

May 5, 1975

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: SB 407 (Safety Responsibility Act)

Dear Mr. Chairman:

I note that the above bill, co-sponsored by you and Senator Croft, has been referred to your Committee for review. I have accumulated some resource material with respect to the bill, both in terms of its justification and questions concerning its affect on rates.

I have discussed the matter of increased coverage vis-a-vis premiums with an insurance broker dealing in "old line" companies and an insurance broker dealing in mutuals and, in addition, I've had discussions with Mr. Don Koch from the Alaska Department of Commerce, Division of Insurance.

The broker from the "old line" agency gave me figures for 15-30-5 and 25-50-10. These figures assume a normal driving record. The base rate for the former coverage would be \$62. For the latter, it would be \$68. Thus, the increase would be approximately 10%. He remarked that his agency of course always tries to sell policies higher than the minimum required under Financial Responsibility. Further, he said that of course the minimums would be increased if the record were poor, although the percentage increase between the 15-30-5 and the 25-50-10 would still be in approximately the same percentage.

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The broker selling insurance through mutual companies gave me different figures for different situations. For their lower risk carrier selling insurance for a pleasure vehicle only, the increase would be from \$19.80 to \$21.60. If the vehicle were driven to and from work, the increase would be from \$31 to \$33.50. For their high risk coverage, a pleasure vehicle would increase from \$30 to \$32.50. Under that same type coverage, a vehicle used to go to and from work would increase from \$45.50 to \$49. Again, a poor driving record would increase the base, but the percentage increase from the base at 15-30-5 to 25-50-10 would be about the same as the above.

Mr. Koch was able to give me an estimate of the increase in percentage under the assigned risk plan. His figures disclose that under an assigned risk plan, an increase from 15-30-5 to 25-50-10 would increase the bodily injury premium 15% and the property damage premium 3%. Since the bodily injury premium is about two-thirds of the cost, he estimates that the overall increase would be about 13%. As stated, this is with respect to assigned risk, which is of course the highest risk coverage.

Mr. Koch further advised that financial responsibility coverage is being increased generally throughout the country. He stated that during the late '50's and '60's, many states had financial responsibility coverage at 10-20-5. However, since the late '60's and into the early '70's, most of those states that he has records for have gone to either 15-30-5 or 20-40-10. He further stated that many Canadian provinces have higher minimum coverage, such as single limit 50, single limit 75, or variations thereof.

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From these figures, it would appear that while bodily injury coverage is being increased by 66-2/3% and property damage coverage by 100%, the total premium increase would, at a maximum, be 13% for assigned risk policies and 10% or less for non-assigned risk policies.

Mr. Koch also furnished me with some of his statistical data from rate filings filed by Allstate Insurance Company and by I.S.O., which is an insurance rating bureau handling rate filings for multiple insurance carriers. The I.S.O. data is from the period commencing 3/31/70 through 12/31/72. It only relates to claims settled at less than \$10,000 limits for bodily injury, but does not include total limits for property damage. The Allstate figures commence 12/31/71 through 9/30/74. Neither bodily injury nor property damage are limited to settlements of less than \$10,000. Thus, the I.S.O. figures would be somewhat distorted.

A phrase is used that is foreign to me. That is "line of best fit". As best I can describe that phrase, it relates to a simplification procedure for actuarial purposes in rate filings which in part projects trends. Presumably, if the projection of trends and other factors are based on correct assumptions, the "line of best fit" and the actual loss will be roughly equivalent. In any twelve-month period, an unusual experience may lead to some distortion between actual and "line of best fit".

The figures provided on both the I.S.O. filing and the Allstate Insurance Company filing include Alaska and countrywide figures.

In Alaska, the actual payment per claim for bodily injury during the two-year period from 9/30/72 through 9/30/74 increased from \$2,788 to \$5,112. The "line of best fit" for that period increased from \$2,953.57 to \$4,094.13. In both categories, Alaska is substantially higher than the countrywide figures.

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In regard to property damage from the Allstate filing for that same period, actual loss went from \$317 to \$430, while "line of best fit" went from \$341.30 to \$428.58. Again, Alaska figures are higher than countrywide figures and the percentage disparity between the two is becoming greater.

On the I.S.O. filing from the period from 12/31/70 to 12/31/72, the actual damage went from \$1,632 to \$1,496, while the "line of best fit" went from \$1,599.40 to \$1,847.72. Thus, while there was some decrease in the actual, there was a substantial increase in the "line of best fit" which takes into consideration the projection of trends. Property damage for that same period went from an actual of \$358 to \$393, while the "line of best fit" went from \$353.93 to \$368.01. Alaska is again higher than the countrywide calculation, particularly in the "line of best fit" in regard to bodily injury.

Using the year ending 12/31/72 for comparative purposes between the Allstate filing and the I.S.O. filing, there appears a relatively high degree of correlation between the property damage payments in both. However, the Allstate filing, which does not limit included figures to those below \$10,000, shows a much higher bodily injury payment.

These are of course average figures. Further, they are apparently figures per claim and not figures per policy. Thus, an accident involving multiple claims occurring during the year ending 9/30/74 would reflect a per claim actual payment of \$5,112. The trend disclosed by the figures is one of substantial increase in both bodily injury and property damage commencing 1973.

I do not know whether the premium figures and statistical data answer all of the questions that may be raised regarding the propriety of this bill. The present minimum coverage requirements were adopted a number of years ago, and if 15-30-5 made sense then,

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it would seem to logically follow that general cost-of-living increases and inflationary pressures would dictate an upward revision. It should also be remembered that persons required to comply with safety responsibility are persons who have already evidenced a potential for harm to others by virtue of having been involved in an accident "resulting in bodily injury to or death of a person or damage to the property of any one person exceeding \$200". AS 28.20.050(a)

I would be pleased to appear before your Committee if I may be of assistance.

Respectfully,

Allen T. Compton
Legislative Counsel
Alaska Bar Association

ATC/bt

cc: Keith E. Brown, Esquire
Mary F. LaFollette, Esquire

May 7, 1975

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: SB 407 (Safety Responsibility Act)

Dear Mr. Chairman:

Subsequent to yesterday's hearing on the above bill, I have again conferred with Mr. Don Koch at the Division of Insurance. He advises me that the increased premium for uninsured motorist coverage would be at approximately the same percentage as the overall premium increase the bill would necessitate. Rounded off to the nearest dollar, it would be a \$1.00 increase in the premium.

He stated that the Division of Insurance had prepared several charts regarding the increase proposed by this legislation and they disclose that an increase to the 25-50-10 minimum would in practical effect reestablish the basic purchasing power of the 15-30-5 minimum when it was enacted in 1966. Thus, this legislation does in fact bring us abreast with current purchasing power.

If requested, Mr. Koch would advise your Committee that the Division of Insurance supports this bill. He of course could not do this voluntarily, but would respond to your inquiry.

Respectfully,

Allen T. Compton
Legislative Counsel
Alaska Bar Association

ATC/bt

cc: Keith E. Brown, Esquire
Mary F. LaFollette, Esquire

AUTOMOBILE INSURANCE--VOLUNTARY PRIVATE PASSENGER CARS
DETERMINATION OF FACTORS TO ADJUST CALENDAR
ACCIDENT YEAR DATA FOR SUBSEQUENT CHANGE

BODILY INJURY
PAID FREQUENCY

ALASKA

COUNTRYWIDE *

YEAR ENDED	ACTUAL	LINE OF BEST FIT	ACTUAL	LINE OF BEST FIT
12/31/71	1.30	1.142	1.52	1.476
3/31/72	1.19	1.095	1.45	1.463
6/30/72	1.06	1.048	1.42	1.450
9/30/72	0.99	1.001	1.42	1.437
12/31/72	0.83	0.954	1.42	1.424
3/31/73	0.78	0.907	1.38	1.411
6/30/73	0.76	0.860	1.40	1.398
9/30/73	0.70	0.813	1.42	1.385
12/31/73	0.66	0.766	1.43	1.372
3/31/74	0.73	0.719	1.36	1.359
6/30/74	0.80	0.672	1.33	1.346
9/30/74	0.79	0.625	1.30	1.333

	ALASKA	COUNTRYWIDE *	COMBIN
AVERAGE ANNUAL CHANGE BASED ON LINE OF BEST FIT	-0.188	-0.052	
LAST POINT ON LINE OF BEST FIT	0.625	1.333	
STATE CREDIBILITY BASED ON PAID CLAIMS IN YEAR ENDED 9/30/74	0.10	0.90	
AVERAGE ANNUAL PERCENT CHANGE BASED ON LINE OF BEST FIT	-30.1	-3.9	

ALLSTATE INSURANCE COMPANY

ALASKA

Exhibit A
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AUTOMOBILE INSURANCE--VOLUNTARY PRIVATE PASSENGER CARS
- DETERMINATION OF FACTORS TO ADJUST CALENDAR
ACCIDENT YEAR DATA FOR SUBSEQUENT CHANGE

BODILY INJURY
PAID SEVERITY

ALASKA

COUNTRYWIDE *

YEAR ENDED	ACTUAL	LINE OF BEST FIT	ACTUAL	LINE OF BEST FIT
12/31/71	3489	2525.86	1793	1710.82
3/31/72	3198	2668.43	1768	1741.08
6/30/72	2482	2811.00	1801	1771.34
9/30/72	2768	2953.57	1827	1801.00
12/31/72	2758	3096.14	1811	1831.86
3/31/73	2625	3238.71	1736	1862.12
6/30/73	2958	3361.28	1802	1892.38
9/30/73	2926	3523.85	1849	1922.64
12/31/73	3021	3666.42	1954	1952.90
3/31/74	4095	3808.99	1959	1983.16
6/30/74	4268	3951.56	2065	2013.42
9/30/74	5112	4094.13	2162	2043.68

	ALASKA	COUNTRYWIDE *	COMBINED
AVERAGE ANNUAL CHANGE BASED ON LINE OF BEST FIT	\$ 570.28	\$121.04	
LAST POINT ON LINE OF BEST FIT	4094.13	2043.68	
STATE CREDIBILITY BASED ON PAID CLAIMS IN YEAR ENDED 9/30/74	126	0.10	0.50
AVERAGE ANNUAL PERCENT CHANGE BASED ON LINE OF BEST FIT	13.9	5.9	6.7

ALASKA

AUTOMOBILE INSURANCE--VOLUNTARY PRIVATE PASSENGER CARS
DETERMINATION OF FACTORS TO ADJUST CALENDAR
ACCIDENT YEAR DATA FOR SUBSEQUENT CHANGE

PROPERTY DAMAGE
PAID FREQUENCY

ALASKA

COUNTRYWIDE *

YEAR ENDED	ACTUAL	LINE OF BEST FIT	ACTUAL	LINE OF BEST FIT
12/31/71	7.35'	6.863'	7.10'	7.143'
3/31/72	6.78'	6.794	7.01	7.092
6/30/72	6.49'	6.725	6.99	7.041
9/30/72	6.48'	6.656	6.97	6.990
12/31/72	6.35'	6.587	6.97	6.939
3/31/73	6.55'	6.518	6.94	6.888
6/30/73	6.47'	6.449	6.93	6.837
9/30/73	6.26'	6.380	6.94	6.786
12/31/73	6.36'	6.311	6.85	6.735
3/31/74	6.25'	6.242	6.68	6.684
6/30/74	6.15'	6.173	6.53	6.633
9/30/74	6.30'	6.104	6.43'	6.582'

ALASKA

COUNTRYWIDE *

COMBINE

AVERAGE ANNUAL CHANGE BASED ON LINE OF BEST FIT	-0.276	-0.204'	
LAST POINT ON LINE OF BEST FIT	6.104	6.582'	
STATE CREDIBILITY BASED ON 1001' PAID CLAIMS IN YEAR ENDED 9/30/74	0.30	0.70	
AVERAGE ANNUAL PERCENT CHANGE BASED ON LINE OF BEST FIT	-4.5	-3.1	-3.

