

ALASKA LEGISLATURE

1320

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

- * obtain a residential subscriber's prior express consent to share or to forward the residential subscriber's request not to be called to a party other than the entity on whose behalf a solicitation is made or its affiliate
- * place the residential subscriber's name and number on the do-not-call list of any affiliates or subsidiaries of the telemarketer where the residential subscriber would reasonably expect to be included on their lists given the identity of the telemarketer and the product being advertised
- * provide the called party with the name of the individual caller, the person or entity on whose behalf the call is made, and a telephone number or address at which that person or entity may be contacted.

- 3) The party on whose behalf a solicitation is made will ultimately be held liable for violations of the TCPA or FCC rules.
- 4) FCC rules do not require tax-exempt nonprofit organizations to comply with rules for making telephone solicitations.

DO THE "DO-NOT-CALL LIST" RULES APPLY TO CALLS PLACED TO BUSINESS TELEPHONE NUMBERS?

No. However, state laws may apply to calls placed within the same state.

ARE SMALL BUSINESSES OR SECOND-CLASS MAIL PERMIT HOLDERS EXEMPT FROM FCC RULES ON TELEPHONE SOLICITATIONS?

No.

DO FCC RULES BAN UNSOLICITED ADVERTISEMENTS TO TELEPHONE FACSIMILE MACHINES?

Yes. Effective December 20, 1992, FCC rules ban the transmission of unsolicited advertisements to telephone facsimile machines. An "unsolicited advertisement" is defined as a transmission

advertising the commercial availability or quality of property, goods or services without the prior express invitation or permission of the person or entity receiving the transmission.

Unsolicited advertisements may not be transmitted by any device to a telephone facsimile machine unless the person receiving the facsimile has given prior express invitation or permission to receive it. If the sender and the recipient have an established business relationship, an invitation or permission to receive unsolicited facsimile advertisements is presumed to exist. However, the recipient may end an established business relationship by requesting that no further unsolicited advertisements be sent, thus revoking any invitation or permission to receive further transmissions.

WHAT OTHER REQUIREMENTS APPLY TO THE USE OR MANUFACTURE OF TELEPHONE FACSIMILE MACHINES?

FCC rules require that each transmission to a telephone facsimile machine must clearly contain, in a margin at the top or bottom of each transmitted page or on the first page of the transmission, (1) the date and time the transmission is sent (2) the identity of the sender and (3) the telephone number of the sender or of the sending machine.

All telephone facsimile machines manufactured on or after December 20, 1992 must have the capacity to clearly mark such identifying information on the first page or on each page of the transmission.

WHO IS RESPONSIBLE FOR COMPLIANCE WITH FCC RULES ON TELEPHONE FACSIMILE TRANSMISSIONS?

The person on whose behalf a facsimile transmission is sent will ultimately be held liable for violations of the TCPA or FCC rules.

DO THE TCPA AND THE FCC'S RULES PREEMPT STATE LAW?

The TCPA specifically preempts state law where it conflicts with the technical and procedural requirements for identification of senders of telephone facsimile messages or automated artificial or prerecorded voice messages.

The TCPA and the FCC's rules do not preempt state law which imposes more restrictive requirements or regulations for (1) the use of facsimile machines or other electronic devices to send unsolicited advertisements, (2) the use of autodialers, (3) the use of artificial or prerecorded voice messages, or (4) the making of telephone solicitations.

Thus, depending on state law, the TCPA, the FCC's rules and/or state laws could apply to your company's services. You should contact the state public utilities commission in each state where your company provides the services listed in the previous paragraph to determine what laws apply in those states.

WHAT REQUIREMENTS APPLY TO RELEASING AUTODIALED CALLS?

Autodialers used to transmit artificial or prerecorded voice messages should automatically release the called party's line within 5 seconds of the time that the called party's hang-up signal reaches the dialing system of the caller.

WHO RESOLVES DISPUTES INVOLVING VIOLATIONS OF THE TCPA AND THE FCC'S RULES?

- 1) Residential subscribers who receive telephone solicitations after requesting not to be called may directly contact the business placing the call using the telephone number or address provided in the solicitation.
- 2) The TCPA provides a person or entity with a private right of action, if permitted by state law or court rules, for any violation of the autodialer or prerecorded voice message prohibitions, for any violation of the unsolicited advertisement facsimile prohibition, and for any violation of the guidelines or solicitations. A person or entity may file suit to enjoin the violations listed below and/or file suit for actual monetary loss from violations or receive \$500 in damages for each violation (whichever is greater). In some instances the court may triple the award.

Suit may be filed when the TCPA is violated, such as when:

- * residential customers receive more than one "live" call within any 12 month period by or on behalf of the same company after making a do-not-call request (defendants that have established procedures to comply with rules regarding telephone solicitation may present such compliance efforts as an affirmative defense to any action brought against them)

- * anyone receives an autodialed or artificial or prerecorded voice message call in violation of the TCPA and the FCC's rules
 - * an autodialer simultaneously engages two or more lines of a multi-line business
 - * anyone receives an unsolicited advertisement on their facsimile machine in violation of the TCPA and the FCC's rules.
- 3) A state may initiate and file a civil action on behalf of its residents in federal district court against any person or entity it believes is engaged in a pattern or practice of violations of the TCPA or FCC rules. States retain the power to initiate action in state court for violations of state telemarketing statutes.
- 4) Persons who suspect violations of the TCPA or the FCC's rules may request FCC action. The FCC may assess penalties against parties who violate the TCPA or the FCC's rules and regulations.

WHERE CAN I ORDER A COMPLETE COPY OF THE TCPA AND THE FCC'S ORDER EXPLAINING IMPLEMENTATION OF THAT ACT?

Copies can be ordered from the FCC's contractor for public records duplication: International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone: (202) 857-3800). You should ask for copies of the Telephone Consumer Protection Act and the Report and Order in CC Docket No. 92-90 released by the Commission on October 16, 1992 (In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991).

###



BELIEVE IT: OTHER THINGS WERE GOING ON

The National Center for State Courts reports that during the nine-month O.J. Simpson trial, the Los Angeles Superior Court disposed of more than 25,000 criminal cases. During the first six months of this period, 138 murder trials were started and completed. Of the 138, 18 were capital murders.

CALIFORNIA GOP GETS A GRIP

Fourteen months after winning a bare majority of seats in the California Assembly, Republicans finally managed to elect the speaker of their choice. The nearly omnipotent Willie Brown last summer had master-minded the elevation of maverick Republican Doris Allen to the speakership. She won with 39 Democratic votes and her own. She resigned to face (and lose) a recall election, bequeathing her post to another renegade, Brian Setencich, again elected with Democratic votes. Only after Mr. Brown went off to be mayor of San Francisco in January was a three-term Republican, Curt Pringle, elected speaker by a vote of 40 to 37.

NOT COLOR BLIND YET

According to the Census Bureau, the number of interracial couples grew from 310,000 in 1970 to 1.2 million in 1992; and 3.4 percent of all American births in 1989 were of mixed race parents. If we're a color-blind society, who cares? Yet you can't have affirmative action if you can't tell who gets its benefits. So if daddy's black and mommy's white, what are you? OMB's 18-year-old Directive 15 allows just five (unsatisfactory) reporting categories (American Indian or Alaskan native, Asian or Pacific Islander, black, Hispanic or white). Federal statisticians are struggling to find a better way to categorize several million of us before the 2000 census; it isn't easy.

HOT ISSUE IN HAWAII

An appointed state commission in Hawaii has recommended to the state Legislature that marriage rights and



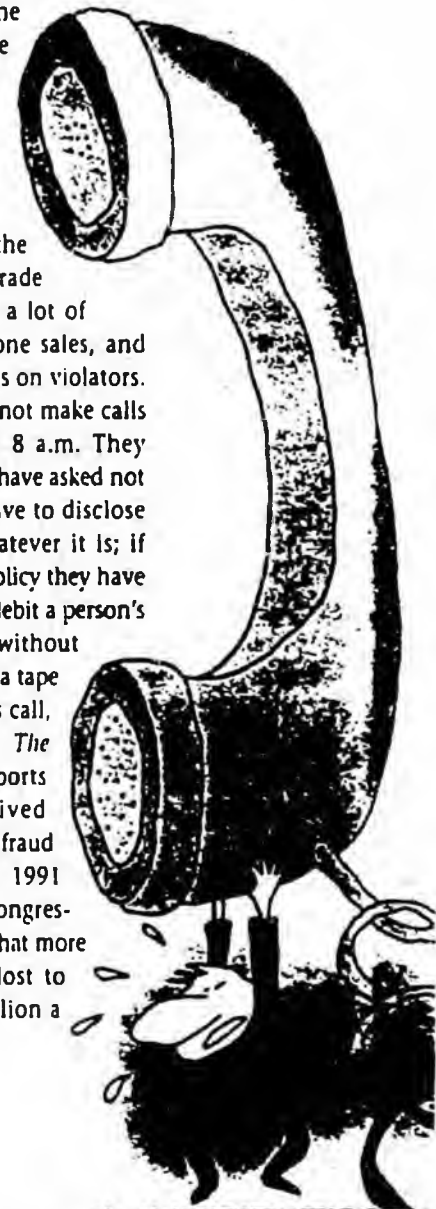
responsibilities be granted to couples of the same sex. In 1993, the Hawaii Supreme Court found that denying marriage licenses to gay couples would be unconstitutional unless the state demonstrated a compelling interest for doing so. The Legislature last year banned same-sex marriages. Because states generally agree to recognize each other's laws, the new debate will be closely watched.

CALIFORNIA BANS GENDER-BASED PRICES

As of the first of January, businesses in California may not price their services based on whether the customer is male or female. Researchers have known for some time that it is common practice to charge women more than men for a plain haircut or for laundering a shirt. A 1990 Chicago study found that white women were asked to pay \$142 more for the same new car than white men; however, the California law does not include products. In addition, a business can charge a different price if the time, difficulty or cost of the service is not the same for men and women.

FTC CURBS TELEMARKETERS

As of the first of the year, the Federal Trade Commission applies a lot of new rules to telephone sales, and can levy \$10,000 fines on violators. "Telemarketers" may not make calls between 9 p.m. and 8 a.m. They can't call people who have asked not to be called. They have to disclose the total cost of whatever it is; if there is a no-refund policy they have to say so. They can't debit a person's checking account without written permission or a tape recording of the sales call, and so on and on. *The Wall Street Journal* reports that the FTC received 47,000 telemarketing fraud complaints between 1991 and 1995, and that congressional staff estimates that more than \$40 billion is lost to fraud in the \$440 billion a year industry.



While You Were Out

To: Consumers

Caller: Federal Trade Commission

Phone: (202) 326-2222

Telephoned

Please Call

Wants You To Know

Returned Your Call

Subject: Consumer Protections -

New Telemarketing Sales Rule

1. It is illegal for a telemarketer to call you if you have asked not to be called.
2. Calling times are restricted to the hours between 8 a.m. and 9 p.m.
3. Telemarketers must tell you it's a sales call, the name of the seller, and what they are selling before they make their pitch. If it's a prize promotion, they must tell you that no purchase or payment is necessary to enter or win.
4. It's illegal for telemarketers to misrepresent any information; any facts about their goods or services; earnings potential, profitability, risk, or liquidity of an investment; or the nature of a prize in a prize-promotion scheme.
5. Before you pay, telemarketers must tell you the total cost of the goods and any fees involved in getting or using them; or that a sale is final or non-refundable. In a prize promotion, they must tell you the odds of winning, that no purchase or payment is necessary to enter, and any restrictions or conditions of receiving the prize.
6. It's illegal for a telemarketer to withdraw money from your checking account without your express, verifiable authorization.
7. Telemarketers cannot lie to get you to pay, no matter what method of payment you use.
8. You do not have to pay for credit repair, recovery room, or advance-fee loan/credit services until these services have been delivered.
9. It's illegal to help deceptive telemarketers if you know - or consciously avoid knowing - that they are breaking the law.
10. Your state law enforcement officers now have the power to prosecute fraudulent telemarketers who operate across state lines.

