

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2576 HLC HB 344 - HB 347 2530

Assembly Bill No. 1787

CHAPTER 388

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

[Approved by Governor July 7, 1982. Filed with Secretary of State July 7, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, as defined, excluding motorcycles, motorhomes, and off-road vehicles, to the applicable express warranties if within one year or 12,000 miles (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has directly notified the manufacturer of the need for repair, as specified; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer. The bill would provide that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1793.2 of the Civil Code is amended to read:
1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

(1) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties.

As a means of complying with paragraph (1) of this subdivision, a manufacturer shall be permitted to enter into warranty service

contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work, however, the rates fixed by such contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, shall not preclude a good-faith discount which is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to the provisions of Section 1793.5.

(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where such delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) It shall be the duty of the buyer to deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, such delivery cannot reasonably be accomplished. Should the buyer be unable to effect return of nonconforming goods for any of the above reasons, he shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of such notice of nonconformity the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when, pursuant to the above, a buyer is unable to effect return shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

(d) Should the manufacturer or its representative in this state be unable to service or repair the goods to conform to the applicable

express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(e) (1) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles, whichever occurs first, either (A) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity, or (B) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to subparagraph (A) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this subdivision and that of subdivision (d), including the requirement that the buyer must notify the manufacturer directly pursuant to subparagraph (A). This presumption shall be a rebuttable presumption affecting the burden of proof in any action to enforce the buyer's rights under subdivision (d) and shall not be construed to limit those rights.

NOTIFICATION

(2) If a qualified third party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of a third party process with a description of its operation and effect, the presumption in paragraph (1) may not be asserted by the buyer until after the buyer has initially resorted to the third party process as required in paragraph (3). Notification of the availability of the third party process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third party dispute resolution process does not exist, or if the buyer is dissatisfied with the third party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of such third party decision, the buyer may assert the presumption provided in paragraph (1) in an action to enforce the buyer's rights under subdivision (d). The findings and decision of the third party shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms, whichever occurs later.

(3) A qualified third party dispute resolution process shall be one that complies with the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the Commission's regulations at 16 Code of Federal Regulations Part 703; that renders decisions which are binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions; and that each year provides to the Department of Motor Vehicles a report of its annual audit required by the Commission's regulations on informal dispute resolution procedures.

(4) For the purposes of this subdivision the following terms have the following meanings:

(A) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle.

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes, but does not include motorcycles, motorhomes, or off-road vehicles.

May 1983

DEPARTMENT OF LAW -- CONSUMER PROTECTION SECTION

AUTOMOTIVE WARRANTY COMPLAINTS

A Note on Complaint Statistics: A total of 133 auto warranty complaints were formally filed with Consumer Protection from January 1981 to April 1983. This figure, although significant, does not necessarily reflect the total number of warranty problems in Alaska.

A study by T.A.R.P. Inc., a Washington D.C. based research firm, revealed that 96 percent (96%) of consumers with a complaint never even tell the business of the problem, much less complain to a government agency. The Consumer Protection Section's experience over a ten year period is that for each consumer who complains, there are probably five or more additional consumers in a similar situation. Many Alaskans do not file a complaint with Consumer Protection because: they don't know we exist, they are distant from our offices, or our limited ability to negotiate voluntary settlements may not satisfy their needs. National automobile industry complaint statistics show that three percent (3%) of all new car buyers feel they were sold a defective vehicle and are frustrated in their attempts to have the defects corrected. If this three percent number holds true in Alaska (and indeed it might be higher) last year alone 846 Alaskans purchased defective vehicles that may meet the criteria established in HB 344.

AN ANALYSIS OF AUTO WARRANTY COMPLAINTS

January 1981 - April 1983

TOTAL NUMBER WARRANTY COMPLAINTS 133

<u>REGIONAL BREAKDOWN:</u>	<u>Number</u>	<u>Percentage</u>
South Central/Anchorage	101	76%
Interior/Fairbanks	14	10%
Southeast/Juneau	18	14%

COMPLAINTS BY PRIMARY ALLEGATIONS:

Multiple Repairs to Same Defect	28	22%
Unreasonable Delay in Repairs	17	14%
Multiple Defects	27	20%
Safety Related Defect	13	10%
Complaint Involves Defect Under Federal Investigation (FTC, NHTSA, EPA, ect.)	12	9%
Paint, Water Leak	7	6%
Miscellaneous	10	8%

<u>DISPOSITION OF WARRANTY COMPLAINTS:</u>		<u>Number</u>	<u>Percentage</u>
<u>Mediated to Consumer's Satisfaction</u>TOTAL:		73	55%
Repairs Completed		38	29%
Repair Costs Refunded		10	8%
Repair Cost Split between Factory and Consumer		8	6%
Manufacturer Supplied Parts but not Labor		5	4%
Manufacturer or Dealer Bought Car Back		5	4%
Miscellaneous		7	5%
		(73)	(55%)
<u>Not Mediated to Consumer's Satisfaction</u> .TOTAL:		48	36%
<u>Because Manufacturer's Response Was:</u>			
Warranty Expired		10	8%
Not Covered by Terms of Warranty		8	6%
Consumer Unable to Return Vehicle to Dealership, So Repairs Denied		2	2%
Factory Refused to Authorize Repairs		4	3%
Owner Abuse/Lack of Maintenance		3	2%
Consumer Refused to Return to Dealership: (Lost Confidence After Dealer's Attempts to Repair).		3	2%
Refused Consumer's Buy Back Request		8	6%
Miscellaneous		10	8%
		(48)	(36%)
<u>WARRANTY COMPLAINTS NOW PENDING:</u>TOTAL:		12	9%
Anchorage		8	6%
Fairbanks		2	2%
Juneau		2	2%

ECONOMIC IMPACT ON CONSUMERS

The owner of a defective vehicle suffers real economic harm, measured in: (1) hours/days of lost work, (2) cost of substitute transportation, and (3) after the warranty expires, cost of numerous repairs due to aftereffects of the defect.

Also, the economic life and value of a defective vehicle is seriously lessened, and this economic truth is recognized by the automobile industry itself. The following example is taken from the June 1983 "Blue Book," a widely used guide to used car values. Calculation of the Blue Book resale price of a 1982 Cadillac includes a deduction of \$1,335, because the vehicle is equipped with a diesel engine which has become nationally recognized as seriously defective. This sharp decrease in value, in comparison to a non-diesel version of the same Cadillac, is made despite the fact that this particular diesel engine had cost the owner \$925, extra at the time of purchase. Thus, the owner of the defective diesel vehicle can be said to have suffered an economic loss of \$2,460, in the value of his/her defective vehicle in comparison to the owner of a similar Cadillac without the defect.

manufacturer relies on the predelivery inspection performed by the dealer to detect and correct these problems. What actually happens is that the buyer finds the problems after delivery and faces the hassle of attempting to have repairs completed by the dealer.

Most, if not all new car warranties require that you take your car back to the dealer for these warranty repairs. In Alaska the fact that your new car dealer may be hundreds of miles away somewhat complicates this requirement.

Even if you live in the Anchorage area warranty service can be a problem. Consumers often report to me that it takes two weeks or more just to get their car into the dealer's repair shop. It is clear many Alaskan automobile dealer's lack adequate service departments for the number of vehicles they sell. Indeed, I was recently told by a major manufacturer's representative that their largest Alaskan dealer had half the number of mechanics they should have, by national standards. Indeed, it is not unusual to find an Alaskan dealership that has more sales personnel than it has mechanics.

Last year the 25 Alaskan new car dealers sold 27,705 new vehicles, which works out to be 1,148 new vehicles per dealership. Automotive News of May 1983, reports the sales per dealer of the average GM single line dealer is 265 vehicles. The

average Alaskan automobile dealership is big business with the average gross sales in excess of \$10,480,000. Indeed Alaska is host to two of the most profitable dealerships in the country and the only full line GM dealer this side of Kuwait.

Despite the healthy condition of the auto dealers in Alaska, Alaskan buyers of new cars have problems when it comes to obtaining service on the defective products they were sold. What recourse do these buyers have? In Alaska very little. While all vehicle manufacturers have a service support system spread across the country, a system that includes thousands of employees and dozens of offices, not one manufacturer has a office or an employee in this state that is responsible for any of the aspects of customer service. An Alaskan with vehicle problems has to rely on an Oregon or Washington service representative that visits once every 6 to 8, weeks or long distance telephone calls to Seattle, California or Detroit. In other states most of the manufacturers have set up third-party arbitration systems to help deal with these problems. In Alaska nobody has as of this date. Instead you may be referred to a Seattle based arbitration programs. A consumer may seek redress through litigation. However, the Small Claims limit of \$2000.00 precludes most of these cases. Alaskan attorneys normally are reluctant to handle these cases due to the lack of statutory definitions and minimal case law, besides the time and expense involved.

I don't wish to waste the committee's time with any unnecessary rhetoric but let me outline five separate complaints that I have recently been involved with. The first complaint came from a District Court Judge who for 18 months had been trying to have his 1980 vehicle's thirst for engine oil and an inoperative horn repaired. The dealer who had worked on this problem 10 times told the judge that the warranty had now expired, and since the dealer didn't build the car just sold it, he was not responsible. Instead the dealer offered half of the \$9000 selling price in trade for a new car. The judge then contacted the manufacturer only to be rebuffed. They would not even return his calls. It is well known that this brand of vehicle had an oil-burning defect but the Alaskan industry refused to acknowledge it.

The second complaint came from a Valdez resident who purchased a car from an Anchorage dealer. The salesman assured the buyer that warranty work could be handled in Valdez. The buyer also bought an additional service contract to expand his warranty to 5 years or 50,000 miles. Seven months later the vehicle's engine failed. Contact was made with the dealer who informed the consumer that repairs would only be made at the dealership and whatever expenses were accrued in towing the now disabled vehicle from Valdez to Anchorage would be out of the owners pocket. I tried but was unsuccessful in resolving this dilemma. The consumer ended up paying several hundred dollars to have his disabled truck shipped to Anchorage, and probably hundreds more to ship it home after the repairs.

The third complaint was by an Alaska State Trooper. His station wagon had been in the dealers shop 8 times in a futile battle to effect repairs to a defective engine. Our intervention finally convinced the manufacturer to replace the engine. However, the problems did not end. The replacement engine also failed. It was again repaired but to this day still uses an excessive amount of oil.

The fourth complaint came from a Ketchikan resident. The vehicle in question had been purchased in Washington. Again assurance was made by the selling dealer that warranty repairs could be done in Ketchikan. The vehicle, a small four wheel drive unit, developed a severe vibration. The consumer soon found out how reliable the warranty representations were. After having a number of local garages work on the problem, the consumer paid to have the vehicle shipped back to the Washington dealer. The dealer made a number of modifications to the vehicle then shipped the vehicle back to Ketchikan, at the consumer's expense. The problem persisted, however, and finally progressed to the point that the State Troopers ordered the car off the road. Our office was called and finally after technical information was received from Detroit a local garage was able to correct the defect. The car however, is in a deteriorated condition caused by the vibrations of the defect.

Alaska dealers and their employees have on numerous occasions stated they wish they could do more to correct these problems. On occasion I have been told by dealership personnel that a particular automobile was a lemon and should be brought back; however, their hands were tied and they could only follow manufacturers procedures or that the manufacturer would not authorize what needed to be done.

I could go on with many more "horror" stories but I think I've made my point. Alaskans have severe problems in obtaining service on their new cars, and House Bill 344 goes a long way to correct these woes.

Lemon law would force dealers to replace cars

By JIM ERICKSON
Daily News reporter

Alaska auto dealers would be forced to buy back or replace automotive "lemons," defective new cars that defy all attempts at repair, if legislation introduced recently in the state Senate and House becomes law.

House Bill 344 calls for replacement of a new car or a refund of the purchase price when manufacturing defects make the car undriveable for 30 days or more during the first year of ownership.

The so-called "lemon law" is scheduled for a House Labor and Commerce Committee hearing Monday.

An identical bill introduced in the Senate by Sen. Bill Ray, D-Juneau, has not been scheduled for a hearing.

The House measure was introduced last month by Rep. Mike Miller, D-Juneau. Miller said Saturday the legislation would compel dealers and manufacturers to honor new-car warranties promptly.

"The legislation doesn't spell out the warranty," he cautioned. "That's up to the manufacturer. What it does do is put full force of the state law behind customer satisfaction of that warranty."

If the defect poses a safety

hazard, the car must be repaired within 14 days, the measure states.

In all cases, dealers would be allowed four chances to fix the car, before the buyer could demand a refund or a replacement. The measure applies only to failures covered by new-car warranties, and only during the first year of ownership.

"What we are talking about is correcting major problems of the vehicle," Miller said. "This is not in regard to trivial repairs or problems that result due to owner abuse."

Similar legislation has been adopted in California, Connecticut, Montana and Wyoming, said legislative aide Denise Zachary. Ten other states are considering lemon laws, she said.

Monday's hearing will be linked to Anchorage, Fairbanks and Ketchikan via the state teleconference network.

Zachary said the public can comment on the bill by attending the teleconference, to be held in Anchorage at the Anchorage Legislative Information Office, 1024 W. 6th Ave.

