

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 86/2

2658 SLC SB 481 - SB 494 (FILE 1)

they will be able to respond to the needs of their own association for the erection of new buildings, acquisition of new lands or equipment or development of new cemetery services such as mausoleums.

The last section of the bill also adds a broader definition of "cemetery lot" to the Alaska Unfair Trade Practices and Consumer Protection Act. This definition refers to AS 45.50.471(b)(24), which regulates the sales of funeral or burial goods or services before "need" (i.e. before death). Under 471(b)(24) as it presently exists, a corporation or association making advance sales of funeral goods or services is required to deposit the consumers' monies in a trust fund pending actual use by the consumer. There is presently an exemption from trust deposit for the amount paid for the actual cemetery lot and grave marker. By expanding the definition of cemetery lot, an advance purchase of a mausoleum crypt, or a crematorium deposit space of some sort, would also be exempt from this trust deposit requirement.

The Department of Law does not oppose this change, since it seems reasonable that this broader definition of cemetery lot be adopted to meet with modern day marketing of burial goods such as crematory crypts. The Consumer Protection section does not believe that broadening this definition will lead to any abuse of the advance-need funeral statute, despite what members of the public or Legislature might fear because of the recent debacle with the Valley Memorial Garden Cemetery near Palmer. (Unfortunately, most of the advance-need burial sales made by that cemetery were made before the effective date of AS 45.471(b)(24), and it was the lack of any trust requirement for any portion of the advance-need sales price which allowed the abusive dissipation of those funds by the for-profit cemetery corporation known as Valley Memorial Gardens, Inc.)

If legislators have a concern that the purchase monies from consumers who purchase cemetery lots or crematory crypts in advance need further protection, a further sentence could be added to 471(b)(24) to the effect that cemetery lots (as more broadly defined by this bill) are exempt if they are in fact, upon payment of the purchase price, "transferred" from the seller to the consumer. Although transfer is not usually made in the sense of legal property "title" transfer, designation of the space as a consumer's by the placement of a grave stone marker already marked with the consumer's name and designation of the plot or crypt as the consumer's on the official map of the cemetery should be sufficient protection.

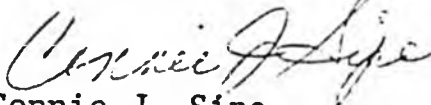
Honorable Joe Hayes  
Speaker of the House

February 3, 1984  
Page 3

Overall, the Attorney General's office does not see significant problems with the enactment of House Bill \_\_\_\_\_.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Connie J. Sipe  
Assistant Attorney General  
Consumer Protection Section

Alaska State Legislature

SENATOR  
ROBERT H. ZIEGLER, SR.  
307 BAWDEN STREET  
KETCHIKAN, ALASKA 99901

While in Juneau

POUCH V  
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN  
SENATE RESOURCES COMMITTEE

MEMBER  
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE  
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL  
OF STATE GOVERNMENTS

March 12, 1984

Judiciary Concerns

Senator Bill Ray, Chairman  
Senate Judiciary Committee  
Alaska State Legislature  
Juneau, Alaska

Re: SCS CSHB 569.

Dear Senator Ray:

Here is a copy of the proposed SCS CSHB 569, an act relating to cemetery associations, nonprofit cemetery corporations and cemetery lots.

I am told by Representative Phillips, prime sponsor of the original bill, that either Senator Josephson or Pettyjohn will be prepared to carry this bill upon request, inasmuch as the same people who asked Randy to introduce the bill made the same request of the two good senators.

I hope that is the case, for I certainly can't muster up any enthusiasm for the legislation. On the other hand, I have nothing against the bill.

The major change between all other versions of the bill and the bill before you is that on page two, lines seven and eight, we have endeavored to obviate your objection to the earlier language. As I recollect, you thought it was pretty loosely drawn and that interest or income, as applied to property, could be utilized for almost any purpose whatsoever. Now it is restricted to the property of the association or corporation related to operation of a cemetery.

Apparently the residue or balance in an irreducible fund can be dispersed pursuant to other provisions of the law found in Section 10.20.

Finally, I suggest that my final attachment, the letter of February 23rd from Assistant Attorney General Sipe to Speaker Hayes, be disseminated to all members of the Senate whenever the bill is calendared. It explains the bill as well as anything or anybody ever could.

I hope this helps.

Very truly yours,

3-

Robert H. Ziegler, Sr.

RHZ:lk

Enclosures

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3000

February 3, 1984

FEB 03 1984

The Honorable Joe Hayes  
Speaker of the House  
Alaska State House of  
Representatives  
Pouch V  
Juneau, AK 99811

Re: House Bill \_\_\_\_\_  
relating to nonprofit  
cemetery corporations

Dear Representative Hayes:

You have asked the Consumer Protection section of the Attorney General's office to review House Bill \_\_\_\_\_ regarding nonprofit cemeteries, and to inform you whether the Department of Law has any difficulties with the overall concept behind the bill, specifically whether it would pose a threat of injury to the consuming public dealing with nonprofit cemeteries in the state.

My understanding of the intent behind the bill is to modernize and clarify the 1949 Nonprofit Cemetery Association statute presently in effect. The bill would allow nonprofit cemetery associations to be incorporated as nonprofit corporations under AS 10.20 and would generally give the nonprofit cemetery association or corporation more flexibility in how it invests the monies in its irreducible fund, how it spends its other revenues and how and for what purposes it may contract debts. The crucial part of this updating was to add a definition of "cemetery lot" to include not only grave spaces but also mausoleum crypts, or crematory niches, since those items are often the preferred choice of modern consumers.

The Consumer Protection section in the Attorney General's office is not opposed to this bill and does not think that it will cause any harm to the public. If anything, the bill will allow those nonprofit cemetery associations operating in the state to better serve their own membership. Since these associations are like cooperatives, owned and controlled by the members, there is little danger of overreaching or abuse of the corporation's cemetery assets. The changes in this statute will only further the worthy purposes of the cemetery associations as

they will be able to respond to the needs of their own association for the erection of new buildings, acquisition of new lands or equipment or development of new cemetery services such as mausoleums.

The last section of the bill also adds a broader definition of "cemetery lot" to the Alaska Unfair Trade Practices and Consumer Protection Act. This definition refers to AS 45.50.471(b)(24), which regulates the sales of funeral or burial goods or services before "need" (i.e. before death). Under 471(b)(24) as it presently exists, a corporation or association making advance sales of funeral goods or services is required to deposit the consumers' monies in a trust fund pending actual use by the consumer. There is presently an exemption from trust deposit for the amount paid for the actual cemetery lot and grave marker. By expanding the definition of cemetery lot, an advance purchase of a mausoleum crypt, or a crematorium deposit space of some sort, would also be exempt from this trust deposit requirement.

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# Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311  
OFFICE HOURS:  
10 A.M. TO 3 P.M.

January 19, 1984

CEMETERY  
AND  
OFFICE  
ON KLATT ROADMr. Randy Phillips  
State Legislator  
Juneau, Alaska

Dear Mr. Phillips:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, were to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association really needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niche and storage vault. Also we can not even build a much needed administartion building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non paid.

Sincerely,  
Special Committee  
Mr. Alvah C. Buswell, Jr.  
Chairman

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures

This material has also been sent to Representative Joe Hayes

*REASON BEHIND BILL*

Honorable Joe Hayes  
Speaker of the House

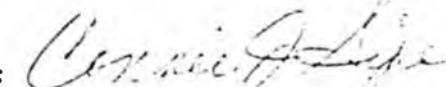
February 3, 1984  
Page 3

Overall, the Attorney General's office does not see significant problems with the enactment of House Bill \_\_\_\_\_.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:



Connie J. Sipe  
Assistant Attorney General  
Consumer Protection Section

S

B

485

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: February 29, 1984

REQUEST

Bill/Resolution No.: SB 485  
 Title: An Act relating to permissible service charges by Financial Inst.  
 Sponsor: Josephson  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.  
 Program Category Affected: Consumer Protection  
 BRU, Program or Subprogram(s) Affected: Banking, Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Willis F. Kirkpatrick, Director  
 Division: Banking, Securities and Corporations

Phone: 465-2521

Date: 2/29/84

Approved by Commissioner: Richard A. Lyon  
 Agency: Commerce and Economic Development

Date: 3/5/84

Distribution (by Agency preparing fiscal note):

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

12/1/83

SB 485 TITLE & SPONSOR SUMMARY

14:32 5/22/84 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO THE PERMISSIBLE INTEREST AND SERVICE CHARGES OF FINANCIAL INSTITUTIONS, AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: JOSEPHSON.