CURRENT STATUS: (S) FIN

	JRN-DATE	JRN-PAGE	ACTION
1	03/08/96	3033	(H) READ THE THIRD TIME CSHB 109(JUD)
2	03/08/96	3034	(H) PASSED Y34 N1 E3 A2
3	03/08/96	3034	(H) (H) ADOPTED JUD LETTER OF INTENT
4	03/08/96	3035	(H) BRICE NOTICE OF RECONSIDERATION
5	03/08/96	3035	(H) RECON TAKEN UP SAME DAY UNAN CONSENT
6	03/08/96	3036	(H) RECON TAKEN UP - IN THIRD READING
7	03/08/96	3036	(H) PASSED ON RECONSIDERATION Y36 E3 A1
8	03/08/96	3036	(H) (H) ADOPTED JUD LETTER OF INTENT
9	03/08/96	3043	(H) TRANSMITTED TO (S)
10	03/11/96		(S) READ THE FIRST TIME - REFERRAL(S)
11	03/11/96		(S) FINANCE

SELECTION=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP	SUBJ	EXIT	MENU	TEXT	PRINT	BWD	FWD	CMT/JRNL	FIRST	LAST	QUIT
4B		H						==PC	LINE 22	COL 14	

To: Alaska State Legislature

The Direct Marketing Association (DMA)
has 3600 Members nationwide
who sometimes use the telephone.....

we have members headquartered in Alaska
and with operations in Alaska

DMA opposes a state do-not-call list as proposed in HB 109
because we already serve consumers in two important ways

if you ask us not to call -- we don't

we put you on our in-house
do-not-call list

we do not trade your name
or number with
any other company

it's the law

we support and pay for an industry service to consumers
Telephone Preference Service (TPS)

a consumer can write to TPS and be deleted from
calling lists of national marketers

this service is free to consumers and paid for by
industry -- for 20 years

there are two federal laws which require a company to implement
a consumer's request not to be called again

Telephone Consumer Protection Act (FCC administered)

Telemarketing Sales Rule (FTC administered)

DMA supported both laws

these two federal laws were intended and implemented to preempt
the states as far as interstate marketing is
concerned

that means that an Alaska law would affect
only companies who call Alaskans from Alaska

this proposed Alaska law is not practical or helpful to Alaska
consumers or Alaska businesses

Representative Kay Brown

MAR 18 1996

ALASKA STATE LEGISLATURE

Legislative Information Office
716 W. 4th Ave., #420
Anchorage, AK 99501-2133
(907) 258-8162

During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4998

TO: Senator Steve Frank
Senator Rick Halford
Co-Chairs, Senate Finance Committee

FROM: Representative Kay Brown

DATE: March 18, 1996

RE: HB 109 hearing request

I respectfully request a hearing be scheduled for CSHB 109 (Jud) at your earliest convenience.

This legislation would require telephone utilities to offer residential customers an opportunity to avoid telemarketing solicitation. Passage of this bill would relieve many Alaskans from being interrupted in the privacy of their home from unwanted or unsolicited phone sales. The increased use of telephone solicitation has become an annoyance to many people.

The bill unanimously passed the House on March 8. It has a zero fiscal note.

Senate Finance Committee previously held hearings on similar legislation, SB 239, in February.

In addition to the attached sponsor statement, fiscal notes and sectional analysis, I have also provided two amendments that I would like to put before your committee. One amendment would add language that was included in the Senate version (SB 239) making the charges for directory identification and for providing a copy of the list subject to APUC approval. The other amendment would establish a "good faith defense" provision in the event of calling errors; a similar provision is included in federal law. This amendment is requested by the Alaska Newspaper Association.

Please don't hesitate to contact me if you have any questions or concerns about this bill. I will be happy to provide additional information.

Attachments

cc: Senator Rieger
Senator Pearce

DISTRICT 15

Downtown • Fairview • Northstar • Romig • South Addition • Spenard

SPONSOR STATEMENT

CSHB 109 (JUD)

An Act relating to telephone directory listings and solicitations

The multi-billion dollar telemarketing industry has created a situation in which every telephone subscriber in Alaska is potentially part of a captive market. The rapid expansion of telemarketing has created a need for enhanced protection of our privacy rights.

CSHB 109 (JUD)

- *Would require telephone utilities to offer residential customers an opportunity to avoid telemarketing solicitations. In a practical and economic manner, it resolves shortcomings in federal regulation.*

This legislation would make it clear that a citizen's right to individual privacy includes the right to be protected from abusive or annoying misuse of telephones.

SECTIONAL ANALYSIS CSHB 109 (JUD)

An Act relating to telephone directory listings and solicitations.

Section 1.

Amends AS 45.50.471(b) to add the new unlawful unwanted telephone solicitation provisions in AS 45.50.475. Makes a violation of the provisions in this bill an "unlawful act and practice" under the unfair trade practices and consumer protection statute. The penalty is up to \$5,000 per violation.

Section 2. Adds new section. AS 45.50.475. Unlawful, unwanted telephone advertisements and solicitations.

(a) A person is in violation of AS 45.50.471(b)(41) if the person:

(1) engages in telephone solicitation to a residential telephone if the party is identified in the telephone directory as not wishing to receive telephone solicitations; or

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

(b) Local exchange telecommunications companies and companies that provide telephone directories shall provide for identification in the directory of those parties who do not wish to be solicited by telephone; only those who chose to be so identified shall pay for the cost of identification.

(c) If requested, local exchange telecommunications companies shall provide at a reasonable cost to the phone solicitors a telephone list (in computer format, if possible) of residential customers not wishing to receive telephone solicitations.

(d) Local exchange telecommunications companies shall inform subscribers by inserts in billing statements or advertising in the consumer information pages of the directory of the availability of the "no solicitation" service.

(e) Defines terms in the bill (charitable organization, customer, and telephone solicitation) and makes exemptions for charitable organizations, opinion polling, responding to inquiries, business to business calls and follow ups on previous purchases or donations (with a two year limitation for both charities and businesses).

Section 3.

Repeals 45.50.472 (junk telephone calls).

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: 2-15-96

By: Brian D. Porter

Brian Porter, Chairman House Judiciary Committee

HOUSE ADOPTED 3/8/96

Representative Kay Brown

APR 12 1996
ALASKA STATE LEGISLATURE

Legislative Information Office
716 W. 4th Ave., #420
Anchorage, AK 99501-2133
(907) 258-8162

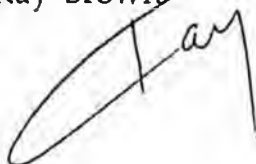
During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4998

TO: Senate Finance Committee members

FROM: Representative Kay Brown

DATE: April 12, 1996

RE: Telemarketers



As the sponsor of HB 109, legislation relating to telephone solicitations, I want to bring to your attention a recent consumer protection settlement between the Department of Law and an Alaska company concerning allegations of continuing telephone sales to residential and business consumers after repeatedly being told to stop.

The attached press release dated April 11 announces a consumer protection settlement with Alpine Glass of Alaska and the Department of Law. The State investigated allegations that Alpine Glass telemarketers continued to make sales calls to residential and business consumers after being repeatedly asked by the consumers not to call again. Under the terms of the settlement, Alpine Glass has paid a \$1,000 civil penalty and must adopt and implement written "do not call" procedures for its telemarketers. Harassing telemarketing calls do occur and can create problems. If you are interested, I have a copy of the Superior Court compliance order pertaining to this case that I would be happy to share with you.

Passage of HB 109 would help stop unwanted telephone solicitations. Thank you for considering this bill.

Attachment

DISTRICT 15

Downtown • Fairview • Northstar • Romig • South Addition • Spenard

PRESS RELEASE

April 11, 1996

TELEMARKETER PROMISES TO HONOR "DO NOT CALL" REQUESTS

For Immediate Release

Contact person: Daveed A. Schwartz, Assistant Attorney General
Alaska Department of Law, Anchorage Office
(907) 269-5265

Attorney General Bruce Botelho announced today that the State has entered into a consumer protection settlement with Alpine Glass of Alaska, Inc., a telemarketer of auto glass repair and replacement services in Fairbanks, Wasilla, and Anchorage. The settlement resolves the State's investigation of allegations that Alpine Glass telemarketers persisted in making sales calls to several residential and business consumers in Anchorage and Fairbanks over the last year after being repeatedly asked by the consumers not to call again. In some instances, Alpine Glass made sales calls to consumers after the State directed in writing that Alpine Glass stop calling specific phone numbers belonging to the consumers in question.

Under Alaska and federal law, a telemarketer may not initiate a sales call to persons who have previously stated that they do not wish to receive further sales calls. Telemarketing tactics of this sort are defined as "abusive" and "oppressive" practices under federal and state law. The State began its investigation of Alpine Glass after several consumers in Fairbanks, Anchorage, and Wasilla complained to the Better Business Bureau and to the State of receiving repeated unwanted sales calls despite having lodged "do not call" requests. In one instance, a consumer who had already lodged a half dozen "do not call" requests with Alpine Glass complained of receiving two additional unwanted sales calls after having extracted a promise from Alpine Glass management that its telemarketers would stop calling.

Under the settlement, which will be filed with the Alaska Superior Court, Alpine Glass must adopt and implement written "do not call" procedures to ensure that its telemarketers do not call consumers who have previously requested that Alpine Glass not call them. As part of the "do not call" procedures, Alpine Glass must establish lists of persons who may not be contacted, update the lists at the start of each business day, and distribute the lists to each of its telemarketers. Alpine Glass must also train its telemarketing representatives in the "do not call" procedures on a quarterly basis. Also under the settlement, Alpine Glass has paid a \$1,000 civil penalty to the State of Alaska.

Attorney General Botelho said: "Alaskans are too often subjected to abusive and oppressive telemarketing practices. Telemarketers should be on notice that Alaskans value their privacy, and will not tolerate unwanted telephone solicitations."

APR 09 1996

HOUSEHOLD INTERNATIONAL

Lew McMurray

April 1, 1996

Senator Rick Halford, Majority Leader
Co-Chair, Senate Finance Committee
Room 508, State Capitol
Juneau, AK 99801

Dear Senator Halford,

I am writing to express concern over House Bill 109, which now resides in your committee. As I am sure you are aware, telemarketing has grown dramatically in the last decade as an effective and low-cost means for businesses and consumers to conduct many types of transactions. Buying and selling over the telephone is the preferred method of doing business for millions of people. HB 109 would make transacting business via the telephone more difficult.

As with any growing industry, there have been problems. Unfortunately, fraud has been perpetrated by unscrupulous telemarketers. I also realize that people are simply annoyed at getting sales calls, especially at dinner time.

Various states and the federal government have dealt with the issue of regulating telemarketing in myriad ways. HB 109's way of regulating telemarketing has been the least preferred.

Two significant federal laws are in place that protect consumers from unwanted calls. The Telephone Consumer Protection Act (TCPA) gives consumers a way to avoid unwanted calls by asking to be placed on a company-specific do not call list. A consumer may bring action for violation of the TCPA. It is enforced by the Federal Communications Commission.

In 1994, the Telemarketing and Consumer Fraud and Abuse and Prevention Act was passed. This act will be enforced by the Federal Trade Commission, State Attorneys General or private parties. The FTC wrote rules that were effective December 31, 1995. The law and rules deal extensively with deceptive and abusive telemarketing, required disclosures, record keeping and penalties for violations.

HOUSEHOLD INTERNATIONAL

Lew McMurrin

Many states have also required registration or licensing of telemarketers who either reside or call into a given state. Oregon is the only state that I am aware of that has enacted a similar law to HB 109.

We do business as Household Finance Corporation, Household Retail Services, Household Credit Services and Household Life Insurance Company. I can tell you from experience that the Oregon law is difficult to comply with because of the need to purchase the names with asterisks from US West and then "scrub" that against our customer list. It is a simple fact of doing business that almost nobody uses the local phone book when telemarketing.