The teleconference will begin at 7 a.m.

Daily News 5/18/83



Photo by Danny Daniels

Annual Walk for Hope, which was held on the C-3.

s a phrase for every misdeed

(Not to mention the ultimate disaster. "If you eat that now, you won't be hungry for dinner!")

And then there is the chapter on Questions Without Answers. These generally come along during the teenage years.

Questions like, "You're not going out dressed like that, are you?"

Or, "You know this goes against everything we've ever taught you, don't you?"

Not to mention the all-time winner, which spans most of the formative years: "Just what do you think you're doing?"

Experienced mothers know they can mix and match these phrases for special effect, as in: "Just where do you think you're going dressed like that?"

"When you're grown and have children of your own, that's when."

This last, especially, falls under the definition of all-purpose Motherese, touching as it does on the perpetually ripe arena of life after one has children of one's own.

Of course, it's not all conflict and threats in Motherese. There's the Broken Heart chapter, things mothers say to make you feel better. Things like, "Ten years from now this will all seem funny" and "Just think of it as good experience" — not to mention the all-time classic, "Well, just consider yourself lucky; a man will never marry a girl like that!"

I suppose with changing mores they'll be wanting to update the Mother's Phrase Book before long, make it a little more hip, but I

Introduced: 4/8/83
Referred: Labor & Commerce

BY M.M.MILLER, DUNCAN, FLOOD,
GRUSSENDORF, MALONE AND
PHILLIPS

1 IN THE HOUSE

2

HOUSE BILL NO. 344

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to motor vehicle warranties."

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

8 * Section 1. AS 45.45 is amended by adding a new section to read:

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ARTICLE 6. MOTOR VEHICLE WARRANTIES.

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Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor

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vehicle does not conform to an express warranty that is applicable to

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it and the owner of the vehicle reports the nonconformity to the

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manufacturer or distributor of the vehicle, the agent of the manufac-

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turer or distributor, or the manufacturer's or distributor's dealer

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during the term of the warranty or within one year after the date of

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delivery of the motor vehicle to the owner, whichever date is earlier,

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the manufacturer, distributor, agent, or dealer shall make the neces-

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sary repairs to conform the vehicle under the express warranty.

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(b) If a manufacturer, distributor, agent, or dealer is unable

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to conform the motor vehicle under an applicable express warranty

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under (a) of this section after a reasonable number of attempts and

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the nonconformity is a defect or condition that substantially impairs

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the use and value of the motor vehicle to the owner, the manufacturer

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or distributor shall accept the return of the defective motor vehicle

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and shall, at the option of the owner, replace the motor vehicle with

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a new motor vehicle, or refund the purchase price to the owner, in-

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cluding all collateral charges. A refund under this subsection shall

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be made to the owner and to a lienholder as their respective interests

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appear.

1 (c) It is an affirmative defense to a claim made under (b) of
2 this section for a new motor vehicle or a refund that the nonconformi-
3 ty complained of

4 (1) does not substantially impair the use and value of the
5 motor vehicle; or

6 (2) is the result of abuse, neglect, or unauthorized modi-
7 fication or alteration of the motor vehicle by the owner.

8 (d) A presumption that a reasonable number of attempts have been
9 undertaken to conform a motor vehicle under an applicable express
10 warranty is established if (1) the same nonconformity has been subject
11 to repair four or more times by the manufacturer or distributor, its
12 agent, or its dealer during the term of the warranty or the one-year
13 period after delivery of the motor vehicle to the owner, whichever
14 period terminates first, but the nonconformity continues to exist; or
15 (2) the vehicle is out of service for repair for a total of 30 or more
16 days during the warranty term or the one-year period referred to in
17 (1) of this subsection, whichever period terminates first. A period
18 of time under this subsection is extended by any period during which
19 repair services are not available to the owner for reasons that are
20 not the responsibility of the owner.

21 (e) If the nonconformity is a defect in the motor vehicle that
22 makes it unsafe for the owner to operate it and the defect is reported
23 under (a) of this section, the time period for repair, refund, or
24 replacement under (b) of this section is reduced to 14 days.

25 (f) A failure to replace or refund the purchase price of a motor
26 vehicle when there is a requirement to do so under this section is an
27 unfair trade practice under AS 45.50.471.

28 (g) The provisions of this section do not limit other rights and
29 remedies that may be available to the owner of a motor vehicle under

1 other provisions of law.

2 (h) If a manufacturer or distributor has established an informal
3 dispute settlement procedure that complies with the provisions of 16
4 C.F.R. Part 703, as that Part may be amended, the provisions of (b) of
5 this section concerning refund or replacement do not apply to an owner
6 who has not first resorted to the informal dispute settlement proce-
7 dure.

8 (i) In this section

9 (1) "motor vehicle" or "vehicle" means a motor vehicle as
10 defined in AS 28.35.360 that is required to be registered under
11 AS 28.10 or with a governmental agency of another jurisdiction per-
12 forming a similar function;

13 (2) "owner" means a purchaser, other than for resale, of a
14 new motor vehicle, a person to whom the motor vehicle is transferred
15 during the term of an express warranty applicable to the vehicle, or
16 any other person entitled to enforce an express warranty on the vehi-
17 cle under the terms of the warranty;

18 (3) "substantially impairs use and value" refers to a
19 defect or condition in a vehicle that

20 (A) prevents it from being operated;

21 (B) makes it unsafe to operate; or

22 (C) decreases the economic life of the vehicle.

The act also reduces the amount of interest that is forfeited by a tenant for late payment of a month's rent from the interest earned during the entire year to the interest earned during the month that the rent payment was late.
EFFECTIVE DATE: October 1 1982

Finally, the act does not limit other rights or remedies available to a consumer under any other law.
EFFECTIVE DATE: October 1, 1982

COMMENT

Informal Dispute Settlement Mechanisms

Federal Trade Commission regulations providing a means to mediate disputes between consumers and warrantors were issued under the authority of the "Magnuson-Moss Warranty Act." They must be complied with only if the manufacturer refers to such a mechanism in the warranty. The regulations:

- 1) establish requirements for consumer notification;
- 2) require the mechanism to be insulated from the manufacturer's influence and that the decision-makers not be associated in any way with a party to a dispute;
- 3) require that the mechanism be free to the consumer; and
- 4) generally require that a dispute be settled within 40 days.

✓ PA 82-287—sHB 5729
General Law Committee

AN ACT CONCERNING AUTOMOBILE WARRANTIES

SUMMARY: This act requires a manufacturer of a new passenger car, van or truck or the manufacturer's agent or authorized dealer to repair all defects covered by a written warranty if reported by the purchaser during the warranty period or within one year of the vehicle's delivery date, whichever is earlier. If these vendors are unable to repair a defect which substantially impairs the vehicle's use and value after a reasonable number of attempts, the act requires the manufacturer to either replace the vehicle or refund the full purchase price and collateral charges, less an allowance for the consumer's use. A refund is made to the consumer and to anyone holding a lien on the vehicle. If a manufacturer has established an informal dispute settlement mechanism that complies in all respects with relevant Federal Trade Commission regulations, the act requires a consumer to attempt to settle the dispute through this mechanism before the act's refund or replacement provisions apply. The act specifies that the manufacturer has the following affirmative defenses in any suit to have a vehicle replaced or to recover the cost of a vehicle:

- 1) The defect does not substantially impair the vehicle's use and value; and
- 2) The defect was caused by the consumer's abuse, neglect or unauthorized modification of the vehicle.

The act specifies that a "reasonable number of attempts" have been undertaken when:

- 1) the same problem has been subject to repair four or more times during the warranty period or within one year of the vehicle's delivery date, whichever is earlier; or
- 2) the vehicle has been out of service for repair for a cumulative total of 30 calendar days during the same period.

In addition, the act extends the term of a written warranty, the one-year period following the vehicle's delivery and the 30-day period for repair for the period of time during which repair services are unavailable due to war, invasion, strike, fire, flood or other natural disasters.

PA 82-299—sSB 300

Finance, Revenue and Bonding Committee
General Law Committee

AN ACT ESTABLISHING A CATERER'S PERMIT

SUMMARY: This act establishes a restaurant liquor permit for catering establishments. The permit allows the sale of liquor to persons invited to and attending a catered event. The act also:

- 1) limits the hours and days such an establishment may sell liquor to the same as those previously established by law for restaurants, hotels, cafes, and several other types of on-premises permits;
- 2) specifies that the permittee is not required to be open except during the hours events are scheduled; and
- 3) specifies that the permittee is required to comply with local health regulations.

The permit fee is \$1,200.

EFFECTIVE DATE: July 1, 1982

FURTHER EXPLANATION

Permit Eligibility

A person or business organization is eligible for the permit if he or it:

- 1) regularly furnishes rooms for hire for particular events or regularly furnishes provisions or services for these events;

Substitute House Bill No. 5729

PUBLIC ACT NO. 82-287

AN ACT CONCERNING AUTOMOBILE WARRANTIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) As used in this act: (1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and (2) "motor vehicle" means a passenger motor vehicle or a passenger and commercial motor vehicle, as defined in subdivisions (35) and (36) of section 14-1 of the general statutes, as amended, which is sold in this state.

(b) If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

(c) If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the

*Demon Law
Motor Vehicles
Consumer Protection
Warranties*

Substitute House Bill No. 5729

vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this act (1) that an alleged nonconformity does not substantially impair such use and value or (2) that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

(e) Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(f) If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of title 16 Code of Federal Regulations Part 703, as from time to time amended, the provisions of

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subsection (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

Certified as correct by

Legislative Commissioner.

Clerk of the Senate.

Clerk of the House.

Approved _____, 1982

Governor.

cle in 1970 . . . for all *checks* and *adjustments*. Actual *defects* we bill the factory for on a regular warranty claim. . . . We spend an average of three hours on each car in preparation. . . .

We are reimbursed nothing for predelivery service by the factory. We charge it off as a "cost of sale" per factory accounting manual—same as salesman's commission. . . .

There is no fee as such collected for predelivery service from the customer. We absorb the cost in its entirety.

Other dealers are less responsible. A Ford dealer in southern California puts his better mechanics on make-ready, but pays them only a flat \$5 per car, giving them no incentive to do a good job.

Of course, when the manufacturers deem predelivery inspection to be important, they know how to improve the usual make-ready procedure. For instance, dealers who process police cars are paid by Ford for 5.4 hours of labor per car to insure a thorough check. In New Jersey this amounts to \$59.40 per car.

Ford and Chrysler are both experimenting with regional predelivery inspection operations, financed, in part, by fees charged to participating dealers. However, there are only a few of these facilities. Most new cars are either poorly inspected or not inspected at all by the dealers. Informants estimate that less than 25% of the required checks are generally performed.

To complicate matters considerably, cars frequently arrive from the assembly plant with defects which the dealer cannot remedy—because parts are unavailable, because the dealer is not equipped to diagnose the defect, or because the defects are too numerous. One dealer has reported that the new 1970 cars are "being received in the poorest condition ever. They are poorly assembled and finished." A car which starts out as a lemon at the factory is thus unlikely to undergo any significant alteration before reaching the buyer.

Even more distressing, some new cars are received from the assembly plant in damaged condition. A. East Douglas, Massachusetts, resident wrote that he saw a new Maverick in a body repair shop having a badly smashed fender repaired, only to discover later that it was the very Maverick he had ordered. The dealer's response: "It is a common practice to pass on to customers patch jobs like this, for that matter much worse."¹⁰ According to one dealer, the manufacturer's policy is that if front fenders have to be replaced (because of damage in transit) or if the K frame has to be replaced, this is done and the car is sold by the dealer as new. But if the roof or quarter panel is seriously damaged and needs replacement, the car is sold as used. The reason for the distinction is simple: in the first instance, if the repair is done properly, it cannot be detected; in the second it can.

Introduced: 4/8/83
Referred: Labor & Commerce

BY M.M.MILLER, DUNCAN, FLOOD,
GRUSSENDORF, MALONE AND
PHILLIPS

1 IN THE HOUSE

2 HOUSE BILL NO. 344

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicle warranties."

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

8 * Section 1. AS 45.45 is amended by adding a new section to read:

9 ARTICLE 6. MOTOR VEHICLE WARRANTIES.

10 Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor
11 vehicle does not conform to an express warranty that is applicable to
12 it and the owner of the vehicle reports the nonconformity to the
13 manufacturer or distributor of the vehicle, the agent of the manufac-
14 turer or distributor, or the manufacturer's or distributor's dealer
15 during the term of the warranty or within one year after the date of
16 delivery of the motor vehicle to the owner, whichever date is earlier,
17 the manufacturer, distributor, agent, or dealer shall make the neces-
18 sary repairs to conform the vehicle under the express warranty. ¶

19 (b) If a manufacturer, distributor, agent, or dealer is unable
20 to conform the motor vehicle under an applicable express warranty
21 under (a) of this section after a reasonable number of attempts and
22 the nonconformity is a defect or condition that substantially impairs
23 the use and value of the motor vehicle to the owner, the manufacturer
24 or distributor shall accept the return of the defective motor vehicle
25 and shall, at the option of the owner, replace the motor vehicle with
26 a new motor vehicle, or refund the purchase price to the owner, in-
27 cluding all collateral charges. ¶ A refund under this subsection shall
28 be made to the owner and to a lienholder as their respective interests
29 appear.