CO-SPONSORS:

CURRENT STATUS: 2/13/84 IN (S) LABOR & COM REFERRAL: FINANCE

SB 485 SENATE ACTION

14:32 5/22/84 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/13/84	01	2049	FIRST READING -- COMMITTEE REPORTS LABOR & COMMERCE FINANCE RULES

\*\*\* \*\* \*\* \*\* \*\*

MSG 84-06017737 PRTY 1  
FROM: DAVE/AND LIO  
TARGET: LUNK SUBJ: POM

15:14:43 ORIG: LA04 IN= 0009 OUT= 0153  
TO: POM - JNO LIO

-----  
TO: SENATORS BENNETT, ELIASON, JOSEPHSON, MULCAHY, PETTYJOHN, RODEY AND SACKETT  
FROM: PHIL THINGSTEAD  
407 DENALI  
ANCHORAGE, AK 99501  
276-3533

MESSAGE: PLEASE DO NOT SUPPORT SR 485 ON DEREGULATION OF INTEREST RATES AS  
IT WOULD HURT THE WORKING PEOPLE.

EDM/\*\*\*\*\*

MSG 84-00017112 PRTY 1 02/24/84 08:49:41 ORIG: LA02 IN= 0003 OUT= 0014  
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO  
TARGET: LJHK SUBJ: P O M 6

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TO: SENATORS KERTTULA, V. FISCHER, ELIASON, SACKETT AND BENNETT  
FROM: NANCY GROSZEK  
729 K ST. #F  
ANC 99501 H 278-2150 W 279-7541

I STRONGLY OPPOSE SB 485 RELATING TO PERMISSIBLE INTEREST RATES AND SERVICE CHARGES. WHAT IS THE JUSTIFICATION FOR RAISING INTEREST RATES TO 24%? BILL ALSO APPEARS TO VIOLATE FEDERAL TRUTH IN LENDING LAW ALSO KNOWN AS REGULATION Z. "INTEREST AT A RATE AGREED BY CONTRACT" IS A SHAM. MIDDLE AND LOWER INCOME PEOPLE DO NOT HAVE EQUALITY IN BARGAINING POSITIONS WITH FINANCIAL INSTITUTIONS: BILL ALSO APPEARS TO VIOLATE CIVIL COURT RULE 82.

/S/ NANCY GROSZEK

EOM

S

B

488

FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: SB 488  
 Title: "...relating to unfair trade practices."  
 Sponsor: Sen. Josephson  
 Requestor: Sen. Labor & Commerce  
 Date of Request: 2/17/84

FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2-21-84  
 Approved by Commissioner: Norman C. Gorsuch Date: 2-21-84  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Fiscal Note 12/1/83

This bill is the first comprehensive revision of Alaska's unfair trade practices and consumer protection statutes since 1974. The bill clears up ambiguities raised by Alaska court decisions; for instance, the bill reaffirms that the statute is meant to protect: (1) purchasers of real property, and (2) business or government entities purchasing goods or services as "consumers". The bill encourages members of the public to seek private redress for violations of the statute, by clarifying the private cause of action provisions, and creating a new cause of action by an honest business against a competitor which damages the honest merchant by its deceptive conduct.

It is not expected that this bill will have any fiscal impact on the Department of Law's Consumer Protection Section because the bill refines the Section's law enforcement tools (by eliminating substantive and procedural ambiguities), and encourages more citizens to act on their own behalf rather than seeking government intervention (by the strengthened private action amendments).

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

February 17, 1984

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

The Honorable Richard I. Eliason, Chairman  
Senate Labor and Commerce Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SB 488 (unfair trade practices and  
consumer and business protection)  
Our file no. 377-053-84

Dear Senator Eliason:

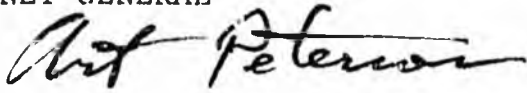
Sheila Peterson, of your staff, asked today for our position paper and fiscal note on this bill. Our position is that we strongly support the bill. I am enclosing a copy of the draft transmittal letter that we prepared when it was contemplated that the governor would be introducing the bill. That letter sets out the major goals of the bill and includes a section-by-section analysis. Dick Pegues, our director of administrative services, will be sending you the fiscal note. I believe that it will be a zero fiscal note.

If we may be of further assistance on this, please do not hesitate to call on us.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:



Arthur H. Peterson  
Assistant Attorney General

AHP:djc

cc w/enclosure:

The Honorable Joe Josephson  
Alaska State Senate

Hon. Richard I. Eliason, Chairman  
Senate Labor and Commerce Committee  
Our file no. 377-053-84

February 17, 1984  
Page 2

cc w/o enclosure:

Connie J. Sipe  
Assistant Attorney General  
Chief, Consumer Protection Section  
Department of Law/Anchorage

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which amends and re-names art. 4 of AS 45.50 which has been titled "Unfair Trade Practices and Consumer Protection." (AS 45.-50.471 -- 45.50.561 or "the UTP Act.") This bill is the first comprehensive revision to these statutes since 1974. The bill was prepared by the consumer protection section of the Department of Law in response to decisions by our courts under the present statutes and based on the suggestions of businesses, consumers, attorneys, and legislators in our state.

The bill has seven major goals:

1. to clarify that every Alaskan who buys or leases any item in trade or commerce for use (not for resale) is a protected consumer under these statutes, whether the buyer is an individual buying a car, a business concern buying airline tickets for employees, or a village corporation buying office photocopier supplies;

2. to clarify that honest business competitors may bring a private cause of action for damages against their less scrupulous competitors who injure them through the use of unfair or deceptive trade practices;

3. to clarify and simplify the investigative procedures used by the attorney general, and to make them less threatening to the business under investigation;

4. to clarify the role of the attorney general when bringing an enforcement action on behalf of the general public to stop an unlawful practice and to seek restitution for injured consumers;

5. to eliminate any barriers to private victims of fraud who wish to seek their own redress in the courts;

6. to ensure that out-of-state businesses which reach into our marketplace to do business with Alaskans are covered by the UTP Act, and to further ensure that all aspects of "trade or commerce" in the Alaskan marketplace are also covered, not just the narrow area of "goods or services";

7. to cure substantive, procedural, and language defects which have made the UTP Act difficult to enforce in the past.

In order that the full intent of this bill be clearly understood, a detailed section-by-section analysis follows.

## Section-By-Section Analysis

### Change in Name of Act

The first change made by this bill is to re-name art. 4 of AS 45.50 which is now titled "Unfair Trade Practices and Consumer Protection" to be the "Unfair Trade Practices and Consumer and Business Protection Act," to emphasize the intent of the amendments in the bill. Article 4 will be referred to in this analysis as "the UTP Act" or simply "the Act."

### Section 1. Consolidating Consumer Laws

Section 1 of the bill amends AS 45.50.471(b), which is a list of examples of the type of unfair or deceptive trade practices which the Act prohibits. Two practices are added to the list, failure to comply with AS 45.45.105 -- 45.45.110, regarding unsolicited merchandise, and failure to comply with AS 45.45.120 regarding disclosure of funeral costs. Although these statutes contain no enforcement provisions, it has been the informal opinion of the attorney general that they may be enforced under the UTP Act, since they are clearly meant to protect consumers. Their direct inclusion in the Act more clearly allows their enforcement. Alaskans are frequent victims of unsolicited merchandise schemes from the lower 48, and of funeral home over-reaching in sales to bereaved families.

## Section 2. Exemptions from the Act

Section 2 of the bill would clear up an area of ongoing confusion regarding what types of business activities are exempt from the UTP Act under AS 45.50.481(1). This paragraph is in need of amendment because it has been a source of continued controversy due to its "double-negative" language, and because of its potential to exempt almost all commercial activities from the UTP Act. Under AS 45.50.481(1), as amended by this bill, the UTP Act would not apply to acts or transactions which are regulated by other laws, only if the other law: (1) prohibits the same type of unlawful practices, (2) does not exempt from regulation the very person who is committing a prohibited act or practice, (3) provides a private cause of action for injured consumer or competitor victims, and (4) provides the state with adequate means to compel compliance with the statute and to recover restitution for injured parties, in the public interest.

This amended exemption section recognizes that while government should not duplicate regulatory efforts, the state also should not exempt a licensed professional or tradesman from the standard of honest conduct that governs unlicensed, unregulated vendors of a different type of goods or services. It also recognizes that activity should not be exempt from the UTP Act merely because the activity

constitutes a crime.

The amendment does not cause "double regulation" of licensed professions or occupations, but rather acknowledges that "regulation" through licensure or certification by a board or commission is not the same type of public law enforcement protection as that provided in the UTP Act. Although some boards have power to prohibit a licensed professional from repeating unlawful practices in the future, most boards do not have authority to order, grant, or even to seek restitution for members of the public who were injured by the licensee.

This section of the bill would ensure that both private injuries and injuries to the public interest can be corrected, but it does not set up a new "regulatory" scheme.