Another viable remedy for consumers is the Direct Marketing Association's Telephone Preference Service. Consumers can send their name to this service asking to be taken off telemarketing lists. It works. I send my name in annually and sales calls cease soon afterwards. To be honest with you, the telephone solicitations I get now are from non-profits.

I hope that I have made the point that consumers have many avenues to avoid unwanted sales calls. At this time there is no need for HB 109, despite its worthy purpose.

I apologize for responding to this issue so late in the process but I have been wrapping up with the Idaho and Washington legislative sessions. If you have any questions, please contact me at the address or phone number above. If need be, I would travel to Juneau to discuss this issue with you personally. Thank you for your consideration.

Sincerely,



Lew McMurrin

(S) FIN

MAR 26 1996

DIRECT SELLING ASSOCIATION

1600 K Street, NW, Suite 1010, Washington, DC 20006-2808
202/293-5760 • Fax 202/463-4569

March 21, 1996

The Honorable Rick Halford
Alaska State Senate
State Capitol
Juneau, AK 99801-1182

Dear Senator Halford:

I write on behalf of the Direct Selling Association (DSA) to express our concerns with H.B. 109 (telemarketing).

By way of background, DSA is the national trade association representing over 150 companies which sell their products and services by personal presentation and demonstration, primarily in the home. Our membership, with 6.3 million direct sellers, includes some of the nation's most well-known commercial names which constitute 95% of all direct selling in the United States. The home party and person-to-person sales methods used by our companies and their independent contractor salesforces have become an integral part of the American landscape.

The typical individual direct seller is a woman who operates her own business part-time from her home. Her financial goals are simple -- to earn enough extra income for gifts, tuition, or family vacation -- in short, to supplement family income. The direct seller, as a micro-entrepreneur, is the quintessential small business person.

Alaska, like most states, have multiple local phone companies and therefore, many telephone books. A direct seller who has customers across phone company jurisdictions would be forced to consult multiple phone books before placing a call. Additionally, in many places, several different publishers will release different phone books that cover the same telephone company area. In these situations, direct sellers will be forced to consult all of these phone books before making calls to the same phone company service area. It is also possible that in the areas served by more than one phone book, some subscribers' names will be omitted from another publisher's book. Because of the hundreds of listing changes each day by local telephone companies, any state or local no-call registry would be obsolete as soon as it is printed.

Registries such as those proposed by the bill would have the effect of violating the privacy of telephone subscribers. Persons with unlisted telephone numbers who do not wish to receive commercial solicitations must have their numbers listed in a registry to prevent such calls. This listing would cause the publication of those persons who do not wish to have their numbers known by the general public.

The Honorable Rick Halford

March 21, 1996

Page 2

Additionally, registries do not allow for consumer choices. The goal of a registry is to prevent *all* unsolicited commercial telephone solicitations regardless of who is soliciting. The effect of a registry plan would prevent the consumer from determining which solicitors he or she wishes to hear from. It is possible that a consumer wants to hear about a direct seller's products but not about a charge card offer or vice versa. The preclusion of consumer choice is harmful to the consumer and to the economy.

Several years ago, the FCC in issuing regulations under the Telephone Consumer Protection Act sought to determine the best method for preventing unwanted commercial solicitations through telephone lines. The FCC considered and rejected a national no-call list citing that "...the disadvantages of such a system outweigh any possible advantages." The problems inherent in a national no-call list are applicable on a smaller scale to state or local no-call lists. Of particular concern to the FCC were the burdens such a list would place on small and start-up businesses.

In weighing the costs and benefits of all of the potential alternatives, the conclusion reached by the FCC was that a solicitor specific no-call list "...is the most effective and efficient means to permit telephone subscribers to avoid unwanted telephone solicitations." This system would allow consumers to pick and chose which solicitations to receive and which to avoid. Additionally, it would provide the lowest financial burden on solicitors, the government and the consumer. The no-call list maintained by the person or entity making the call "...represents a careful balancing of the privacy interests of residential telephone subscribers against the commercial speech rights of telemarketers and the continued viability of a valuable business service."

Sincerely,



Eric J. Ellman
Associate Attorney/Manager, Government Relations

j:\legal\aktel



Shaklee Corporation
Shaklee Terraces
444 Market Street
San Francisco, CA 94111-5325

Telephone 415/954-3000

March 21, 1996

VIA FACSIMILE TRANSMITTAL

The Honorable Rick Halford
Co-Chairman, Senate Finance Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

RE: **Opposition to House Bill 109 and Senate Bill 239 relating to telephone solicitations**

Dear Senator Halford:

I am writing to you regarding our opposition to H.B. 109, relating to telephone solicitations, which is pending in the Senate Finance Committee. I understand that a similar bill, S.B. 239, has already been reported out of committee. These concerns apply to that bill as well. Comparable bills creating "no call" lists have been considered in several other states in recent years but all have been rejected. If you deem this legislation should move forward, I ask for your support for the attached amendment language. Similar language has been adopted in several other states that regulate telephone solicitations.

Shaklee, as you may know, is a direct selling company that markets its nutritional, personal care and household products through independent small business people, many of whom live and work in Alaska. Many of our Distributors are women who work out of their homes on a part-time basis to supplement their family's income.

Shaklee Distributors typically utilize the telephone for business purposes in the day to day management of their businesses. Most calls are made to ask if a person wants to know more about a product or to see if someone wants to schedule an appointment. The sales transaction is not completed on the telephone but rather in a later face-to-face meeting. Shaklee Distributors are typically calling their friends and neighbors or others to whom they have been referred.

The Honorable Rick Halford
March 21, 1996
Page 2

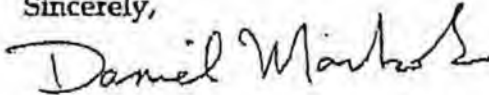
Shaklee Corporation

H.B. 109 would require our Distributors to purchase a "no call" list from the local telephone company or purchase multiple telephone directories. Before they could make a telephone call to a prospective customer, they would need to refer to the list or directory which would constantly be updated. For a small, part-time business person working out of their home, this a onerous and unnecessary requirement.

I believe that the intent of H.B. 109 is to control calls that are usually made by "boiler room" operations conducted by national telephone solicitation firms. My concern is that H.B. 109 is written so broadly and in such a way as to restrict small business people like Shaklee Distributors from making routine business calls.

Thank you for your consideration and let me know if you have any questions.

Sincerely,



Daniel Markels
Government Relations Representative

Attachment

Proposed Amendment to Alaska House Bill 109

Section 2.(e) (3)(B) does not include

(vi) Any call in which the solicitation is an isolated call and not done in the course of a pattern of repeated calls of like nature; or

(vii) Any call in which the person soliciting does not intend to complete or does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting with the solicitor and the prospective purchaser.

Key: Normal: Existing language in the bill.
****: Language in bill not shown.
(Underlined): Language added to bill.

SHAKLEE CORPORATION

Shaklee Terraces
444 Market Street
San Francisco, CA 94111
Tel: (415) 954-3000
Fax: (415) 954-3100

FACSIMILE TRANSMITTAL

**TO: The Honorable Rick Halford
Alaska State Senate
(907) 465-4928**

**FROM: Daniel Markels
Government Relations Representative
SHAKLEE CORPORATION**

DATE: March 21, 1996

RE: H.B. 109 / S.B. 239

Number of Pages being sent (including cover sheet): 4

If you have any problems receiving this transmittal, contact Jenifer at 415-954-2132

Notice of Confidentiality: This transmittal may contain confidential information intended exclusively for the person named above. Use, duplication, or further disclosure of information transmitted in error is strictly prohibited. If you have received this fax in error, please notify us immediately by telephone at our expense, and mail the original message to us at the above address.

Alaska



Newspaper Association

FOUNDING MEMBERS

Incorporated Dec 6, 1980

March 8, 1996

ROBERT B. ATWOOD

The Anchorage Times

KATHERINE FANNING

Anchorage Daily News

LOREN STEWART

Chena Valley News, Kenai

MAX SWEARINGEN

Peninsula Clarion, Kenai

GLEN COBB

The Homer Citizen, Palmer

TOM GIBBONEY

Homer News

JIM C. MARTIN

Alaska Journal of Commerce

G. KENT STURGIS

Four Rivers Daily News, Homer

LEW WILLIAMS

North Star Daily News

CARL SAMPSON

Journal Express

TOM SNAPP

AB Alaska Weekly

Dear Legislator:

Bills to regulate Alaska businesses in their use of telephones have been introduced in both the Senate (CS SB 239) and the House (CS HB 109). Alaska Newspaper Association members in Anchorage, Fairbanks, Kenai, Juneau, and elsewhere who use telemarketing to sell their papers have serious concerns with the proposed legislation. ANA believes other businesses throughout the state will be unhappy with it as well, and encourages you not to pass this legislation.

ANA believes it is unnecessary, particularly in light of available alternatives and federal legislation addressing the same concerns. More than that, ANA believes this legislation will put Alaska businesses at a competitive disadvantage and encourage the exporting of Alaska jobs to other states that do not impose restrictions on their businesses.

If you decide that Alaska businesses need these added restrictions, we would appreciate it if you would change or clarify several provisions to make it less onerous. We do not understand that Sen. Reiger or other Senate sponsors, or Rep. Brown or other House sponsors, have any interest in making compliance with their bills any more difficult or expensive for Alaska businesses than necessary, and we appreciate their willingness to work with the affected businesses to avoid burdens where possible.

• Why the Legislation Should Not Pass We recognize that many people would like not to be bothered at home with interruptions to what they are doing, including phone calls. Most calls, of course, come from friends and family, or are requests to serve on committees or talk about neighborhood problems, or to renew charitable contributions or indicate how you'll vote. None of these calls are screened by this legislation. Existing federal legislation already prevents a second unwanted call. The only thing this legislation does is prevent a single initial call from a business or charity.

~ It Hurts Businesses and The Economy This legislation is bad for business, and will have adverse economic effects. Statistics show that enormous amounts of business are conducted by phone through "telemarketing;" it is popular, with both businesses and consumers. This legislation keeps businesses and consumers from taking full advantage of developments in technology that make commercial transactions increasingly convenient and cost-effective, and reduces the overall volume of goods and services sold. If whatever we could gain in exchange for this were very substantial, it might be different, but it is not.

Those who wish are perfectly free not to do business by phone, and, they already have the protection of federal legislation that guarantees them the right to have their name put on a "do not call" list if they don't ever want to hear again from a company that calls them. Beyond this, for no charge to consumers, the Direct Marketing Association will add their name to a service updated and distributed regularly that will delete their name from lists used by telemarketers nationwide.

In addition, those who choose to list their phone numbers already have numerous alternatives to help deal with this concern. Besides simply not answering the phone when we don't wish to, or hanging up on a caller we don't want to talk with, answering machines and "caller ID," allow us to screen and ignore calls at our convenience.¹ None of these come at the expense of government regulations of businesses in addition to those the federal government has already found adequate to address any problems in this area.

~ The Proposed Legislation Puts Alaska Businesses at A Competitive Disadvantage and Encourages Export of Alaska Jobs Federal legislation passed in 1991 dealt specifically with telemarketing, and protects consumers against unwanted repeated solicitations. Later federal legislation dealt more specifically with telemarketing fraud and abuse. All telemarketers — whether they are located in Miami, Reno, or Fairbanks — operate under these laws and the rules adopted by the Federal Communications Commission and Federal Trade Commission to implement them.