ALASKA

AUTOMOBILE INSURANCE--VOLUNTARY PRIVATE PASSENGER CARS
DETERMINATION OF FACTORS TO ADJUST CALENDAR
ACCIDENT YEAR DATA FOR SUBSEQUENT CHANGE

PROPERTY DAMAGE
PAID SEVERITY

ALASKA

COUNTRYWIDE *

YEAR ENDED	ACTUAL	LINE OF BEST FIT	ACTUAL	LINE OF BEST FIT
12/31/71	330'	308.57	280'	275.42
3/31/72	327'	319.48	282	279.51
6/30/72	331'	330.39	283	283.60
9/30/72	317'	341.30	286	287.69
12/31/72	326'	352.21	289	291.78
3/31/73	355'	363.12	291	295.87
6/30/73	377'	374.03	298	299.96
9/30/73	396'	384.94	302	304.05
12/31/73	415'	395.85	310	308.14
3/31/74	406'	406.76	314	312.23
6/30/74	413'	417.67	317	316.32
9/30/74	430'	428.58	323	320.41

	ALASKA	COUNTRYWIDE *	COMBINED
AVERAGE ANNUAL CHANGE BASED ON LINE OF BEST FIT	\$ 43.64	\$ 16.36	
LAST POINT ON LINE OF BEST FIT	428.58	320.41	
STATE CREDIBILITY BASED ON 1001' PAID CLAIMS IN YEAR ENDED 9/30/74	0.30	0.70	
AVERAGE ANNUAL PERCENT CHANGE BASED ON LINE OF BEST FIT	10.2	5.1	6.6

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AUTOMOBILE LIABILITY AND PHYSICAL DAMAGE INSURANCE
PRIVATE PASSENGER CARS
DETERMINATION OF FACTORS TO ADJUST
LOSS RATIOS FOR SUBSEQUENT CHANGE

AVERAGE PAID CLAIM COST DATA

ALL COMPANIES REPORTING

(1) YEAR ENDED	ALASKA				COUNTRYWIDE			
	BODILY INJURY (\$10,000 LIMIT)		PROPERTY DAMAGE (TOTAL LIMITS)		BODILY INJURY (\$10,000 LIMIT)		PROPERTY DAMAGE (TOTAL LIMITS)	
	(2) ACTUAL	(3) LINE OF BEST FIT	(4) ACTUAL	(5) LINE OF BEST FIT	(6) ACTUAL	(7) LINE OF BEST FIT	(8) ACTUAL	(9) LINE OF BEST FIT
3/31/70	\$1320	\$1506.28	\$343	\$ 348.65	\$1227	\$ 1221.04	\$262	\$ 265.69
6/30/70	1366	1537.32	360	350.41	1247	1240.82	268	270.17
9/30/70	1519	1568.36	363	352.17	1260	1260.60	274	274.65
12/31/70	1632	1599.40	358	353.93	1269	1280.38	279	279.13
3/31/71	1672	1630.44	343	355.69	1280	1300.16	285	283.61
6/30/71	1794	1661.48	352	357.45	1310	1319.94	291	288.09
9/30/71	1902	1692.52	360	359.21	1334	1339.72	296	292.57
12/31/71	2042	1723.56	360	360.97	1381	1359.50	301	297.05
3/31/72	1989	1754.60	359	362.73	1414	1379.28	306	301.53
6/30/72	1830	1785.64	346	364.49	1407	1399.06	306	306.01
9/30/72	1562	1816.68	373	366.25	1412	1418.84	307	310.49
12/31/72	1496	1847.72	383	368.01	1417	1438.62	309	314.97

	B-I.	P.D.
(10) AVERAGE ANNUAL DOLLAR CHANGE IN PAID CLAIM COSTS BASED UPON LINE OF BEST FIT:		
A) STATE	\$ +124.16	\$ + 7.04
B) COUNTRYWIDE	+ 79.12	+ 17.52
(11) AVERAGE POINT ON LINE OF BEST FIT:		
A) STATE	\$ 1677.00	\$ 358.33
B) COUNTRYWIDE	1329.83	290.33
(12) AVERAGE ANNUAL PERCENT CHANGE IN PAID CLAIM COSTS BASED UPON LINE OF BEST FIT (LINE(10)/LINE(11)):		
A) STATE	+ 7.4%	+ 2.0%
B) COUNTRYWIDE	+ 5.9	+ 6.2
(13) STATE CREDIBILITY:	0.15	0.35
(14) CREDIBILITY WEIGHTED AVERAGE ANNUAL CHANGE IN CLAIM COSTS (12A)X(13)+(12B)X(1.0-(13)):	+ 6.1%	+ 4.7%
	COMP.	COLLISION
(15) AVERAGE ANNUAL CHANGE IN PREMIUM REVENUE RESULTING FROM EFFECT OF AGE AND SYMBOL CLASSIFICATION:	+ 1.7%	+ 0.6%
(16) AVERAGE ANNUAL CHANGE IN PHYSICAL DAMAGE LOSS RATIOS		
$\frac{(1.0 + N \times \text{LINE}(14) \text{ PROPERTY DAMAGE}) - 1.0}{(1.0 + N \times \text{LINE}(15))} / N$	+ 2.8%	+ 3.8%

NOTE: N=NUMBER OF YEARS OF PROJECTION, 3-58 IN THIS REVISION.
* EXCLUDING DEL.,FLA.,ILL.,MASS.,ORE. AND P.R. FOR B.I.
AND FLA. AND MASS. FOR P.D.

AUTOMOBILE LIABILITY INSURANCE - PRIVATE PASSENGER CARS

DETERMINATION OF FACTORS TO ADJUST ACCIDENT YEAR
LOSS RATIOS FOR SUBSEQUENT CHANGE
AVERAGE PAID CLAIM FREQUENCY DATA

ALL COMPANIES REPORTING

CLAIM FREQUENCIES PER 100 CARS

(1) YEAR ENDED	BODILY INJURY				PROPERTY DAMAGE			
	(2) STATEWIDE ACTUAL	(3) EXPNTL CURVE	(4) COUNTRYWIDE# ACTUAL	(5) EXPNTL CURVE	(6) STATEWIDE ACTUAL	(7) EXPNTL CURVE	(8) COUNTRYWIDE# ACTUAL	(9) EXPNTL CURVE
3-31-67	1.4978	1.3794	2.7386	2.7838	5.8214	5.6613	7.8428	7.9822
6-30-67	1.6139	1.3754	2.7459	2.7571	5.8740	5.6577	7.8937	7.9521
9-30-67	1.6167	1.3714	2.7265	2.7308	5.6944	5.6541	7.8020	7.9220
12-31-67	1.4980	1.3675	2.7003	2.7046	5.6193	5.6505	7.7988	7.8921
3-31-68	1.4250	1.3635	2.6881	2.6788	5.5871	5.6468	7.8067	7.8622
6-30-68	1.2191	1.3596	2.6347	2.6531	5.4413	5.6432	7.6706	7.8325
9-30-68	1.1869	1.3557	2.6266	2.6278	5.6397	5.6396	7.7704	7.8029
12-31-68	1.2501	1.3517	2.6056	2.6026	5.5957	5.6360	7.7739	7.7734
3-31-69	1.2278	1.3478	2.5544	2.5777	5.6075	5.6324	7.7159	7.7440
6-30-69	1.228.	1.3439	2.5424	2.5531	5.6924	5.6288	7.7760	7.7148
9-30-69	1.2818	1.3401	2.5127	2.5286	5.7102	5.6251	7.7370	7.6856
12-31-69	1.2550	1.3362	2.4920	2.5045	5.8300	5.6215	7.7818	7.6566
3-31-70	1.1897	1.3323	2.4736	2.4805	5.4718	5.6179	7.8707	7.6276
6-30-70	1.1826	1.3285	2.4712	2.4568	5.4330	5.6143	7.9361	7.5988
9-30-70	1.1259	1.3246	2.4655	2.4333	5.2751	5.6107	7.9092	7.5701
12-31-70	1.2002	1.3208	2.4734	2.4100	5.3109	5.6071	7.8165	7.5415
3-31-71	1.3427	1.3170	2.4785	2.3869	5.6308	5.6035	7.6783	7.5130
6-30-71	1.4536	1.3132	2.4432	2.3641	5.5722	5.5999	7.4923	7.4846
9-30-71	1.5349	1.3094	2.3928	2.3415	5.6499	5.5964	7.3509	7.4563
12-31-71	1.4998	1.3056	2.3351	2.3191	5.6261	5.5928	7.2813	7.4281
3-31-72	1.4541	1.3018	2.3165	2.2969	5.8787	5.5892	7.3815	7.4000
6-30-72	1.3797	1.2981	2.2270	2.2749	5.8809	5.5856	7.1422	7.3721
9-30-72	1.3295	1.2943	2.1791	2.2532	5.7026	5.5820	7.1404	7.3442
12-31-72	1.2150	1.2906	2.1310	2.2316	5.3888	5.5784	7.1455	7.3164

	B.I.	P.D.
(10) RATE OF CHANGE IN CLAIM FREQUENCIES FOR ANY 12 MONTH INTERVAL ON EXPONENTIAL LINE OF BEST FIT:		
A. STATE	-1.15%	- .26%
B. COUNTRYWIDE	-3.77	-1.50
(11) STATE CREDIBILITY:	0.15	0.35
(12) CREDIBILITY WEIGHTED AVERAGE ANNUAL CHANGE IN CLAIM FREQUENCY ((10A)X(11)+(10B)X(1.0-(11))):	-3.4%	-1.1%
(13) CREDIBILITY WEIGHTED AVERAGE ANNUAL CHANGE IN CLAIM COSTS (SEE SHEET 1, LINE(17)):	+ 6.1%	+ 4.7%
(14) AVERAGE ANNUAL CHANGE IN LIABILITY LOSS RATIOS ((1.0+N(12))X(1.0+N(13))-1.0)/N:	+ 1.9%	+ 3.4%

NOTE: N=NUMBER OF YEARS OF PROJECTION, 3.58 IN THIS REVISION.
EXCLUDING DEL.,FLA.,ILL.,MASS.,ORE. AND P.R. FOR B.I.
AND FLA. AND MASS. FOR P.D.

file on 407

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES

HERBERT L. FAULKNER (1882-1972)
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JAN VAN DORT
LAWRENCE T. FEENEY
CHARLES N. DRENNAN

May 22, 1975

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 407

Dear Representative Gardiner:

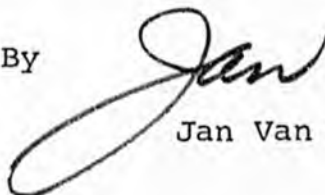
I notice that Senate Bill No. 407 which would raise the minimum liability limits under Alaska's Financial Responsibility Law from 15/30/5 to 25/50/10, has been referred to your committee.

I have been informed by the home office of the American Mutual Insurance Alliance that such a raise in the minimum liability limits will increase premiums which the policyholder must pay approximately 11%. The Alliance is not taking a position on this bill; we are only passing cost information along to you.

Very truly yours,

FAULKNER, BANFIELD, DOOGAN & HOLMES

By



Jan Van Dort

JVD/aw

cc: Don Koch - Division of Insurance

ALLEN T. COMPTON

ATTORNEY AT LAW

201 FRANKLIN STREET

JUNEAU, ALASKA 99801

TELEPHONE 907-586-2482

May 19, 1975

Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

RE: SB 407 (Safety Responsibility Law)

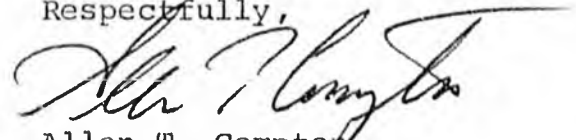
Dear Mr. Chairman:

Last Saturday your House Judiciary Committee held a hearing on the above bill. At that time reference was made to the position of the Division of Insurance, Department of Commerce, regarding the measure. Unfortunately, no one from that agency attended the hearing.

I have obtained from Senator Ziegler a copy of the memorandum from Mr. Don Koch, Rate Analyst for said agency, regarding the proposal. Although I realize your Committee has already taken action on the measure, I thought it might nonetheless be advisable for you and the Committee to at least have reference to the memorandum prior to House action.

Thank you for your consideration.

Respectfully,




Allen T. Compton

ATC/bt
Enclosure

STATE
of ALASKA**MEMORANDUM**DEPARTMENT OF COMMERCE
DIVISION OF INSURANCETO:
File

DATE : 5-7-75

FROM: Don Koch 
Rate Analyst

SUBJECT: SB-407

During our analysis of this legislation, we examined the purchasing power of the existing limits required by law. Our review determined that the proposed limits would be roughly equivalent to the purchasing power that the current limits had when passed in 1966. SB-407 is desirable legislation and we favor its passage.

STATE OF ALASKA
Inter-Department Route SlipTO:
MAIL STATION NUMBER _____DEPARTMENT STATE SENATEATTENTION SENATOR ZIEGLER

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input type="checkbox"/> Your Information |

Remarks:

AS PER YOUR REQUEST

FROM:
MAIL STATION NUMBER 2800DEPARTMENT COMMERCE - INSURANCEBY DON KOCH DATE 5-7-75

S B

4 1 1

Pls don't
mess place.