1 (c) It is an affirmative defense to a claim made under (b) of
2 this section for a new motor vehicle or a refund that the nonconformi-
3 ty complained of

4 (1) does not substantially impair the use and value of the
5 motor vehicle; or

6 (2) is the result of ^{UNREASONABLE} ~~abuse~~, neglect, or unauthorized modi-
7 fication or alteration of the motor vehicle by the owner.

8 (d) A presumption that a reasonable number of attempts have been
9 undertaken to conform a motor vehicle under an applicable express
10 warranty is established if (1) the same nonconformity has been subject
11 to repair four or more times by the manufacturer or distributor, its
12 agent, or its dealer during the term of the warranty or the one-year
13 period after delivery of the motor vehicle to the owner, whichever
14 period terminates first, but the nonconformity continues to exist; or
15 (2) the vehicle is out of service for repair for a total of 30 or more
16 days during the warranty term or the one-year period referred to in
17 (1) of this subsection, whichever period terminates first. A period
18 of time under this subsection is extended by any period during which
19 repair services are not available to the owner for reasons that are
20 not the responsibility of the owner.

21 (e) If the nonconformity is a defect in the motor vehicle that
22 makes it unsafe for the owner to operate it and the defect is reported
23 under (a) of this section, the time period for repair, refund, or
24 replacement under (b) of this section is reduced to 14 days.

25 (f) A failure to replace or refund the purchase price of a motor
26 vehicle when there is a requirement to do so under this section is an
27 unfair trade practice under AS 45.50.471.

28 (g) The provisions of this section do not limit other rights and
29 remedies that may be available to the owner of a motor vehicle under

*BINDING ON MANUFACTURER
MANUFACTURER
BILL DEFINITIONS*

1 other provisions of law.

2 (h) If a manufacturer or distributor has established an informal
3 dispute settlement procedure that complies with the provisions of 16
4 C.F.R. Part 703, as that Part may be amended, the provisions of (b) of
5 this section concerning refund or replacement do not apply to an owner
6 who has not first resorted to the informal dispute settlement proce-
7 dure. *FEDERAL REGULATION (PROGRAM INFORMAL*

8 (i) In this section *TRAVIS)*

9 (1) "motor vehicle" or "vehicle" means a motor vehicle as
10 defined in AS 28.35.360 that is required to be registered under
11 AS 28.10 or with a governmental agency of another jurisdiction per-
12 forming a similar function;

13 (2) "owner" means a purchaser, other than for resale, of a
14 new motor vehicle, a person to whom the motor vehicle is transferred
15 during the term of an express warranty applicable to the vehicle, or
16 any other person entitled to enforce an express warranty on the vehi-
17 cle under the terms of the warranty;

18 (3) "substantially impairs use and value" refers to a
19 defect or condition in a vehicle that

20 (A) prevents it from being operated;

21 (B) makes it unsafe to operate; or

22 (C) decreases the economic life of the vehicle.

MEMORANDUM

TO:

Rep. Walt Furnace, Chairman
House Labor & Commerce Committee
House of Representatives

DATE:

May 4, 1983

FILE NO:

TELEPHONE NO:

275-0428

FROM:

Norman C. Gorsuch
Attorney General
By: *C. Depe*
Connie J. Sipe
Assistant Attorney General
Chief, Consumer Protection Section
AGO/Anchorage

SUBJECT:

House Bill 344
(Motor Vehicle Warranties)

The Office of the Attorney General is in favor of House Bill 344, although we do suggest some possible amendments to the bill which would enhance its benefit to Alaskan citizens. Before I analyze the bill section by section, I would like the committee to note that state legislation which dictates a certain degree of performance of warranties on consumer goods is not unusual, and in many states, it has been a frequent subject of legislative action. The Alaska legislature passed a bill in 1978 setting minimal warranty standards for mobile homes and providing for performance bonds by manufacturers of mobile homes sold in the state. (AS 45.30.011--100.) The Uniform Commercial Code for the State of Alaska also addresses warranties in a more general manner.

It is our information that as of this date the states of Connecticut, California, and Wyoming have passed a bill similar to House Bill 344, and that the State of Wisconsin is likely to pass a bill this section. Several other states are considering these bills.

Analysis of HB 344

Section 1. Section 1 of the bill states that when the express warranty given by a manufacturer against defects of design, manufacturing or assembly is not being carried out, because the vehicle is displaying a defect, then the owner may report the nonconformity to either the manufacturer, or in the case of a foreign manufacturer the U.S. "distributor" of the vehicle, or their agent. Subsection (a) limits the application of the bill to the term of the warranty, or one year, whichever comes first. Many manufacturers are now offering three to five years warranties with extended mileage periods, but HB 344 would only apply to the first year of ownership of the vehicle if a year is shorter than the manufacturer's express warranty.

Subsection 1(a) also requires the manufacturer or its dealer to make the necessary repairs to bring the vehicle to conformity under the express warranty. Testimony which will be submitted by our auto investigator will show that Alaskans have great difficulty in getting such repairs performed in a timely fashion.

Section 1(b), at line 19, sets out the burden of proof which a consumer would have to meet if the consumer sued the manufacturer of a vehicle. (Under case law interpreting the Uniform Commercial Code and other common law warranty rights, the consumer's burden of proof can be more difficult.) By the operation of (b), the vehicle owner would enjoy a legal presumption that after a reasonable number of attempts to correct a deformity, that the vehicle is in fact defective or a "lemon." HB 344 also provides a remedy: namely, that the owner has the option of returning the defective vehicle for a refund of the purchase price (including all collateral charges) or having the new motor vehicle replaced with an identical motor vehicle. (The bill does provide for a refund to a lien holder if one exists.)

Subsection (c) (page 2, line 1) gives the manufacturer two affirmative defenses to the owner's claim for a refund. The manufacturer may not be liable if the defect complained of does not actually cause substantial impairment to the owner's ability to use the vehicle or to the value of the vehicle, or if the defect is not in fact a manufacturer defect but resulted from the abuse or modification of the vehicle by the owner. I would urge the addition of the word "unreasonable" just before "neglect." Otherwise, an express warranty may set up such an unreasonably strict maintenance schedule for the consumer to follow that the manufacturer would always be able to claim that any defect was caused by consumer "neglect." I think that a modification to "unreasonable neglect" would be a good balance.

Subsection (d) creates the presumption (or in other words a legal definition) of when a car is "defective" by defining as defective a vehicle which has been worked on four or more times for the same nonconformity, or which is out of service for more than 30 days, during the warranty term or the first year (whichever comes earlier). Such a car is legally presumed to be a "lemon."

Please note that an amendment needs to be made in subsection (d), at page 2, lines 17-20. This last section of the sentence should read:

... The warranty term or the one year period referred to in (1) of this section shall be extended by any period during which repair services are not available to the owner for reasons that are not the responsibility of the owner.

As the section reads now, the presumption of what is a lemon (4 repairs or 30 days out of use) would be taken away from the consumer by being "extended" (?) when the manufacturer fails to provide repairs.

Subsection (e). Frankly, I do not understand what the legislative drafter meant by subsection (e). The clear intent of the passage seems to be that if the nonconformity which is a defect in the motor vehicle is one that makes the vehicle unsafe for owner operation, that a repair must be effected within 14 days. However, the 14 days language references back to subsection (b) which does not contain any time period. Perhaps the drafter meant to refer back to subsection (d) saying that if the vehicle is unsafe to operate, then only 14 instead of 30 days would be required to create a presumption of a "lemon." However, as you will hear from testimony of the auto investigator, 14 days is the norm in Alaska even for safety defects. I think the 14 days would probably be too strict a time period in terms of a standard for creating the presumption that the vehicle is a lemon. I think that 30 days out of service during the warranty period, or the first year, is a reasonable time period for creating a presumption that the owner owns a defective car.

Subsection (f) makes the manufacturer's failure to honor the owner's request for replacement of, or refund of the purchase price of a defective motor vehicle an unfair trade practice under the Alaska Unfair Trade Practices and Consumer Protection Act. This is an efficient way of providing an enforcement mechanism for the statute, since it gives the Attorney General public enforcement powers against a manufacturer or dealer who is engaging in a pattern of refusal to honor its warranty obligations, but it also gives private individuals a private cause of action, with up to triple damages, costs and attorneys fees, under AS 45.50.531. Since the Alaska Unfair Trade Practices Act already discusses warranty work at AS 45.50.471(b)(17), and since the warranty becomes "false" if it is not honored by the manufacturer, it is appropriate to put the enforcement section in this

statute. It also dovetails well with the Motor Vehicle Repair statute which is already incorporated into the Unfair Trade Practices Act, at AS 45.50.471(b)(23).

Subsection (g) insures that the provisions of this act do not limit any other rights or remedies that the motor vehicle owner might have under common law regarding express or implied warranties. This is a good provision, since the courts might develop a higher standard for manufacturers, and some courts might rule in the owner's favor on a defect which shows up after the one year period.

Subsection (h) refers to the federal Magnuson-Moss Warranty Act act, and the regulations promulgated pursuant to that act. Under that act a manufacturer of vehicles may set up an informal dispute settlement procedure, outside the court, (usually an arbitration panel) to which consumers must take their defect or warranty claim before filing suit against the manufacturer for a defective vehicle. However, the informal dispute settlement procedure must follow carefully the standards in the federal regulations, including a provision that the award of the arbitration panel is binding on the manufacturer but is not necessarily binding on the consumer owner of the vehicle unless the owner accepts the award. If the owner does not agree with the award the owner may then proceed to court. Subsection (h) insures that under the Alaska motor vehicle warranty act we would also allow the national manufacturers to exercise this same option.

[The committee should know that historically, it was the hope of Congress to encourage all the manufacturers to create such informal dispute resolution programs, but that to date none of the manufacturers have set up a national program that complies with the Magnuson-Moss Act. In the last year, General Motors has contracted with the Better Business Bureau in some states (not Alaska) to do arbitrations with discontented vehicle owners, but the arbitrations do not meet the federal requirements because they are binding on both parties and the consumer does not have the option of refusing the arbitration award. Because of this requirement, consumers are not required to use the GMC/BBB program before going to court on what the consumer believes to be a defective GMC car.]

Subsection (i) of the bill includes pertinent definitions. The definition of "owner" includes not only the original purchaser of the vehicle but anyone to who the vehicle is transferred during the term of the express warranty, which is appropriate, since the warranties on new vehicles are transferable by their own terms. Also, this subsection includes examples of what are "substantial impairments" of the use and value of a vehicle. These definitions seem to cover most instances that a court would want to consider and I think they are adequate.

OVERALL COMMENTS ON HB 344

HB 344 is very well drafted in respect that it avoids some problems found in its counterpart in Connecticut statutes. Specifically, in the Connecticut statute, the consumer owner who asks for a refund of the purchase price of the vehicle will have deducted from it a "reasonable allowance for use of the vehicle." This is a serious problem, and one which it is anticipated that dealers or the manufacturers may suggest as an amendment to HB 344. HB 344 should not include this kind of set off provision, because, under court case law developed pursuant to under the U.C.C. on warranties, when a consumer revokes acceptance of a defective vehicle the consumer is usually entitled to the full refund of the purchase price, and may sometimes recover from the manufacturer "cover" costs for buying a more expensive replacement vehicle. Also, under the U.C.C., the consumer may recover incidental and consequential damages from the dealer, not just the purchase price. Under the U.C.C., a consumer could claim consequential damages caused by the vehicle's failure, such as: loss of work due to a car that broke down, long distance telephone calls, towing charges. HB 344 is a better statute than the Connecticut lemon law because it does not allow the manufacturer to ask for the set off for use of the defective vehicle. This is appropriate in light of the case law.

Overall, HB 344 if passed would greatly help the work of the Consumer Protection Section of the Office of the Attorney General in mediating and investigating warranty complaints by consumers. As our auto investigator will report, a great number of our auto repair problems are alleged warranty violations or defects in vehicles.

It is my opinion, after working in this area for seven years, that very few Alaskans, especially those who live outside the three major cities, receive full value of the warranty on their vehicles. We know that warranties, and the service guaranteed under warranties, is a substantial selling tool of the manufacturers. We also know that the warranty has a definite, although unstated, economic value as part of the purchase price of a motor vehicle. Since Alaskans pay not only the top manufacturers' suggested retail price but usually amounts in addition to the suggested retail price we can see that Alaskans do not get any break or allowance for their difficulty in obtaining warranty work. (As far as I know this is the only marketplace in the entire United States where consumers pay manufacturer's suggested price or above.)

Suggested Amendments

I would suggest the addition of language like the following, although this has not yet been refined to legislative standards. The suggested language, which is attached, would require manufacturers of motor vehicles to either maintain sufficient repair facilities reasonably close to all areas where its vehicles are sold or to designate independent shops in various towns as authorized warranty repair facilities.

Most manufacturers and their corporate organization provide for such independent repair facilities, but in fact, we do not know of any non-dealer, factory authorized repair centers in the State of Alaska. We have tried to negotiate directly with a couple of manufacturers to get them to authorize repairs in population centers like Ketchikan, but we have failed in our efforts.