### Section 3. Investigations by the Attorney

#### General

Section 3 of this bill is a comprehensive revision of AS 45.50.495, which deals with the investigative powers of the attorney general. Currently, the grant of investigative powers focuses on the use of a "subpoena," without describing the method by which the attorney general decides to issue a subpoena, nor the rights of the subpoenaed person to challenge the scope or method of the

investigation. This section of the bill more clearly sets out the steps the attorney general must follow before and during using formal investigations.

At AS 45.50.495(a), the bill inserts new language that shows that the attorney general must have cause to believe that an illegal act is happening, based on information received from public complaints, information from other agencies, or from information gained by the attorney general's own inquiries. Also, in this subsection the new term "civil investigative demand" is first used. This term is substituted for the word "subpoena," which had a more onerous or quasi-criminal connotation.

AS 45.50.495(b) as revised by this bill, describes in detail what information is required to be included on the face of an investigative demand. Although it has been the practice of the attorney general to disclose this information, having the requirements set by law makes it more clear to both the attorney general's staff and to the person involved in the investigation.

The bill adds new AS 45.50.495(c), describing the way in which the attorney general may serve a civil investigative demand. Previously, a subpoena had to be served by a process server or a state trooper, which often caused undue alarm to the person being served. Under this new subsec-

tion, service may be made the same way as for a subpoena from a civil court action, which is much less onerous and does not always require delivery by a process server or a law enforcement officer.

New AS 45.50.495(d), (e), and (f) set out the location where testimony sought under a civil investigative demand shall be made, and the manner in which a person may seek a modification or waiver of the civil investigative demand. If the attorney general denies a request for modification, the person under investigation may file a petition in court, asking the court to grant the request.

New AS 45.50.495(g) provides that a person served with an investigative demand who does not seek relief under subsec. (f), and who fails to respond to the demand, may be held in contempt of court for failure to answer the investigative demand. Again, although standards for enforcement similar to those set out in the bill are already followed, it is the opinion of the attorney general that statutory notice would better ensure procedural fairness to all parties concerned.

Section 4. Public Interest Lawsuits  
by the Attorney General

Section 4 of the bill would expand and clarify AS 45.50.-

501, which is the section under which the attorney general brings public interest actions in the courts to stop unfair and deceptive trade practices. The attorney general does not have power to order a business to cease and desist, but must go to court and prove a civil case before a business will be ordered by the court to stop a particular practice.

The new language in AS 45.50.501(a) includes a vital revision to clarify that any one outside Alaska who solicits the business of Alaskans or otherwise trades with Alaskans with knowledge that the goods or services will reach Alaska, is subject to the jurisdiction of our courts and to prosecution by our attorney general for any unfair or deceptive trade practices which harm Alaskan businesses or consumers. Although legislative history shows that this was the intent of the existing language, a 1980 Alaska Supreme Court decision throws some doubt on whether the existing language in AS 45.50.501 is sufficient to vest the courts with the total extent of "long-arm jurisdiction" granted to them in AS 09.05.015. Swenson Trucking & Excavating Inc. v. Truckweld Equipment Co., 604 P.2d 1113 (Alaska 1980). The amendment in the bill cures this potential defect.

The new language of AS 45.50.501(a) and (b) also clarifies that not only may the attorney general seek a temporary,

preliminary, or permanent order or injunction against unlawful practices, but that the attorney general may also, acting on behalf of citizens injured by an unlawful act or practice, seek to restore the status quo by a court order to return to victims whatever money or property they may have lost by the unlawful actions of the business defendant.

Other amendments to AS 45.50.501 became necessary when a recent court decision interpreted current AS 45.50.501(b) so as to create several barriers to the attorney general's ability to obtain restitution for victims in a public interest action. State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982). Specifically, new subsecs. (b) through (g) clarify that when the attorney general seeks restitution for a group of injured citizens, the attorney general does not "represent" each of them as would a private attorney, and that the attorney general's lawsuit is not what is otherwise known to the courts as a "class action." If the attorney general were forced to follow the cumbersome procedures for "class actions" each time he seeks restitution, the attorney general might be forced -- in the interest of putting an expeditious halt to unlawful activity -- to seek only injunctive relief and not restitution to victims.

Restitution to victims plays a critical role in law

enforcement, since a civil injunction against a business violator, without a requirement that the violator repay ill-gotten profits back to the victims, would not provide an adequate deterrent to businesses who might violate the law. It is in the interest of honest competitors, consumer victims, and the general public, that those who violate the law lose their ill-gotten gains, and that this money be put back into the marketplace.

New AS 45.50.501(c) provides that the attorney general will give notice of actions brought under subsec. (b) to all affected consumers. New subsec. (d) provides a method by which consumer victims could decide to "opt-out" from the public action.

The addition of AS 45.50.501(e) and (f) ensures that consumer victims will not get duplicate recoveries, once from the public interest action by the attorney general, and once by a private action. It further ensures that a victim who elects the public action by the attorney general will be bound by a court's decision in that case and be prevented from pursuing a private claim for the same remedy.

New AS 45.50.501(g) ensures that procedural requirements will not interfere with speedy law enforcement by the attorney general, so that requirements for consumer notice

and elections to opt-in or opt-out of the public interest action would not delay a request by the attorney general for an order or injunction to halt the unlawful activity.

New AS 45.50.501(h) is intended to strengthen the message to our courts that once the court has found, to a sufficient degree of probability, that an unfair practice is occurring, that the court should and must grant a preliminary injunction in the public interest to restrain the use of the unlawful act pending the time when the court can hear a full trial on the case. The message to the courts would be clear that an unlawful trade practice should not be tolerated longer than necessary.

New AS 45.50.501(i) amends a serious deficiency in existing subsec. 501(b). The bill gives the court further powers to ensure that there will be, if at all possible, money available to make restitution to victims of the unlawful scheme. The bill adds the specific power of the court to grant a prejudgment attachment of a violator's money or property to make restitution, or in the alternative, to appoint a receiver to manage the business's money or property until the time for restitution.

This addition to existing AS 45.50.501(b) is needed because of court rulings that under our prejudgment attachment statute, AS 09.40.010, the courts do not have power

to grant prejudgment attachment of money upon request of the attorney general in an action enforcing the UTP Act. When the attorney general wins the case at final trial, one or two years after the fraud actually occurs, the business has often transferred its assets or filed for bankruptcy. With this amendment, the courts may use all legal or equitable remedies that may be necessary to restore the status quo, and make whole all persons injured by an unlawful act.

Sections 5 -- 8. Private and Class Actions for  
Consumers and Businesses

Section 5 of the bill amends AS 45.50.531(a) and expands the private and class actions that may be brought by individual members of the public. New subsec. (a) makes it clear that any person who purchases or leases any item of value in trade or commerce for use and not for resale (not merely the traditional household or family consumer buying goods or services), may bring a private cause of action against a party who uses an unfair trade practice which harms the purchaser or lessee. Another amendment to subsec. 531(a) deletes the existing clause specifying in which judicial district the injured person must sue. This designation is moved to new AS 45.50.531(j), in sec. 8 of the bill.

Section 6 of the bill amends the private class action portion of the UTP Act (AS 45.50.531(b)) to eliminate the requirement that an injured person wishing to bring a class action on behalf of himself and other similarly situated persons is required to first get the approval of the attorney general. Such a prerequisite is an unfair and perhaps unconstitutional barrier to a private party's right to seek redress from the courts.

Section 7 of the bill amends AS 45.50.531(h), which allows honest Alaskan merchants who are found liable for damages in a court action under the Act to seek redress in turn from their manufacturer or supplier of merchandise. The bill amends this provision to enable a retailer to also seek redress from the manufacturer or supplier when the retailer satisfies a customer's claim without a legal action. The retailer must give reasonable notice and an opportunity to satisfy the customer's claim to the manufacturer or supplier, but if the manufacturer or supplier does not do so, the retailer would have a private cause of action to recover the cost of satisfying the customer.

Section 8 of the bill amends AS 45.50.531 in a very important way by adding a new provision that a business which is injured by a competitor who commits an unfair or deceptive trade practice has a private cause of action against the competitor. This cause of action may be inferred in

the current UTP Act, but, in order to enhance the rights of private business competitors to guard their own place in the market against unfair competition, a clearly spelled out private cause of action for the injured competitor is needed.

Section 8 also cures a serious potential defect in the Act, by clarifying in new AS 45.50.531(j) that a private consumer or business who exercises the private right of action under new ~~sec.~~ 531 is entitled to seek relief not only against a business located in Alaska, but also against outside businesses which solicit trade with Alaskans, or send merchandise or services into Alaska. As with the amendment to AS 45.50.501(a) in sec. 4 of the bill, dealing with the attorney general's lawsuits, this revision is necessary to eliminate the ambiguity caused by the 1980 Alaska Supreme Court decision in the Swenson Trucking case, which implied that the existing Act might not apply to a Seattle business which did not maintain a place of business within Alaska. Under Alaska's "long-arm" jurisdiction statute, AS 09.05.015, most outside businesses which deal with Alaska would be subject to the "personal" jurisdiction of our courts, but perhaps not to the "subject matter" jurisdiction of this Act. This ambiguity will be cured by adding new AS 45.50.531(j).