ANA believes that the state legislation being proposed can only be applied legally to Alaska businesses, and not to *interstate* telemarketing. If this is so, then Alaska businesses who continue to do their telemarketing from within Alaska will be at a competitive disadvantage, because those who call here from Outside will be subject to

¹ Other things could be done to more effectively accommodate those consumers who wish added privacy without interfering unduly with companies trying to conduct business. For example, at present, many Alaskans who wish to pay for it can subscribe to the "caller ID" feature from their phone company, but APUC regulations allow a caller to block or override this feature. A rule prohibiting telemarketers from blocking caller ID would not be objectionable; it would not restrict the rights of companies to effectively do business, but would help consumers who wish added privacy to screen their calls.

the federal regulations, but not the restrictions added by this legislation. Experience has already shown that cost is not a barrier to Alaska businesses using Outside firms for telemarketing their products and services. And, given the advantages of operating from elsewhere, it is quite predictable that many Alaska businesses will move this aspect of their operations, at a cost of many local jobs.

The state Department of Law thinks it can make a plausible defense that the law would not be unconstitutional, but it acknowledges that it cannot guarantee this. The assistant Attorney General responsible for this area testified to the House Judiciary Committee last month that "it is fair to say this is a grey area in terms of federal preemption." This appears to be a generous characterization, given that the federal statute that deals with this very same thing specifically provides that "nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits, ... (D) the making of telephone solicitations." 47 U.S.C. §227(e)(1). The commentary accompanying the FCC's Report and Order adopting rules to implement the federal telephone solicitation law also notes that there is no preemption for more restrictive intrastate regulations.

The state's lawyer is willing to make the argument that despite this clear language, you can ignore it and pass more restrictive interstate requirements because a totally different federal statute passed three years later, dealing with telemarketing fraud and credit card laundering, doesn't contain the same preemption language. We realize that you have the ability to pass a bill and leave it to the federal courts to say whether Congress meant what it said. We don't pretend to have all the answers, but we don't find it that easy to ignore Congress' plain language.

- Adjustments That Should Be Made If Legislation Is Passed While ANA and other Alaska businesses would prefer not to see this additional legislation at all, they acknowledge that the burdens on them will be much less if the bill is clarified to reflect this understanding. This will enable Alaska business to comply with the legislation without putting them at the mercy of arbitrary charges by third parties with no interest in reducing their costs of doing business, and also should avoid the need to spend time and resources participating in ratemaking or other administrative proceedings to protect their interests.

~ Costs ANA believes that it is the intention and understanding of the bill's sponsors that the costs imposed on businesses by this bill should be quite minimal. However, we would request that the bill be clarified, to avoid unintended costs down the road — including costs of the lists themselves, as well as the costs of having to participate in regulatory proceedings to protect against unreasonable charges.

Specifically, it is our understanding that there are two separate costs here. One is the cost of setting up and maintaining a service that allows those consumers who wish not to be contacted even once to identify themselves in a directory. We understand that utility customers will be charged some reasonable rate for this, as they are for other optional features and services. The other cost is the cost of providing a list that all companies will have to use if this legislation passes in order to do business telephonically. The businesses forced to buy these lists should be charged only the actual, incremental costs of providing the disk, tape or other medium containing the list. ANA understands this is what is intended, but the language is not clear.

Stability If this legislation passes, ANA and other Alaska businesses hope that you will minimize the disruption and cost of compliance as much as possible by avoiding any requirement that companies must change their procedures or programming any more often than annually, as each new year's directory is published. It appears that the House bill does this; at present, the Senate bill would require frequent changes throughout each year. Using the annual publication of the phone directories as a benchmark would be a reasonable accommodation between the providing protection to the privacy interests of consumers, in addition to that already afforded by federal law, and avoiding undue burdens on the business community.

Good Faith Defense In the Event of Errors Federal law, in the form of rules implementing federal statutes governing telemarketing, assures that businesses cannot be held liable for damages as the result of infrequent or unintended errors. If someone receives a phone call despite having said they would prefer not to be contacted, because of a slip-up on the part of a business, they should not automatically be given a pot of money. Federal law recognizes that good faith compliance is a defense; state law should also. If a company engaged in telemarketing can show, in the event that an error occurs, that it has in place procedures and practices that should accommodate a consumer's wish not to be called, and has taken steps to implement these (just having procedures on paper is not enough), then occasional errors by that company should be excused.

Polling First, the prohibitions against automated polling contained in the Senate version unnecessarily restrict the use of modern polling techniques that provide for maximum statistical reliability for political and other opinion sampling. The public is not well served by this prohibition, and there is no evidence of abuse in this area that warrants or necessitates it.

Miscellaneous Matters There are a few other provisions that we think should be modified, and we will be happy to work with Rep. Brown, Sen. Reiger, and any other interested legislators or their staff members to address these concerns if the Legislature decides that this area really needs to be further regulated. We hope, however, that

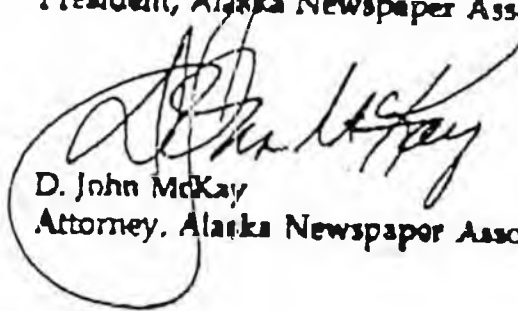
Alaskans can be satisfied to live with the substantial regulations already enacted by the federal government to deal with telemarketing.

ANA thanks you for your consideration of these comments.

Sincerely,



Ron Loesch, Publisher
Petersburg Pilot
President, Alaska Newspaper Association



D. John McKay
Attorney, Alaska Newspaper Association

HOUSE JUDICIARY STANDING COMMITTEE
February 14, 1996
1:07 p.m.

MEMBERS PRESENT

Representative Brian Porter, Chairman
Representative Joe Green, Vice Chairman
Representative Con Bunde
Representative Bettye Davis
Representative Al Vezey
Representative Cynthia Tochey
Representative David Finkelstein

MEMBERS ABSENT

None

COMMITTEE CALENDAR

HOUSE BILL NO. 109

TITLE: "An Act relating to telephone directory listings and solicitations."

- CSHB 109(JUD) PASS OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 109

SHORT TITLE: TELEPHONE DIRECTORY LISTING/SOLICITATIONS

SPONSOR(S): REPRESENTATIVE(S) BROWN, Navarre, B. Davis

JRN-DATE	JRN-PG		ACTION
01/23/95	115	(H)	READ THE FIRST TIME - REFERRAL(S)
01/23/95	116	(H)	LABOR & COMMERCE, JUDICIARY
01/26/95	148	(H)	COSPONSOR(S): B.DAVIS
04/28/95		(H)	L&C AT 3:00 PM CAPITOL 17
04/28/95		(H)	MINUTE(L&C)
05/01/95		(H)	L&C AT 3:00 PM CAPITOL 17
05/01/95		(H)	MINUTE(L&C)
05/04/95	1849	(H)	L&C RPT CS(L&C) SDP 2NR
05/04/95	1849	(H)	DP: KOTT, ROKEBERG, KUBINA, PORTER
05/04/95	1849	(H)	DP: ELTON
05/04/95	1849	(H)	NR: MASEK, SANDERS
05/04/95	1849	(H)	ZERO FISCAL NOTE (DCED)
02/12/96		(H)	JUD AT 1:00 PM CAPITOL 120
02/14/96		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DAVEED SCHWARTZ, Assistant Attorney General

Commercial Section
Department of Law
1031 W 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
Telephone Number: (907) 269-3697

POSITION STATEMENT: Provided information regarding HB 109

ACTION NARRATIVE

TAPE 96-20, SIDE A
Number 000

CHAIRMAN BRIAN PORTER called the House Judiciary committee meeting to order at 1:07 p.m. Members present at the call to order were Representatives Green, Bunde, Tooney, Vezey and Finkelstein. Representative Davis arrived at 1:09 p.m.

HB 109 - TELEPHONE DIRECTORY LISTING/SOLICITATIONS

CHAIRMAN PORTER informed those present that this was a continued hearing on HB 109 and invited Representative Brown to the table. He also noted that Daveed Schwartz from the Department of Law, would provide information from Anchorage by speaker phone.

Number 140

DAVEED SCHWARTZ, Assistant Attorney General, Consumer Protection Enforcement, testified that part of his responsibilities as Assistant Attorney General includes enforcing Alaska's telephonic solicitations statute at AS 45.63.00, which was enacted in 1993. Since this time, the department has had quite a lot of experience regulating telemarketers. They've found that the vast majority of these telemarketers are from outside the state. Alaska is more a victim state, rather than one which houses telemarketer operations, in contrast to state's such as Georgia, Nevada, Florida and California.

MR. SCHWARTZ stated that Alaska has never had their regulations challenged by out of state telemarketers, either in the area of jurisdiction which is provided for under a long arm jurisdiction statute at AS 09.05.015, or on federal pre-emption grounds. He felt as though HB 109 would attempt to regulate many of the same telemarketers which the state already regulates under AS 45.63.00, by imposing a "do not call" provision under the Consumer Protection Law. Mr. Schwartz also outlined that there were federal laws which deal with "do not call," provisions, one of which is entitled the Telephone Consumer Protection Act of 1991. This is enforced by the Federal Communications Commission. He noted a more recent act entitled, The Telemarketing and Consumer Fraud and Abuse Prevention Act, which was enacted in 1994. The provisions of this act are enforced by the Federal Trade Commission, which just promulgated regulations that went into effect December 31, 1995. Mr. Schwartz

noted that the "do not call" provisions in each of these laws are very similar.

MR. SCHWARTZ referred to questions raised in the previous meeting of the House Judiciary Committee, as to whether or not federal law would preempt the state of Alaska's regulating their interstate calls. He felt as though this was grey area at best. In Congress's most recent pronouncement outlined in The Telemarketing and Consumer Fraud and Abuse Prevention Act, Congress regulates through the federal Trade Commission, interstate calls. They do have a "do not call" provision in this act. Additionally, part of this federal statute says that, "Nothing contained therein, shall prohibit an authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state." This is Congress's pronouncement concerning possible preemption in relation to regulating interstate calls. Under this particular statute it would be a fair interpretation to say that states can also enact (indisc.), which would have an effect of regulating interstate as well as, out-of-state calls.

Number 430

MR. SCHWARTZ said he was unable to find any cases which indicated that there was some type of federal pre-emption of a state's efforts to prohibit telemarketers from calling those individuals who do not wish to receive calls. Florida, among other states, has a statute which does much of what CSHB 109 seeks to do. This Florida law has been on the books since 1991 and was actually enacted prior to the Federal Telephone Consumer Protection Act. There has never been a challenge to the Florida law on either jurisdictional or federal pre-emption grounds. Although, there's no iron-clad guarantee that Alaska can insulate themselves from a federal pre-emption attack, he thought that it was fair to say that this is a grey area in terms of federal pre-emption and an argument could certainly be paid that Alaska can, like other states, under their telephonic registration acts, regulate interstate calls for this purpose. In terms of asserting jurisdiction, as long as the telemarketer consummates a sale of goods over the phone, there shouldn't be any problem asserting jurisdiction allowed under AS 09.05.015.

Number 593

REPRESENTATIVE AL VEZEY asked Mr. Schwartz to explain Alaska's long-arm intervention statute. How does this work and what success has Alaska had in trying to impose these laws on these non-resident businesses.

MR. SCHWARTZ answered that the state has had quite a lot of success in imposing their telephonic solicitation registration requirements on out-of-state telemarketers. He used an illustration of a San

Diego, California telemarketer who attempted to continue their efforts without registering with the Alaska Department of Law, which is required under AS 45.63.00. He went to court against this company and obtained a permanent injunction against them in March of last year. They have now challenged a portion of this injunction in the Alaskan Supreme Court, but in raising the many other arguments in relation to this suit, they have not raised a challenge to Alaska's jurisdiction over them. AS 09.05.015 which relates to personal jurisdiction allows the state to serve an out-of-state defendant and then bring them into court to answer and defend against law suits the state might bring. This company was served in San Diego through the rules of civil procedure. It's a recognized principle in civil procedure across the nation that if a state can serve an out-of-state defendant and if this state's statute permits this assertion of jurisdiction over an out-of-state defendant to the maximum extent allowed under the due process clause of the 14th amendment of the U.S. Constitution, which the Alaska statute does, then jurisdiction is appropriate under these circumstances.