Also as you will note in the suggested amendments, it is important that the manufacturer be required to fairly compensate either the dealer or the non-dealer authorized repair facility for the warranty work done. As the auto repair investigator can testify, the flat rate paid to dealers for warranty work often reflects the economic and political power differential between the manufacturer and the dealer more than it does the actual time and effort necessary to cure a warranty defect. Also, the warranty service manual's suggested times for repair are geared to large dealer service centers with computer diagnostic equipment and factory-trained technicians. Since an independent repair facility in Bethel would be unlikely to have the same sophistication of equipment or personnel training, the manufacturer should pay the actual time necessary to repair the warranty defect, not just the suggested flat rate time in a warranty repair manual.

Availability of parts. Another problem in Alaska is the availability of repair parts for warranty work. The manufacturer should fairly reimburse the repair facility for shipping cost on warranty covered repairs. Also, the manufacturer should timely reimburse repair facilities for warranty expenses. Consumers should not be required to pay for parts shipments on warranty repairs.

Substitute Transportation. Another suggested addition to the bill is a requirement that if a vehicle is not timely fixed, within two weeks of notice of defect, that the manufacturer should be obligated to provide substitute transportation or rental car cost, from the two week date until the car is repaired. (At the present time only one national manufacturer promises a loaner car in its express warranty. In Alaska, most dealers do not offer loaner cars as a courtesy, although that courtesy is a common practice in the lower 48.)

The manufacturers should be encouraged to beef up their repair facilities and their inventory of repair parts within the state or face the obligation to provide alternative transportation, at least after the first two-week period that a vehicle has been unuseable.

Vehicle Transport Costs. It is important that Alaska take action to clarify what is the duty of the customer to re-deliver a vehicle to the manufacturer's nearest dealership for warranty repairs. This is requirement in most express warranties, but it creates great difficulties, especially when there are no roads back from the consumer's location, (such as Bethel) to the nearest dealership (say in Anchorage). Perhaps manufacturers should not be required to bear all the high cost of transportation of vehicles within the state, but the manufacturer could choose an alternative if these amendments were put into law. The manufacturer should either authorize independent repair facilities in the communities to repair vehicles, or pay for at least one way of the transportation of the vehicle, namely from the dealership back to the customer after repair.

Sec. 45.45.305. WARRANTY REPAIR FACILITIES AND

OBLIGATIONS. (a) Every manufacturer or distributor of motor vehicles sold in this state for which the manufacturer or distributor has made an express warranty shall maintain in this state sufficient repair facilities, reasonably close to all population centers where its vehicles are used, to carry out the terms of such warranties.

(b) As a means of complying with section (a), a manufacturer or distributor shall be permitted to enter into warranty service contracts with independent repair facilities. The warranty service contracts may provide for a flat rate schedule of repair times to be used in calculating charges for warranty service or repair work, provided that the contract hourly rates must reimburse the repair facility at normal retail rates, for the community where the facility is located, for any service and parts reasonably required to carry out warranty repairs. The manufacturer or distributor shall also fairly reimburse a dealer or authorized contract repair facility for expenses incurred in ordering and shipping parts needed to effect warranty covered repairs. Any request by a contract repair facility for reimbursement of warranty covered repairs must be paid by the manufacturer or distributor within 30 days.

(c) In the event that repairs of any warranty covered malfunction or defect are not completed within two weeks of (1) the customer's delivery of the vehicle to the manufacturer's or distributor's designated repair facility or dealer; or, (2) the customer's notification to the manufacturer, distributor, or its dealer of a warranty malfunction which renders the vehicle inoperable; then reasonable charges for the owner's rental of substitute transportation shall be paid by the manufacturer or distributor, or the manufacturer or distributor shall provide

a substitute vehicle, from the date two weeks after delivery of the vehicle or notification of a malfunction rendering a vehicle inoperable, until repairs are complete.

[NOTE: Subsection d, below, is very rough, even in concept!]

(d) If the express warranty requires the owner to deliver the vehicle to the nearest manufacturer's dealer for warranty repair, that duty shall not be binding on the owner, nor a waiver of the owner's warranty rights when, (1) due to the malfunction or defect the vehicle cannot safely be operated, or (2) the delivery of the vehicle cannot be made by road or by shipment by boat or ferry of less than one day's shipping or travel time. Should the customer be unable to effect return of the vehicle for any of the above reasons, the customer shall notify the manufacturer, distributor or its nearest dealer or authorized repair facility within the state. Written notice of the malfunction or defect to the manufacturer, distributor, dealer or repair facility shall constitute "return" of the vehicle for purposes of this section. Upon receipt of such notice of malfunction or defect the manufacturer or distributor shall, at its option, repair the vehicle at the customer's residence or town of residence, or arrange for transporting the vehicle to a dealer or repair facility. All reasonable costs of transporting the vehicle when, pursuant to (1) above, the owner is unable to effect delivery, shall be at the manufacturer's expense. When the owner cannot deliver the vehicle under the time limits of (2) above, if the manufacturer does not choose to repair the vehicle at the owner's residence or town of residence, the reasonable cost of transporting the vehicle to the dealer or designated repair facility shall be paid one-half by the owner and one-half by the manufacturer.

WARRANTIES - MOTOR VEHICLES - REPAIRS

COMMENTARY: Under existing case law, a manufacturer who is sued because of failure to service or repair goods to conform to applicable express warranties after a reasonable number of attempts may be required by a court to either replace the goods or reimburse the customer. However, the costs of determining in the court what is a "reasonable" number of repair attempts and by what method a customer should be reimbursed makes such suits very difficult and costly.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if, during the first year or 12,000 miles of the applicable express warranty (note that some warranties are now "5-year"): (1) the same malfunction or defect has been subject to repair four or more times by the manufacturer or its agent or authorized dealers or (2) the vehicle is out of service by reason of repair (or repair delays) of a warranty covered malfunction or defect for a cumulative total of more than 30 business days during the first year of the warranty.

The bill would provide that the presumption may not be asserted by the customer until after the customer has resorted to an in-state qualified third party dispute resolution process, if one is available in state. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the customer elects to accept it, and that if the customer is dissatisfied with the third party decision the customer may assert the presumption in an action to enforce the buyer's rights as specified. (This tracks the federal Magnuson-Moss Warranty Act.) The bill also would require manufacturers to pay for the shipping of parts.

SECTION 1. (a) If a new motor vehicle does not conform to all applicable express warranties, and the customer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties, or during the period of one year following the date of original delivery of the vehicle to the customer, whichever is the later date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of the warranty term or the one-year period;

(b) Every manufacturer of motor vehicles sold in this state for which the manufacturer has made an express warranty shall maintain in this state sufficient service and repair facilities, reasonably close to all areas where its vehicles are sold, to carry out the terms of such warranties; and designate and authorize in this state as service and repair facilities independent repair or service facilities, reasonably close to all population centers where its motor vehicles are used, to carry out the terms of such warranties.

As a means of complying with this section, a manufacturer shall be permitted to enter into warranty service contracts with independent repair facilities. The warranty service contracts may provide for a flat rate schedule of repair times to be used in calculating charges for warranty service or repair work, provided that the contract hourly rates must reimburse the repair facility at normal retail rates, for the community where the facility is located, for any service and parts reasonably required to carry out warranty repairs. The manufacturer shall also fairly reimburse the repair facility for expenses incurred in ordering and shipping parts needed to effect warranty covered repairs. Any request by a contract repair facility for reimbursement of warranty covered repairs must be paid by the manufacturer within 30 days.

(c) In the event that repairs of any warranty covered malfunction or defect are not completed within two weeks of: (1) the customer's delivery of the vehicle to the manufacturer's designated repair facility; or, (2) the customer's notification to the manufacturer of a warranty malfunction which renders the vehicle inoperable; reasonable charges for the rental of substitute transportation shall be paid by the manufacturer, or the manufacturer shall provide a substitute vehicle, from the date two weeks after delivery or notification of the vehicle until repairs are complete.

(d) It shall be the duty of the customer to deliver the vehicle to the nearest authorized dealership or manufacturer authorized service and repair facility within this state unless: due to the malfunction or defect the vehicle cannot safely be operated, or the delivery of the vehicle cannot be made by road, or by shipment by boat or ferry, of less than one day's shipping or travel time. Should the customer be unable to effect return of the vehicle for any of the above reasons, the customer shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of the malfunction or defect to the manufacturer or its service and repair facility shall constitute return of the vehicles for purposes of this section. Upon receipt of such notice of malfunction or defect the manufacturer shall, at its option, repair the vehicle at the customer's residence, or arrange for transporting the vehicle to its repair facility. All reasonable costs of transporting the vehicle when, pursuant to the above, a customer is unable to effect return, shall be at the manufacturer's expense. The reasonable costs of return transport of a non-conforming vehicle to the customer after the vehicle's delivery to the repair facility shall be at the manufacturer's expense.

SECTION 2. (a) Should the manufacturer or its representative in this state be unable to service or repair the vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the vehicle or reimburse the customer in an amount equal to the purchase price paid by the customer, less a reasonable amount for use by the customer prior to the discovery of the non-conforming malfunction or defect.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the customer or 12,000 miles, whichever occurs first, either (1) the same vehicle system or assembly has been subject to repair for non-conforming warranty problems four or more times by the manufacturer or its agent, or (2) the vehicle is out of service by reason of repairs (or repair delays) by the manufacturer or its agents, or by the malfunctions or defects, for a cumulative total of more than 30 business days since delivery of the vehicle to the customer.

(c) If a qualified third party dispute resolution process exists in Alaska and the customer receives timely notification in writing of the availability of a third party process with a description of its operation and effect, the presumption in paragraph (b) may not be asserted by the customer until after the

customer has initially resorted to the third party process as described in paragraph (d). Notification of the availability of the third party process is not timely if the customer suffers any prejudice resulting from any delay in giving notification. If a qualified third party dispute resolution process does not exist in Alaska, or if the customer is dissatisfied with the third party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of such third party decision, the customer may assert the presumption provided in paragraph (b) in an action to enforce the customer's rights under (a). The findings and decision of the third party shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or Alaska law with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms, whichever occurs later.

(d) A qualified third party dispute resolution process shall be one that complies with the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the Commission's regulations at 16 Code of Federal Regulations Part 703; that renders decisions which are binding on the manufacturer if the customer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions.

(e) It shall be an affirmative defense to any claim under this act: (1) that a nonconforming malfunction or defect does not substantially impair the uses, values or safety of the vehicle; or (2) that a nonconformity is the result of abuse, unreasonable neglect, or unauthorized modifications or alterations of the vehicle by the customer.

SECTION 3. For the purposes of this chapter the following terms have the following meanings:

(1) "Malfunction or defect" means a nonconformity with an express warranty which substantially impairs the use, value, or safety of the new motor vehicle.

(2) "Customer" means the purchaser, ~~other~~ than for the purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person applicable to such motor vehicle, and any other person entitled

by the terms of such warranty to enforce the obligations of such warranty.

(3) "Vehicle" means a "new" motor vehicle which is the subject of a manufacturer's express new car warranty and specifically includes motorcycles and motorhomes.

(4) "Population center" means a community of over 1,000 persons (or _____ miles of publicly funded roads).

(5) "Vehicle system or assembly" means . . .

TO: [Mike Ford, Legislative Aid to
Representative Mike Miller

DATE: March 18, 1983

FILE NO.

TELEPHONE NO. 279-0428

FROM: Connie J. Sipe
Assistant Attorney General
Chief, Consumer Protection Section
AGO/Anchorage

SUBJECT: Lemon Law

Enclosed please find a copy of the California Lemon Law, and a copy of the Connecticut Lemon Law. The statute which you had referred to as possibly being a Pennsylvania law is in fact the Connecticut law, which is noted in their most recent supplement as "P.A.," which merely stands for "public act." To our knowledge, no states except Connecticut and California have passed lemon statutes.

Also enclosed you will find not a draft but a "sketch" of a lemon law for Alaska, with a prefatory page of commentary. Please note that this sketch of a bill does not in any way conform to Alaska drafting standards on legislation, but our office has been so busy that it was all that I and our auto investigator could do on short notice to throw together a "cut and paste" which combined parts of the Connecticut with parts of the California statute, and inserted some other modifications that would be needed to address the specific warranty problems in the Alaskan market.

As some background information on warranties, you should realize that many of the American manufacturers are now offering 5-year warranties rather than the former 1-year or 12,000 mile warranties. Both the California and Connecticut lemon laws seemed to be based on the assumption that the 1-year warranty would continue to be the industry standard. On the other hand, in terms of the leverage provided by the lemon law, perhaps it is appropriate that only the very "worst" lemons, those cars with massive defects showing up within 1-year or 12,000 miles should be covered by a state lemon law.

The way we set up the draft that we sent down to you separates out the manufacturer's responsibilities in two areas: First, the ~~simple duty to follow through on their vehicle warranties, and to maintain a sufficient number of authorized repair shops in the state to make the warranty effective.~~ Section One does not have any time deadline other than the terms of the express warranty given by the manufacturer or 1-year, if 1-year would be the longer of the two dates. Our auto investigator, Scotty Dawkins, and I feel that Section 1 is very important in Alaska, because one of the main warranty problems we see is the fact that for most of the state, a warranty received with a new car is

virtually useless. Alaskan consumers outside of the major metropolitan areas receive virtually no value for their warranty, but we do know that a warranty is a significant part of the purchase price of a new vehicle. (Scotty would be willing to meet with you and talk with you about this, because he has had extensive experience inside the industry in Michigan, working with warranty problems both there and here.)