SB 911 - Joe Hill - talked
A.G. to lawyer in D.C.

local Medical Assoc. have
challenged

Stopped other Docs from
participating

Borough Health Dept
says need A.G. opinion
or pass bill

MEMORANDUM

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

POUCH Y—STATE CAPITOL
JUNEAU, ALASKA 99811

TO: Senator Chancy Croft
President of the Senate

DATE: April 1, 1975

FROM: Anne Carpeneti
Legislative Counsel

SUBJECT: PIRG - Physicians
Guide

The issue you requested researched is whether a consumer's guide to the Anchorage area physicians, proposed by the Alaska Public Interest Research Group (hereinafter PIRG), would violate the provisions of the Alaska statutes prohibiting physicians from advertising.

The guide proposed by the Alaska PIRG is a compilation of all physicians in the Anchorage area, their addresses, types of practice (group or sole practitioner), specialties, hospital affiliations, office hours, and the language(s) spoken by each physician. It would also include fees charged by each physician for an initial visit, a routine office visit, a routine hospital visit, and for various tests including a chest X-ray, throat culture, and a complete blood count. The guide will not contain evaluations of a physician's ability or reputation and will not include self-aggrandizing statements by physicians. All information reported will be factual and set out in a uniform, nondiscriminatory manner. The data for the guide will be collected by telephone interviews with physicians or persons on their staffs. A copy of the data taken over the phone will be sent to each physician so that he/she may correct errors or misstatements. The guide will be sold to consumers at a nominal cost.

AS 08.64.330(b) provides that a license to practice medicine or osteopathy may be revoked for unprofessional or dishonorable conduct as defined by AS 08.640.380(3), or for professional incompetence. AS 08.64.380(3) contains in its definition of unprofessional or dishonorable conduct subparagraph D, providing that advertising professional services to the public except for notice of opening, closing, or removing practice is unprofessional conduct. There is no legislative history to aid in the interpretation of AS 08.640.-380(D); on its face however, the prohibition of advertising by physicians in Alaska is very broad. Comparable provisions in other states are generally narrower than the Alaska provision. For

MEMORANDUM

Senator Chancy Croft

April 1, 1975

Page Two

example, California prohibits physicians from deceitful advertising, advertising without using the advertiser's name, advertising claiming treatment for regulation or reestablishment of the menses, and advertising treatment of venereal disease, impotence, and other sexual disorders. Deering's Business and Professions Code Annotated, sections 2380, 2380.5, 2381, 2382. Presumably, advertising that does not fall into the above categories is not prohibited in California. In Alaska, however, the statute bars all advertising except notice of opening, closing, or removing practice.

It is not clear whether supplying information in response to a questionnaire by a nonprofit public interest group which plans to publish a consumer's guide falls within the meaning of advertising envisioned by the drafters of the statute. In Missouri Dental Board v. Eastern Dental Co., 256 S.W. 2d 832 (Mo. App. 1953), the court held that the word advertise, in a statute prohibiting dentists from advertising, means to give public notice by emphasizing desirable qualities in order to arouse a desire to purchase. In State v. Guardian Foundation of Texas, 128 S.W. 2d 880 (Tex. App. 1939), the court defined advertising as meaning more than merely announcing or making something known to the public, advertising according to the court meant making information known to the public for the purpose of selling a product or service. Under the definitions in Eastern Dental Co. and Guardian Foundation of Texas it does not seem that the proposed guide to physicians would be considered advertising. The purpose of the guide is to provide information to consumers in the Anchorage area so that they may make a more informed choice when selecting a physician, and not to sell the services of a particular physician or the medical community in general.

The proposed guide does not seem to create the risk of the evils that AS 08.64.380(3)(D) presumably was enacted to avoid. Such statutes are usually enacted for the purpose of maintaining a high standard of competency among medical professionals, to protect the medical profession against commercialized exploitation, and to protect the public from deception, particularly members of the public susceptible to "bait" advertising or promises of quick physical relief. Semler v. Oregon State Board of Dental Examiners, 294 U.S. 608, 79 L.Ed. 1086 (1934). A consumer's guide to physicians in a format intended to inform the public without stressing the comparative differences among the physicians listed could only serve to strengthen the standards of professionalism and the avoidance of situations where the public is misled or duped by unscrupulous practitioners.

MEMORANDUM

Senator Chancy Croft
April 1, 1975
Page Three

There is little help from other jurisdictions in deciding the issue. Cities in Illinois and New York have consumer's guides to physicians; however, the prohibitions against advertising by physicians in Illinois and New York are significantly narrower than the Alaska prohibition.^{/1} Thus the fact that the Illinois and New York provisions have not prevented the publication of consumer's guides does not provide definitive guidance to an interpretation of Alaska's statute. There is litigation in the United States District Court of Maryland involving

/1 The Illinois Medical Practice Act provides

Section 16m. MISLEADING ADVERTISING - PENALTY. Any person, not being licensed in this State to practice medicine in all of its branches, who shall hold himself out by any sign or advertisement, or by a writing of any kind, to treat human ailments without therein attaching to his name a word or words indicating the system, method or kind of practice which he is lawfully licensed to pursue in this State, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by confinement in the county jail not more than one year, or by both such fine and imprisonment, in the discretion of the court.
Illinois Annotated Statutes, Chapter 91.

The New York Statute provides for revocation, suspension, or annulment of a license to practice medicine, osteopathy, or physiotherapy if it is found

(d) That a physicial, osteopath or physiotherapist offered, undertook or agreed to cure or treat disease by a secret method, procedure, treatment or medicine or that he can treat, operate and prescribe for any human condition by a method, means or procedure which he refuses to divulge upon demand to the committee on grievances; or that he has solicited or advertised for patronage by means of handbills, posters, circulars, letters, stereoptical slides, motion pictures, radio, television, magazines, telephone directories, classified telephone directories, or other directories; except, however, the publication, distribution and circulation by any group duly organized and existing as a non-profit insurance plan, pursuant to article nine-c of the state insurance law, or classified professional directories among its subscribers and members, stating group and participating physicians, osteopaths and physiotherapists, their addresses, telephone numbers and special branch of profession practiced, shall in no wise be deemed violative of the provisions of this subdivision; or by means of flamboyant or glaring or flickering signs; or
New York Education Code, Section 5314 (2)(d).

MEMORANDUM

Senator Chancy Croft
April 1, 1975
Page Four

Maryland's prohibition against advertising by physicians, which is almost as broad as Alaska's provision.^{/2} The plaintiffs, various public interest groups in Prince George County, Maryland, are seeking to have the Maryland prohibition declared unconstitutional on First Amendment grounds. However, there has been no decision handed down in the case.

If the provisions of AS 08.64.330(b) and 380(3)(D) are interpreted to prohibit publication of the consumer's guide to physicians, there is a serious question as to whether the provisions would withstand a constitutional challenge on the grounds that they violate the free speech provisions of the United States and Alaska Constitutions, as found in the First Amendment to the Constitution of the United States and Article 1, Section 5, of the Alaska Constitution.

The First Amendment prohibits Congress from making laws abridging freedom of speech, press and the right of people to assemble peaceably. Its prohibitions are applicable to the states through the due process clause of the Fourteenth Amendment. Gitlow v. New York, 268 U.S. 652, 69 L.Ed. 1138 (1924). The Supreme Court has found that a necessary incident of First Amendment freedoms is the right to receive and possess information and ideas. Stanley v. Georgia, 394 U.S. 557, 22 L.Ed.2d 542 (1969). It is not entirely clear, however, whether actions to acquire information to be used in connection with First Amendment freedoms fall within the protection of the First Amendment. In Zemel v. Rusk, 381 U.S. 1, 14 L.Ed.2d 1179 (1965), the court held that the First Amendment does not carry with it the unrestrained right to gather information. In Branzburg v. Hayes, 408 U.S. 665, 33 L.Ed.2d 626 (1972), the court gave limited recognition to the right of news gathering, although it found that a newsman is not privileged to refuse to reveal his sources in response to a proper grand jury investigation. A three judge District Court in Alabama recently held that the First Amendment right to publish must logically include reasonable access to information and the right to gather information, particularly where the information is available to the general public. Lewis v. Baxley, 368 F. Supp. 766 (M.D. Ala., M.D. 1973). In Houston Chronicle Publishing Co. v. Kleindienst, 364 F. Supp. 719 (S.D. Tex. 1973), the court, in invalidating a rule giving the United States attorney's office unlimited discretion in denying newsmen interviews with federal prisoners, held that a newspaper publisher's right to seek out news is an integral part of its First Amendment right to publish news.

^{/2} Article 43, Section 129 of the Annotated Code of Maryland (1971 Replacement Volume) and Regulation F promulgated pursuant thereto permit only the use of business cards, change of address notices, and small signs outside and on the door of the physician's office.

MEMORANDUM

Senator Chancy Croft
April 1, 1975
Page Five

The trend of decisions in the courts indicates that the right to gather information probably inheres in the right to receive and publish information, and is protected by the First Amendment. Thus it appears that the Alaska PIRG has the right under the First Amendment to gather and publish a consumer's guide to physicians in the Anchorage area.

First Amendment rights enjoy special protection as compared with other constitutional rights. They are not, however, absolute. Obscenity and "fighting words", for example, are not protected by the First Amendment. Purely commercial advertising may also be prohibited without running afoul of the First Amendment. Valentine v. Chrestensen, 316 U.S. 52, 86 L.Ed. 1262 (1942), Pittsburgh Press Co. v. Pittsburgh Human Relations Commr., 413 U.S. 376, 37 L.Ed.2d 669 (1973). The courts have made a distinction between purely commercial and noncommercial advertising. New York Times v. Sullivan, 376 U.S. 254 (1964), and Pittsburgh Press, supra, both recognized that Chrestensen applies only to purely commercial advertising.

Even if the publication planned by the Alaska PIRG ^{is} found to be advertising under AS 08.64.380(3)(D), it is not purely commercial advertising. It is not intended to financially benefit physicians listed in the guide or the publishers of the guide. It is intended to give consumers a factual guide to all physicians in the Anchorage area so that they may make an informed choice in the vital area of health care.

The validity of restrictions on the exercise of First Amendment rights depends on the weighing of two factors: (1) the type and strength of the government interest in imposing the restriction, and (2) the type of disability imposed on the individual and the scope of the restriction imposed. The state's interest in the present case is maintaining a high standard of competency among medical professionals and protecting the public against misleading and deceptive advertising. Semler, supra.

The state's interest in maintaining high professional standards and protecting the public is a valid interest. If the Alaska prohibition is found to proscribe the guide, by barring all advertising by physicians, AS 08.64.380(3)(D) excludes advertising which does not demean the professionalism of physicians and which does not deceive the public. Indeed, a consumers' guide such as that proposed by the Alaska PIRG, by providing a nondiscriminatory factual compilation of physicians, their education, specialties, etc., supports the goals that are the basis of the statute. There seems to be little rational relationship between the broad prohibition of AS 08.64.380(3)(D) and the state's interest in enacting it. Thus it appears that the statute probably would fall against a constitutional challenge on the grounds that the state's interest is outweighed by the scope of the restriction.

MEMORANDUM

Senator Chancy Croft
April 1, 1975
Page Six

Assuming that the guide is found to be advertising under AS 08.64.-380(3)(D), the statute is probably also invalid due to overbreadth. An overbroad statute regulates rights which are protected by the First Amendment as well as those rights which are not constitutionally protected. By prohibiting all advertising, whether purely commercial or not, or whether rationally related to the state's interest or not, the statute has a chilling effect on the exercise of First Amendment rights. Broadrick v. Oklahoma, 413 U.S. 601, 37 L.Ed.2d 830 (1973). Overbroad statutes relating to First Amendment rights are void on their face, and cannot be used to regulate even that kind of speech or expression that is not constitutionally protected. Thus, until AS 08.64.380(3)(D) is amended by the legislature or judicially construed to cure its overbreadth, it probably is not valid to prohibit any advertising by physicians in Alaska.

In conclusion, it appears that AS 08.64.380(3)(D) should not be read to prohibit a consumer's guide to physicians as proposed by the Alaska PIRG. If, however, the statute is interpreted to bar such a guide, the application of the statute would probably violate the First Amendment to the Constitution of the United States.

POSITION PAPER
ON
SENATE BILL 411

An Act entitled: "An Act relating to advertising of professional services by physicians; and providing an effective date."

To change the intent of paragraph 3 (D) from prohibiting advertising except for "professional services to the public except for notice of opening, closing, or removing practice", to "untruthful or misleading advertising of professional services".

Position: This Division believes this amendment is inappropriate and inadvisable. Advertising by the medical profession would lead to increased costs of medical care and is considered to be unethical by the American Medical Association. The Division does not support passage of this amendment.

Recommend By:

James L. Shuster MD
(Division Director)

5-8-75
(Date)

Approved By:

(Commissioner)

(Date)

Comments by Governor's Office:

By:

(Date)

*Withdrawn in
favor of
May 8, 1975*

POSITION PAPER
ON
SENATE BILL NO. 411

An Act relating to advertising of professional services.