Sections 9 -- 12. Revised and Expanded Definitions  
of Who is Protected by the UTP Act; Short Title

Section 9 of the bill amends AS 45.50.541, the only section of the UTP Act where it is appropriate to restrict the word "consumer" to mean a person who acquires goods or services for personal, family, or household purposes (as opposed to a business or municipal "consumer" who purchases goods for use in the work place). AS 45.50.541 is concerned with the nonnegotiability of consumer installment contracts or "paper," such as the three-year contract signed by a consumer purchasing a health spa membership or an automobile. The special protections in this section are necessary only for a consumer who finances the traditional type of consumer purchase made for personal, family, or household use. Therefore, a restrictive definition of "consumer" is added to AS 45.50.541 as subsec. (d).

Section 10 of the bill deals with a similar problem. Presently, AS 45.50.542 contains a provision that "consumers" cannot waive their protections under the Act. To make it clear that this Act covers all types of customers, and not merely a restrictively defined "consumer," the bill amends this section to read that a waiver by any person who is the intended beneficiary of the protections in the Act is contrary to public policy, and is void.

In sec. 11 of the bill, new AS 45.50.560 provides for a short title by which to cite AS 45.50.471 -- 45.50.561, "The Unfair Trade Practices Act."

Section 12 of the bill amends AS 45.50.561 by adding three definitions. The first, AS 45.50.561(9), clarifies that whenever the word "person" is used in the UTP Act, it has the meaning given to it in AS 01.10.060(7), which is

"person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

The second new definition, AS 45.50.561(10), is a crucial component of this bill. It adds a definition of "trade or commerce" that affects the operative section of the entire Act, AS 45.50.471, which forbids unfair or deceptive practices in "the conduct of trade or commerce." Recent court decisions have limited the coverage of the UTP Act to merely the sale of "goods or services," which would eliminate real property and commercial intangibles, such as commodity futures from the Act. However, it is the opinion of the attorney general that it was the original intent of the legislature to prohibit all unfair trade practices, not only in the sale of goods or services, but in the conduct of any type of "trade or commerce." The new definition of trade or commerce includes not only a sale or lease, but all advertisements or offers for sale, or the barter or any other type of distribution of any type of goods, services, or any type or property, article,

commodity, or other thing of value.

This definition of "trade or commerce" is especially critical in reversing the Alaska Supreme Court's ruling that the UTP Act does not cover the sale of real property. State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982). Under that ruling and traditional property law, a builder or developer who sells a piece of land with a newly built home on it, may well not be covered by the UTP Act because the house and arguably the materials, appliances, and builder services included in its construction are considered to be "real property."

The court's restriction of the UTP Act to "goods or services" also leaves other gaps in the public protection. For instance, Alaskans are often exposed to high pressure offers to buy commodity futures, an item of value in trade or commerce, but which is not regulated by our state securities law, and arguably is not "goods" or "services," under the UTP Act.

HB 236, introduced during the 1983 session by Representatives Lacher, Koponen, and Clocksin, contains the same definition of "trade or commerce." HB 236 is currently in the House Labor and Commerce Committee.

Section 12 also adds, as AS 45.50.561(11), a definition of

what it means for a person to "willfully" violate the statute. The term "willful" is not of relevance in public actions brought by the attorney general, but is the operative language which gives rise to triple damages in private actions brought by consumer victims or honest competitor victims who use their private cause of action against unfair trade practices.

Section 13 of the bill repeals AS 45.50.561(6), the definition of "consumer." Section 9 of the bill adds a more restrictive definition of "consumer" only to AS 45.50.541, concerning the nonnegotiability of consumer paper, where it is appropriate.

In summary, this bill reflects the practical experience of the attorney general's staff, and consumers and businesses in the state over the last nine years of using the existing Unfair Trade Practices Act. Such a vital law enforcement tool as this Act is due for a well-planned refinement to better serve our citizens. I therefore urge your prompt and favorable action on this measure.

Sincerely,

Bill Sheffield  
Governor

DEPARTMENT OF LAW

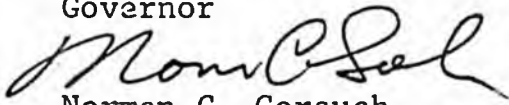
OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

January 13, 1984

M E M O R A N D U M

TO: Honorable Bill Sheffield  
Governor

FROM:   
Norman C. Gorsuch  
Attorney General

RE: Attached bill concerning unfair trade practices  
and consumer and business protection  
Our file: 377-053-84

Attached is a bill that would make a number of amend-  
ments to and re-name art. 4 of AS 45.50, which has been titled  
"Unfair Trade Practices and Consumer Protection." The bill was  
requested by the consumer protection section of the Department  
of Law, and approved by the L/BRC on October 20, 1983. The pri-  
mary purposes of this bill are the following:

- (1) to enhance and expand the protection offered both  
to honest Alaskan businesses and to Alaskan consumers;
- (2) to simplify the law enforcement procedures used  
in investigations and litigation by the attorney gen-  
eral;
- (3) to better enable consumer or business victims of  
fraud to seek their own private redress in the courts;
- (4) to ensure that all aspects of Alaska's "trade and  
commerce" which affect the consumer marketplace are  
covered by this article; and
- (5) to correct various procedural and language de-  
fects or omissions in the present statutes.

Also attached is a transmittal letter to the legisla-  
ture which describes the bill in more detail and includes a sec-  
tion-by-section analysis to help with legislative consideration  
of the bill and provide legislative history.

NCG:CJS:an

cc w/enc.: Honorable Richard A. Lyon  
Commissioner  
Department of Commerce and Economic  
Development

Honorable Bill Sheffield  
377-053-84

January 13, 1984  
Page 2

Connie J. Sipe  
Assistant Attorney General  
Consumer Protection Section  
Department of Law  
Anchorage

SB 488 TITLE & SPONSOR SUMMARY

14:33 5/22/84 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO UNFAIR TRADE PRACTICES AND CONSUMER AND BUSINESS PROTECTION

PRIME SPONSOR: JOSEPHSON.

CO-SPONSORS:

CURRENT STATUS: 2/13/84 IN (S) LABOR & COM REFERRAL: JUDICIARY

SB 488 SENATE ACTION 14:33 5/22/84 PAGE 2 OF 2

DATE SEQ PAGE LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/13/84	01	2050	FIRST READING -- COMMITTEE REPORTS LABOR & COMMERCE JUDICIARY RULES

\*\*\* \*\* \*\* \*\*\* \*\* \*\*



MSC 84-00028778 PRTY I 03/27/84 14:24:28 ORIG: LS00 IN= 0013 OUT= 0050  
FROM: SITKA TO: TOM/PRIMARY MODERATOR  
TARGET: LJHV SUBJ: S L&C, 3/27, HB 488 TC

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F I N A L S T A T S

\*\*\*\*\*  
LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET  
\*\*\*\*\*

DATE: MARCH 27, 1984  
SITE: SITKA  
SPONSOR/SUBJECT: SENATE LABOR & COMMERCE/HB 488, UNFAIR TRADE ACT

1	TESTIFIED	1	STARTED:	1:30
0	OBSERVED	**	ENDED:	2:15
**1*	TOTAL			

TESTIFIED  
\*\*\*\*\*

1. BOB TICE, BOX 2426, SITKA, AK 99835 747-5989

\*\*\*\*\*

WILL SEND HAINES STATS WHEN I GET THEM.

\*\*\*\*\*  
\*\*\*\*\*

MSG 84-00028795 PRY 1 03/27/84 14:37:34 ORIG: LA19 IN= 0009 OUT= 0054  
FROM: ANCHORAGE TO: TOM/FINAL STATS  
TARGET: LJVH SUBJ: (S) LABOR & COMMERCE, 3/27

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\*\*\*\*\*  
LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET  
\*\*\*\*\*

DATE: MARCH 27, 1984  
SITE: ANCHORAGE  
SPONSOR/SUBJECT: (S) LABOR & COMMERCE, SB 488

...2..TESTIFIED	*****T/C STARTED: 1:35
...0..OBSERVED	*****T/C ENDED: 2:13
...2..TOTAL	

TESTIFIED  
\*\*\*\*\*

1. CONNIE SIPE/DEPT. OF LAW, 1031 W. 4TH, 99501, 279-0478
2. MAUREEN KENNEDY/AKPIRG, P.O. BOX 1093, 99510, 278-3661

\*\*\*\*\*



OFFICIAL BUSINESS

# ALASKA STATE LEGISLATURE - SENATE

## COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON  
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811  
(907) 465-3844

3/19/84

The Senate Labor and Commerce Committee today announced a state-wide public hearing via the teleconference network to take testimony concerning S.B. 488 - "An Act relating to unfair trade practices and consumer and business protection". The teleconference is scheduled for March 27 at 1:30 at all Legislative Information Offices. Other sites will be added upon request.