Number 825

CHAIRMAN PORTER asked where a hearing is required to take place when the telemarketer is from out-of-state.

MR. SCHWARTZ pointed out that as long as Alaska can establish service on the out-of-state telemarketer, the hearing would take place in Alaska, by filing a complaint in state Superior Court. This is done routinely.

CHAIRMAN PORTER asked how does Alaska then enforce this judgment after they are able to prevail.

MR. SCHWARTZ said that they obtain an injunction from the court under the Consumer Protection Act. This injunction usually prohibits a telemarketer from engaging in telephonic solicitations to Alaska without first registering with the Department of Law. If the telemarketer continues to violate this law, as well as the court's injunction, instead of subjecting itself to a civil penalty of up to \$5,000 per violation, they can subject themselves to a civil penalty of up to \$25,000 per violation of a court injunction. The court would impose a civil penalty in the form of a judgment and then the state would be in the position to execute on this judgment if the telemarketer did not pay the civil penalty. Alaska is able to do this even if a defendant is located out-of-state.

Number 1111

REPRESENTATIVE VEZEY asked if this San Diego Case was the only case that he had taken to court.

MR. SCHWARTZ pointed out that the telemarketing law has been on the

books since 1993. This San Diego case was the first and only case which the state has had to bring because on every other occasion other telemarketers have relented. Mr. Schwartz has sent over 100 cease and desist, warning letters to telemarketers, all of whom were located out-of-state and he's obtained more than \$430,000 in refunds for consumers in Alaska in the last 12 months or so from these telemarketers. The state has filed many assurances of voluntary compliance documents with the court, in which the telemarketers agree to do all sorts of things to help consumers as a result of their violations of the law. This San Diego case is on appeal at the Alaska Supreme Court, but not related to the issues of federal pre-emption or personal jurisdiction under Alaska's long arm statute.

Number 1035

REPRESENTATIVE TOCHEY asked Mr. Schwartz how the state obtained the names of these telemarketing companies.

MR. SCHWARTZ noted that after the state Attorney General's lost most of their funding for consumer protection complaint investigations, they negotiated a complaint referral and information sharing agreement with the Better Business Bureau of Alaska in 1991. This agreement is still in effect. The state has a long standing working relationship with the Better Business Bureau which handles most of the individual complaints from consumers in Alaska, they then refer patterns of complaints to the attorney general's office for enforcement, where the Better Business Bureau is unable to mediate complaints. The department immediately acts to send a cease and desist warning letter whenever they receive a referral from the bureau.

Number 1035

REPRESENTATIVE VEZEY wondered how they are able to get an address of where these telemarketers are located.

MR. SCHWARTZ said that typically what happens is the people who complain to the Better Business Bureau are those who have actually made a purchase or have at least received some literature from the telemarketer.

Number 1268

REPRESENTATIVE KAY BROWN responded to some concerns from the previous committee meeting regarding HB 109. She noted the two pieces of correspondence distributed at this same meeting from ATU Communications and the Alaska Telephone Association. She offered amendment number 1, (F3) which would rectify the areas of concerns outlined by these two firms. These amendments would apply to the version (F) of HB 109. The language changes outlined in amendment 1 would read as follows:

Page 1, line 12: Delete "uses" and insert, "originates a telephone call using";

Page 2, line 2, after ".":, insert, "A residential customer who requests to be so identified shall pay for the cost of the identification;

Page 3, line 57, after".":, insert, "The local exchange telecommunications company may impose a reasonable cost for the list";

Page 2, line 15 after "1)", insert, "'charitable organization" has the meaning given in AS 45.58.900."

REPRESENTATIVE BROWN outlined that the first portion of this amendment dealt with rectifying a situation where a company might want to insert an advertisement on a recording that a caller could hear. This legislation's intent is not to regulate businesses from using their own phones for advertisements, hence the change as outlined.

REPRESENTATIVE BROWN spoke to the remainder of the changes outlined in this amendment number 1, and stated the language used was implicit and certainly has addressed conversations of record all along. Representative Brown said she did not have a problem clarifying these issues further. In regards to defining a charitable organization, she stated for the record that under AS 45.58.900 a charitable organization is a "non-profit organization that is (a) operated for the relief of poverty, distress or other condition of public concern in the state, or (b) the Internal Revenue Service determines to be a tax-exempt organization under 26 USC 501.C3 Internal Revenue Code." She stated that this bill builds in a prior relationship exception both for the commercial operations and for the charities. She felt it made sense to pick up these other non-profits as well, as accomplished by the reference to this definition of a charitable organization in statute.

Number 1525

REPRESENTATIVE CON BUNDE made a motion to move amendment number 1, (F3) as described by the sponsor. Hearing no objection it was so adopted.

REPRESENTATIVE BROWN pointed out that amendment number 2 was put forward as a consideration of policy matters. Mr. Schwartz pointed out that some of these telemarketers might continue to abuse persons over a long period of time. Representative Brown looked for a reasonable side-board on this exception. She pointed out that what these two proposals outlined in amendment number 2 would accomplish, would add to both the charitable organization exception and the to the prior commercial relationship exception the requirement that this prior relationship needs to be made current in the last 24 months. This language would serve as a further limitation. This amendment number 2 would read as follows:

Page 2, line 27, after "who," insert, "within the last 24 months," and on Page 3, line 3 delete "previously," and insert, ", within the last 24 months."

REPRESENTATIVE GREEN made a motion to adopt version (F) for CSHB 109 as the working draft of the bill before the committee. Hearing no objection it was so moved. Representative Bunde moved again amendment number 1. Hearing no objection it was so moved.

Number 1645

REPRESENTATIVE BUNDE made a motion that amendment number 2 be moved. Hearing no objection, it was so adopted.

Number 1656

REPRESENTATIVE BROWN stated that amendment number 3 was a letter of intent at the request of the Alaska Telephone Association. They would like the record to reflect that the legislature doesn't intend that any violation of this law would put any liability on them. She pointed out that it doesn't make sense to put this language in the statute because it's a non-issue in her opinion. She used the following illustration to make her point in the context of this intent, say for example, under a criminal statute they wouldn't add, "if anybody uses the phone for the commission of a crime the phone company's not at fault. Even if someone wanted to bring suit against the phone company, the amount of money they would have paid would be so small for this exclusion service.

Number 1721

REPRESENTATIVE FINKELSTEIN moved that CSHB 109 (F) be passed from the Judiciary Committee with individual recommendations and fiscal notes as attached with amendments. Hearing no objection, it was so moved.

Number 1752

REPRESENTATIVE DAVIS made a motion to move the letter of intent as outlined. Hearing no objection, the letter of intent was adopted.

ADJOURNMENT

CHAIRMAN PORTER adjourned the meeting at 1:35 p.m.

By Sharp

CS HB 109 (Jud)

Amendment:

pg. 293, Delete sub-paragraph (ii)
on lines 28-31 pg 2 and pg 3
line 1

Replace with:

Insert: (ii) calls made

by charitable organization
volunteers on behalf of the
charitable organization

A M E N D M E N T

*New lang. 4/29
from
Rep. Brown*

OFFERED IN THE SENATE

TO: CSHB 109(JUD)

1 Page 1, line 11:

2 Delete "telephone solicitations; or"

3 Insert

4 "(A) commercial telephone solicitations; or

5 (B) any telephone solicitations; or"

6 Page 2, line 2, following "receive":

7 Insert "commercial telephone solicitations and of those residential customers who do

8 not wish to receive any"

9 Page 2, line 3:

10 Delete "so identified"

11 Insert "identified as not wishing to receive commercial telephone solicitations or as

12 not wishing to receive any telephone solicitations"

13 Page 2, line 7, following "receive":

14 Insert "commercial telephone solicitations or of those residential customers who do

15 not wish to receive any"

16 Page 2, following line 17:

17 Insert a new paragraph to read:

18 "(2) "commercial telephone solicitation"

19 (A) means the solicitation by a person by telephone of a

20 customer at the residence of the customer for the purpose of encouraging the

21 customer to purchase property, goods, or services;

1 (B) does not include permitted telephone solicitations;"

2 Renumber the following paragraph accordingly.

3 Page 2, following line 19:

4 Insert a new paragraph to read:

5 "(4) "permitted telephone solicitations" means

6 (A) calls made in response to a request or inquiry by the called
7 customer or communications made during a call made by the customer;

8 (B) calls made by a charitable organization, a public agency,
9 or volunteers on behalf of the charitable organization or public agency to
10 members of the organization or agency or to persons who, within the last 24
11 months, have made a donation to the organization or agency or expressed an
12 interest in making a donation;

13 (C) calls limited to polling or soliciting the expression of ideas,
14 opinions, or votes;

15 (D) business-to-business calls; or

16 (E) a person soliciting business from prospective purchasers
17 who have, within the last 24 months, purchased from the person making the
18 solicitation or from the business enterprise for which the person is calling but
19 only if the person or business enterprise has not received a written request
20 from the prospective purchaser asking that telephone solicitations cease; the
21 person or business enterprise is presumed to have received a written request
22 no later than 10 days after the prospective purchaser mailed it, properly
23 addressed and with the appropriate postage;"

24 Renumber the following paragraph accordingly.

25 Page 2, line 24, following "include":

26 Insert "permitted telephone solicitations;"

27 Page 2, line 25, through page 3, line 13:

1'

Delete all material.

HB

110

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 18, 1996

FURTHER REFERRALS:

Date of Committee Action: 4/9/96

The FINANCE Committee considered:

SSHB 110

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 110

CONFIDENTIALITY OF MOTOR VEHICLE RECORDS

"An Act relating to the confidentiality of certain information in motor vehicle records; and providing for an effective date."

recommends it be replaced with the following committee substitute SSHB 110 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) DPS 3/18/96

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Richard Foster</i>	FOSTER	X			
<i>Glenn Miller</i>	Miller	X			
<i>Eric Kohring</i>	Kohring	X			
<i>Nancy Navarre</i>	Navarre			X	
<i>Tony Brown</i>	Brown			X	
<i>Pat Kelly</i>	Kelly			X	
<i>Therese Thernard</i>	Thernard			X	

CHAIR'S SIGNATURE _____

Richard Foster
 FOSTER

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: CSHB 110(STA)

Revision Date: 03/26/96 Dept. Affected: Public Safety
 Title: An Act relating to confidentiality of information BRU: Motor Vehicles
motor vehicle records... Component: Field Services
 Sponsor: Representative Barnes
 Requestor: H. FIN COMPONENT SERIAL NO. 0502

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL	1.4					
CONTRACTUAL	2.5					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.9	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	(25.0)	(25.0)	(25.0)	(25.0)	(25.0)	(25.0)
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE	3.9					
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL	3.9	-0-	-0-	-0-	-0-	-0-

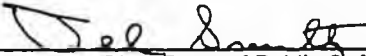
Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 03/26/96
 Approved by Commissioner:  Date: 3/26/96
 Agency: Ronald L. Otte, Dept. of Public Safety

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

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: CSHB 110(STA)

Revision Date: 03/26/96

Dept. Affected: Public Safety

ANALYSIS CONTINUED

In 1994 the State received approximately \$150.0 for the sale of vehicle records.

Current law allows an individual to walk-in and purchase a vehicle record at a DMV Field office for a fee of \$5.00. It is estimated that \$25.0 will be lost from the sale from the walk-in customers who will have no legitimate purposes for obtaining the record.

There are currently two major vendors who receive the vehicle records electronically at a cost of \$50.00 per 1,000 records. The main use is to generate mailing lists and to determine the address of an individual. The vendors who have a legitimate business purpose for receiving the information will still be allowed to obtain the electronic record file. There is a possibility a vendor may discontinue to receive the file due to the restrictions of disclosure of information. Therefore, we are unable to project any additional loss if a vendor discontinues to receive the file.