This measure repeals that definition of unprofessional or dishonorable conduct which states "advertising professional services to the public except for notice of opening, closing, or removing practice" and substitutes as the definition, "untruthful or misleading advertising of professional services."

This measure appears to substitute a more comprehensive and satisfactory definition.

The Department favors passage of this measure.

Recommended By: *Donald K. Friedman* *5/9/75*
Division Director Date

Approved By: *Francis S. Williamson* *5/9/75*
Commissioner Date

Comments by Governor's Office:

By: _____ Date _____

10
SB-411

ALASKA PUBLIC INTEREST RESEARCH GROUP

P. O. BOX 1093
ANCHORAGE, ALASKA 99510

PHONE 274-6765

May 6, 1975

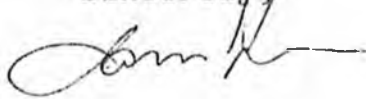
Senator George Hohman
Chairman, Senate HESS
Pouch V
Juneau, Alaska 99811

Dear Senator Hohman:

This letter is a request for your support on the passage of SS SB 411, an act which would amend the state's laws pertaining to advertising by physicians. My interest in the legislation is as follows: Earlier this year our organization was planning to publish a consumers guide to doctors in the Anchorage area. We were advised that it may not be legal for a doctor to cooperate in publishing of such a guide due to AS 08.64.330-380 (3)(d) which limits advertising by doctors to the opening, closing, and reopening of practice.

This bill is, as I understand it, an attempt to exempt the publishing of a doctors guide, which is comprehensive, non-discriminatory, and which does not make qualitative statements about doctors' abilities, from normal restrictions regarding advertising. I am enclosing other correspondence on this matter, along with publications which describe the guide we are hoping to publish. I would appreciate your consideration of this request as early as possible, since we had planned on publishing the guide this summer. Thank you.

Sincerely,



James Love
Director, Alaska Public Interest
Research Group, Inc.

ALASKA PUBLIC INTEREST RESEARCH GROUP

P. O. BOX 1093
ANCHORAGE, ALASKA 99510

PHONE 274-8755

April 22, 1975

Representative Terry Gardner
Chairman, House Judiciary Committee
House of Representatives
Juneau, Alaska 99801 .

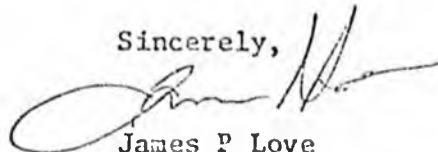
Dear Terry,

Enclosed is a packet of back up information regarding the problems we are having getting a go ahead on publishing a consumer guide to Anchorage area Doctors. Present state statutes are vague, but restrictive, insofar as advertising of physicians services is concerned. AkPIRG is interested in publishing a guide to doctors services similar to guides originally published by the Nader Health Research Group (Nader Health Group publication enclosed), and outlined in a recent issue of Consumer Reports (enclosed).

I wrote Chancy Croft in March hoping to get a clarification of the legal problems, and asked that he get an AG opinion, and introduce legislation to clear up ambiguities in the existing statute. Chancy requested an AG opinion, and an opinion from Legislative Affairs. (Chancy's letter to Gross, and LA opinion by Carpeneti, are enclosed). Carpeneti wrote an opinion which supported our position that the consumers guide does not constitute advertising. The AG has been sitting on Chancy's request since March 19, and will probably say that the guide is illegal, but that the statute is unconstitutional. All this leaves us in a bad spot. Without enabling legislation, we would have to get a Supreme Court decision to publish the guide (we don't have the bucks for litigation at present), and any legal problems would probably preclude any hopes for a majority of doctors cooperating on the survey.

It would be a great help to us if someone would ask Carpeneti to draft an amendment to the advertising law, (probably would be brief) so that we can have a chance of passage this year. I would appreciate receiving your response to this as soon as possible. Thank You.

Sincerely,



James P Love
Director,
Alaska Public Interest Research Group



Alaska State Legislature

SENATOR CHANCY CROFT
PRESIDENT OF THE SENATE

POUCH V
JUNEAU, ALASKA 99801
PHONE 907-465-3755

425 G STREET
ANCHORAGE, ALASKA 99501

March 19, 1975

Avrum M. Gross, Esq.
Attorney General, State of Alaska
Pouch K
Juneau, Alaska 99811

Dear Av:

I have received a letter from the Alaska Public Interest Research Group outlining their interest in publishing a consumers guide to physicians in the Anchorage area. This publication will be patterned after a guide designed by the Ralph Nader Health Care Research Group. The goal is to publish a comprehensive directory of physicians, with information for the health care consumer regarding the qualifications, services, and costs which a particular physician offers.

They are concerned that the provisions of AS 08.64.330 - 380(3)(d) may make physicians wary of participating in the proposed survey because of the definition of unprofessional or dishonorable conduct defined as "advertising professional services to the public, . . .".

I request that you prepare an opinion regarding the legality of the physicians cooperating in the survey in light of the provisions of the above statute. Legislation could be introduced defining the limits of information permissible in the listing to prevent any misunderstanding on the part of the Alaska Public Interest Research Group, the physicians and the general public. I would appreciate receiving the opinion as soon as possible.

Very truly yours,

Chancy Croft
Chancy Croft

cc: Alaska Public Interest Research Group

hallucinogenic or stimulant drugs, as defined in AS 17.12.130 or addiction to the use of narcotic drugs as defined in AS 17.12.230 (13) ;

(C) conviction of an offense involving moral turpitude;

(D) advertising professional services to the public except by notice of opening, closing, or moving practice;

(E) making untruthful or fraudulent statements in the application for examination, or deceiving or cheating during the application for license, or procuring a license by deceit or fraud;

(F) violating the Controlled Substances Act (P.L. 91-513 Stat. 1242) or any other federal law pertaining to medical practice and drugs;

(4) Repealed by § 1 ch 148 SLA 1970.

(5) "department" means the Department of Commerce. (37-3-3-94, 35-3-38 ACLA 1949; am § 27 ch 77 SLA 1969; am § 3 ch 103 SLA 1970; am § 25-27 ch 148 SLA 1970; am § 9 ch 32 SLA 1971; am § 1 ch 117 SLA 1971; am § 4 ch 85 SLA 1972)

Cross reference.—As to malpractice actions, see AS 09.55.530—09.55.550.

Effect of amendment.—The 1972 amendment, in paragraph (3)(F), substituted "Controlled Substances Act, P.L. 91-513, or any other federal law pertaining to medical practice and drugs" for "Harrison Anti-Narcotic Act."

Legislative committee report.—For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

The statutory definition of practicing medicine or surgery is very broad and within the literal meaning of the words would include the practice of

dentistry, optometry, podiatry, practice, etc. By its very breadth this definition precludes a literal interpretation inasmuch as dentists, for example, have had a separate licensing procedure as long as have those practicing medicine or surgery. 1963 Op. Att'y Gen., No. 17.

Prescription of drugs or medicine by chiropractor.—It is illegal for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 21.

Cited in *Leage v. Martin*, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

Chapter 66. Motor Vehicle Dealers.

- Section
- 10. Dealers to register
- 20. Application, bond, and fee
- 30. Form of application
- 40. Filing application for registration

- Section
- 50. Renewal of registration
- 60. Bond
- 70. Action on bond
- 80. Penalties
- 90. Dealer defined

Sec. 08.66.010. Dealers to register. Every dealer in motor vehicles, trailers or semi-trailers shall, as a condition to engaging in business in this state, register annually with the Department of Revenue. (§ 1 ch 135 SLA 1959)

Sec. 08.66.020. Application, bond, and fee. Application for dealer registration shall be accompanied by an annual registration fee of

November 18, 1974

MEDICINE

The Doctors Guide

When choosing a doctor, Americans usually have less information to go on than they do when shopping for a toaster, color TV or new car. They don't know how to determine a physician's qualifications and are reluctant to ask about such delicate matters as how much he charges for his services. For their part, doctors have been discouraged from publishing details about their training or practice for fear of violating state laws against professional advertising. But during the past year, consumer groups have begun to tear away at the mystique that has traditionally surrounded the medical profession by issuing directories designed to help the layman make an informed choice of a doctor.

Volunteers: The first was a guide to doctors in Prince Georges County, Md., published last winter by Ralph Nader's Health Research Group. More recently, Nader-inspired consumer task forces have issued similar directories for Queens County, N.Y., Sangamon County (Springfield), Ill., and Hawaii; others are scheduled to come out soon for communities in Massachusetts, Colorado and Washington. In most instances, the directories have been put together by student and faculty volunteers at local colleges by telephone interviews and follow-up questionnaires.

The directories are a revolutionary departure from the published information now available on physicians. The Yellow Pages list only a doctor's address, phone number and, possibly, his specialty. Professional directories put out by the American Medical Association or local medical societies may include the physician's age, medical school and type of practice. Most telephone referral services run by medical societies provide only the names of two or three doctors from which the caller can make a choice. But typically, the consumer guides list the doctor's training, hospital affiliation and specialty, together with such items as the fees he charges for office visits, whether he makes house calls, treats emergencies, accepts medicare and Medicaid patients, plus what tests he can give in his office and their cost. In some cases, doctors who refuse to provide information are listed as "uncooperative."

List: The compilation of the guides has raised the hackles of the profession. According to Robert McGarrah, attorney for the Health Research Group, the Prince Georges Medical Society told its members that any doctor who provided information for the Prince Georges directory might be violating state laws against advertising. As a result, only 115 of the 461 doctors practicing in the county cooperated. The New York Public Interest Research Group had better luck putting together the Queens guide. The local

medical society refused to supply a list of physicians for the survey, but did not actively try to put a stop to it. Of the 589 doctors queried, an NYPIRG spokesman said, more than half responded to questions and most listed their fees. However, about 38 per cent of the county's physicians could not be reached because the state medical directory used by the surveyors was out of date.

Even when they agree in principle with the idea of the directories, some doctors complain about the abrasive manner displayed by the consumer advocates as they go about their task. "They came on like a blitz and declined meaningful communications," says one Prince Georges Medical Society member. Even some doctors listed in the Queens guide as cooperative voice a range of reservations. A few claimed that they didn't know how the information had been obtained and said they did not want to be listed. One complained that the information had been supplied by her son and that much of what appeared in the directory was wrong. Others warned, quite sensibly, that such a guide would not assure a person of choosing a good doctor. "It's not a good idea for patients to shop around," says Dr. Cecil Reid, a Queens GP. "You can't equate care with fees." A better way of selecting a doctor, several pointed out, is asking a neighbor, a hospital, the medical society or another doctor.

While most states have laws that prohibit doctors from advertising, it remains unclear how these restrictions relate to consumer directories. Legal counsel for the Prince Georges Medical Society interprets the listing of information that might give a doctor an apparent competitive advantage, such as his fees, as "indirect" advertising and a violation of state law. However, the HRC has brought suit to challenge the interpretation. Meanwhile, the American Medical Association's Judicial Council has ruled that a doctor is not violating medical ethics by listing his name in a consumer directory so long as it is open to all the physicians in the community and does not include "any self-aggrandizing statement or qualitative judgment" regarding his competence as a medical practitioner. The ruling leaves open the question of listing fees. But if adopted by the AMA House of Delegates next month, the ruling could do much to remove the present legal obstacles faced by the consumer advocates.

Newsweek, November 18, 1974

REPORT OF THE JUDICIAL COUNCIL

Report: C
(C-74)

Subject: Community Medical Directories

Presented By: George W. Petznick, M.D., Chairman

Referred To: Reference Committee D
(William A. Sodeman, M. D., Chairman)

COMMUNITY PROFESSIONAL DIRECTORIES

It is not unethical for a physician to authorize the listing of his name and practice in a directory for professional or lay use which is intended to list all physicians in the community on a uniform and non-discriminatory basis. The listing shall not include any self-aggrandizing statement or qualitative judgment regarding the physician's skills or competence. The American Medical Directory provides an example of the kind of information that may be properly listed in national as well as community directories for health service personnel. Likewise, specialties or specialty practices used in the American Medical Directory should set the pattern for specialty designations.

ADOPTED BY THE HOUSE OF DELEGATES DECEMBER, 1974.

de guide
SB911

ALASKA PUBLIC INTEREST RESEARCH GROUP

P. O. BOX 1093
ANCHORAGE, ALASKA 99510

PHONE 274-6765

April 22, 1975

Representative Terry Gardner
Chairman, House Judiciary Committee
House of Representatives
Juneau, Alaska 99801

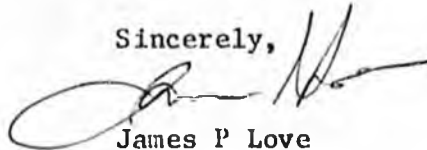
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Sincerely,



James P Love
Director,
Alaska Public Interest Research Group

S B

4 3 8

"An Act relating to franchising agreements involving gasoline refiners, distributors and dealers; and providing for an effective date."