SB 488 is a comprehensive revision and update of the Unfair Trade Practices Act. The bill would define the "trade or commerce" covered by the act and would clarify and strengthen the attorney general's preliminary relief powers. This legislation would also create private causes of action for businesses against a fraudulent competitor who is causing economic harm to an honest business, and against a manufacturer or distributor who is responsible for ultimate repayment of a consumer claim against a local merchant for deceptive advertising or defective merchandise.

If more information is needed, contact Sheila Peterson, Senate Labor and Commerce Committee, at 465-3844.

3/28/84

Re: Sen. Pettyjohn's concern about possible  
Court impact on SB 488 - Unfair Trade Practices

I talked to Karla Forsythe, General Counsel,  
Judicial Branch and she reviewed SB 488  
as to possible impact. Karla stated  
that SB 488 would not change court  
rules, but would complement the rules.  
The legislation clarifies procedures  
when dealing with consumer protection  
cases.

Ms Forsythe foresees some increase in  
caseload, but not a vast increase so she  
expressed no concern. Karla felt it  
is appropriate for the legislature  
to outline procedure to handle these  
cases

In other words, in Karla's opinion, the  
Court System would be neutral on  
SB 488

From: Sheila

Bill Fact Sheet

Date Received 2/13/46

Bill Number SB488 Title Unfair Trade Practices

Fiscal Note - Date Requested 2/16 Date Received \_\_\_\_\_

- Of Whom Consumer Protection (Law)

Dept. Position Paper - Date Requested 2/16 Date Received \_\_\_\_\_

- Of Whom \_\_\_\_\_

Resource People

Initial Hearing - Date 3/22/84  
People Contacted

- Don Magnuson
- Martin Tuvador
- Elaine Sunde
- Chamber (slate)
- Sen. Josephson
- Connie (AKPIRC)

Follow-up Hearing - Date \_\_\_\_\_

Final Action \_\_\_\_\_ Date \_\_\_\_\_

refer. 587 on 55700  
(a) 5 AAC 46.035. ~~2~~

"Not more than six lines may be fished from any charter vessel."

Authority: AS 16.05.251(a)(4)  
Regs of the Board of Fish

MSG 84-00027386 PRTY 1 03/22/84 11:41:46 ORIG: LS00 IN= 0003 OUT= 0072  
FROM: ELAINE, SITKA TO: JUNEAU  
TARGET: LJHK SUBJ: POM 3

TO: SENATOR ELIASON AND REPRESENTATIVE GRUSSENDORF

FROM: BOB TICE  
BOX 2426  
SITKA, AK. 99835 747-5989

RE: SPORT FISHING REGULATION

I SENT YOU A MESSAGE ON MARCH 20 CONCERNING MY ATTEMPT TO START A SPORT FISH CHARTER SERVICE IN SITKA. I AM APPARENTLY BLOCKED BY A REGULATION THROUGH ADF&G WHICH PERMITS NO MORE THAN 6 RODS IN THE WATER AT ONE TIME. MY BUSINESS WOULD BE A DAILY BOAT, LEAVING SITKA HARBOR, WITH PEOPLE ABLE TO RESERVE A SPACE FOR MUCH, MUCH LESS MONEY THAN CHARTERING A FULL BOAT. I WANT TO MAKE SOME FISHING AVAILABLE TO LOCAL RESIDENTS WITHOUT BOATS, AS WELL AS VISITORS. FISH & GAME TELLS ME THAT THE KETCHIKAN CHARTER SERVICE ASSOCIATION HAS PUSHED THIS REGULATION THROUGH TO KEEP COMPETITION OUT. I THINK THIS IS UNFAIR TRADE RESTRICTION AND INTEND TO TESTIFY ON SB 488. CAN YOU PLEASE LOOK INTO THIS REGULATION FOR ME? I AM VERY SHORT ON TIME TO FINALIZE THE BOAT PURCHASE & PROCEED. THANK YOU.

-----SITKA LIO, 3-22-84 - 27396 -----

Please check out.

S

B

491

COMMITTEE SUBSTITUTE FOR SB 491 (L & C) IS A BILL WHICH AMENDS THE WEIGHTS AND MEASURES ACT, AS 45.75.

IN 1982, THE OVERWEIGHT AND OVERSIZE MOTOR VEHICLE PROGRAM WAS TRANSFERRED FROM THE DEPARTMENT OF PUBLIC SAFETY TO THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT. THIS TRANSFER INCLUDED THE DUTIES OF OPERATING VEHICLE WEIGHING STATIONS, ISSUING PERMITS FOR OVERWEIGHT AND OVERSIZE VEHICLES, AND ENFORCING THE VEHICLE SIZE, WEIGHT, AND LOAD LIMITS.

THE 1982 TRANSFER OF DUTIES WAS ACCOMPLISHED ONLY BY ADDING A PARAGRAPH TO THE GENERAL DUTIES TO THE DEPARTMENT OF COMMERCE. CSSB 491 COMPLETES THE TRANSFER BY ALSO ADDING THOSE DUTIES TO THE WEIGHTS AND MEASURES ACT.

SECTION 13 OF THIS LEGISLATION CLARIFIES THAT THE COMMISSIONER OF COMMERCE MAY AUTHCRIZE DEPARTMENT EMPLOYEES TO ISSUE CITATIONS TO PERSONS WHO VIOLATE THE DOT/PF VEHICLE SIZE, WEIGHT, AND LOAD LIMITS, THE PROVISIONS OF AN OVERWEIGHT OR OVERSIZE VEHICLE PERMIT, OR DEPARTMENT REGULATIONS. THIS ELIMINATES AN AMBIGUITY AND LOOPHOLE LEFT AFTER THE 1982 TRANSFER OF ENFORCEMENT AUTHORITY TO THE DEPARTMENT.

SECTIONS 26 AND 27 OF CSSB 491 STATES THE PENALTY FOR ALL WEIGHTS AND MEASURED OFFENSES IS A CLASS B MISDEMEANOR PLUS

FIVE CENTS A POUND FOR OVERWEIGHT VEHICLE OFFENSES. THIS CHANGE CONFORMS TO THE NEW CRIMINAL CODE AND WILL PROVIDE A MORE EFFECTIVE DETERRENT TO WEIGHTS AND MEASURES VIOLATIONS. CURRENTLY, MANY PEOPLE ARE TOO WILLING TO RISK CITATION FOR VIOLATIONS BECAUSE OF THE LOW MAXIMUM PENALTIES.

ALL OF THESE CHANGES IN THE WEIGHTS AND MEASURES ACT WILL INCREASE THE EFFECTIVENESS AND EFFICIENCY OF IMPLEMENTATION OF THE ACT, ESPECIALLY THE OVERWEIGHT AND OVERSIZE VEHICLE PROGRAM. THEREFORE, I URGE YOUR PASSAGE OF CSSB 491.

Support By Dept. of Commerce  
" " Alaska Truckers

ADDITIONAL INFORMATION

- 1) THE CHANGES MADE IN THE COMMITTEE SUBSTITUTE INCLUDE
  - A) PG 6, LINE 29 - DELETED "ARREST OR" SO THE DEPT REPRESENTATIVE CAN GIVE A CITATION FOR A VIOLATION, BUT CANNOT ARREST THE INDIVIDUAL
  - B) PG 12, LINE 1 - MADE THE PENALTY A CLASS B MISDEMEANOR INSTEAD OF THE ORIGINAL CLASS A MISDEMEANOR
  - C) PG 14, LINES 3-8 - ADDED SECTION 27 WHICH STATES THAT FIVE CENTS A POUND CAN BE ASSESSED FOR OVERWEIGHT VEHICLE OFFENSE IN ADDITION TO THE FINE ESTABLISHED AS A CLASS B MISDEMEANOR
- 2) CSSB 491 DECREASES THE FREQUENCY OF REQUIRED INSPECTIONS AND TESTS OF ALL WEIGHTS AND MEASURES FROM SEMI-ANNUAL TO ANNUAL, MORE FREQUENT INSPECTIONS AND TESTS CAN STILL BE MADE IN PROBLEM AREAS, HOWEVER.
- 3) SECTIONS 1 - 3 AND 5 - 26 CLARIFIES A CONFUSING APPROACH TAKEN BY THE 1961 LEGISLATION WHICH FIRST ENACTED THE WEIGHTS AND MEASURES ACT. FOR REASONS WHICH ARE NOT NOW CLEAR, THE COMMISSIONER OF COMMERCE

IS THE DIRECTOR OF WEIGHTS AND MEASURES AND THROUGHOUT THE CHAPTER MANY REFERENCES ARE MADE TO THE DIRECTOR. TO AVOID CONFUSION, CSSB 491 CHANGES ALL OF THOSE REFERENCES TO THE DIRECTOR TO BE REFERENCES TO THE COMMISSIONER.