It would be important also that any bill which is meant to ~~encourage the manufacturers to appoint or contract with independent repair shops in the smaller Alaska communities, provide a standard of payment that would be high enough to encourage those independent repair shops to enter into such agreements.~~ A very real problem in the area of manufacturer's warranties is that the manufacturers compensate their dealerships for warranty work based on a flat rate manual which has very little relationship to the actual time needed to complete a warranty repair. Also, the times suggested for repair in the manufacturer's manual assume that the person doing the work will have all the specialized tools and diagnostic equipment of a full dealership, as well as factory trained technicians who know about the latest problems or technology. An independent repair shop in a rural area attempting to correct a defect of any complexity soon discovers that it takes them many more hours to cure the problem than it would a factory trained technician back in the dealership's more fully equipped shop.

Another problem apparently unique to Alaska is the incredible delay in getting warranty repair work done. Although only one manufacturer offers in its express warranty to provide substitute transportation during warranty repairs, most dealerships in the lower 48 do offer complimentary loaner vehicles to almost all warranty repair customers. Repairs are delayed beyond a few days. Also, in the lower 48 most dealerships would be chagrined if they could not get the car into the shop on a warranty repair within two to three days. In Alaska, one of our largest dealerships "prides" itself on being able to get a non-functioning vehicle, under warranty, into the shop to be "looked at" in 10 business days.

The problem in Alaska is further aggravated by the fact that many of the dealerships do not stock a significant inventory of parts, but order parts specially as the warranty calls for. (In fact, if a vehicle under warranty needs a part not available at the Alaska dealership, the customer is usually required to pay the air freight to get the part shipped promptly, or else wait for the surface shipment of the required parts.) To address these problems, we inserted a Section 1(c), which gives the manufacturer two weeks leeway, then imposes a duty to provide substitute transportation.

We also tried to put in some reasonably balanced criteria about what constitutes a customer's inability to deliver a vehicle to a dealership or authorized agent because of distance. You will find this in Section 2(d). The way we set up this statute, Section (2) really contains the heart of the "lemon" law provisions, namely the presumption of when a manufacturer has had a reasonable chance to attempt repair, and the manufacturer's duty to make reimbursement to a customer who has purchased a lemon. (Section 2's more powerful provisions are for the first year or 12,000 miles.)

We wrote some definitions, but we would still need to figure out definitions for "population center," and also for what a "vehicle system or assembly" is.

You will note that the other states focus in on whether a manufacturer has attempted to repair the "same non-conformity." What Scotty Dawkins tells me is that that language could provide an incredibly large loophole for the manufacturer. For instance, if a customer has a portion of the transmission "system or assembly" worked on four times, it is possible that the first two times the manufacturer will attempt to repair the least expensive portion of the system, hoping that that will be sufficient. Often in warranty repairs Scotty sees that the necessary work is done in a progressive manner; namely the least expensive and least complex repairs are attempted first, but when this doesn't work, only then does the manufacturer reluctantly dig into the larger system or into some more complex component of the system, which in fact may be the underlying problem. So, you see that Scotty wanted to make sure that the same nonconformity was broad enough to cover the same malfunction within a system. For example, your engine develops a severe oil leak, and it is repaired by repacking a seal. The engine then develops a knock, and the dealer attempts to correct it by first installing a new oil pump, then a crankshaft, and finally corrects the knock by rebuilding the engine. A few weeks later while operating the vehicle on the highway several hundred miles from home the engine seizes. That is the malfunction or the defect of the system that should trigger the statutory remedies.

We also did not write in any law enforcement mechanism into the statute, since I assumed you're thinking of it being a private action lemon law as in other states. You might want to note all the background warranty statutes that do exist in the State of California, and that provide for treble damages and affirmative defenses and other things. I am including those in this packet, for your use. You may also want to look at whether you want to make any or all of this act a violation of the Unfair Trade Practices Act if not followed. (You might get very different political reactions to those two proposals.)

Mike Ford, Legislation Aid
to Rep. Mike Miller

March 17, 1983
Page No. 4

I need to disclose to you a possible conflict of interest on this request. I am currently president of a nonprofit corporation known as the Conflict Resolution Center (CRC), which is a "third party dispute resolution mechanism," offering mediation and arbitration in the Anchorage municipality. In fact, the Conflict Resolution Center has made approaches to representatives of several automobile manufacturers about whether or not they would wish to use the services of CRC as a third party dispute mechanism under the federal Magnuson-Moss Warranty Act. At this time, there is no such specific relationship contemplated between CRC and any manufacturer. However, that is a possibility, so I thought I should mention my relationship to CRC.

Scotty Dawkins will be in Juneau on March 28 and, despite the official holiday, is very eager to discuss the lemon law concept with you.

/aw

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 344
 Title: "...motor vehicle warranties."
 Sponsor: Repr. M.M. Miller
 Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Pub. Protec.
 BRU, Program of Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Fegues Director Phone: 465-3672
 Division: Administrative Services Division Date: April 13, 1983
 Approved by Commissioner: Richard I. Fegues / FOR Date: April 13, 1983
 Department: Department of Law Attorney General

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HB 344
Fiscal Note
Analysis

HB 344 clarifies and defines the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. Section 1(f) of the bill makes the manufacturer's refusal or failure to fulfill its warranty duties an unfair trade practice under AS 45.50.471. AS 45.50.471, which is enforced by the Consumer Protection Section of the Department of Law, already covers warranties and repairs in a more general manner. The specific legal standards of HB 344 should not cause additional fiscal impact on Consumer Protection because HB 344 merely gives a better definition and therefore a better enforcement tool in the auto warranty area.

AS 45.50.471 also provides for the vehicle owner's private enforcement lawsuit, so some of HB 344's impact will be in the private legal sector.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB-344
 Title: Motor Vehicle Warranties
 Sponsor: M.M. Miller
 Requestor: Sponsor

II. FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Life/Property Protection
 BRU, Program of Subprogram(s) Affected: Driver/Vehicle Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

No fiscal impact anticipated

Prepared By: Robert J. Rowan, Director
 Division: Motor Vehicles

Phone: 269-5551

Date: 4-20-83

Approved by Commissioner: [Signature]
 Department: Public Safety

Date: 4/22/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB-344
 Title: Motor Vehicle Warranties
 Sponsor: M.M. Miller
 Requestor: Sponsor

II. FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Life/Property Pro
 BRU, Program of Subprogram(s) Affected: Driver/Vehicle Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

No fiscal impact anticipated

Prepared By: Robert J. Rowan, Director
 Division: Motor Vehicles

Phone: 269-5551

Date: 4-20-83

Approved by Commissioner: [Signature]
 Department: Public Safety

Date: 4/22/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

I. REQUEST

Bill/Resolution No.: HB 344
 Title: "...motor vehicle warranties."
 Sponsor: Repr. M.M. Miller
 Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Pub. Protec.
 BRU, Program of Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Pegues Director
 Division: Administrative Services Division

Phone: 465-3672

Date: April 13, 1983

Approved by Commissioner: Richard L. Pegues / FOR
 Department: Department of Law

Date: April 13, 1983

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HB 344
Fiscal Note
Analysis

HB 344 clarifies and defines the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. Section 1(f) of the bill makes the manufacturer's refusal or failure to fulfill its warranty duties an unfair trade practice under AS 45.50.471. AS 45.50.471, which is enforced by the Consumer Protection Section of the Department of Law, already covers warranties and repairs in a more general manner. The specific legal standards of HB 344 should not cause additional fiscal impact on Consumer Protection because HB 344 merely gives a better definition and therefore a better enforcement tool in the auto warranty area.

AS 45.50.471 also provides for the vehicle owner's private enforcement lawsuit, so some of HB 344's impact will be in the private legal sector.

H B

346

I. REQUEST

Bill/Resolution No: SS HB 346
 Title: Exempting public utility income
 Sponsor: Cato
 Requestor: State Affairs and Finance

II. FISCAL DETAIL

Agency Affected: Department of Revenue
 Program Category Affected: Rev Coll & Mgmt
 BRU, Program of Subprogram(s) Affected: Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	(500)	(2500)	(2000)	(2000)	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Robert R. Kessel
 Division: Audit Division

Phone: 465-2320
 Date: April 25, 1983

Approved by Commissioner: [Signature]
 Department: Revenue

Date: 7/26/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

IV. Analysis

The fiscal note takes into consideration the retroactive provisions of the bill (1-1-83). Corporations make estimated payments in advance of their filing of a tax return and the fiscal note assumes that the first quarterly payments for 1983 taxes (paid on or before March 15, 1983) would not be refunded until after July 1, 1983. Therefore, the fiscal note for FY84 is greater than subsequent fiscal notes because of that refund carryover.

The fiscal note is based on data extracted from returns as filed for tax year 1981 and adjusted for anticipated increases in tax liabilities.

HB

347



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 5, 1984

MEMORANDUM

TO: Representative Furnace

FROM: Jay Livey *JL*
Legislative Analyst

RE: Regulation of Naturopaths in Other States
Research Request 84-055

Steve Levi of your staff asked that we compare the regulation and licensure of naturopaths in other states with the approach proposed by CSHB 374. There are currently six states, Washington, Arizona, Oregon, Hawaii, Nevada, and Connecticut, that license naturopaths. We were able to contact or obtain licensing laws for all of these states. The comparisons of the laws includes the following information:

- the entity responsible for the regulation;
- requirements for licensure as a naturopath;
- scope of naturopathic practice; and
- reciprocity arrangements with other states.

Responsibility for Naturopathic Regulation

CSHB 347 puts the responsibility for the regulation of naturopaths in Alaska within the authority of the Department of Commerce and Economic Development. The department would have the authority to evaluate the qualifications of applicants, prepare and administer examinations to applicants and revoke and suspend licenses for cause. The State of Washington uses a similar structure, giving these powers to the Department of Licensing.

In four states, Hawaii, Oregon, Nevada and Arizona, the authority to administer the licensure law is given to a Board of Naturopathic Examiners. These boards may discipline licensed naturopaths through revocation or suspension of licenses, establish and administer licensure examinations, evaluate the qualifications of applicants and generally administer the licensure law. Three of these states, Hawaii, Arizona

and Oregon, have a three-member board composed of licensed naturopaths. Nevada has a five-member Board of Examiners of which three members are required to be naturopaths; one member is required to be a physician and one member must be a layperson.

Connecticut has a structure that divides the licensing authority between a Board of Examiners and the Department of Health Services. The board, composed of 2 licensed naturopaths and one layperson, has the authority to discipline licensed naturopaths according to procedures established by the law and administrative code. The board is also responsible for developing the licensure examination. The Department of Health Services administers the licensure statute, and has final responsibility for licensing naturopaths under the statute.

Requirements for Licensure

In summary, to be licensed as a naturopathic physician in any of these states, the applicant must be a high school graduate, have graduated from an approved school of Naturopathy and pass an examination administered by either a state department or state board of examiners. As proposed in the Alaska law, Hawaii, Oregon and Connecticut require that applicants complete additional college work at an approved school. We also found the the standards used by the states to define approved schools of naturopathy were fairly similar to those proposed in the Alaska law. All states require a mix of classroom and clinical study, a course of study that occurs over four years and a minimum number of hours required for graduation. Each state's requirements are summarized below.

Alaska. To be eligible for a license as a naturopath in Alaska, CSHB 347 would require the applicant to be a high school graduate or equivalent, and to have completed two years of postsecondary education at an accredited college of liberal arts and sciences, have successfully completed an examination given by the Department of Commerce and Economic Development and not to have been licensed to practice naturopathic medicine in another state if the license has been revoked or suspended for disciplinary reasons. In addition, the applicant must have graduated from a legally chartered school of naturopathic medicine or a school of naturopathic medicine that meets specific curriculum requirements including a course of study of at least 4,000 hours of which 1,500 must be clinical.

Hawaii. In Hawaii, to be licensed as a naturopathic physician, an applicant must reside in the state for one year prior to application, be a high school graduate, have had two years liberal arts education at an accedited college and be a graduate of a legally chartered school of naturopathic medicine that meets specific curriculum requirements found in the law. In addition, the applicant must pass an examination prepared and administered by the Board of Naturopathic Examiners.

Arizona. Arizona law requires an applicant for a naturopathic license to be a high school graduate or the equivalent and to have graduated from a school of drugless therapeutics, approved by the Board of Naturopathic Examiners. The school must meet specific curriculum requirements specified in the law and provide a total of at least 4,500 hours of instruction. The applicant must also pass an examination prepared by the Board of Examiners.

Connecticut. Connecticut law requires an applicant for a naturopathic license to be a high school graduate, to have completed 64 weeks of study at a college or scientific school approved by the Board of Naturopathic Examiners and to have graduated from a legally chartered, reputable school or college of naturopathy approved by the board. To be approved, the school of naturopathy, must require a course of resident instruction of at least four years, with each year consisting of thirty-six weeks of actual attendance. The applicant must also successfully pass an examination given by the Department of Health Services.