This bill will require the Department to promulgate regulations regarding the release of motor vehicle records. Public hearings will be held in Anchorage, Fairbanks, Soldotna/Kenai and Juneau. Travel = \$980.00 Airfare from Juneau to Anchorage, Anchorage to Fairbanks, Fairbanks to Soldotna/Kenai and return to Juneau. Per-diem = \$336.00, Car Rental in Anchorage, Fairbanks and Soldotna = \$75.00. Total of travel expenses = \$1.4.

Contractual. Publishing cost to publish notice of regulations and public hearings 2 times in 6 different newspapers = \$2.1, Cost of contracting with the Legislative Information Office to hold public hearings are \$25.00 an hour, 4 hours in each location = \$.04. Total cost of contractual is \$2.5.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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


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

MEMORANDUM

April 4, 1996

SUBJECT: Sectional Summary of CSSSHB 110(STA)

TO: Representative Ramona Barnes
Attn: Eleanor Roser

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Prohibits the Department of Public Safety from disclosing personal information contained in motor vehicle records, with certain exceptions. Requires the department to disclose personal information in motor vehicle records for certain purposes specified in subsection (b). Allows the department to disclose personal information with the written consent of the person who is the subject of the information. Allows the department to disclose personal information for certain specified reasons listed in subsection (d). Allows the department to disclose personal information without regard to the use of the information, if the department provides certain notice and an opportunity for a person to prohibit disclosure.

Section 2. Effective date.

MFF:klb
96-258.klb

SEC. 300002. PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS.

(a) In General.--Title 18, United States Code, is amended by inserting after chapter 121 the following new chapter:

CHAPTER 123--PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS

Sec. 2721. Prohibition on release and use of certain personal information from State motor vehicle records

(a) In General.--Except as provided in subsection (b), a State department of motor vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record.

(b) Permissible Uses.--Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act, and may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or

contractors, but only--

“(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

“(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

“(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

“(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

“(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

“(7) For use in providing notice to the owners of towed or impounded vehicles.

“(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

“(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.).

“(10) For use in connection with the operation of private toll transportation facilities.

“(11) For any other use in response to requests for individual motor vehicle records if the motor vehicle department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information

collected by the department may be disclosed to any business or person, and has provided in a clear and conspicuous manner on such forms an opportunity to prohibit such disclosures.

“(12) For bulk distribution for surveys, marketing or solicitations if the motor vehicle department has implemented methods and procedures to ensure that--

“(A) individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

“(B) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them.

“(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

“(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

“(c) Resale or Redisclosure.--An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b) (11)) that resells or rediscloses personal information covered by this title must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

“(d) Waiver Procedures.--A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing

such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

Sec. 2722. Additional unlawful acts

(a) Procurement for Unlawful Purpose.--It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721(b) of this title.

(b) False Representation.--It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

Sec. 2723. Penalties

(a) Criminal Fine.--A person who knowingly violates this chapter shall be fined under this title.

(b) Violations by State Department of Motor Vehicles.--Any State department of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be subject to a civil penalty imposed by the Attorney General of not more than \$5,000 a day for each day of substantial noncompliance.

Sec. 2724. Civil action

(a) Cause of Action.--A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) Remedies.--The court may award--

(1) actual damages, but not less than liquidated damages in the amount of \$2,500;

(2) punitive damages upon proof of willful or reckless disregard of the law;

(3) reasonable attorneys' fees and other litigation costs reasonably incurred; and

(4) such other preliminary and equitable relief as the court determines to be appropriate.

Sec. 2725. Definitions

In this chapter--

C HOUSE COMMITTEE REPORT

3/18/96

(7)

Date Referred: March 10, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-14-96

The STATE AFFAIRS Committee considered:

SSHB 110

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 110

CONFIDENTIALITY OF MOTOR VEHICLE RECORDS

"An Act relating to the confidentiality of certain information in motor vehicle records; and providing for an effective date."

recommends it be replaced with the following committee substitute CS SSHB 110(STA) [X] 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)

[X] fiscal note(s) PS

[] fiscal note(s)

[] zero fiscal note(s)

[] zero fiscal note(s)

Table with columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows include names like Jeannette James, Brian Porter, Green, Ivan, Caren Robinson, Ed Willis, and Ogan. Summary counts: 3 in DP, 4 in NR.

CHAIR'S SIGNATURE Jeannette James Timon



Official Business

COMMITTEES
Natural Resources
Legislative Council

Alaska State Legislature

Office of World Trade And State/Federal Relations

REPRESENTATIVE
RAMONA L. BARNES
District 22

Anchorage
P O Box 103382
Anchorage, AK 99510
(907) 337-7737
(907) 258-8163

State Capitol
Juneau, AK 99801-1182
(907) 465-3438

SPONSOR STATEMENT SS HB 110

This legislation was introduced at the request of two of my constituents who had experienced stalking by persons who had obtained their addresses from DMV through license plate information. Additionally, in 1994, confidentiality of license plate information was included in the President's Crime Package.

The intent of the federal legislation (18 U.S.C. 2721) was to protect the personal privacy of persons licensed by states to drive a motor vehicle or persons who register a motor vehicle by prohibiting disclosure of information on drivers maintained by the state. This information is only to be disclosed under permissible uses.

If Alaska is not in compliance with the federal law by September 13, 1997, the DMV could be liable for civil fines of \$2,500.00 per day and the state could be subject to fines of \$5,000.00 per day until compliance is reached.

This bill is supported by the Council on Domestic Violence and Sexual Assault and the Anchorage Police Department.

I appreciate your consideration of this bill and request your support.



Official Business

COMMITTEES
Natural Resources
Legislative Council

Alaska State Legislature

Office of World Trade And State/Federal Relations

REPRESENTATIVE
RAMONA L. BARNES
District 22

Anchorage
P.O. Box 103382
Anchorage, AK 99510
(907) 337-7737
(907) 258-8163

State Capitol
Juneau, AK 99801-1182
(907) 465-3438

SPONSOR STATEMENT CS SS HB 110(STA)

This legislation was introduced at the request of two of my constituents who had experienced stalking by persons who had obtained their addresses from DMV through license plate information. Additionally, in 1994, confidentiality of license plate information was included in the President's Crime Package.

The intent of the federal legislation (18 U.S.C. 2721) was to protect the personal privacy of persons licensed by states to drive a motor vehicle or persons who register a motor vehicle by prohibiting disclosure of information on drivers maintained by the state. This information is only to be disclosed under permissible uses.

The businesses that currently purchase the list for dissemination to their customers who are banks, credit unions, insurance companies, etc., will still be able to do so. However, they will be required to abide by the restrictions imposed by the Federal Act.

If Alaska is not in compliance with the federal law by September 13, 1997, DMV employees could be liable for civil fines of \$2,500.00 per day or be in violation of state statute and the state could be subject to fines of \$5,000.00 per day until compliance is reached.

This bill is supported by the Council on Domestic Violence and Sexual Assault and the Anchorage Police Department.

I appreciate your consideration of this bill and request your support.

HB

110

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/25/96

DATE TURNED INTO OFFICE: 5-2-96

The Finance Committee considered CS FOR SPONSOR SUBSTITUTE FOR HB 110(STA) am
 Relating to the confidentiality of certain information in motor vehicle records.

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 Ruiz</i>	✓	<i>Wanda Dwyer</i>	✓		
<i>Bob Strong</i>	✓	<i>Patricia Glassoff</i>	✓		
Co-Chair: <i>Mark</i>	✓	Co-Chair:			
Co-Chair: <i>Rick Halford</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>DPS</i>	<i>3/4/96</i>		<i>3.9 (50.0)</i>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 1
BILL NO. Bill Version: CSSS HB 110(STA)
 (H) Publish Date: 3/18/96

Revision Date: 03/06/96 Dept. Affected: Public Safety
 Title: An Act relating to confidentiality of information BRU: Motor Vehicles
motor vehicle records... Component: Field Services
 Sponsor: Representative Barnes
 Requestor: H. STA. COMPONENT SERIAL NO. 0502

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL	1.4					
CONTRACTUAL	2.5					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.9	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.9					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	3.9	-0-	-0-	-0-	-0-	-0-

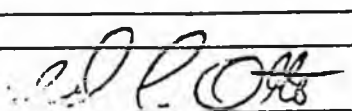
Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 03/06/96
 Approved by Commissioner:  Date: _____
 Agency: Ronald L. Otte, Dept. of Public Safety

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

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: SHB 110

Revision Date: 03/06/96

Dept. Affected: Public Safety

ANALYSIS CONTINUED

In 1994 the State received approximately \$150.0 for the sale of vehicle records. This was for individual records at \$5.00 each and for the sale of master file updates to two major vendors at a cost of \$50.00 per 1,000 records. The main use of these records was to determine the address of the individual or, in case of major vendors, to generate mailing lists. It is estimated that \$50.0 of this revenue annually will be lost if the addresses are confidential. It is anticipated that one vendor will not be able to get the records because they make their data base available to everyone and this will be a loss of \$25.0. It is estimated that an additional \$25.0 will be lost from the walk-in customers who will have no legitimate purpose for obtaining the record.

This bill will require the Department to promulgate regulations regarding the release of motor vehicle records. Public hearings will be held in Anchorage, Fairbanks, Soldotna/Kenai and Juneau. Travel = \$980.00 Airfare from Juneau to Anchorage, Anchorage to Fairbanks, Fairbanks to Soldotna/Kenai and return to Juneau. Per-diem = \$336.00, Car Rental in Anchorage, Fairbanks and Soldotna = \$75.00. Total of travel expenses = \$1.4.

Contractual. Publishing cost to publish notice of regulations and public hearings 2 times in 6 different newspapers = \$2.1, Cost of contracting with the Legislative Information Office to hold public hearings are \$25.00 an hour, 4 hours in each location = \$.04. Total cost of contractual is \$2.5.



Official Business

COMMITTEES
Natural Resources
Legislative Council

Alaska State Legislature

Office of World Trade And State/Federal Relations

REPRESENTATIVE
RAMONA L. BARNES
District 22

Anchorage
P O Box 103382
Anchorage, AK 99510
(907) 337-7737
(907) 258-C163

State Capitol
Juneau, AK 99801-1182
(907) 465-3438

SPONSOR STATEMENT CS SS HB 110(STA) AM

This legislation was introduced at the request of two of my constituents who had experienced stalking by persons who had obtained their addresses from DMV through license plate information. Additionally, in 1994, confidentiality of license plate information was included in the President's Crime Package.

The intent of the federal legislation (18 U.S.C. 2721) was to protect the personal privacy of persons licensed by states to drive a motor vehicle or persons who register a motor vehicle by prohibiting disclosure of information on drivers maintained by the state. This information is only to be disclosed under permissible uses.

The businesses that currently purchase the list for dissemination to their customers who are banks, credit unions, insurance companies, etc., will still be able to do so. However, they will be required to abide by the restrictions imposed by the Federal Act.

If Alaska is not in compliance with the federal law by September 13, 1997, DMV employees could be liable for civil fines of \$2,500.00 per day or be in violation of state statute and the state could be subject to fines of \$5,000.00 per day until compliance is reached.

This bill is supported by the Council on Domestic Violence and Sexual Assault and the Dept. of Public Safety.

I appreciate your consideration of this bill and request your support.

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 4/19/96

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-24-96

The Judiciary Committee considered CS FOR SPONSOR SUBSTITUTE FOR HB 110(STA) am
 Relating to the confidentiality of certain information in motor vehicle records.

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 title
 - new: SCR# _____

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Lynda Green</i>	✓				
<i>il Cdes</i>	✓				
<i>CHAIR: [Signature]</i>	✓	<i>CHAIR:</i>			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>Pub Safety</i>	<i>4/24/96</i>	2	<i>3.9</i>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

BILL: HB 110 SHORT TITLE: CONFIDENTIALITY OF MOTOR VEHICLE RECORDS
BILL VERSION: CSSSHB 110(STA) AM
SPONSOR(S): REPRESENTATIVE(S) BARNES, GREEN, B. DAVIS

CURRENT STATUS: (S) FIN

STATUS DATE: 04/25/96

TITLE: "AN ACT RELATING TO THE CONFIDENTIALITY OF CERTAIN INFORMATION IN MOTOR VEHICLE RECORDS."