AMENDED TITLE: CSSB 491(L&C)  
AN ACT RELATING TO WEIGHTS AND MEASURES, AND PROVIDING  
FOR AN EFFECTIVE DATE

PRIME SPONSOR: SENATE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 4/03/84 IN (H) LABOR & COM REFERRAL: FINANCE

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/14/84	01	2063	FIRST READING -- COMMITTEE REPORTS
02/14/84	02	2063	F/NOTE EQUALS ZERO
02/14/84	03	2063	GOV TRANSMITTAL LETTER
03/16/84	04	2374	L&C -- CS05
03/27/84	05	2486	MOVED FROM FIN TO RLS BY UNAN CONSENT
03/30/84	06	2540	RLS -- L&C CS05, OTHER05 TAKEN UP IMMEDIATELY
03/30/84	07	2549	SECOND READING
03/30/84	08	2549	L&C CS ADOPTED BY UNAN CONSENT
03/30/84	09	2550	ADVANCED TO 3RD READING BY UNAN CONSENT
03/30/84	10	2550	THIRD READING
03/30/84	11	2550	PASSED BY DIV 17-01-02
03/30/84	12	2550	EFFECTIVE DATE VOTE SAME AS PASSAGE
03/30/84	13	2550	NOTICE OF RECONSIDERATION GIVEN
04/02/84	14	2590	RECONSIDERATION NOT TAKEN UP

XXXX XX XX XXX XXX XXX

DATE	SEQ	PAGE	LEGISLATIVE ACTION
4/03/84	15	3178	FIRST READING -- COMMITTEE REPORTS LABOR & COMMERCE FINANCE RULES

XXXX XX XX XXX XXX XXX

# COMMITTEE REPORT

## SENATE

FURTHER:

FINANCE

2/14/84

Date

2/15/84

Mr. President

The Committee on LASER AND COHERENT considered SB 491

weights and measures; etc.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 491 (L&C)
- new title
- same title and recommends do pass
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Chairman

Chairman recommendation









STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

st 491

February 13, 1984

The Honorable Jalmar Kerttula  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the Weights and Measures Act, AS 45.75.

In 1982, the overweight and oversize motor vehicle program was transferred from the Department of Public Safety to the Department of Commerce and Economic Development. This transfer included the duties of operating vehicle weighing stations, issuing permits for overweight and oversize vehicles, and enforcing the vehicle size, weight, and load limits established by the Department of Transportation and Public Facilities (DOT/PF). (Ch. 77, SLA 1982)

The 1982 transfer of duties was accomplished only by adding a paragraph (25) to the general duties of the Department of Commerce and Economic Development listed in AS 44.33.020. This bill completes the transfer by also adding those duties to the Weights and Measures Act (secs. 2 and 4 of the bill). The bill also decreases the frequency of required inspections and tests of all weights and measures from semiannual to annual (sec. 8 of the bill). More frequent inspections and tests can still be made in problem areas, however.

CS deletes  
"arrest"

Section 13 of the bill clarifies that the commissioner of commerce and economic development may authorize department employees to ~~arrest~~ or issue citations to persons who violate the DOT/PF vehicle size, weight, and load limits, the provisions of an overweight or oversize vehicle permit, or department regulations. This eliminates an ambiguity and loophole left after the 1982 transfer of enforcement authority to the department.

GOVERNOR'S SUMMARY

CS changes  
it to  
misdemeanor  
B

Section 26 of the bill amends AS 45.75.380 to increase the current maximum penalty for all weights and measures offenses from a \$200 fine (or five cents a pound for overweight vehicle offenses) ~~and three months imprisonment, to a \$5,000 fine and one year imprisonment~~ (see AS 12.55.035(b)(3) and 12.55.135(a)). This change conforms to the new Criminal Code (AS 11) and the Code of Criminal Procedure (AS 12) and will provide a more effective deterrent to weights and measures violations. Currently, many people, particularly truck drivers, are too willing to risk citation for violations because of the low maximum penalties.

Most of the bill, including secs. 1 -- 3 and 5 -- 26, clarifies a confusing approach taken by the 1961 legislature which first enacted the Weights and Measures Act. For reasons which are not now clear, and which no longer apply, AS 47.75.030 states that the commissioner of commerce and economic development is the director of weights and measures and throughout the chapter many references are made to the director. To avoid confusion with the director of the division of measurement standards which is currently assigned to administer the Act, this bill changes all of those references to the director to be references to the commissioner.

The bill also makes "housekeeping" amendments to clean up outdated language and to correct several citations.

All of these changes in the Weights and Measures Act will increase the effectiveness and efficiency of implementation of the Act, especially the overweight and oversize vehicle program. Therefore, I urge your passage of this bill.

Sincerely,



Bill Sheffield  
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: 491  
 Title: Relating to weights and measures; and effec. date  
 Sponsor: Governor  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Economic Development  
 Program Category Affected: Protection  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
 Measurement Standards: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Joseph Swanson, Director Phone: 345-7750  
 Division: Measurement Standards Date: 2/10/84

Approved by Commissioner: Richard A. Lyon Date: 2/10/84  
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

FISCAL Note

Division of Measurement Standards

	<u>FY '82</u>	vs.	<u>FY '84</u>
Trucks weighed	44,415		64,353
Lbs. overweight	3,629,281		6,879,957
Enforcement Act	1,027		2,852

Six-month comparison:

PROPOSED AMENDMENT

SB 491

Sec. 45.75.130. POLICE POWERS AND RIGHT OF ENTRY AND STORAGE.

Page 6 line 13 delete [arrest or]

Sec. 45.75.380. OFFENSES AND PENALTIES.

page 10 line 3 delete [It is a class A misdemeanor for a person to perform any of the following acts or otherwise to violate a provision of this chapter.]

page 10 line 5 add A person who, by himself or by his servant, or agent, or as the servant or agent of another, performs any one of the following acts is guilty of a misdemeanor and upon a first conviction of the violation is punishable by a fine or not less than \$20 nor more than \$200, or by imprisonment for not more than three months, or by both. Upon a second or subsequent conviction, the person is punishable by a fine of not less than \$50 nor more than \$500, or by imprisonment for not more than one year, or by both.

page 12 line 4 add Notwithstanding the maximum fine provided for infractions under this section, for the violation of regulations or special permits issued governing vehicle weight limits, overweight penalties shall be imposed at the rate of five cents for each pound of weight over the authorized weight limit for the vehicle.

Then later recommended the changes adopted.

Bill Fact Sheet

Date Received \_\_\_\_\_

Bill Number SB 49 / Title Weight / Measures

Fiscal Note - Date Requested \_\_\_\_\_ Date Received \_\_\_\_\_

- Of Whom \_\_\_\_\_

Dept. Position Paper - Date Requested \_\_\_\_\_ Date Received \_\_\_\_\_

- Of Whom \_\_\_\_\_

Resource People

Initial Hearing - Date 3/6/84  
People Contacted

Joe Swanson -

Risa King -

T-J Trasher - 276-1149 (Dump Trucker)  
Ginger - will inform

Follow-up Hearing - Date \_\_\_\_\_

Final Action \_\_\_\_\_ Date \_\_\_\_\_

S B

494

#1



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

20494

February 13, 1984

The Honorable Jalmar Kerttula  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the sale of time share programs for use, occupancy, or possession of residential property. The bill also amends the Real Estate Commission's authority to adopt regulations necessary for administration of the entire real estate chapter.

The most common time share offer is to sell for a one- to two-week period the use of a vacation "home" in a popular vacation spot to individuals. For example, a person would "own" periods of two weeks of time in an apartment on the beach in Hawaii.

The bill has several main components: a time share offered for sale in Alaska must be registered with the Real Estate Commission and sold through a real estate agent licensed in the state; certain disclosures must be made to potential purchasers by a time share offeror; unfair methods of competition and deceptive acts or practices in the sale of time shares are prohibited; a time share purchaser has 15 days to cancel a time share purchase contract; enforcement powers are granted the attorney general; and authorization to bring a private action is specified for individuals.

In addition, the commission is empowered to set by regulation additional fees for registration of these time shares, including supplemental bond payments to the real estate surety fund to allow adequate compensation to victims of time share sales fraud. Supplemental payments to the surety fund were considered necessary to ensure that these large projects did not deplete the rest of the surety fund.

Governor's Letter

Finally, the last major component of the bill is an expansion of the Real Estate Commission's regulatory promulgation authority. Presently, the commission may only promulgate procedural regulations. Under this bill, the commission will be able to issue both procedural and substantive regulations about time shares and about the rest of the real estate chapter. On numerous occasions, the commission has found a need to adopt regulations codifying its interpretation of the law regarding real estate matters. This bill is an appropriate vehicle to rectify this weakness in the commission's ability to protect the public while adequately informing the industry of the conduct legally expected of it.