Oregon. Minimum requirements to be eligible for a license of naturopathy in Oregon include a high school diploma, two years satisfactory study in an accredited college of liberal arts and sciences and graduation from a college of naturopathy approved by the Board of Naturopathic Examiners. To be accredited, the college of Naturopathy must provide at least 4,000 lecture or recitation hours. Applicants are also required to pass an examination administered by the board.

Washington. Washington requires applicants for a naturopathic license to be graduates of a school of naturopathic medicine approved by the Director of Licensing and to pass an examination prepared and administered by the Director of Licensing. To be approved, the school must require a high school diploma as a condition of admission.

Nevada. To be licensed as a naturopath in Nevada, the applicant must be 21 years of age or older, a citizen of the United States or be legally entitled to work and live here, a graduate of a school of naturopathic medicine that is approved by the Board of Naturopathic Examiners and must have successfully completed an examination administered by the board.

Scope of Practice

The scope of naturopathic practice allowed by the proposed Alaska law is similar to the scope of practice allowed in Oregon, Arizona, and Connecticut. These states all allow naturopaths to perform childbirth, draw blood for diagnosis purposes, sign birth and death certificates and perform minor surgeries.

However, the states of Washington and Nevada restrict the scope of naturopathic practice more than the proposed Alaska law. These states do not allow naturopaths to perform surgeries of any kind or perform natural childbirth (except in Washington if a licensed midwife is present). Naturopaths in Nevada must work under the supervision of a physician; however, they are allowed to draw blood for diagnosis.

Alaska. The proposed Alaska law would allow naturopaths to perform physical exams, write prescriptions for noncontrolled substances, sign birth and death certificates, diagnose disease according to training, treat patients by stimulating normal functions of tissues and organs sensitized by disease, draw blood for laboratory purposes, use electrical or other methods for repair and care of superficial lacerations and abrasions, and practice natural childbirth in obstetrics. According to the proposed law, a naturopath may not perform surgery except as related to childbirth, use controlled substances, use radiation therapy or use drugs except antiseptics, local anesthetics, minerals and extracts, compounds or concentrates obtained from plants or animals.

Hawaii. Hawaii's naturopathic licensing law does not specify a scope of allowable practice. However, it does state that "naturopathic physicians licensed under this chapter shall observe and be subject to all state regulations relative to reporting births and deaths and all matters pertaining to the public health with equal rights and obligations as physicians, surgeons, and practitioners of other schools of medicine." Because we were unable to contact representatives of the Hawaii Board of Naturopathic Examiners, we were unable to make specific comparisons to the proposed Alaska law.

Arizona. The Arizona law does not specifically include the scope of services naturopaths can offer. According to Dr. Milburn Shelton, President of the State Naturopathic Licensing Board, the scope of services is determined by the definitions found in the statute.¹ For example, naturopathy means "a system for treating the abnormalities of the human mind and body by the use of drugless and nonsurgical methods including the use of physical, electrical, hygienic, and sanitary measures and all form of physiotherapy."

Nonsurgical is defined to be "a system of treating the abnormalities of the human mind and body without surgical invasion of the human body, but does not preclude the use of acupuncture, electrical or other methods for the repair and care of incident and superficial lacerations and abrasions, benign superficial lesions and the removal of foreign bodies

¹Dr. Milburne Shelton, President of the Arizona Board of Naturopathic Examiners, (602) 937-9125.

located in superficial structures, and the use of standard clinical procedures in connection therewith." This definition allows procedures that are similar to ones allowed in the proposed Alaska law.

Dr. Shelton stated that naturopaths in Arizona could also perform physical examinations, prescribe substances authorized in the statutes, sign both birth and death certificates, treat patients with acupuncture, draw blood for laboratory purposes and practice natural childbirth. He also noted that naturopaths in Arizona are prohibited from performing the activities also prohibited in CSHB 347.

Connecticut. As with Arizona, the Connecticut law is not very specific concerning the scope of practice naturopaths are allowed to perform. However, according to Dr. Charles Soderstrom, President of the Board of Naturopathic Examiners, the scope of practice is very similar to the proposed Alaska law.² He noted that Connecticut naturopaths can perform minor surgery, practice natural childbirth, sign both birth and death certificates, draw blood for laboratory tests, and perform diagnosis. However, as in the proposed Alaska law, naturopaths may not perform major surgery, use controlled substances, or use radiation therapy.

Oregon. The Oregon statutes allow naturopaths to "treat the human body by use of drugless methods, which has for its object the maintaining of the body in, or of restoring it to, a state of normal health." Although the full scope of allowed services is not detailed in the statute, it does specifically mention that antiseptics and anesthetics can be administered, birth and death certificates can be signed and minor surgery (as defined in the statute) can be performed.³ Specific prohibitions mentioned in the law include the practice of optometry, performing chiropractic adjustments and prescribing drugs.

Washington. The Washington licensing law does not specifically detail the scope of naturopathic practice. According to Yvonne Braeme, Executive Secretary to the Drugless Examining Committee, the existing law in Washington, which was adopted in 1919, is outdated.⁴ However, she did note that naturopathic practice in Washington may be more restricted than that proposed by the Alaska law. In Washington, naturopaths are

²Dr. Charles Soderstrom, President, Connecticut Board of Naturopathic Examiners, (203) 633-5330.

³Minor surgery as defined in the Oregon law is very similar to the scope of services detailed in the proposed Alaska statute.

⁴Ms. Yvonne Braeme, Executive Secretary, Washington State Board of Drugless Medicine, (206) 753-3576.

Representative Furnace
March 5, 1984
Page 6

not allowed to sign birth and death certificates, draw blood for laboratory uses, perform natural childbirth without the presence of a licensed midwife, do surgeries of any kind or prescribe medicine.

Nevada. Of all the states that we contacted, Nevada had the most restrictive law concerning naturopaths. In Nevada, naturopaths are required to work under the supervision of a licensed physician and are not authorized to "perform those functions and duties specifically delegated by law to physicians, dentists, nurses, osteopaths, chiropractors, practitioners of traditional oriental medicine, podiatrists, optometrists, hearing aid specialists or physical therapists."

Specifically, naturopaths may not use x-ray or radium treatments, perform major or minor surgery, perform obstetrics, prescribe drugs or draw blood for any reason other than diagnosis. Naturopaths may sign birth and death certificates if they are co-signed by the supervising physician.

Reciprocity in Licensing

Reciprocity refers to the granting of a license by one state based on the fact that a license has been granted to the applicant by another state that has similar licensing requirements. The proposed Alaska law gives this power to the Department of Commerce and Economic Development assuming that the law in the state in which the applicant currently has a license is equivalent to the requirements of Alaska law.

Currently, the states of Arizona and Oregon have the power in their statutes to grant naturopathic licenses based on reciprocity agreements. The states of Nevada, Washington, Connecticut and Hawaii do not allow reciprocity.

I hope that this information is helpful to you. If you would like copies of the naturopathic regulations from other states or require additional research, please let me know.

JL

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

March 28, 1984

To: House Labor and Commerce Committee Members

From: Labor and Commerce Committee Staff

RE: CSHB 347 "Relating to Licensing of Naturopathic Practitioners"

Following yesterday's public hearing on HB 347, a committee substitute for the bill was ordered by the Chairman of the Committee. The changes from the original committee are substitute are listed below.

1. The Board of Naturopathic examiners would consist of three naturopaths, one licensed doctor, and one public member. The original CS called for two naturopaths, one doctor, one nurse and a public member.
2. The Applicability section was deleted.
3. Page 2, Line 5, the words "equivalent to or higher than requirements in other states that license naturopaths" were added.
4. Page 3, Line 3, after the word held the words "at least twice a year" were added.
5. Page 6, Line 21 was changed so to read "through the prevention and treatment of illness."

Offered: 2/20/84
Referred: Labor & Commerce and
Finance

Dr. Fitzjohn

Original sponsors: Martin and Tischer

1 IN THE HOUSE
2 CS FOR HOUSE BILL NO. 347 (HESS)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the licensing of practitioners of
7 naturopathic medicine; and providing for an effective
8 date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:
11 (24) regulation of naturopathy or naturopathic medicine
12 under AS 08.45.
13 * Sec. 2. AS 08 is amended by adding a new chapter to read:
14 CHAPTER 45. NATUROPATHS.
15 ARTICLE 1. REGULATION OF NATUROPATHY.
16 Sec. 08.45.010. DUTIES AND POWERS. The department shall
17 (1) evaluate the qualifications of applicants for licenses
18 under this chapter;
19 (2) conduct hearings and keep records necessary to carry
20 out the purposes of this chapter;
21 (3) license naturopaths and renew licenses in accordance
22 with AS 08.45.100 - 08.45.170; and
23 (4) provide for temporary permits to engage in the practice
24 of naturopathic medicine for persons who are apparently qualified that
25 are valid until certification of the results of the next examination
26 given under AS 08.45.120.
27 ARTICLE 2. LICENSING OF NATUROPATHS.
28 Sec. 08.45.100. LICENSING REQUIREMENT. A person may not engage
29 in the practice of naturopathy or naturopathic medicine unless that

1 person has a valid license or temporary permit under this chapter.

2 Sec. 08.45.110. LICENSURE AS A NATUROPATH. To be eligible for a
3 license as a naturopath, an applicant shall

4 (1) hold a high school diploma or the equivalent;

5 (2) have completed two years of postsecondary education at
6 an accredited college of liberal arts or sciences;

7 (3) have graduated from a legally chartered school or
8 college of naturopathic medicine that has as a requirement for gradua-
9 tion successful completion of a course of resident instruction of at
10 least nine months actual attendance in each of four years and success-
11 ful completion of a course of instruction totaling 4,000 hours or more
12 of which at least 1,500 hours is clinical experience; the course of
13 instruction shall include:

14 *2 schools* (A) anatomy, physiology, histology, and embryology;

15 (B) microbiology;

16 (C) pathology;

17 (D) immunology;

18 (E) public health;

19 (F) physical, clinical, and x-ray diagnosis;

20 (G) first aid and emergency medicine;

21 (H) obstetrics and gynecology;

22 (I) orthopedics;

23 (J) minor surgery and proctology;

24 (K) otolaryngology;

25 (L) physiotherapy and manipulative techniques;

26 (M) dietetics and clinical nutrition;

27 (N) botanical medicine;

28 (O) naturopathic theory, therapeutics and clinical

29 practice;

8 other states

*Seattle
Portland*

- 1 (P) jurisprudence;
- 2 (4) successfully complete an examination given by the
3 department;
- 4 (5) not have a license to practice naturopathic medicine in
5 another state, province, or territory, that is suspended or revoked
6 for disciplinary reasons;
- 7 (6) be a United States citizen or lawfully admitted to
8 permanent residence in this country; and
- 9 (7) be of good moral character.

10 Sec. 08.45.120. EXAMINATION. (a) An examination for licensing
11 as a naturopath shall be held at a time and place and shall be con-
12 ducted as determined by the department. The examination shall be
13 limited to the subjects listed in AS 08.45.110(3), each of which shall
14 constitute a separate examination section. The examination shall be
15 objective and in writing, but may be supplemented by oral examina-
16 tions, and by demonstrations or other practical tests as the depart-
17 ment may require.

18 (b) To pass the examination an applicant shall receive an over-
19 all average of 75 percent and may not receive less than 70 percent in
20 more than two sections.

21 Sec. 08.45.130. •ENDORSEMENT• The department may license a
22 person as a naturopath if the person is currently licensed as a
23 naturopath in another state or in a province of Canada and

24 (1) that state or province maintains professional licensing
25 standards equivalent or higher than those in this chapter;

26 (2) that state or province extends the same licensing
27 privilege to those holding a license in this state; and

28 (3) the person demonstrates to the satisfaction of the
29 department qualifications at least equal to those required of persons

1 licensed under this chapter.

2 Sec. 08.45.140. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.

3 The department may deny, suspend, or revoke the license of a person or
4 applicant who

5 (1) has obtained or attempted to obtain a license under
6 this chapter by fraud or deceit;

7 (2) wilfully violates a provision of this chapter or a
8 regulation adopted under this chapter;

9 (3) habitually overuses alcoholic beverages;

10 (4) unlawfully uses a controlled substance as defined in
11 AS 11.81.900(b)(6);

12 (5) impersonates another physician;

13 (6) practices under an assumed name; or

14 (7) is convicted of a crime involving moral turpitude,
15 including murder, sexual assault, robbery, kidnapping, incest, arson,
16 burglary, theft, and forgery.