COMMITTEE REPORT

HOUSE

4/15/76

Mr. Speaker:

Date May 22, 1976

The Committee on JUDICIARY has had SB. 438 am

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>[Signature]</u>	<u>[Signature]</u>	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Signature] Chairman

file
438

SENATE BILL 438
ALASKA GASOLINE PRODUCTS FRANCHISE ACT
WHAT DOES IT DO?

<u>REFERENCE</u>	<u>ITS IMPACT</u>
Page 2-810(a)3	Most if not all stations will be closed on Sunday. Getting gasoline in evenings will be much more difficult. Adverse impact on tourists, economy, emergency vehicles, and other travelers will result.
Page 2-810(a)5	Section provides for public utility control of our product pricing with courts serving as the regulatory agency. This conflicts with free enterprise system to the detriment of the consumer on product pricing.
Page 2-810(a)6	May enable dealers to buy and sell competitive gasoline. Subject to differing court interpretation. Impossible to administer. No sales assurance may mean no company investment in service stations.
Page 2-810(a)8	Allows dealers to lease or sublease stations. Dealer may have no concern for qualifications of sublessee or assignee. Level of service will drop to public. Dealer will assign lease to highest bidder. No company control over investment may mean no further investment in service stations.
Page 3-810(b)	Requires supplier to give dealer 90 days notice of termination in cases where there is a breach of contract. Does not afford dealer opportunity to cure the breach and avoid termination. Immediate termination is not included in cases of fraudulent and deceptive sales practices, in cases of fire caused by dealer, dealer mental incapacity, debts owed by dealer, etc.
Page 4-810(c)	Good causes for termination do not include dealers death, dealer debt, trademark violations, consumer complaints, etc. Part 4 allows for differing interpretation of "similar" stations in requiring our rental be the same for "similar retail outlets." Rental for all stations should not be the same since they are of different size, type, and in different locations.
Page 5-810(d)	Restrains competition. Would not enable supplier to lower prices to dealers experiencing bonafide competition; therefore consumer pays more.
Page 5-820	Enables dealers to sell good will. In conjunction with ability to assign lease, allows dealers to sell station to highest bidder, regardless of candidates qualifications to manage business or provide service to public. Results in station speculation by real estate investors. Service to public deteriorates. There is no justification for good will - There is nothing to sell. Supplier carries accounts receivable. Growth in business is due to location and one dealer s ability - not transferrable to succeeding dealers. Dealer does not pay company for good will initially.

Mr. Chairman and Members of the Committee:

My name is John Sanders. I am Division Manager for Standard Oil Company of California in its Alaska Division. I am responsible for the sale of its products throughout the state of Alaska. I appreciate the opportunity to present my company's views on this legislation, after which I will try to answer any questions you may have. As I understand it, the intent of this legislation is to guarantee service station dealers fair and equitable treatment by their petroleum suppliers. In my opinion, however, Senate Bill 438 would not do that. In some instances, it would merely duplicate existing state and federal law. In others, it would merely provide a shield for ineffective dealers and would be to the detriment of consumers and good dealers alike. At the onset, we believe additional legislation to protect the service station dealers is unnecessary. Furthermore, we believe the importance of an efficient and successful independent dealer organization cannot be over-emphasized. It is through such independent dealers that the vast majority of service station sales are made.

In the state of Alaska, Standard Oil Company of California supplies products to 42 conventional dealer stations, all of which are operated by independent businessmen. We provide, at our expense, all the marketing research, site location, land acquisition, facility construction, fixed equipment, tankage, and signs. We then lease the complete facility and site to a dealer, with the

dealer being responsible only for such things as operating tools, moveable equipment, and inventory. There is no "Franchise Fee" for the dealer to pay Standard. This arrangement affords the dealer entry into the service station business at a comparatively modest initial investment; in most instances, between \$15,000 and \$25,000. On the other hand, in recent years, our average investment for a new service station has been approximately \$500,000, including real property and facilities.

Our enormous investment and our complete marketing reliance upon the service station dealer demonstrate a very fundamental point about us and Chevron dealers--we need each other, and we must assure the dealer a reasonable opportunity for success if we are both to profit.

Our forms of dealer supply contract and dealer lease are available to the committee if it wishes to see them. We think that these agreements testify to our good faith in providing to Chevron Dealers on commercially fair terms a very valuable place of business in which the dealer has a reasonable opportunity to make a good living. These agreements are for a five year term, and, after a brief initial trial period, they can be terminated by us during the term only for good cause. Our relationship with dealers is both fair and reasonable and is founded upon the mutual interest of both parties. From the very beginning we have been aware of the antitrust laws that govern our relationship with Chevron Dealers. Accordingly, Chevron Dealers are entirely free to price

their products and services and to purchase also from other suppliers as they may decide. In other words, we recognize and respect the dealer as an independent businessman. If we were to change our policy and seek improperly to control a dealer's pricing or purchasing discretion, we would surely be subject to the formidable sanctions of the antitrust laws, including treble damages. We therefore believe that the commercial interests of suppliers and the dealers who sell their products are mutual interests. These interests, together with the severe sanctions of the existing antitrust laws, are, we believe, entirely adequate to protect service station dealers and hence no further legislation is necessary.

We acknowledge that S.B. 438 was amended in the Commerce Committee to remove several undesirable and irresponsible provisions; however, the very fact that it comes to this body on the strength of only one affirmative vote, indicates that many problems remain intact in the legislation before you. With your permission, I will highlight these problem areas:

1. Section 45.50.810(a)(4)

This section would prohibit us from requiring Chevron Dealers to buy any quantity of our products unless we proved that such purchase obligations are "reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition."

This provision is unnecessary since the antitrust laws, including Alaska's antitrust statutes as well as the Federal Clayton Act and Sherman Act provide ample protection to dealers, including treble damage provisions, by forbidding any agreements which would require them to buy all or substantially all of their inventory requirements from a particular supplier. Accordingly a Chevron Dealer is merely required by contract to buy from us only such quantities of our products as may be necessary to satisfy customer demand for our products at his station. He may also handle any competitive products that he desires. Indeed, we find that most of our dealers do in fact choose to handle substantial quantities of competitive petroleum products and tires, batteries and accessories.

In addition, this section is wholly impractical because of the uncertainty of the language measuring the legality of the purchasing obligation. When are such obligations "reasonably necessary for lawful purposes justified on business grounds?" And when do they not "substantially affect competition?" The bill gives no guidance on this. Even entirely reasonable and otherwise lawful purchase obligations may affect competition as any aggregation of sales or purchases would, without in any way lessening or impairing competition. Suppliers cannot be expected to make the very substantial investments required for modern service stations if they do not have reasonable assurance that their products will be at least offered for sale at such stations.

Also, depending upon a court's interpretation of the wording in this section, it may be in conflict with current State and

Federal Trademark laws. If this section were to allow gasoline purchased by the dealer from another supplier to be sold through pumps marked with Standard's brands, then it appears obvious to us that it is in violation of applicable trademark laws.

This would obviously provide a great disservice to consumers who think they are buying Standard's products when, in fact, they may be sold someone else's product of lesser quality and performance characteristics. I think the Department of Weights and Measures would take a dim view of that situation.

2. Section 45.50.810(b)

Our Chevron dealer contracts now provide that the dealer must be given notice of default and 10 days within which to cure the default and thereby avoid termination in most situations. That is ample time. This section would require that a refiner or distributor give 45 days notice prior to terminating or failing to renew a franchise except where such termination or failure to renew is due to the voluntary abandonment of the station by the dealer; or where the dealer is convicted of a felony. This requirement is not needed for the protection of the dealer and is commercially unfair and impracticable.

But the 45 days prior notice is unrealistically long in many situations other than those two recognized in the bill. Consider for instance the case of a dealer engaged in fraudulent and deceptive sales practices against the motoring public. In this example, there is normally ample evidence of repeated illegal practices such as the deliberate damaging of tires and/or fan belts. Prompt termination was necessary in another situation, as

a result of a fire caused by the dealer's improper use of a welding torch in violation of city ordinances and contrary to our instructions against the practice. Obviously to permit such situations to continue for a minimum of 45 days would be to the detriment of consumers and good dealers alike.

In addition to that kind of illegal conduct by the dealer, there are numerous other situations in which 45 days prior notice would be wholly unrealistic. For example: (a) The Dealer's death or mental or physical incapacity to operate the station, (b) refusal by the dealer to pay debts owed to his supplier or the dealer's bankruptcy or insolvency, and (c) a breach of a contract or franchise which cannot be cured.

Any of these cases would prevent us from regaining possession of our investment for 45 days and would to that extent arbitrarily deprive us of our property and would require enormous efforts by a new dealer to rebuild the business that has been needlessly impaired by prolonged neglect or idleness.

3. Section 45.50.810 (c)

This section deals with the causes for termination and provides that no refiner or distributor may terminate, cancel, or fail to renew a dealer lease without good cause which is defined as including: "The failure of a franchisee to comply with the lawful material provisions of a franchise between distributor or refiner and the franchisee/dealer..."

What provisions in dealer agreements would meet these criteria is a speculative matter at best; and different courts or juries may be expected to have conflicting views of the same contractual provisions. Thus, a particular term or condition in the lease or supply contract may or may not be enforceable based upon the interpretation of a judge or jury without experience in such commerce. Moreover, this bill would give a judge or jury no instructive guidance for making the required determinations. We understand that some service station dealers are supplied petroleum products pursuant only to oral agreements; others, like our Chevron dealers, are supplied under quite detailed written agreements designed to clarify the continuing business relationship for the benefit of both parties. However, in addition to the fundamental obligations to sell, to buy and to pay for products, there are other commercially important provisions such as those relating to the maintenance of a very expensive station. Are these to be deemed non-material by a judge or jury unfamiliar with servicestation business practices?

And, while the bill provides for some specific situations to be construed as good cause for termination, cancellation, or non-renewal, it fails to recognize many others, such as:

- a dealer's death or mental or physical incapacity to operate the station;
- refusal by the dealer to pay debts owed to his supplier;

- adulteration, commingling, mislabeling or misbranding gasoline;
- trademark violation;
- repeated consumer complaints concerning the dealers;
- and
- the supplier's decision to materially alter the facilities to meet changing consumer needs.

Furthermore, it is unclear whether the requirement to give the franchisee a reasonable opportunity to cure a default is applicable only where the breach is curable, such as the failure to pay for goods delivered. Surely, for example, where a dealer is convicted for fraudulent or deceptive sales practices, or becomes bankrupt or abandons the station, the default is essentially non-curable.

Moreover, subpart (4) would, in effect, require that the terms of our agreements be essentially the same as those offered other dealers in similar retail outlets. Surely, there is no sound basis for requiring every franchise agreement to be the same as that offered to every franchise dealer. The term "similar" is undefined and like other terms in the bill would be subject to varying and conflicting interpretations.

Rental terms vary from dealer to dealer quite properly; there are differing types and sizes of service stations and differing locations. Also, when we lease station sites from property owners, they require differing ground rents. In addition, there are differences in the costs incurred in supplying products to various dealers.

4. Section 45.50.810 (d)

This section provides that no refiner or distributor may charge different prices to dealers unless they are based upon the quantity purchased or transportation costs. Such a provision is plainly anticompetitive.

The Federal Robinson-Patman Act does not forbid all price differences between customers, but only those that threaten substantial anticompetitive effects. Moreover, in order to avoid the anticompetitive effects of rigid price uniformity, the Federal statute provides that a lower price given to one customer, but not to others, is lawful if granted "in good faith to meet an equally low price of a competitor" (15 USC S 13(a)(b)). The purpose of this provision in the Federal statute was to give a supplier sufficient flexibility to respond to differing competitive conditions, when and where they occur. For example, a gasoline price war may break out in one city within the State but not elsewhere. To assist its dealers to remain competitive in the area of the price war, Standard under present law would be able to lower its price to them without lowering it Statewide. If such a price reduction had to be extended Statewide, it probably would not be made at all. This feature of the bill would provide a strong upward pressure on pricing to the detriment of competition and the motoring public. Thus, this provision is anticompetitive since it unduly limits the very price competition that is the principal goal of both the Alaskan and Federal antitrust legislation.

