephone calls may not be placed to residential subscribers.

A call is exempt from this prohibition if the call:

- * is not made for a commercial purpose
- * is made for a commercial purpose but does not include an unsolicited advertisement
- * is made by a caller with whom the called party has an established business relationship
- * is made by or on behalf of a tax-exempt nonprofit organization.

3) Artificial and prerecorded voice message telephone calls placed to business numbers are not prohibited.

4) No person may use an autodialer in a way that simultaneously engages two or more lines of a multi-line business.

5) Any person, business, or entity using an autodialer to transmit an artificial or prerecorded voice message, including such calls placed to business numbers, must clearly state its identity at the beginning of the message, and must clearly state its telephone number or address during or after the message. The telephone number provided cannot be the number of the autodialer or prerecorded message player which placed the call.

DID THE FCC ADOPT SPECIAL RULES FOR PRERECORDED DEBT COLLECTION CALLS PLACED TO RESIDENCES?

No. The FCC did not find it necessary to adopt specific rules for debt collection calls. Debt collectors are reminded that the Fair Debt Collection Practices Act also applies to debt collection calls. That Act is enforced by the Federal Trade Commission.

WHAT RULES APPLY TO "LIVE" SOLICITATIONS PLACED TO RESIDENTIAL TELEPHONE SUBSCRIBERS?

- 1) "Live" telephone solicitations may not be made to residential subscribers before 8 A.M. or after 9 P.M. (local time at the called party's location).
- 2) Persons or businesses making "live" telephone solicitations to residential telephone subscribers must:
 - * institute procedures for maintaining a list of persons who do not wish to receive telephone solicitations (a "do-not-call list") before initiating any telephone solicitations
 - * have a written policy, available upon demand, for maintaining a do-not-call list
 - * train and inform personnel engaged in any aspect of telephone solicitation in the existence and use of the do-not-call list
 - * make a record of the name and telephone number of residential subscribers who request not to be called again, at the time the request is made

Requests should be forwarded to the person or entity on whose behalf the solicitation is made (where appropriate), to the party maintaining the do-not-call list (if not maintained by the caller), and to affiliated entities (where appropriate)

- * maintain the do-not-call list indefinitely for the purpose of future telephone solicitations