01/23/95	116	(H)	READ THE FIRST TIME - REFERRAL(S)
01/23/95	116	(H)	STATE AFFAIRS, FINANCE
01/25/95	136	(H)	COSPONSOR(S): GREEN
03/10/95	701	(H)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
03/10/95	701	(H)	READ THE FIRST TIME - REFERRAL(S)
03/10/95	701	(H)	STATE AFFAIRS, FINANCE
03/18/96	3172	(H)	STA RPT CS(STA) 3DP 4NR
03/18/96	3173	(H)	DP: GREEN, IVAN, ROBINSON
03/18/96	3173	(H)	NR: JAMES, PORTER, WILLIS, OGAN
03/18/96	3173	(H)	FISCAL NOTE (DPS)
04/10/96	3672	(H)	FIN RPT CS(STA) 3DP 4NR
04/10/96	3673	(H)	DP: FOSTER, MULDER, KOHRING
04/10/96	3673	(H)	NR: NAVARRE, BROWN, KELLY, THERRIAULT
04/10/96	3673	(H)	FISCAL NOTE (DPS) 3/18/96
04/17/96	3816	(H)	RULES TO CALENDAR 4/17/96
04/17/96	3816	(H)	READ THE SECOND TIME
04/17/96	3817	(H)	STA CS ADOPTED UNAN CONSENT
04/17/96	3817	(H)	ADVANCED TO THIRD READING UNAN CONSENT
04/17/96	3817	(H)	READ THE THIRD TIME CSSSHB 110(STA)
04/17/96	3817	(H)	PASSED Y34 N4 A2
04/17/96	3816	(H)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/17/96	3818	(H)	BUNDE NOTICE OF RECONSIDERATION
04/17/96	3827	(H)	COSPONSOR(S): B.DAVIS
04/18/96	3860	(H)	RECON TAKEN UP - IN THIRD READING
04/18/96	3861	(H)	RETURN TO 2ND FOR AM 1/UNAN CONSENT
04/18/96	3861	(H)	AM NO 1 ADOPTED UNAN CONSENT
04/18/96	3861	(H)	...CHANGES TITLE OF LEGISLATION
04/18/96	3861	(H)	RETURN TO 2ND FOR AM 2/UNAN CONSENT
04/18/96	3861	(H)	AM NO 2 ADOPTED UNAN CONSENT
04/18/96	3862	(H)	PASSED ON RECONSIDERATION Y31 N6 E2 A1
04/18/96	3868	(H)	TRANSMITTED TO (S)
04/19/96	3379	(S)	READ THE FIRST TIME - REFERRAL(S)
04/19/96	3379	(S)	JUD, FIN
04/25/96	3554	(S)	JUD RPT 3DP
04/25/96	3554	(S)	PREVIOUS H FN (DPS)
04/25/96	3554	(S)	REFERRED TO FINANCE

HB

116

HFIN

FILE

March 7, 1995

The Honorable Mark Hanley
Co-Chairman, House Finance Committee
State Capital Room 507
Juneau, AK 99801

Dear Representative Hanley:

I'm requesting your support in passage of CSHB 116 which is crucial to the Alaska Seafood Marketing Institute's (ASMI) domestic promotional activities.

The seafood industry is Alaska's largest private employer with the equivalent of over 33,000 full time jobs, which represents one-sixth of all employment within the state. Seafood and the related industries represents a multi-billion dollar impact on the Alaska economy and provides more than \$80 million dollars of tax revenue to state and local governments. The health of the industry and the multiple economic benefits to the state are dependent upon the successful marketing of Alaska seafood products throughout the world.

Currently, the industry is experiencing heavy competition from farmed salmon, foreign seafood production and other protein sources. This competition has significantly eroded Alaska's market share and reduced prices for Alaska salmon and other seafood products directly affecting the incomes of all those dependent upon a healthy industry.

The Alaska Seafood Marketing Institute is the state's seafood commodity commission with offices in Juneau and Seattle, Washington. The institute's domestic marketing activities are solely funded through industry tax assessments from salmon fishermen and Alaska shore based processors. ASMI is governed by a 25-member board of directors appointed by the governor, composed of fishermen, processors and a public member who are responsible for managing the finances and marketing services in the best interest of the industry and the state. In meeting these responsibilities, the board has adopted a domestic marketing plan to aggressively promote Alaska salmon and other seafood products. In pursuing this plan, the board has unanimously decided to seek exemption from the restrictive requirements of the state procurement code. This is necessary in order for the institute to obtain tactical flexibility to effectively compete in a private sector economy.

Alaska Seafood Marketing Institute
1111 West 8th Street, Room 100
Juneau, Alaska 99801-1895
Tel: (907) 465-5560
In Alaska: 1-800-478-2903
Fax: (907) 465-5572



The state procurement process is not designed to facilitate market promotion services in the private sector, conduct business in a cost effective manner or readily allow the board to participate in the decision making process. In order to maximize our limited promotional budget, ASMI requires efficient and cost effective purchasing of services and products.

As an example, ASMI currently cannot advertise and procure services valued over \$25,000 outside of Alaska. The domestic marketing plan is based upon contracting with regional marketing representative staff who have unique knowledge of local foodservice and retail distribution systems. The domestic marketing plan requires the addition of three market representatives, two on the East coast and one on the West coast of the United States. Under the state procurement system, ASMI is prohibited from advertising outside of Alaska for such services. This requirement will result in an elaborate, time consuming and costly bid process that will not adequately consider unique knowledge and abilities.

ASMI first contracted two market contract representative were hired in the Midwest in the fall of 1994. Due to the procurement requirements, these staff were solicited in the same manner that a multi-million dollar professional service contract is procured. While the procurement process was adhered to, the delays in accommodating this type of process resulted in late implementation of the fall salmon promotion campaign and reduced marketing effort for our products..

In addition, the procurement requirements place extensive delays and prohibitions on ASMI's ability to act quickly and take advantage of unique promotional opportunities that often arise informally, associated with other marketing activities. As an example, if ASMI purchased a service utilizing a small procurement process (value less than \$25,000) and subsequently requires an expansion of the service above \$25,000, staff are required to resolicit or obtain approval from the Department of Administration. During the time required to adhere to these procedures, the promotional opportunity can be lost or delayed.

ASMI has reorganized to conduct direct marketing and communication services instead of the previous practice of relying on contractors. With this reorganization, ASMI program managers will be providing direct marketing services and managing various small and large contracts. Under the current state system, securing these arrangements is cumbersome and time consuming and has resulted in layering of multiple subcontracts under a single vendor. This subcontracting has resulted in increased management and administrative cost at the expense of direct marketing program services.

As ASMI expands into the domestic market, there is an increased need to procure non-traditional government services such as coupon redemption, consumer sponsorship and sales incentive awards, and direct financial support for promotional campaigns with foodservice operators. While these are traditional private sector marketing techniques, procurement of such services and commodities are not readily accommodated in the government sector. Obtaining Department of Administration approval for such solicitations and conducting the procurement in accordance with state regulations results in significant delays and cost to ASMI and the Department of Administration.

In conducting business in the retail and foodservice sectors, the state procurement procedures are often a direct barrier to ASMI obtaining the most qualified and cost effective vendors.

Representative Hanley

Page 3

This is due to the time and cost to proponents in complying with the various bureaucratic procedures and forms. As a result of this cumbersome process, many vendors, including potential contract regional marketing representatives, choose not to conduct business with ASMI. This results in limiting Alaskan access to certain unique skills and market niches in the lower 48 states - Alaska's domestic seafood market.

ASMI participates in major food industry trade shows that are sponsored and managed by a single company. The sponsoring company in turn requires participants (ASMI) to utilize only specified vendors for labor and other services. To participate in these shows, ASMI is required to obtain sole source authorization for all procurements from the Department of Administration, or provide substantial documentation in the procurement files. This documentation requires significant cost in terms of ASMI and Department of Administration staff time without any measurable benefit to the state.

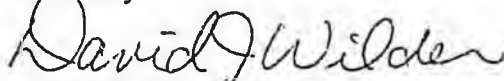
ASMI conducts joint promotions with major retail and foodservice chains. These promotional agreements are obtained in a competitive market where other food producers are also aggressively seeking such arrangements. Obtaining promotional partners is often opportunistic, and accomplished through individual business relationships and promotional incentives. Utilizing a state procurement process to obtain promotional agreements would result in the elimination of ASMI from joint promotional activities due to the bureaucratic barriers of the invitation to bid procedures.

ASMI obtains fresh and frozen seafood products for display at national and international food shows and for use in producing promotional materials. Utilizing the small procurement process, ASMI must consider price as a deciding factor in the purchase of these supplies. This has continually resulted in the procurement of low quality products which significantly detracts from the image of Alaska seafood. As an example, ASMI purchased low bid display fish for poster production in Japan. To produce the poster, the advertising agency had to spray paint the salmon to hide the scale loss and discoloration which significantly detracted from an expensive and highly visible production.

The delays and restrictions required by the state procedures frustrates our marketing efforts and results in increased costs to the industry and the state. Under CSHB 116, the board would develop and manage procurement procedures to assure cost effective and efficient purchasing.

Your favorable consideration of this legislation is greatly appreciated.

Sincerely



David Wilder, Chairman
Board of Directors

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 1, 1995

FURTHER REFERRALS:

Date of Committee Action: 3/8/95

The FINANCE Committee considered:

HB 116

HOUSE BILL NO. 116

EXEMPT ASMI FROM PROCUREMENT CODE

"An Act exempting the Alaska Seafood Marketing Institute from the State Procurement Code."

recommends it be replaced
with the following committee substitute

CS HB 116 (L.C.)

the same title
 a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

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

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) DCED 2/15/95

Admin 2/15/95

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Walter Mulder</i>			X	
<i>Terpen Martin</i>			X	
<i>Alan Pannell</i>			X	
<i>Vic Kohring</i>	X			
<i>Ben Grussendorf</i>			X	
<i>Walter Havarre</i>	X			
<i>Tam Brown</i>	X			
<i>Paul Kelly</i>			X	
<i>Gene Thernasut</i>			X	
<i>Mark Hahley</i>	X			
<i>Richard Foster</i>	X			

Co-CHAIR'S SIGNATURE

Mark Pannell *Richard Foster*

Handwritten initials

Handwritten initials

FISCAL NOTE

No. 1
 Bill Version: HB 116
 (H) Publish Date: 2/15/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: An Act exempting the Alaska Seafood Marketing BRU: General Services
Institute from the State Procurement Code. Component: Purchasing
 Sponsor: House Special Committee on Fisheries
 Requestor: _____ COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF / Program Receipts	0	0	0	0	0	0
1006 GF / MHTA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY95) impact: \$ 0

ANALYSIS: (attach a separate page if necessary.)
 None.

Prepared By: Vern Jones, Chief Procurement Officer Phone: 465-2250
 Division: General Services Date: _____

Approved by Commissioner: Mark Boyer *Mark Boyer* Date: 2/5/95
 Agency: Department of Administration

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

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

No. 2
 Bill Version: HB 116
 (H) Publish Date: 2/15/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date:
 Title: "An act exempting the Alaska Seafood Marketing Institute from the State Procurement Code"
 Sponsor: House Special Committee on Fisheries
 Requestor: House Special Committee on Fisheries

Department: Commerce and Economic Development
 BRU: Alaska Seafood Marketing Institute
 Component: Alaska Seafood Marketing Institute

COMPONENT SERIAL NO. #393

Expenditures/Revenues	(Thousands of Dollars)					
	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING EXPENDITURES						
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 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 95) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary)

This bill does not have a fiscal impact on the Alaska Seafood Marketing Institute.