A detailed discussion follows:

The first section of the bill requires the Real Estate Commission to set up registration requirements for all time shares offered in the state regardless of whether the property is located in the state. Specific registration requirements would be adopted by the Real Estate Commission under the authority granted in sec. 2 of this bill, amending AS 08.88.111. In addition, a time share offer made in this state must be made through a real estate broker, licensed in Alaska. The effect of this requirement would be to give purchasers of time shares recourse to the real estate surety fund (AS 08.88.450 -- 08.88.500) for misrepresentation by a real estate broker, associate real estate broker, or real estate salesperson.

These provisions would offer the people of Alaska protection against an outside outfit that opens an office in this state or holds sales presentations in a hotel suite to sell time shares located outside the state. Requiring time share sales to be made by an agent licensed in the state would discourage "fly-by-night" or fraudulent operations since the local brokers would be cautious about risking their licenses or exposure to claims by dissatisfied purchasers. Thus, licensed agents would have an incentive to screen and refuse to serve as agents for risky time share concerns. The definition of "offeror" in new AS 45.50.660(6) exempts from the requirements of AS 45.50.630 -- 45.50.660 an individual who is re-selling his interest in a time share program.

The bill requires registration with the Real Estate Commission. Some time shares actually are interests in real property, others are just agreements to use a time share unit. The bill would require registration of all time share offers to be made in the state, whether the offeror sells an interest in real property or merely a contractual right to use residential property. This registration requirement should not be burdensome to the commission as it is not anticipated that numerous time shares will be marketed in the state. Fees charged should offset any cost of the registration. Under new AS 08.88.111(b)(1), in sec. 2 of the bill, the commission will set the registration fee. In other legislation, I propose that the Department of Commerce and Economic Development, by regulation, set the licensing and other professional fees for the businesses and professions regulated under AS 08, rather than the current system of establishing the fees by statute. If that bill passes, AS 08.88.111(b)(1) should be changed accordingly.

The bill requires persons selling time shares to disclose in writing significant facts about the offer to potential purchasers. The written disclosure statement must be filed with the Real Estate Commission as part of the registration. In other states, disclosure requirements have helped to prevent sales pitches that suggest that the time share is an "investment" and cure other abuses such as the failure to inform the purchaser of the total cost of the time share over the full term of the time share. Adequate written disclosure enables a consumer to make an informed purchase decision. While there is some evidence that purchasers in high-pressure sales situations do not fully read disclosure statements, the provision of written disclosures coupled with the 15-day cancellation period allows a purchaser the opportunity to carefully consider a time share purchase.

Another significant portion of the bill prohibits deceptive acts or practices in the sale of time shares. Experience in other states (e.g., Hawaii, Florida, Colorado, Arizona) where time shares have been marketed aggressively for some years shows that many purchasers are induced to attend sales presentations through promises of prizes or awards and are unable to resist the fast sales pitch. The time share industry itself criticizes this type of sales approach and suggests that sales should be geared to persons who want to purchase time shares for the features of the units themselves and as a hedge against future inflation in vacation costs. The consumer protection section of the Department of Law has received inquiries and complaints from persons induced to believe that they would win a car or color television if they attended a sales

presentation only to actually receive a cheap set of luggage as their "prize." This bill prohibits any contest or giving of a prize to induce someone to attend a sales presentation. Food served at a time share presentation, tours or visits to facilities and projects, and transportation to a project or presentation would not be prohibited. Specifically prohibited, however, is the serving of any alcoholic beverage at a time share presentation. A \$7,000 to \$35,000 purchase should not be made while under the influence of alcohol.

Perhaps the most important provision in the bill is the one for a 15-day "cooling-off" period for a purchaser to cancel the time share purchase. Other states have enacted cooling-off periods ranging from 5 to 15 days. Fifteen days will allow a purchaser time to fully review written materials, consult an attorney, accountant, or other professional and investigate representations made during the time share presentation. Escrow of purchaser deposits until after the cancellation period has expired assures that the purchaser will receive a refund of any payments made if the purchaser decides to cancel.

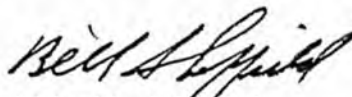
Enforcement powers identical to the enforcement powers in the Consumer Protection Act (AS 45.50.495 -- 45.50.521) are granted to the attorney general by this bill.

A private cause of action is specifically set out in the bill, providing that for violations of this bill the purchaser may void the sale. If the purchaser, however, has received some value such as using the time share unit for a period of time, the value of that use would be deducted from any amount the purchaser could recover. The customer's cause of action under this bill would be in addition to all other remedies presently available.

Sections 2, 3, and 4 of the bill contain provisions allowing the Real Estate Commission to set, by regulation, special fees for the registration of time share offerings, which fees may include supplemental payments by the time share offeror, through its real estate broker or licensed salesperson, to the real estate surety fund. Section 4 amends the statute that sets the maximum liability of the surety fund for any one broker at \$50,000 so that if a supplemental bond fee for higher liability has been filed by a time share offeror, the consuming public could file claims up to the higher maximum liability amount of the bond fees. The commission will be authorized to establish, by regulation, a schedule of adequate supplemental payments to the surety fund to protect both the public and the integrity of the fund from depletion.

In preparing this bill, the consumer protection section consulted with other state agencies -- the division of banking, securities and corporations and the Real Estate Commission. Legislation from many states, as well as the National Timesharing Council's Model Timeshare Act and Exchange Program Act, was reviewed. Discussions were held with industry representatives, Federal Trade Commission attorneys, and with assistant attorneys general from other states. The timesharing industry has recognized the need for reasonable regulation of the industry and it is not anticipated that there will be any significant industry opposition to this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield  
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: 494  
Title: Sale of time share for use of residential property  
Sponsor: Rules by Governor  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce and Economic Development  
Program Category Affected: Public Protection  
BRU, Program or Subprogram(s) Affected: Real Estate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES	-0-	31.7	33.3	34.9	36.5	38.0
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	1.0	1.0	1.1	1.2	1.2
400 SUPPLIES	-0-	.5	.5	.6	.6	.6
500 EQUIPMENT	-0-	4.7	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	37.9	34.8	36.6	38.3	39.8
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	50.0	50.0	60.0	40.0	60.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	37.9	34.8	36.6	38.3	39.8
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	37.9	34.8	36.6	38.3	39.8

POSITIONS:

FULL-TIME	-0-	1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Revenues will offset the expenditures if it is assumed that the commission can charge fees. The fiscal note assumes 100 registrations at \$500.00 each.

ANALYSIS: Attach a separate page for analysis

Prepared By: James L. Magorian Phone: 272-5508  
Division: Real Estate Commission Date: 1/25/84  
Approved by Commissioner: Richard A. Lyon Date: 1/25/84  
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

Fiscal Note

1.	POSITION TITLE License Examiner I				RANGE/STEP 12	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.		
2.	TYPE OF POSITION Perm	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY 1	LOCATION EBA	ELECTION DISTRICT	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>This position will be necessary to handle the additional workload of registering time share sales, examining disclosure statements, and enforcing the Registration Act. It is estimated that there will be 100 registrations, each requiring ten hours of processing. The position will also provide public information to developers, licensees and consumers regarding the registration and sales of time shares. The position will require desk, chair, filing cabinet and computer terminal.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary	1,973/month	23,676									
6.	Benefits		3,866									
7.	Supplemental Benefits		1,451									
8.	Fixed Benefits		2,728									
9.	TOTAL PERSONAL SERVICES		01	31,721								
10.	Travel		02									
11.	Contractual		03	1,000								
12.	Commodities		04	500								
13.	Equipment		05	4,700								
14.	Other											
15.	TOTAL COST			37,921								
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts	1002									
17.		G.F. Match	1003									
18.		General Funds	1004	37,921								
19.		I-A Receipts	1005									
20.		Program Receipts	1028									
21.		Other										
FOR B&M USE ONLY												
4A KEY NUMBER _____												

**13** REQUEST FOR  
NEW POSITION

AGENCY Commerce & Economic Development  
PROGRAM Consumer Protection  
BRU Real Estate Commission  
COMPONENT \_\_\_\_\_

Page 1 of 1  
Revised Date \_\_\_\_\_

**FY 85**

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: Jan. 9, 1984  
(Revised for 1984 Session)

REQUEST  
Bill/Resolution No.: 496  
Title: "An Act relating to...  
time share programs..."  
Sponsor: Sen. Rules/Governor  
Requestor: Off. of Gov. - OMB  
Date of Request: \_\_\_\_\_

FISCAL DETAIL  
Agency Affected: Department of Law  
Program Category Affected: Public Protection  
BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
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						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pagano, Director Phone: 465-3672  
Division: Administrative Services Division Date: 1-9-84  
Approved by Commissioner: Norman C. Gorsuch Date: 1-9-84  
Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

This bill attempts to regulate the sale or offer of "time share" programs in the state. Typically, time share projects are located in areas outside Alaska, such as Hawaii or Mexico. The department has experienced a growing number of complaints involving misrepresentations in either the promise of promotional incentives or in the value actually offered by the time share. The bill provides that a time share offered in Alaska must be registered with the Real Estate Commission and sold through a real estate agent licensed in the state; certain disclosures must be made to potential purchasers by a time share offerer; unfair methods of competition and deceptive acts or practices in the sale of time shares are prohibited; a time share purchaser has 15 days to cancel a time share purchase contract; enforcement powers are granted the attorney general; and authorization to bring a private action is specified for individuals.