17 Sec. 08.45.150. FEES. The following fees are imposed under this
18 chapter:

19 (1) application for examination \$ 50

20 (2) application for reexamination 10

21 (3) license issuance or biennial renewal 200

22 (4) issuance of temporary permit 50

23 Sec. 08.45.160. SCOPE OF NATUROPATHIC PRACTICE. (a) A naturo-
24 path in the course of the practice of naturopathic medicine may

25 (1) perform physical examinations, write prescriptions for
26 substances authorized in this chapter, and sign birth and death cer-
27 tificates;

28 (2) use systems of diagnosis for which the naturopathic
29 physician has been trained under AS 08.45.110(3);

1 (3) treat patients by physiological, nutritional, psycho-
2 logical, mechanical, electrical, manual, hydrotherapeutic, phytothera-
3 peutic, mineral and organic substances and agencies, including acu-
4 puncture, that are effective in stimulating normal function of tissues
5 and organs sensitized by disease;

6 (4) draw blood for laboratory purposes, and use electrical
7 or other methods for the repair and care of superficial lacerations
8 and abrasions, benign superficial lesions, and the removal of foreign
9 bodies located in superficial structures; and

10 (5) practice natural childbirth in obstetrics, including
11 related minor surgical procedures.

12 (b) A naturopath may not

13 (1) perform surgery except as provided under (a)(5) of this
14 section;

15 (2) use controlled substances as defined in AS 11.81.-
16 900(b)(6);

17 (3) use radiation therapy; or

18 (4) use drugs except (antiseptics, local anesthetics, min-
19 erals and extracts, compounds or concentrates obtained from plants or
20 animals.)

21 Sec. 08.45.170. CONTINUING EDUCATION. (a) The department may
22 prescribe by regulation continuing education requirements for persons
23 licensed under this chapter.

24 (b) Before a license issued under this chapter may be renewed,
25 the licensee shall submit to the department evidence of completion of
26 continuing education requirements.

27 (c) The department may exempt a licensee from the continuing
28 education requirement under (b) of this section upon an application of
29 the licensee setting out extenuating circumstances. A licensee may

1 not receive more than one exemption under this subsection in a five-
2 year period.

3 ARTICLE 3. GENERAL PROVISIONS.

4 Sec. 08.45.200. TITLES AND ABBREVIATIONS. (a) A person li-
5 censed under this chapter may use the following titles: "Naturopath",
6 "Doctor of Naturopathy" or its abbreviation, "N.D.". A person li-
7 censed under this chapter may not use a title in a manner that sug-
8 gests that the person practices a form of medicine or a healing art
9 other than naturopathy.

10 (b) A person may not use a title or abbreviation listed in (a)
11 of this section unless the person is licensed under this chapter.

12 Sec. 08.45.205. VIOLATIONS. (a) A person is guilty of a
13 class B misdemeanor if the person

14 (1) fraudulently obtains or furnishes a temporary permit,
15 license, renewal, or record required by this chapter;

16 (2) wilfully violates a provision of this chapter or a
17 regulation adopted under this chapter.

18 (b) A person who practices naturopathy or naturopathic medicine
19 without a valid temporary permit or license issued under this chapter
20 is guilty of a class A misdemeanor.

21 Sec. 08.45.220. DEFINITIONS. In this chapter

22 (1) "department" means the Department of Commerce and
23 Economic Development;

24 (2) "naturopathy" and "naturopathic medicine" means a
25 system of healing the human body that includes diagnosis and treatment
26 through the use of natural agencies, force, processes, and products
27 with emphasis on the response of the individual to the disease rather
28 than its treatment in isolation.

29 * Sec. 3. LICENSING OF PRACTITIONERS OF NATUROPATHY OR NATUROPATHIC

1 MEDICINE WITHOUT EXAMINATION. The commissioner of commerce and economic
2 development shall license all persons who, on the effective date of this
3 Act, meet the qualifications of AS 08.45.110(1) - (3) and (5) - (7) and who
4 apply for licensure under AS 08.45 not later than June 30, 1985.
5 * Sec. 4. This Act takes effect July 1, 1984.

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

March 28, 1984

To: House Labor and Commerce Committee Members

From: Labor and Commerce Committee Staff

RE: CSHB 347 "Relating to Licensing of Naturopathic Practitioners"

Following yesterday's public hearing on HB 347, a committee substitute for the bill was ordered by the Chairman of the Committee. The changes from the original committee substitute are listed below.

1. The Board of Naturopathic examiners would consist of three naturopaths, one licensed doctor, and one public member. The original CS called for two naturopaths, one doctor, one nurse and a public member.
2. The Applicability section was deleted.
3. Page 2, Line 5, the words "equivalent to or higher than requirements in other states that license naturopaths" were added.
4. Page 3, Line 3, after the word held the words "at least twice a year" were added.
5. Page 6, Line 21 was changed so to read "through the prevention and treatment of illness."

Original sponsors: Martin and Tischer

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS CS FOR HOUSE BILL NO. 347 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the licensing of naturopaths; and
7 providing for an effective date."

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

9 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

10 (24) regulation of naturopaths under AS 08.45.

11 * Sec. 2. AS 08 is amended by adding a new chapter to read:

12 CHAPTER 45. NATUROPATHS.

13 ARTICLE 1. BOARD OF NATUROPATHIC EXAMINERS.

14 Sec. 08.45.010. CREATION AND MEMBERSHIP OF THE BOARD. There is
15 established the Board of Naturopathic Examiners consisting of

16 (1) two naturopaths licensed under this chapter;

17 (2) one doctor licensed under AS 08.64;

18 (3) one registered nurse licensed under AS 08.68; and

19 (4) one public member.

20 Sec. 08.45.030. TERM OF OFFICE. Members of the board serve
21 staggered terms of three years. A member may be appointed to serve no
22 more than two consecutive full terms.

23 <Sec. 08.45.040. APPLICABILITY. AS 08.45.010 - 08.45.040 apply
24 one year after the first eight licenses are issued under this chapter.
25 After AS 08.45.010 - 08.45.040 becomes applicable, the board shall
26 exercise the powers and duties of the department under this chapter.>

27 ARTICLE 2. REGULATION OF NATUROPATHY.

28 Sec. 08.45.090. DUTIES AND POWERS. (a) The department shall

29 (1) evaluate the qualifications of applicants for licenses

1 under this chapter;

2 (2) conduct hearings and keep records necessary to carry
3 out the purposes of this chapter; and

4 (3) license naturopaths and renew licenses in accordance
5 with AS 08.45.100 - 08.45.170.

6 (b) The department may establish by regulation educational
7 requirements for licensure under this chapter in addition to require-
8 ments under AS 08.45.110(2), and identify schools that provide courses
9 of study that satisfy the requirements.

10 Sec. 08.45.100. LICENSING REQUIREMENT. A person may not engage
11 in the practice of naturopathy unless that person has a valid license
12 or temporary permit issued under this chapter.

13 Sec. 08.45.110. LICENSURE AS A NATUROPATH. To be eligible for a
14 license as a naturopath, an applicant shall

15 (1) hold a bachelor's degree from an accredited college of
16 liberal arts or sciences;

17 (2) have graduated from a school of naturopathy approved by
18 the department that has as a requirement for graduation successful
19 completion of a course of resident instruction of at least nine months
20 actual attendance in each of four years and successful completion of a
21 course of study totaling at least 4,000 hours of instruction of which
22 at least 1,500 hours is clinical experience.

23 (3) successfully complete an examination given by the
24 department;

25 (4) not have a license to practice naturopathy in another
26 state, province, or territory, that is suspended or revoked for disci-
27 plinary reasons;

28 (5) be a United States citizen or lawfully admitted to
29 permanent residence in this country; and

1 (6) after graduating from a school of naturopathy, complete
2 a one-year internship supervised by a naturopath licensed in this or
3 another state.

4 Sec. 08.45.120. EXAMINATION. (a) An examination for licensing
5 as a naturopath shall be held at a time and place and shall be con-
6 ducted as determined by the department. The examination shall be
7 objective and in writing, but may be supplemented by oral examina-
8 tions, and by demonstrations or other practical tests as the depart-
9 ment may require.

10 (b) To pass the examination an applicant shall receive an over-
11 all average of 75 percent and may not receive less than 70 percent in
12 more than two sections. If an applicant fails the examination, the
13 applicant may apply to be re-examined.

14 Sec. 08.45.130. TEMPORARY PERMIT. (a) The department may issue
15 a temporary permit to practice naturopathy to a person if the person

16 (1) is currently licensed as a naturopath in another state
17 or territory or in a province of Canada; and

18 (A) that state, territory, or province maintains
19 professional licensing standards equivalent or higher than those
20 in this chapter;

21 (B) that state, territory, or province extends the
22 same licensing privilege to those holding a license in this
23 state; and

24 (C) the person demonstrates to the satisfaction of the
25 department qualifications at least equal to those required of
26 persons licensed under this chapter; or

27 (2) qualifies for a license under AS 08.45.110(1) - (5) and
28 is working as an intern supervised by a naturopath with a license or
29 temporary permit issued under this chapter.

1 (b) A temporary permit issued under (a)(1) of this section is
2 valid until the date on which the next examination is offered under
3 AS 08.45.120. A temporary permit issued under (a)(2) of this section
4 is valid for one year.

5 Sec. 08.45.140. LICENSE RENEWAL. A license issued under this
6 chapter expires unless it is renewed every four years.

7 Sec. 08.45.150. FEES. The following fees are imposed under this
8 chapter:

- 9 (1) application for examination \$ 50
10 (2) application for re-examination..... 10
11 (3) license issuance or renewal 200
12 (4) temporary permit issuance..... 50

13 Sec. 08.45.160. SCOPE OF NATUROPATHIC PRACTICE. (a) A naturo-
14 path in the course of the practice of naturopathy may

15 (1) use systems of diagnosis for which the naturopath has
16 been trained;

17 (2) treat patients by physiological, nutritional, mechan-
18 ical, manual, hydrotherapeutic and phytotherapeutic means, with
19 accupressure, ^{and with} ~~and~~ minerals, and ~~with~~ extracts, compounds and
20 concentrates obtained from plants or animals.

21 (b) A naturopath may not

22 (1) perform surgery;

23 (2) use or prescribe controlled substances as defined in
24 AS 11.81.900(b)(6); or

25 (3) use x-ray equipment, radium, or irradiation for
26 diagnosis or therapy.

27 Sec. 08.45.170. CONTINUING EDUCATION. (a) The department shall
28 prescribe by regulation continuing education requirements for persons
29 licensed under this chapter.

1 (b) Before a license issued under this chapter may be renewed,
2 the licensee shall submit to the department evidence of completion of
3 continuing education requirements.

4 (c) The department may exempt a licensee from the continuing
5 education requirement upon an application of the licensee setting out
6 extenuating circumstances. A licensee may not receive more than one
7 exemption under this subsection in a five-year period.

8 ARTICLE 3. GENERAL PROVISIONS.

9 Sec. 08.45.200. TITLES AND ABBREVIATIONS. (a) A person with a
10 license or permit under this chapter may use the following titles:
11 "Naturopath", "Doctor of Naturopathy" or its abbreviation, "N.D.". A
12 person with a license or permit under this chapter may not use a title
13 in a manner that suggests that the person practices a form of medicine
14 or a healing art other than naturopathy.

15 (b) A person may not use a title or abbreviation listed in (a)
16 of this section unless the person is licensed under this chapter.

17 Sec. 08.45.210. IMPOSITION OF DISCIPLINARY SANCTIONS. After a
18 hearing, the department may limit, deny, suspend, or revoke a license
19 or temporary permit, or censure a licensee or permittee if the person

20 (1) secured a license or permit under this chapter through
21 deceit, fraud, or intentional misrepresentation;

22 (2) engaged in deceit, fraud, or intentional misrepresenta-
23 tion in the course of providing professional services or engaging in
24 professional activities;

25 (3) advertised professional services in a false or mislead-
26 ing manner;

27 (4) has been convicted of a felony or other crime that
28 affects the person's ability to continue to practice competently and
29 safely;

1 (5) fails to comply with this chapter or a regulation
2 adopted under this chapter;

3 (6) continued to practice after becoming unfit due to

4 (A) professional incompetence;

5 (B) addiction or severe dependency on alcohol or other
6 drugs that impairs the person's ability to practice safely;

7 (C) physical or mental disability;

8 (7) engaged in lewd or immoral conduct in connection with
9 the delivery of professional service to a patient.

10 Sec. 08.45.220. VIOLATIONS. (a) Except as provided in (b) of
11 this section, a person is guilty of a class B misdemeanor if the
12 person intentionally violates a provision of this chapter or a regula-
13 tion adopted under this chapter.

14 (b) A person who practices naturopathy without a valid temporary
15 permit or license issued under this chapter is guilty of a class A
16 misdemeanor.

17 Sec. 08.45.900. DEFINITIONS. In this chapter

18 (1) "department" means the Department of Commerce and
19 Economic Development;

20 (2) "naturopathy" and "naturopathic" means a system of
21 human health care that promotes good health through the prevention of
22 illness and treatment by the use of educational, physical,
23 nutritional, botanical, hygienic and other methods, and without the
24 use of prescription drugs, surgery, x-ray equipment or radium therapy.

25 * Sec. 3. TEMPORARY PERMITS FOR PRACTITIONERS OF NATUROPATHY. (a) The
26 Department of Commerce and Economic Development shall issue a temporary
27 permit to practice naturopathy to a person who, on the effective date of
28 this Act,

29 (1) is practicing naturopathy in the state;

1 (2) meets all the qualifications of AS 08.45.110 or 08.45.130-
2 (a)(2), except for AS 08.45.110(3); and

3 (3) applies for the permit.