Prepared by: Art Scheunemann, Executive Director
 Division: Alaska Seafood Marketing Institute
 Approved by Commissioner: 
 Agency: Commerce and Economic Development

Phone: 465-5560
 Date: 2/10/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

February 1, 1995

The Honorable Alan Austerman
Chairman, House Special Committee on Fisheries
State Capital Room 343
Juneau, AK 99801

Dear Representative Austerman:

I am requesting your assistance in obtaining an exemption from the onerous requirements of the state procurement laws for the Alaska Seafood Marketing Institute. This request is for the purpose of increasing efficiency and reducing the cost of promoting the consumption of our products within the United States.

The seafood industry is Alaska's largest private employer with the equivalent of over 33,000 full time jobs, which represents one-sixth of all employment within the state. Seafood and its related industries represents a multi-billion dollar impact on the Alaska economy and provides more than \$40 million dollars of tax revenue to state and local governments. The health of the industry and its multiple economic benefits to the state are dependent upon the successful marketing of Alaska products throughout the world.

Currently, the industry is experiencing heavy competition from farmed salmon, foreign seafood production and other protein sources. This competition has significantly eroded Alaska's market share and reduced prices for Alaska products directly affecting the incomes of all those dependent upon a healthy industry.

The Alaska Seafood Marketing Institute is the state's seafood commodity commission with offices in Juneau and Seattle, Washington. The institute's domestic marketing activities are solely funded through industry tax assessments from salmon fishermen and Alaska processors. ASMI is governed by a 25 member Board of Directors composed of fishermen and processors who are responsible for managing the finances and marketing services in the best interest of the industry. In meeting these responsibilities, the board has adopted a domestic marketing plan to aggressively promote Alaska products and increase consumption. In pursuing this plan,

Alaska Seafood Marketing Institute
1111 West 8th Street, Room 100
Juneau, Alaska 99801-1895
Tel: (907) 465-5560
In Alaska: 1-800-478-2903
Fax: (907) 465-5572

RECEIVED

FEB 01 1995

Ans'd.....



Representative Austerman

page 2

the board has unanimously decided to seek exemption from the restrictive requirements of the state procurement code. This is necessary in order for the institute to obtain tactical flexibility to effectively compete in a private sector economy.

The state procurement process is not designed to facilitate market promotion services in the private sector, conduct business in a cost effective manner or readily allow the board to participate in management of its own purchases. As an example, ASMI cannot readily advertise and to procure services valued over \$25,000 outside of Alaska. The current marketing plan is based upon contracting with region based sales representatives who have unique knowledge of local foodservice and retail distribution systems. Under the state procurement system, it is impossible for ASMI to contract directly with such individuals without an elaborate, time consuming and costly bid process that does not adequately consider unique knowledge and abilities.

In addition, the procurement requirements place extensive delays and prohibitions on ASMI's ability to act quickly and take advantage of unique promotional opportunities that often arise informally, and or in association with other marketing activities. As an example, if ASMI purchased a service utilizing a small procurement process (value less than \$25,000) and required an expansion above \$25,000, ASMI would have to resolicit or obtain approval from the Department of Administration. During the time required to adhere to these procedures, the promotion opportunity can often be lost.

The delays, restrictions and selection criteria required by the state procedures cripple ASMI efforts in implementing promotional activities and results in increased costs to the industry. ASMI's unique mission requires purchasing non-governmental associated services which state procedures are not designed to address. Any assistance you can provide in obtaining relief from these requirements is greatly appreciated.

Sincerely



David Wilder, Chairman
Board of Directors



REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

SPONSOR STATEMENT

HB 116 - "EXEMPTING ASMI FROM THE STATE PROCUREMENT CODE"

February 13, 1995

House Bill 116 would exempt the Alaska Seafood Marketing Institute (ASMI) from the state procurement code under AS 36.30.850(b) for all domestic marketing and board-related activities.

ASMI is a state seafood commodity commission which is solely dependent upon fishing industry assessments for supporting domestic marketing. The 1% marketing tax is levied on all commercial salmon fishers -- so only private industry dollars go towards the domestic marketing efforts addressed in this bill.

The institute has four legislative mandates: 1) to promote all species of Alaska seafood worldwide; 2) to maintain and promote quality awareness from point of harvest to final distribution; 3) to disseminate information on prices paid and market conditions for raw salmon and salmon products; and, 4) to investigate new product forms and future markets for Alaska salmon.

The board is seeking to eliminate the restrictive requirements of the state procurement code in marketing Alaska products in the United States. The procurement requirements restrict the

institute's private sector economy. As an example, ASMI cannot advertise and procure services over \$25,000 in the lower 48 states without an elaborate, time consuming and costly bid process that does not adequately consider unique vendor knowledge and abilities.

The delays, restrictions and selection criteria required by the state procedures cripple ASMI efforts in implementing promotional activities and is a barrier to the board in making direct decisions regarding expenditures of industry funds. ASMI's unique mission requires purchasing non-governmental services such as coupon distribution and redemption, advertising, retail store product demonstration, sales representatives, foodservice catering, product sample distribution, market research, consumer education, product development and industry cooperative promotions.

The state procurement procedures are not designed to address these needs and result in significant inefficiencies. The proposed procurement exemption will allow ASMI to purchase marketing services and supplies that meet industry imperatives.

HB

116

SFIN

FILE

FISCAL NOTE

No. 1
 Version: HB 116
 (H) Publish Date: 2/15/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act exempting the Alaska Seafood Marketing
Institute from the State Procurement Code." BRU: General Services
 Component: Purchasing
 Sponsor: House Special Committee on Fisheries
 Requestor: _____ COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY95) impact: \$ 0

ANALYSIS: (attach a separate page if necessary.)

None.

Prepared By: Vern Jones, Chief Procurement Officer Phone: 465-2250
 Division: General Services Date: _____

Approved by Commissioner: Mark Bover *[Signature]* Date: 2/5/95
 Agency: Department of Administration

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

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

No 2
 Bill Version: HB 116
 (H) Publish Date: 2/15/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date:
 Title: "An act exempting the Alaska Seafood Marketing Institute from the State Procurement Code"
 Sponsor: House Special Committee on Fisheries
 Requestor: House Special Committee on Fisheries

Department: Commerce and Economic Development
 BRU: Alaska Seafood Marketing Institute
 Component: Alaska Seafood Marketing Institute

COMPONENT SERIAL NO. #393

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 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 95) cost: \$ 0.0

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 This bill does not have a fiscal impact on the Alaska Seafood Marketing Institute.

Prepared by: Art Scheunemann, Executive Director
 Division: Alaska Seafood Marketing Institute
 Approved by Commissioner: 
 Agency: Commerce and Economic Development

Phone: 465-5560
 Date: _____
 Date: 2/10/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

SENATE COMMITTEE REPORT

DATE: 3/14/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 4/6/95

file

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 116(L&C)

"An Act exempting the Alaska Seafood Marketing Institute from the State Procurement Code."

H \$/N'

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>Mika Miller</i>	✓				
<i>John Ferguson</i>	✓				
<i>Judy Sals</i>	✓				
CHAIR: <i>Teri Kelly</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

DCED	2/10/95	✓	→
Administrators	2/6/95	- /	→

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

→ House			
→ House			

[] APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

CSHB 116(L&C)
THIRD READING
FINAL PASSAGE

YEAS: 30 NAYS: 5 EXCUSED: 5 ABSENT: 0

YEAS: AUSTERMAN, BRICE, BROWN, BUNDE, DAVIES, G.DAVIS, ELTON,
FINKELSTEIN, GREEN, GRUSSENDORF, HANLEY, IVAN, KELLY, KOHRING, KOTT,
KUBINA, MACKIE, MACLEAN, MOSES, MULDER, NAVARRE, NICHOLIA, PHILLIPS,
PORTER, ROKEBERG, THERRIALT, TOOHEY, VEZEY, WILLIAMS, WILLIS

NAYS: BARNES, MARTIN, MASEK, OGAN, SANDERS

EXCUSED: B.DAVIS, FOSTER, JAMES, PARNELL, ROBINSON

AND SO, CSHB 116(L&C) 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

120

HFIN

FILE

FINANCE COMMITTEE REPORT

(11)

Date Referred: February 10, 1995

FURTHER REFERRALS:

Date of Committee Action: 2/22/95

The FINANCE Committee considered:

HB 120

HOUSE BILL NO. 120

INDEMNIFICATION OF PUBLIC EMPLOYEES

"An Act relating to public employers defending and indemnifying public employees and former public employees with respect to claims arising out of conduct that is within the scope of employment."

recommends it be replaced

with the following committee substitute CS #B 120 (Fin)

the same title
 a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

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

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) DOLA zero fiscal note(s) (2) DOA 2/10/95

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Richard G. Day</i>	X			
<i>Mark H. ...</i>	X			
<i>John ...</i>	X			
<i>John ...</i>	X			
<i>Terry ...</i>	X			
<i>Vic ...</i>	X		X	
<i>Chris ...</i>			X	
<i>John ...</i>	X			
<i>John ...</i>	X			

CHAIR'S SIGNATURE *Mark H. ...* *Richard G. Day*

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 120

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to public employers defending and indemnifying public employees..." BRU: Legal Services
 Sponsor: Representative Porter Component: Operations
 Requester: Representative Porter COMPONENT SERIAL NO. 0093

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	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill clarifies existing practice concerning the defense and indemnification of public employees involving civil claims against these employees arising out of conduct that is within the scope of employment. Because the bill spells out these existing practices in statute, there will not be a fiscal impact.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 2/7/95
 Date: 2/7/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 1
Bill Version: HB 120
(H) Publish Date: 2/10/95

Revision Date: _____
Title: Public employers defending and indemnifying public employees within scope of employment.
Sponsor: Porter
Requestor: _____

Department Affected: Administration
BRU: Personnel/OEEO
Component: Personnel/OEEO
COMPONENT SERIAL NO. 56

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	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
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES	0	0	0	0	0	0

FUNDING SOURCE:

(Thousands of Dollars)

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

Estimate of any current year (FY 95) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

This bill has no fiscal impact to the Division of Personnel.

Prepared by: Dianne Corso, Labor Relations Manager
Division: Personnel/OEEO

Phone: 465-4403
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 1/27/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 2
Bill Version: HB 120
(H) Publish Date: 2/10/95

Revision Date: _____
Title: "An Act relating to public employers defending and indemnifying public employees"
Sponsor: Porter
Requestor: _____

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	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
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$None

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The Division of Risk Management, as a matter of policy, already practices the defense and indemnity provisions now being committed to statute.

Prepared by: J. Brad Thompson, Director
Division: Risk Management

Phone: 465-5723
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 1/27/95

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

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

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

February 2, 1995

SUBJECT: Sectional Summary of HB 120 (Public employee legal defense and indemnification)

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

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

Section 1 adds a new chapter to the title that applies to public officers and employees.

Sec. 39.55.010 provides that a public employer shall provide legal defense and pay settlements and judgments for a public employee when the acts or omissions that form the basis for the claim or judgment occurred during the course of and within the scope of the public employee's employment.

Subsection (b) relieves the employer of the obligation to defend and indemnify if the employee acted with gross negligence or if the acts or omissions were the result of intentional or wilful misconduct. The employer is also excused from defending or indemnifying when the case involves a disciplinary, administrative or criminal matter brought against the employee or when the employee has been convicted of a criminal offense or terminated from employment because of the conduct. If the employee settles or compromises the claim or action before asking the public employer to provide a defense and indemnify the employee, the employer is also relieved of its obligations.

Under subsection (c), the requirement to provide a legal defense and indemnification applies unless a collective bargaining agreement that covers the public employee includes a provision for defense and indemnification.

Subsection (d) excuses the employer from paying punitive damages awarded against an employee.

Subsection (e) permits public employers to adopt policies requiring the employer to provide defense or indemnification or to pay punitive damages when the statute would not otherwise require the employer to do so.

Subsection (f) states that the provision of a defense or indemnification does not waive sovereign immunity.