Consider also the not uncommon situation in Alaska where a service station dealer himself has made the investment in the station. That investment will normally induce suppliers to offer an investment allowance on gasoline to reflect the fact that the dealer and not the supplier in this instance is furnishing the station. In these circumstances, a competing supplier, such as Standard, should be able to respond to this competitive situation by offering a comparable allowance to obtain or retain this dealer's business. But here too, if the same price must be offered to all dealers throughout the State, regardless of the commercial circumstances, it is probable that such an allowance for the dealer's investment would not be offered. Again, the result of this section of the bill would clearly be to reduce competition and encourage price rigidity. It would be anomalous for Alaska, having recently passed general antitrust legislation, now to pass a law which would encourage uniform, rigid price competition.

5. Section 45.50.820

In its original form, this provision was objectionable because it provided that, in some cases, upon termination the supplier would have to compensate the dealer for the "fair market value of the service, including good will." Recognizing that there is nothing in the nature of good will that is transferrable from a dealer to its supplier or to a successor dealer where the station is owned by the supplying company, the Commerce Committee deleted the reference to good will. In order to

avoid confusion and possible judicial misinterpretation, we would recommend also the deletion of the reference to good will in Line 25 of Page 4.

But even if that were done this section would still require the supplier to compensate the dealer for the "fair market value of the franchise." While the focus of this provision is upon compensation for the dealer's inventory and equipment when purchased from the refiner, these items do not appear to limit the supplier's obligation since they are merely "included" in the fair market value of the franchise for which compensation must be paid. It is therefore possible that this broad phrase would be held by a court to require compensation for good will, bringing us back to face the difficulties of the original language. If there is to be legislation on this point--and to us it seems unnecessary--we recommend that it be limited to requiring the supplier to repurchase merchantable inventory. We should not be required to repurchase equipment since it will be in used condition and will often be equipment that the outgoing dealer didn't need and the incoming dealer doesn't want.

6. Section 45.50.800

This provision would require the refiner to disclose to the dealer "Facts which would reasonably be considered material to the dealer's decision to enter the franchise." These facts shall include but not be limited to various kinds of data described in subparts 1-7. Due to the practical uncertainty

in defining "facts which would reasonably be considered material," we recommend the section be amended to state that the refiner must disclose to the dealer, "The following facts material to a dealer's decision to enter into the franchise," followed by a list of such facts.

7. Section 45.50.840(4)

So as to confine the applications of this bill solely to service stations as distinguished from wholesale distributors or jobbers who sell to other types of consumer accounts and hence might be considered to operate "retail outlets", we recommend that Subpart 4, defining "dealer" be amended by adding "to the motoring public" after "gasoline."

In closing, I would restate that no where else can a dealer obtain a half-million dollar income-producing investment with such minimal risks. No where else does the consumer enjoy the level of assurance of product quality, service, skills, and competitive pricing, that have been achieved through our system as it is presently operated. This legislation would discourage the investments required to construct service stations today. Such an act would be counter-productive, working against the common goals of both the consumer and dealer.

I hope the views I have expressed will be helpful to you. This legislation is unnecessary. I respectfully urge you to consider our views and to reject this bill. If you have any questions, I would be pleased to respond.

MEMORANDUM

April 22, 1976

SOCAL - 1976 Alaska
Legislation - S.B. 438

Amendment Preferences

§ 45.50.810(a)(4) -- See 4/16/76 memo under
§ 45.50.810(a)(6), p. 1.

§ 45.50.810(b) -- See 4/16/76 memo, Exhibit A-1
as amended and attached hereto.

§ 45.50.810(c) -- See 4/16/76 memo, Exhibit B-3,
as amended and attached; or Exhibit D, California Bus. & Prof.
Code § 20999.1 as amended and attached.

§§ 45.50.820 -- See 4/16/76 memo, Exhibit C.
45.50.830
Substitute Exhibit C-2 as amended or, if necessary, Exhibit
C-1 as amended, both attached hereto.

D. T. Van Camp

Attachs.

EXHIBIT A
Alternative 1

(b) No refiner or distributor may terminate, cancel or fail to renew a franchise unless such refiner or distributor furnishes notification pursuant to this subsection to the other party to the franchise. Such notification shall be in writing addressed to such other party and sent by certified mail, deposited in the mail no less than 45 days prior to the date on which such franchise is to be terminated, cancelled or not renewed; provided, however, that if in light of the circumstances, it would not be reasonable to provide notice 45 days in advance of such termination, cancellation or failure to renew the refiner or distributor shall provide such notice less than 45 days as may be reasonable in the circumstances. Notification shall contain a statement of intention to terminate, cancel, or decline to renew such franchise, together with the reasons therefor, and the date on which such termination, cancellation or failure to renew shall take effect.

EXHIBIT B

Alternative 3

(c) Notwithstanding the terms of any franchise, no refiner or distributor shall terminate, cancel or fail to renew a franchise without good cause, except that a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved has not been a dealer of the refiner or distributor for that period of time at the premises described in the franchise.

As used in this section good cause shall include the following:

(1) The dealer failed to comply with reasonable requirements of the franchise agreement;

(2) The dealer failed to act in good faith in carrying out the terms of the franchise; or

(3) Other legitimate business reasons (except that a termination or cancellation of a franchise for the purpose of enabling the refiner or distributor to assume operation of the dealer's business, shall not be considered to be a legitimate business reason unless the dealer is offered repurchase at current wholesale prices of all merchantable inventory purchased from the refiner or distributor and repurchase at fair market value of all equipment purchased from the refiner or distributor.

EXHIBIT C
Alternative 1

Section 45.50.820. REPURCHASE OF GOODS. In the event that the refiner or distributor terminates, cancels or fails to renew the franchise, such refiner or distributor shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors or assigns, at the current wholesale prices, any and all merchantable products and merchandise which are undamaged and unaltered from their original form, purchased by the dealer from the refiner or distributor; provided, that such refiner or distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer; and, further provided that such repurchase obligation is conditioned upon there being no claims or liens by or on behalf of other parties, including creditors and governmental agencies, against such products and merchandise.

EXHIBIT C

Alternative 2

Section 45.50.820. DISPOSITION OF INVENTORY.

Upon any termination, cancellation or failure to renew a franchise, the refiner or distributor shall at the request of the dealer, take back any merchantable inventory from the dealer to which he has good title free from any claims or liens of others, which was supplied by the refiner or distributor and which has not diminished substantially in value and is of similar quality as when originally supplied. The refiner or distributor at its option shall reimburse the dealer for not less than ninety per cent of the cost paid by the dealer or shall cancel not less than ninety per cent of any debts owed on account of the inventory.

EXHIBIT D

California (as amended)

Notwithstanding the terms of any franchise, no refiner or distributor shall terminate, cancel or refuse to renew any existing franchise without good cause.

As used in this section good cause is limited to the following:

(a) The dealer failed to comply with reasonable requirements of the franchise agreement;

(b) The dealer failed to act in good faith in carrying out the terms of the franchise; or

(c) Other legitimate business reasons (except that a termination or cancellation of a franchise for the purpose of enabling the refiner or distributor to assume operation of the dealer's business shall not be considered to be a legitimate business reason unless the dealer is offered repurchase at current wholesale prices of all merchantable inventory purchased from the refiner or distributor and repurchase at fair market value of all equipment purchased from the refiner or distributor.

STATEMENT OF J. R. SANDERS
ON BEHALF OF
STANDARD OIL COMPANY OF CALIFORNIA
ON SENATE BILL 438
"ALASKA GASOLINE PRODUCTS FRANCHISE ACT"

BEFORE THE HOUSE OF THE STATE OF ALASKA

Mr. Chairman and Members of the Committee:

My name is John Sanders. I am Division Manager for Standard Oil Company of California in its Alaska Division. I am responsible for the sale of its products throughout the State of Alaska. I appreciate the opportunity to present my Company's views on this legislation after which I will try to answer any questions you may have.

As I understand it, the intent of this proposed legislation is to guarantee service station dealers fair and equitable treatment by their petroleum suppliers. I don't think it would do that. In fact, in my opinion, it would merely provide a shield for ineffective dealers and would be to the detriment of consumers and good dealers alike. At the onset, we believe that additional legislation to protect the service station dealer is unnecessary. Furthermore, we believe the importance of an efficient and successful independent dealer organization cannot be overemphasized. It is through such independent dealers that the vast majority of service station sales are made. In the State of Alaska, Standard Oil Company of California supplies products to 42 conventional dealer stations plus about 112 car washes, garages, new car dealerships, and other miscellaneous accounts, all of which are operated by independent businessmen. With respect to dealer stations, (those being the 42 conventional stations) we presently provide, at our expense, all the marketing research,

site location, land acquisition, facility construction, fixed equipment, tankage and signs. We then lease the completed facility and the site to a dealer with the dealer being responsible only for such things as operating tools, movable equipment, and inventory. There is no "franchise fee" for the dealer to pay Standard. This arrangement affords the dealer entry into the service station business at a comparatively modest initial investment, in most instances between \$15-25,000. On the other hand, in recent years, our average investment for a new service station has been approximately \$500,000 including real property and facilities.

Our enormous investment and our complete marketing reliance upon the service station dealer demonstrate a very fundamental point about us and Chevron dealers: We need each other and we must assure the dealer a reasonable opportunity for success if we are both to succeed.

Our forms of dealer supply contract and dealer lease are available to the committee if it wishes to see them. We think that these agreements testify to our good faith in providing to Chevron Dealers on commercially fair terms a very valuable place of business in which the dealer has a reasonable opportunity to make a good living. These agreements are for a five year term and, after a brief initial trial period, they can be terminated by us during the term only for good cause. Our

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relationship with dealers is both fair and reasonable and is founded upon the mutual interest of both parties. From the very onset we have been aware of the antitrust laws that govern our relationship with Chevron Dealers. Accordingly, Chevron Dealers are entirely free to price their products and services and to purchase also from other suppliers as they may decide. In other words, we recognize and respect the dealer as an independent businessman. If we were to change our policy and seek improperly to control a dealer's pricing or purchasing discretion we would surely be subject to the formidable sanctions of the antitrust laws, including treble damages. We therefore believe that the commercial interest of suppliers and the dealers who sell their products are mutual interests. These interests, together with the severe sanctions of the existing antitrust laws, are we believe entirely adequate to protect service station dealers and hence no further legislation is necessary. But, even if additional legislation were needed, Senate Bill 438 would be ill advised for the following principal reasons:

1. Section 43.50.810(a)(6)

This section would prohibit us from requiring Chevron Dealers to buy any quantity of our products unless we proved that such purchase obligations are "reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition".

This provision is unnecessary since the antitrust laws provide ample protection to dealers by forbidding any agreements which would require them to buy all or substantially all of their inventory requirements from a particular supplier. Accordingly a Chevron Dealer is merely required by contract to buy from us only such quantities of our products as may be necessary to satisfy customer demand for our products at his station. He may also handle any competitive products that he desires. Indeed, we find that most of our dealers do in fact choose to handle substantial quantities of competitive petroleum products and tires, batteries and accessories.

In addition, this section is wholly impractical because of the uncertainty of the language measuring the legality of the purchasing obligation. When are such obligations "reasonably necessary for lawful purposes justified on business grounds?" And when do they not "substantially affect competition?" The bill gives no guidance on this. Even entirely reasonable and otherwise lawful purchase obligations may affect competition as any aggregation of sales or purchases would, without in any way lessening or impairing competition. Suppliers cannot be expected to make the very substantial investments required for modern service stations if they do not have reasonable assurance that their products will be at least offered for sale at such stations.

Also, depending upon a court's interpretation of the wording in this section, it may be in conflict with current State and

Federal Trademark Laws. If this section were to allow gasoline purchased by the dealer from another supplier to be sold through pumps marked with Standard's brands, then it appears obvious to us that it is in violation of applicable trademark laws.

This would obviously provide a great disservice to consumers who think they are buying Standard's products when, in fact, they may be sold someone else's product of lesser quality and performance characteristics. I think the Department of Weights and Measures would take a dim view of that situation.

2. Section 45.50.810 (d)

This section provides that no refiner or distributor may charge different prices to dealers unless they are based upon the quantity purchased or transportation costs. Such a provision is plainly anticompetitive.

The Federal Robinson-Patman Act does not forbid all price differences between customers, but only those that threaten substantial anticompetitive effects. Moreover, in order to avoid the anticompetitive effects of rigid price uniformity, the Federal statute provides that a lower price given to one customer, but not to others, is lawful if granted "in good faith to meet an equally low price of a competitor" (15 USC § 13(a)(b)). The purpose of this provision in the Federal statute was to give a supplier sufficient flexibility to respond to differing competitive conditions, when and where they occur. For example, a gasoline price war may break out in one city

within the State but not elsewhere. To assist its dealers to remain competitive in the area of the price war, Standard under present law would be able to lower its price to them without lowering it Statewide. If such a price reduction had to be extended Statewide, it probably would not be made at all. This feature of the bill would provide a strong upward pressure on pricing to the detriment of competition and the motoring public.