4 (b) A temporary permit issued under this section is valid until the
5 date on which the first examination is offered under AS 08.45.120, as
6 enacted in sec. 2 of this Act.

7 * Sec. 4. Notwithstanding AS 08.45.010 as enacted in sec. 2 of this
8 Act, the first members of the Board of Naturopathic Examiners shall be
9 appointed for the following terms; one member shall serve a one-year term,
10 two members shall serve two-year terms, and two members shall serve three-
11 year terms.

12 * Sec. 5. This Act takes effect January 1, 1985.
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introduced by Rep. Funnace

MARCH 27, 1984

TO: HOUSE LABOR AND COMMERCE COMMITTEE MEMBERS
RE: PROPOSED AMENDMENTS TO HB 347

THE FOLLOWING AMENDMENTS TO CSCSHB 347 WERE PROPOSED BY MEMBERS OF THE NATUROPATHIC PROFESSION.

1. ADD A THIRD NATUROPATH TO THE BOARD. THE TOTAL NUMBER OF BOARD MEMBERS WOULD THEN BE SIX.
2. PAGE 2, LINE 7 AFTER THE WORD CHAPTER ADD, CONSISTENT WITH OTHER STATES THAT LICENSE NATUROPATHS.
3. PAGE 3, LINE 5 AFTER THE WORD HELD ADD, AT LEAST TWICE PER YEAR.
4. PAGE 5, LINE 11 AFTER THE WORD NATUROPATHY ADD, NATUROPATHIC PHYSICIAN.
5. PAGE 6, LINE 21 BEGINNING WITH THE WORD PREVENTION, CHANGE TO READ, PREVENTION AND TREATMENT OF ILLNESS.
6. PAGE 6, LINE 24 CHANGE THE TERMS PRESCRIPTION DRUGS TO READ, CONTROLLED SUBSTANCES AS DEFINED UNDER AS 11.71.140-11.71.190
7. INCLUDE A SECTION AT THE END OF THE BILL ALLOWING THOSE NATUROPATHS WHO:
 1. MEET THE REQUIREMENTS FOR LICENSURE
 2. ARE LICENSED IN ANOTHER STATE
 3. HAVE PRACTICED IN ALASKA FOR ONE YEAR OR MORETO BE EXCLUDED FROM TAKING THE NATUROPATHIC LICENSING EXAMINATION.

MARCH 7, 1984

TO: JOHN
FROM: KEN
RE: 347

THE PURPOSE OF HB 347 IS TO PROVIDE, IN STATUTES, LANGUAGE ON THE LICENSING OF PRACTITIONERS OF NATUROPATHIC MEDICINE, AND TO CLEARLY SPELL OUT THE SCOPE OF NATUROPATHIC PRACTICE. THIS LEGISLATION HAS BEEN SCRUTINIZED BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE AND PASSED ON TO THIS COMMITTEE FOR FURTHER WORK.

TO DEFINE THE INTENT OF THE BILL MORE CLEARLY, HB 347 WOULD SET UP A MEANS FOR REGULATING NATUROPATHY. IT ALSO WOULD ESTABLISH LICENSING, EDUCATION, AND EXAMINATION REQUIREMENTS, SET FEES, AND LAY OUT WHAT A NATUROPATH CAN OR CAN NOT PRACTICE.

did not read ↓
THE HESS COMMITTEE PASSED OUT ONE VERSION OF THE BILL. REP. MILO FRITZ HAS ALSO OFFERED ANOTHER. BOTH VERSIONS OF THE BILL ARE BEFORE YOU KNOW FOR COMPARISON AND CONSIDERATION.

QUESTIONS:

1. SHOULD THE DEPARTMENT OF HEALTH EDUCATION AND SOCIAL SERVICES HAVE RESPONSIBILITY FOR REGULATING THIS FIELD, OR SHOULD A BOARD OF NATUROPATHY BE ESTABLISHED ?

2. WHY SHOULD OR SHOULDN'T A NATUROPATH BE ALLOWED TO DRAW BLOOD FOR TESTING ?

3. HOW MANY NATUROPATHS ARE THERE PRACTICING IN ALASKA AT THE PRESENT TIME ?

4. IN THE TWO BILLS THE EDUCATION REQUIREMENTS VARY. HOW MUCH EDUCATION SHOULD A NATUROPATH BE REQUIRED TO HAVE? AND, IN WHAT SPECIFIC AREAS SHOULD STUDY BE CONCENTRATED?

5. IN SECTION 3 OF THE HESS COMMITTEE VERSION, THOSE CURRENTLY PRACTICING NATUROPATHY IN ALASKA WOULD NOT HAVE TO MEET REQUIREMENTS ESTABLISHED FOR FUTURE PRACTITIONERS. WHY ?

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

March 28, 1984

To: House Labor and Commerce Committee Members

From: Labor and Commerce Committee Staff

RE: CSHB 347 "Relating to Licensing of Naturopathic Practitioners"

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Offered: 2/20/84
Referred: Labor & Commerce and
Finance

Original sponsors: Martin and Tischer

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 347 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the licensing of practitioners of
naturopathic medicine; and providing for an effective
date."

7

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

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* Sec. 2. AS 08 is amended by adding a new chapter to read:

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CHAPTER 45. NATUROPATHS.

15

ARTICLE 1. REGULATION OF NATUROPATHY.

16

Sec. 08.45.010. DUTIES AND POWERS. The department shall

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(1) evaluate the qualifications of applicants for licenses

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of naturopathic medicine for persons who are apparently qualified that

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are valid until certification of the results of the next examination

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given under AS 08.45.120.

27

ARTICLE 2. LICENSING OF NATUROPATHS.

28

Sec. 08.45.100. LICENSING REQUIREMENT. A person may not engage

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1 person has a valid license or temporary permit under this chapter.

2 Sec. 08.45.110. LICENSURE AS A NATUROPATH. To be eligible for a
3 license as a naturopath, an applicant shall

4 (1) hold a high school diploma or the equivalent;

5 (2) have completed two years of postsecondary education at
6 an accredited college of liberal arts or sciences;

7 (3) have graduated from a legally chartered school or
8 college of naturopathic medicine that has as a requirement for gradua-
9 tion successful completion of a course of resident instruction of at
10 least nine months actual attendance in each of four years and success-
11 ful completion of a course of instruction totaling 4,000 hours or more
12 of which at least 1,500 hours is clinical experience; the course of
13 instruction shall include:

14 (A) anatomy, physiology, histology, and embryology;

15 (B) microbiology;

16 *Doc - not enough* (C) pathology; *(alternation of tissue by disease)*

17 (D) immunology;

18 (E) public health;

19 (F) physical, clinical, and x-ray diagnosis;

20 (G) first aid and emergency medicine;

21 (H) obstetrics and gynecology;

22 (I) orthopedics;

23 (J) minor surgery and proctology;

24 (K) otolaryngology;

25 (L) physiotherapy and manipulative techniques;

26 (M) dietetics and clinical nutrition;

27 (N) botanical medicine;

28 (O) naturopathic theory, therapeutics and clinical

29 practice;

- 1 (P) jurisprudence;
- 2 (4) successfully complete an examination given by the
3 department;
- 4 (5) not have a license to practice naturopathic medicine in
5 another state, province, or territory, that is suspended or revoked
6 for disciplinary reasons;
- 7 (6) be a United States citizen or lawfully admitted to
8 permanent residence in this country; and
- 9 (7) be of good moral character.

10 Sec. 08.45.120. EXAMINATION. (a) An examination for licensing
11 as a naturopath shall be held at a time and place and shall be con-
12 ducted as determined by the department. The examination shall be
13 limited to the subjects listed in AS 08.45.110(3), each of which shall
14 constitute a separate examination section. The examination shall be
15 objective and in writing, but may be supplemented by oral examina-
16 tions, and by demonstrations or other practical tests as the depart-
17 ment may require.

18 (b) To pass the examination an applicant shall receive an over-
19 all average of 75 percent and may not receive less than 70 percent in
20 more than two sections.

21 Sec. 08.45.130. ENDORSEMENT. The department may license a
22 person as a naturopath if the person is currently licensed as a
23 naturopath in another state or in a province of Canada and

24 (1) that state or province maintains professional licensing
25 standards equivalent or higher than those in this chapter;

26 (2) that state or province extends the same licensing
27 privilege to those holding a license in this state; and

28 (3) the person demonstrates to the satisfaction of the
29 department qualifications at least equal to those required of persons

1 licensed under this chapter.

2 Sec. 08.45.140. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.

3 The department may deny, suspend, or revoke the license of a person or
4 applicant who

5 (1) has obtained or attempted to obtain a license under
6 this chapter by fraud or deceit;

7 (2) wilfully violates a provision of this chapter or a
8 regulation adopted under this chapter;

9 (3) habitually overuses alcoholic beverages;

10 (4) unlawfully uses a controlled substance as defined in
11 AS 11.81.900(b)(6);

12 (5) impersonates another physician;

13 (6) practices under an assumed name; or

14 (7) is convicted of a crime involving moral turpitude,
15 including murder, sexual assault, robbery, kidnapping, incest, arson,
16 burglary, theft, and forgery.

17 Sec. 08.45.150. FEES. The following fees are imposed under this
18 chapter:

- | | | |
|----|------------------------------------------------|-------|
| 19 | (1) application for examination | \$ 50 |
| 20 | (2) application for reexamination | 10 |
| 21 | (3) license issuance or biennial renewal | 200 |
| 22 | (4) issuance of temporary permit | 50 |

23 Sec. 08.45.160. SCOPE OF NATUROPATHIC PRACTICE. (a) A naturo-
24 path in the course of the practice of naturopathic medicine may

25 (1) perform physical examinations, write prescriptions for
26 substances authorized in this chapter, and sign birth and death cer-
27 tificates;

28 (2) use systems of diagnosis for which the naturopathic
29 physician has been trained under AS 08.45.110(3);

1 (3) treat patients by physiological, nutritional, psycho-
2 logical, mechanical, electrical, manual, hydrotherapeutic, phytothera-
3 peutic, mineral and organic substances and agencies, including acu-
4 puncture, that are effective in stimulating normal function of tissues
5 and organs sensitized by disease;

6 (4) draw blood for laboratory purposes, and use electrical
7 or other methods for the repair and care of superficial lacerations
8 and abrasions, benign superficial lesions, and the removal of foreign
9 bodies located in superficial structures; and

10 (5) practice natural childbirth in obstetrics, including
11 related minor surgical procedures. *all major - no minor*

12 (b) A naturopath may not

13 (1) perform surgery except as provided under (a)(5) of this
14 section;

15 (2) use controlled substances as defined in AS 11.81.-
16 900(b)(6); *should not need to use drugs.*

17 (3) use radiation therapy; or *very dangerous*

18 (4) use drugs except antiseptics, local anesthetics, min-
19 erals and extracts, compounds or concentrates obtained from plants or
20 animals.

21 Sec. 08.45.170. CONTINUING EDUCATION. (a) The department may
22 prescribe by regulation continuing education requirements for persons
23 licensed under this chapter.

24 (b) Before a license issued under this chapter may be renewed,
25 the licensee shall submit to the department evidence of completion of
26 continuing education requirements.

27 (c) The department may exempt a licensee from the continuing
28 education requirement under (b) of this section upon an application of
29 the licensee setting out extenuating circumstances. A licensee may

1 not receive more than one exemption under this subsection in a five-
2 year period.

3 ARTICLE 3. GENERAL PROVISIONS.

4 Sec. 08.45.200. TITLES AND ABBREVIATIONS. (a) A person li-
5 censed under this chapter may use the following titles: "Naturopath",
6 "Doctor of Naturopathy" or its abbreviation, "N.D.". A person li-
7 censed under this chapter may not use a title in a manner that sug-
8 gests that the person practices a form of medicine or a healing art
9 other than naturopathy.

10 (b) A person may not use a title or abbreviation listed in (a)
11 of this section unless the person is licensed under this chapter.

12 Sec. 08.45.205. VIOLATIONS. (a) A person is guilty of a
13 class B misdemeanor if the person

14 (1) fraudulently obtains or furnishes a temporary permit,
15 license, renewal, or record required by this chapter;

16 (2) wilfully violates a provision of this chapter or a
17 regulation adopted under this chapter.

18 (b) A person who practices naturopathy or naturopathic medicine
19 without a valid temporary permit or license issued under this chapter
20 is guilty of a class A misdemeanor.

21 Sec. 08.45.220. DEFINITIONS. In this chapter

22 (1) "department" means the Department of Commerce and
23 Economic Development;

24 (2) "naturopathy" and "naturopathic medicine" means a
25 system of healing the human body that includes diagnosis and treatment
26 through the use of natural agencies, forces, processes, and products
27 with emphasis on the response of the individual to the disease rather
28 than its treatment in isolation.

29 * Sec. 3. LICENSING OF PRACTITIONERS OF NATUROPATHY OR NATUROPATHIC

1 MEDICINE WITHOUT EXAMINATION. The commissioner of commerce and economic
2 development shall license all persons who, on the effective date of this
3 Act, meet the qualifications of AS 08.45.110(1) - (3) and (5) - (7) and who
4 apply for licensure under AS 08.45 not later than June 30, 1985.
5 * Sec. 4. This Act takes effect July 1, 1984.