Because of the screening process that would be caused by the requirement for registration of time share sales, and because of the requirement that time shares be sold only by state licensed real estate agents, and the provision to authorize private action for individuals, the department does not foresee any significant increase in enforcement activity. Consequently, there will not be a fiscal impact on the department's operations.

The Real Estate Commission will experience some fiscal impact in implementing and administering the registration requirements under this bill. The commission is empowered, however, to adopt regulations requiring payment of registration fees for time share sales to offset the cost of registration.

Senate Labor & Commerce Committee  
Pouch V  
Juneau, Alaska 99811

April 11, 1984

279-0428

NORMAN C. GORSUCH  
ATTORNEY GENERAL

Senate Bill 494  
(timeshares)

By: Linda M. O'Bannon  
Assistant Attorney General  
Consumer Protection Section  
AGO/Anchorage

What I intended to do today was to give an overview of timeshares and some of the problems and background in the area. Then to discuss some of the specific types of complaints that led to our section of the Attorney General's Office determination that we should draft legislation specifically addressing timeshares. Finally, to discuss the specific provisions of Senate Bill 494.

Overview of timeshares

Timesharing is the use of a vacation home or condominium for a limited period of time, generally one - two weeks per year for a period of years. Timesharing is often promoted as a hedge against inflationary vacation costs.

There are two types of timeshare ownership. One is fee ownership or an interest in real property, under which the purchaser owns a fee simple or leasehold interest in a particular housing unit for a specific period of time over a number of years. This is considered generally an actual interest in real estate, and very often the timeshare owner receives a recorded deed. The other type of ownership is the right to use a vacation

license agreement, under which the purchaser owns a contractual right to use a particular kind of unit in a resort development for a given period of time each year over a number of years.

Often, timeshares are affiliated with an exchange program. Currently the two major exchange programs are Interval International of Miami, Florida, and Resort Condominiums International of Indianapolis, Indiana. If these companies accept a timeshare resort in their exchange program, then the members of these timeshares, for a fee, can apply for an exchange of their period of use in a timeshare project for a period of use in a different timeshare project in another location. Membership in these two exchange programs is no guarantee that a timeshare owner will ever be able to swap a vacation in their timeshare project for a vacation in another one.

The three major problems that have arisen with timeshares nationwide are: (1) the solicitation and marketing techniques, (2) the high-pressure sales fraught with misrepresentations, and (3) the financial problems of the backers and developers.

Solicitations and marketing practices

Typically, timeshares are promoted by the use of direct mail solicitations or phone solicitations offering free "prizes" or gifts to consumers who will listen to sales presentations. In order to claim the "prize," or gift, the consumer generally has to attend a lengthy sales presentation at the timeshare developer's offices, or in a hotel room. These sales presentations are generally quite slick, and include brochures,

slides, films, artists' renditions, and other materials. Often a salesperson is assigned to each person or couple attending the timeshare presentation.

There are many areas of deceptive and unfair practices in the solicitations. Many times the consumers are led to believe that they will receive a very expensive prize, such as a car or television if they attend a sales presentation, but the reward turns out to be a flimsy piece of cheap luggage. Sometimes prospective buyers are not told that they will actually have to attend a sales presentation, but merely that they have to go to a certain location to pick up a "prize." Sometimes the gifts aren't given at the conclusion of the presentation, and consumers are told that they will have to attend another presentation in order to receive the gift, or that they will be later mailed or delivered.

High Pressure Sales

The high-pressure sales techniques include, after a general presentation using audio-visual aids, potential buyers being secluded in a room alone with a salesperson. Often other sales personnel are brought in in order to attempt to secure the sale if the potential buyer indicates a lack of interest. Often prospective buyers are made to feel foolish and ridiculed for being too stupid to take advantage of a "fantastic investment opportunity" if they are reluctant to purchase. Sometimes prospects are told that if they do not buy that day, they will lose a substantial discount that is being offered on the purchase price. Sometimes buyers are falsely told that if they don't purchase that day that the timeshare company will not be able to provide them with financing.

Misrepresentations

Unfortunately, many misrepresentations have been made in the sale of timeshares. These include the representation that the purchase of a timeshare is a good investment. That is, that the consumer can turn around and sell his interval ownership in a year or more and make a profit. Unfortunately, this is seldom the case. Many times people purchase timeshares without ever actually seeing the property. The artists' renditions or brochures show the property not as it actually is, but as the developers wish it were. Many times it is represented that amenities, such as swimming pools, tennis courts, golf courses, etc. will be added to the development, but unfortunately there is often not an actual requirement that the developer do this. Many times there are misrepresentations about the title or ownership

the buyer will actually receive, when in fact title cannot be given free and clear because of underlying encumbrances on the property. Sometimes the sales personnel create false impressions that timeshare units are scarce at prices offered.

Financial problems of timeshare developers

The most tragic problem in the timeshare industry has been the financial collapse of many developments which have resulted in near total losses for consumers. Typically, timeshares are sold with financing provided by the developer. Thus, the buyer would pay several thousand dollars down and sign a note for the remaining cost of the unit. Then the developer generally sells the note or commercial paper at a discount. Of the total purchase price of a timeshare unit, 50% of that

purchase price goes to marketing, solicitation, and the discount for the commercial paper. Thus, within a day or two of the sale, the developer is left with only 50% of the total purchase price of a unit. That 50% is generally gone forever and the developer or seller is seldom in a position to return a full refund to a consumer if it is found that serious misrepresentations were made, or other problems developed with the unit.

The most shocking aspect of the financial collapse of these timeshare developments is that very often the properties are mortgaged, and after any financial failure the financial institutions foreclose on the property, leaving the timeshare owners without any property or interest in the timeshare development. A federal bankruptcy judge in Sombrero Reef Club, Inc. v. Allman, 18 B.R. 612 (Bkrcty. S.D. Fla. 1982), held that

the right-to-use timeshare contracts were executory, and allowed the debtor-in-possession to reject them. The purpose of the bankruptcy action was to clear the way for a sale of the property free and clear of the timeshare purchasers' contracts and for the benefit of the financial creditors. Unfortunately, many swindles have occurred in the timeshare industry because the developer or timeshare seller gets the money upfront and skims off 50%. The early operations are lucrative to the seller and look successful to the unsuspecting onlooker, but ultimately there is a collapse with a foreclosure of the property, and the consumers lose all. In some criminal prosecutions of timeshare hustlers there has been evidence that the ultimate folding of the timeshare corporation was intended from the inception of the timeshare project.

TESTIMONY by Linda O'Bannon  
Consumer Protection

Types of complaints we have received in Alaska

We have received complaints that solicitations were made for timeshare presentations by out-of-state concerns that opened up temporary sales offices or operated out of motel or hotel rooms in the <sup>Anchorage</sup> city. Typically, there were mail or telephone solicitations which were deceptive in that people were told that they had "won a prize." Sometimes they were not told that they would have to attend a timeshare presentation in order to claim the "prize." Our citizens are particularly ripe to a "burn" by out-of-state fly-by-night operations who claim to offer a "tan in the sun," but really offer a "burn." Because these presentations are made through the use of photographs or drawings or other

audio-visual aids, but do not include an actual visit to a site, there is really no opportunity for a consumer to inspect what they are buying.

Generally, very high-pressure sales tactics have been used. Quoting from one of our consumer complaints:

"None of the pictures were available long enough to really study the area, condo, or surroundings."

Some of the complaints we have heard concern the deceptiveness of the prizes allegedly won. In one instance, there was a mass mailing in which people received sealed envelopes which indicated that the envelopes would have to be brought into the sales office to be opened to claim the prize. The consumer, however, could see through the envelope the words

"1983 Cadillac," which suggested to the consumer, of course, that he or she had won a very significant prize. In fact, the brochure inside the sealed envelope was folded in such a way so that the words "1983 Cadillac" were visible, but to our knowledge no one actually won the Cadillac.

Quoting from a consumer complaint about the awarding of prizes:

"We then came to prize time. He took a sealed envelope to reception, . . . and gradually opened it with great expectations. Announced the number, checked it on the chart, and then told us we had won a telephone -- he disappeared into a storage room to get our prize, so I followed him, and guess what - telephones was all it contained. I asked him where the microwave, color tv, computer, VHS, and moped were, and he smirked and