Thus, this provision is anticompetitive since it unduly limits the very price competition that is the principal goal of both the Alaskan and Federal antitrust legislation.

Consider also the not uncommon situation in Alaska where a service station dealer himself has made the investment in the station. That investment will normally induce suppliers to offer an investment allowance on gasoline to reflect the fact that the dealer and not the supplier in this instance is furnishing the station. In these circumstances, a competing supplier, such as Standard, should be able to respond to this competitive situation by offering a comparable allowance to obtain or retain this dealer's business. But here too, if the same price must be offered to all dealers throughout the State, regardless of the commercial circumstances, it is probable that such an allowance for the dealer's investment would not be offered. Again, the result of this section of the bill would clearly be to reduce competition and encourage price rigidity. It

would be anomalous for Alaska, having recently passed general antitrust legislation, now to pass a law which would encourage uniform pricing and discourage price competition.

3. Section 45.50.810 (a)(8)

This section would forbid us to "unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee."

This section constitutes a totally unreasonable and arbitrary interference with our property rights. Having made a \$500,000 investment, and in light of a dealer's relatively small investment, it is only proper and just that we have the right to select a candidate whom we feel best qualified to operate a first class service station.

The consumer stands to lose the most from such a provision. If the dealer is permitted to assign his lease, there is the inevitable question of personal motivation in making the assignment. At Standard our motivation is simply to select dealers who are best qualified to manage the station and who are committed to providing the service to which we believe the motoring public is entitled.

4. Section 45.50.820

This section would require a supplier, upon termination or non-renewal of the franchise, to repurchase certain tangible assets from the dealer and, in certain circumstances, to compensate the dealer for "goodwill". We at Standard are opposed

to the payment of any sum of money for alleged dealer goodwill.

There is nothing in the nature of goodwill that is transferable from a dealer to his supplier or to a successor dealer where the station is owned by the supplying company. If a dealer's business is successful because the station is well located, and has excellent facilities, that portion of the success properly remains with the supplier. In this connection, all dealers, new or old, receive the benefit of large sums of money we have spent on advertising to promote public acceptance of our brands of products at our retail outlets. They also receive the benefit of the large number of credit cards we have solicited and the millions of dollars in accounts receivable we carry for the dealers. These things are in addition to the service station facility itself, which we furnish to the dealer and which currently costs us on an average about \$500,000 per unit. None of these sources of "goodwill" attributable to the station can be transferred by the dealer to us or to his successor.

Likewise, that portion of the dealer's success attributable to his personal skills, personality or the relationship he established with his customers belongs to him and is taken with him when he leaves and cannot be effectively transferred to us or to a succeeding dealer.

Thus it is a misnomer to say that the departing dealer has any "goodwill" that is transferable either to the supplier or to the new dealer.

5. Section 45.50.810 (a)(3)

This section would prohibit us from requiring a dealer to operate his station for more than 12 consecutive hours per day or more than six days per week.

It is safe to say that this provision would effectively eliminate gasoline availability on Sundays and between the hours of 10:00 p.m. and 6:00 a.m. This would be detrimental to the consumer and to the economy of the State of Alaska. Gasoline would be unavailable for emergency vehicles for such agencies as the police department; local travelers would be inconvenienced and tourism would be discouraged. Additionally, this provision completely disregards operating hour requirements imposed by many lessors in their ground leases to us; and while it does seem to recognize that longer hours may be required by the state or the federal government it does not recognize that as a condition to zoning permits, we may be required by municipal or borough authorities to provide for longer hours in certain locations.

6. Section 45.50.810 (a)(5)

This section provides that it would be a violation of law for us to sell, rent or offer to sell to a dealer any product or service for more than a "fair and reasonable" price.

This section would in effect subject the pricing of our service station products to a kind of public utility control with the courts serving as the regulatory agency. Apart from governmental price control during periods of acute economic distress,

at which rare times control could be vested in an administrative agency such as the Federal Energy Administration, it is neither desirable nor necessary to supplant ordinary market forces as proper regulators of prices and rents. Competition establishes fair market prices which balance all the effects of supply, demand and necessary return on capital. On the other hand, when prices are fixed at levels different from those established by the fair market this balance is inevitably upset and economic dislocations result, all to the public's disadvantage.

7. Section 45.50.810 (a)(10)

Under this section it would be a violation for a supplier to fail to deal with a dealer in "good faith". That phrase is so vague and generalized that it would be impossible to administer or comply with. No standards are stated as to how good faith is to be measured. We expect that every difference of opinion or commercial judgment would become a controversy over good faith. Such a provision would inescapably provoke endless dispute and litigation.

8. Section 45.50.810 (b)

This section would require that a refiner or distributor give 90 days notice prior to terminating or failing to renew a franchise except where such termination or failure to renew is due to the voluntary abandonment of the station by the dealer; or where the dealer is convicted of an indictable offense

directly related to the business. This requirement is not needed for the protection of the franchise and is commercially unfair and impracticable. Notice of intention to terminate for breach of contract should generally afford the dealer an adequate opportunity to cure the breach and avoid termination, as our Chevron dealer contracts provide.

But the 90 days prior notice is unrealistically long in many situations other than those two recognized in the bill. Consider for instance the case of a dealer engaged in fraudulent and deceptive sales practices against the motoring public. In this example, there is normally ample evidence of repeated illegal practices such as the deliberate damaging of tires and/or fan belts. Prompt termination was necessary in another situation, we recently found, as a result of a fire caused by the dealer's improper use of a welding torch in violation of city ordinances and contrary to our instructions against the practice. Obviously to permit such situations to continue for a minimum of 90 days would be to the detriment of consumers and good dealers alike.

In addition to the kind of illegal conduct by the dealer, there are numerous other situations in which 90 days prior notice would be wholly unrealistic. For example: (a) The Dealer's death or mental or physical incapacity to operate the station and (b) refusal by the dealer to pay debts owed to his supplier or the dealer's bankruptcy or insolvency.

Any of those cases would prevent us from regaining possession of our investment for 90 days and would to that extent arbitrarily deprive us of our property and would require enormous efforts by a new dealer to rebuild the business that has been needlessly impaired by prolonged neglect or idleness.

9. Section 45.50.810 (c)

This section deals with the causes for termination and provides that no refiner or distributor may terminate, cancel, or fail to renew a dealer lease without good cause which is defined as including: "The failure of a franchisee to comply with the lawful material provisions of a franchise between distributor or refiner and the franchisee/dealer..."

What provisions in dealer agreements would meet those criteria is a speculative matter at best; and different courts or juries may be expected to have conflicting views of the same contractual provisions. Thus, a particular term or condition in the lease or supply contract may or may not be enforceable based upon the interpretation of a judge or jury without experience in such commerce. Moreover, this bill would give a judge or jury no instructive guidance for making the required determinations. We understand that some service station dealers are supplied petroleum products pursuant only to oral agreements; others, like our Chevron dealers, are supplied under quite detailed written agreements designed to clarify the continuing business relationship for the benefit of both parties. However, in addition to the fundamental obligations to sell, to buy and

to pay for products, there are other commercially important provisions such as those relating to the maintenance of a very expensive station. Are these to be deemed non-material by a judge or jury unfamiliar with service station business practices?

And, while the bill provides for some specific situations to be construed as good cause for termination, cancellation or non-renewal, it fails to recognize many others, such as:

- a dealer's death or mental or physical incapacity to operate the station;
- refusal by the dealer to pay debts owed to his supplier;
- adulteration, commingling, mislabeling or misbranding gasoline;
- trademark violation;
- repeated consumer complaints concerning the dealers; and
- the supplier's decision to materially alter the facilities to meet changing consumer needs.

Furthermore, it is unclear whether the requirement to give the franchisee a reasonable opportunity to cure a default is applicable only where the breach is curable, such as the failure to pay for goods delivered. Surely, for example, where a dealer is convicted for fraudulent or deceptive sales practices, or becomes bankrupt or abandons the station, the default is essentially non-curable.

Moreover, subpart (4) would, in effect, require that the terms of our agreements be essentially the same as those offered other dealers in similar retail outlets.

Surely, there is no sound basis for requiring every franchise agreement to be the same as that offered to every franchise dealer. The term "similar" retail outlets does not cure this deficiency since the word "similar" is undefined and like other terms in the bill would be subject to varying and conflicting interpretations.

Rental terms vary from dealer to dealer quite properly; there are differing types and sizes of service stations and differing locations. Also, when we lease station sites from property owners, they require differing ground rents. In addition, there are differences in the costs incurred in supplying products to various dealers.

In closing, I would restate that in recent years our average investment for a new service station has been approximately \$500,000. This figure is probably typical of the recent expenditures made by similar suppliers in this industry. While we cannot speak for others, we seriously doubt that we could continue making these kinds of investments not knowing what our contracts would mean, and, in addition, be subject to the

other restrictive conditions set forth in this bill. It is difficult to foresee who would make such investments or who would maintain the current level of availability for these services which the public has come to expect.

Nowhere else can a dealer obtain a half million dollar income producing business investment with such minimal risk. Nowhere else does the consumer enjoy the level of assurance of product quality, service skills, competitive pricing, and image achievable through our system as it presently operates. Legislation which removes the incentives for the investments required to construct service stations today will prove to be counter productive working against the common goals of both the consumer and the dealer.

I hope the views I have expressed will be helpful to you. I respectfully urge you to consider them and to reject this bill. If you have any questions, I would be pleased to respond.

Original sponsor: Commerce Committee

Offered: 4/15/76
Referred: Judiciary

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 438

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to ^{lease} [franchising] agreements involving
7 gasoline refiners, distributors and dealers; and
8 providing for an effective date."

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

10 * Section 1. FINDINGS OF THE LEGISLATURE. The legislature finds and
11 declares that since the distribution and sales, through ^{lease} [franchise] agreements,
12 of gasoline in the state vitally affect the economy of the state, the public
13 interest, welfare, and transportation, it is necessary to define the rela-
14 tionships and responsibilities of the parties to certain agreements pertain-
15 ing to franchising.

16 * Sec. 2. AS 45.50 is amended by adding new sections to read:

17 ARTICLE 5. ALASKA GASOLINE PRODUCTS FRANCHISE ACT.

18 Sec. 45.50.800. DISCLOSURES TO BE MADE BY DISTRIBUTORS AND RE-
19 FINERS BEFORE CONCLUSION OF AGREEMENT. Before entry into a franchise
20 agreement, a refiner or distributor shall disclose to the dealer facts
21 [which would reasonably be considered] material to the dealer's decision
22 to enter into the franchise. These facts ^{ARE} shall include, ~~but~~ not be
23 limited to,]

24 (1) ownership of property of the retail outlet;

25 (2) if the real property is not owned by a refiner or dis-
26 tributor, then the nature of the relationship between the real property
27 owner and the refiner or distributor and the length of the underlying
28 lease (if applicable);

29 (3) the last known addresses of dealers operating the retail

1 outlet for the last five years;

2 (4) the gasoline gallonage history, if any, of the station
3 for the last five years;

4 (5) any sales goals or quotas the refiners or distributors
5 intend to apply to the station;

6 (6) the nearest gasoline outlet owned, controlled or operated
7 by the refiner or distributor and any plans the distributor or refiner
8 has to open new retail outlets within the trade area of the retail
9 outlet; and

10 (7) any plans the refiner or distributor has for the future
11 of the subject retail outlet.

12 Sec. 45.50.810. VIOLATIONS. (a) No person shall, directly or
13 indirectly, through offices, employees or agents,

14 (1) require the franchisee-dealer at the time of entering
15 into the ^{lease} franchise agreement to ~~assent to release, assignment, novation,~~
16 ~~waiver or estoppel which would~~ relieve any person from liability imposed
17 by secs. 800 - 850 of this chapter;

18 (2) require the dealer to agree to waive his right to a jury
19 trial or any right of counterclaim he may have;

20 (3) restrict or inhibit directly or indirectly the right of
21 free association for any lawful purpose of the franchisee-dealer;

22 (4) except as to the initial inventory of the franchise,
23 require a dealer to purchase or otherwise lease goods or services of a
24 refiner or distributor or from an approved source of supply unless and
25 to the extent that the refiner or distributor satisfies the burden of
26 proving that such restricted purchasing agreements are reasonably neces-
27 sary for lawful purposes justified on business grounds and do not sub-
28 stantially affect competition; in determining whether a requirement to
29 purchase is lawful, the court shall be guided by the decisions of the

1 courts of the United States in interpreting and applying the antitrust
2 laws and the Federal Trade Commission Act of the United States;

3 (5) impose unreasonable standards of performance on the
4 dealer;

5 (6) require a dealer to participate financially in the use of
6 any premium coupon or giveaway or rebate in the operation of the busi-
7 ness; however, a distributor may require the dealer to distribute
8 premiums, coupons or give-aways to customers which are provided to the
9 dealer at the expense of the refiner or distributor or when the pro-
10 motion is self-liquidating; or

11 (7) fail to deal with the dealer in good faith.

12 (b) No refiner or distributor may, directly or indirectly, through
13 any officer, agent or employee, terminate, cancel or fail to renew a
14 dealer franchise without first giving written notice setting out all of
15 the reasons for the termination or cancellation or intent not to renew
16 to the franchisee-dealer at least 45 days in advance of the termination,
17 cancellation or failure to renew except

18 (1) when the alleged grounds are voluntary abandonment by the
19 franchisee-dealer of the franchisee relationship, then the above notice
20 may be given five days in advance of the termination, cancellation or
21 failure to renew;

22 (2) when the alleged grounds are the conviction of the
23 franchisee in a court of competent jurisdiction of a felony.

24 (c) ^{(3) Par amend} No refiner or distributor may terminate, cancel or fail to
25 renew a dealer franchise without good cause. Good cause shall include
26 without limitation:

27 (1) the failure of a franchisee to comply with the lawful
28 material provisions of a franchise between the distributor or refiner
29 and the franchisee-dealer and to cure each default after being given

Tom Manale

- 1. Right of sale
- 2. Right of survivorship

Robson Patman Act

written notice and a reasonable opportunity to cure the default;

(2) an adjudication that the franchisee-dealer is a bankrupt or insolvent or if he makes an assignment for the benefit of creditors or a similar disposition of assets of franchise business or voluntarily abandons the franchise business or is convicted of or pleads guilty or no contest to a charge of violating any law relating to any franchise business;

(3) the good faith business decision of the franchiser that he no longer requires a retail outlet at that location for the marketing of gasoline; and

(4) the dealer's failure to sign the new agreement if at the time of renewal of the franchise the distributor or refiner and the franchisee-dealer cannot agree upon new terms and the terms offered by the refiner or distributor do not violate any other laws of the State of Alaska or of the United States and the terms are essentially the same as those offered to other franchisee-dealers in similar retail outlets and do not discriminate against the subject franchisee-dealer.

(d) No refiner or distributor may engage in price discrimination between dealers unless that discrimination is based upon quantity purchased or transportation costs. ⁽²⁾ ^{(3) capital or personal investment of the dealer.}

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Walker
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lands

Sec. 45.50.820. OBLIGATION OF DISTRIBUTOR TO REPURCHASE UPON TERMINATION, ETC., OF AGREEMENT. If the refiner or distributor has good cause to terminate, cancel or fail to renew under sec. 810(c)(1) ⁽²⁾ ⁽³⁾ of this chapter, he shall compensate the ~~franchisee~~ dealer for the fair market value of the franchise, excluding goodwill. Refiners or distributors terminating, cancelling, or failing to renew under sec. 810(c) ⁽³⁾ ⁽⁴⁾ of this chapter shall compensate the ~~franchisee~~ dealer for the fair market value of the franchise, ^{including goodwill} Valuation shall include the fair market value of the franchisee's inventory supplies, equipment and ^{other than goodwill}

Columbus distributor

1 furnishings purchased from the refiner or distributor exclusive of
2 personalized materials which have no value to the refiner or distributor
3 and inventory supplies, equipment and furnishings not reasonably re-
4 quired in the conduct of the franchise business. Compensation shall be
5 made within 60 days from the date of termination unless it is necessary
6 that a lawsuit be filed under sec. 830 of this chapter or the dealer
7 fails to comply with the bulk sales provisions of AS 45.05.510 et seq.
8 The refiner or distributor may offset against accounts owed by the
9 franchisee-dealer under this section any amount owed by the franchisee-
10 dealer to the refiner or distributor.

11 Sec. 45.50.830. COURT TO DETERMINE FAIR MARKET VALUE WHEN PARTIES
12 CANNOT AGREE. If under sec. 820 of this chapter the distributor or
13 refiner has good cause and the distributor or refiner and the dealer
14 cannot agree on the fair market value of the franchise, then either
15 party may initiate an action in the superior court where the franchise
16 retail outlet exists. ~~If~~ If the amount awarded to the franchisee by the
17 jury or the court is 10 per cent lower than the final offer, if any,
18 made by the refiner or distributor before the filing of the lawsuit,
19 reasonable attorney fees and the appraiser fees shall be awarded to the
20 refiner or distributor.

21 Sec. 45.50.840. DEFINITIONS. In secs. 800 - 830 of this chapter,
22 unless context otherwise requires,

23 (1) "refiner" is a company, corporation or individual who
24 owns or controls, or controls through a substantially owned subsidiary,
25 partnership, or joint venture, a refinery used for the production of
26 gasoline, diesel or other motor vehicle fuels;

27 (2) "distributor" means any person or corporation other than
28 a refiner engaged in the sale, assignment, or distribution of gasoline,
29 to four or more dealer-operated retail outlets;

1 (3) "gasoline" means all products commonly or commercially
2 known or sold as gasoline;

3 (4) "dealer" means a person ^{primarily} engaged in the sale of gasoline ^{to the motoring public}
4 through a retail outlet ~~owned or~~ ^{from the refiner/distributor} leased by the person and operated by
5 the person;

6 (5) "franchise" means an oral or written contract or agree-
7 ment or series of agreements, either express or implied, in which the
8 dealer is required directly or indirectly to purchase 50 per cent or
9 more of his supply of gasoline from a distributor or refiner and in
10 which the dealer is granted authority to occupy premises owned, leased
11 or in any way controlled, directly or indirectly, by the refiner or
12 distributor.

13 Sec. 45.50.850. SHORT TITLE. Sections 800 - 850 of this chapter
14 may be cited as the "Alaska Gasoline Products Franchise Act."

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

16 (22) failing to comply with the terms of the Alaska Gasoline
17 Products Franchise Act (AS 45.50.800 - 45.50.850).

18 * Sec. 4. This Act takes effect July 1, 1976.
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AMENDMENT

4

OFFERED IN THE HOUSE:

By: _____

To: HCS HOUSE BILL No. _____

SENATE BILL No. 438

PAGE: 3

between
LINE: 11 & 12

ADD

Unless ^{otherwise} agreed upon by the parties
(8) require the dealer to keep his retail outlet open for

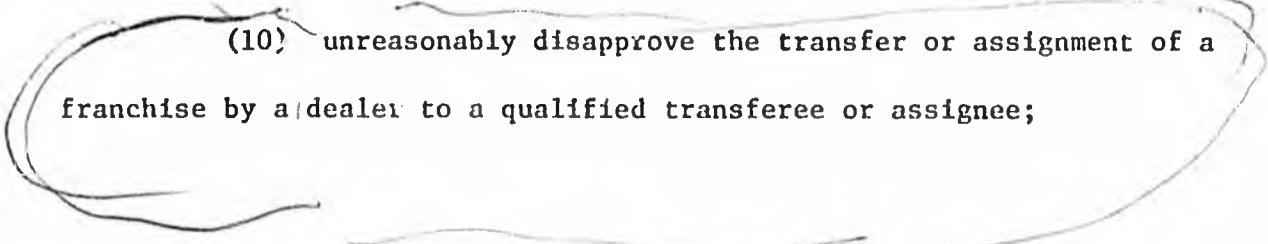
business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

Adopted

require dealer to purchase or
(9) ~~sell~~, rent or offer to sell to a dealer any product or service for more than a fair and reasonable price;

Adopted

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;



*for further provisions upon agreement
of dealer to bear some of loss*

AMENDMENT

4

OFFERED IN THE HOUSE:

By: _____

To: HCS HOUSE BILL No. _____

SENATE BILL No. 438

between

PAGE: 3

LINE: 11 & 12

ADD

OK

(8) require the dealer to keep his retail outlet open for business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

OK

(9) ~~sell, rent or offer to sell to a dealer~~ any product or service for more than a fair and reasonable price;

May not require a dealer to purchase

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;

~~XXXX~~

AMENDMENT

5

OFFERED IN THE HOUSE:

BY: _____

To: _____ HOUSE BILL No. _____

SENATE BILL No. HCS 458

PAGE: 5

LINE: 16 to 20

~~After the word "exists," delete lines 16 to line 20 and insert:~~

Reasonable attorney's fees and the appraiser's fees shall be awarded to the franchisee if the amount awarded to the franchisee by the jury or the court is ten per cent higher than the final offer, if any, made by the refiner or distributor prior to the filing of the lawsuit.

45.50.810 c

~~_____~~
~~_____~~

(c) No refiner or distributor shall terminate or cancel a dealer franchise prior to the expiration date thereof unless the dealer whose franchise is terminated failed to perform or comply with, or failed to act in good faith in performing or complying with, any of the terms or provisions of the franchise, except that a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved has not been a dealer of the refiner or distributor for that period of time, at the premises described in the franchise.

**TWO PARTY DEALER
SUPPLY CONTRACT AND SIGN AND EQUIPMENT
RENTAL CONTRACT**

Dated _____, 19 _____

1. STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC. ("Seller") agrees to sell to _____

("Buyer") and Buyer agrees to buy from Seller such quantities of petroleum products and such quantities of the brands of tires, tubes and batteries (hereinafter sometimes referred to as "Seller's products") sold by Seller generally for resale in Buyer's locality as are necessary to serve customer demand for Seller's products at Buyer's premises for a term commencing _____, 19 _____, and ending _____, 19 _____.

2. Delivery shall be made on reasonable notice (preferably at least 48 hours) at _____

(the "premises") and shall be made in Seller's customary manner with equipment selected by Seller in full capacity loads. The price Buyer shall pay Seller for petroleum products hereunder shall be Seller's posted price to its buyers for resale generally at the time and place of delivery for the particular product, grade, quantity and type of delivery involved. The price Buyer shall pay Seller for tires, tubes and batteries shall be Seller's price to buyers for resale generally in Buyer's vicinity. Terms shall be net cash at time of delivery, except at Seller's option.

3. Buyer shall stock at the premises and continuously offer for sale such quantities of Seller's products as are necessary to serve customer demand for said products. Buyer agrees at all times to give the dispensing equipment, displays and advertisements for Seller's products and brands as prominent and convenient positions as those for any other product offered for sale on the premises. Buyer recognizes the high regard of the motoring public for service stations selling under Seller's trademarks and brands based upon the general cleanliness and the excellence of products and services dispensed at such service stations; and accordingly, Buyer agrees that he shall operate the premises as a first-class service station and shall not by act or omission disparage or diminish in any way the good reputation of said trademarks, brands, products or service stations. Buyer shall not engage in or permit any unlawful, fraudulent, or deceptive act or practice on the premises.

4. (a) The petroleum products covered by this agreement shall be sold by Buyer as the products of Seller and only under the trademarks or brands regularly used by Seller for such products and Buyer shall not, at any time, offer for sale under Seller's trademarks or brands, any product not authorized to be sold thereunder.

(b) Buyer shall so conduct his operations as to eliminate any likelihood of confusion between Seller's products and those of others, and as to eliminate any likelihood of substitution of the products of others for those of Seller. Buyer agrees to abide by such reasonable regulations to this end as Seller may from time to time establish by notice to Buyer. Buyer further agrees to comply with all applicable laws, ordinances and regulations of governmental authorities in resale of all products purchased hereunder.

(c) All signs advertising Seller's products and all signs in the colors used by Seller to identify its products or the places at which its products are sold and all of Seller's trademark rights therein are, and they shall continue to be, the property of Seller. No use shall be made of any such signs except in connection with products manufactured or handled by Seller, and Seller shall have the right, at all times during the life of this agreement and within a reasonable period thereafter, to remove or obliterate such signs. Buyer may not use other signs to advertise products purchased from Seller without Seller's written consent. It is agreed that any paint scheme applied by Seller to the premises to which deliveries are made hereunder may be that used to identify dealer outlets marketing Seller's petroleum products, and that Seller shall, at all times during the life of this agreement and within a reasonable period thereafter, have the right, but not the obligation, to repaint so much of the premises as it elects, in a color or colors selected by it. If Seller at any time removes or obliterates any signs or repaints any of the premises, Seller need not restore any pre-existing signs or paint scheme of the premises. Buyer agrees, during this agreement and thereafter, not to simulate in any way any trademarks or brands, signs or paint schemes identifying Seller's products or the places or outlets where they are sold or marketed.

5. (a) There shall be no obligation to deliver or to receive or use the products herein described when and while, and to the extent that, the receiving or using or manufacture or making deliveries in the customary manner are prevented or hindered by act of God, fire, riot, labor disturbances, accident, war or the acts of any government (whether foreign or domestic,