

ALASKA LEGISLATURE COMMITTEE FILES 1905-1900 00/2

3288 HJUD HB 117 - HB 125



Alaska Court System

State of Alaska

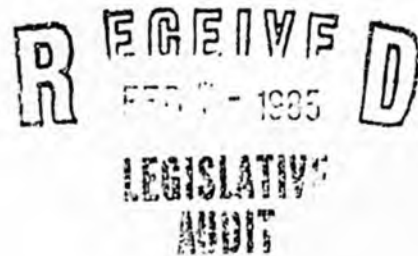
303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR K. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 1, 1985

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Budget and Audit Committee
430 C Street, Suite 301
Anchorage, AK 99501



Re: Preliminary Report
Alaska Court System

Dear Mr. Wilkerson:

Below I have listed Court System responses to each of the recommendations contained in your January 14, 1985 Preliminary Report.

Recommendation No. 1

The Court System should improve trust accounting procedures and should report trust investment balances.

The Court System is implementing a system of subsidiary ledgers to properly account for trust investment transactions. This will eliminate the overstatement of trust activity and will permit the proper reporting of investments maintained outside of the trust fund bank accounts. Trust balances will be monitored on a regular basis and old or unclaimed balances will be disposed of in a systematic manner.

Recommendation No. 2

The Court System should strengthen internal controls and improve accounting and management procedures.

The response to this recommendation follows the format of the Preliminary Report wherein six specific points were raised.

1. The Court System is working with the treasury and the revenue depository bank to coordinate the transfer of and proper accounting for revenue transactions.
2. After the trial court accounting manual is re-issued, a renewed effort will be taken to assure that the trial courts are following the specified procedures. The establishment of an internal audit section would greatly improve this function.
3. Property inventory system is fully functional at the present time and approximately one-half of all existing items have been entered into the automated system. Physical inventories and recording of information has taken place for all items in Anchorage, and other locations around the state will be completed during 1985.
4. The Court System will be implementing an extensive systems analysis of both the manual and automated accounting/information systems. This analysis will be completed by June 30, 1985.
5. Updates to the trial court accounting manual will be merged into the main document and this document re-issued by June 1, 1985.
6. The purchasing guidelines draft will be finalized by January 1, 1985, and circulated for final review. Adoption of these guidelines is anticipated by March 1, 1985.

In addition to completing the above six items, the Court System will evaluate its lines of authority and responsibility to assure that the organization is properly functioning to accommodate the complex and growing nature of the system.

Recommendation No. 3

The Court System should close out inactive capital projects and should implement a project accounting system for projects underway.

The Court System has initiated the implementation of project accounting systems for current capital projects. Project accounting will be utilized in all future capital projects.

Following are comments regarding the three inactive capital projects identified in the letter:

1. Fairbanks court planning - the planning for a new Fairbanks court facility was initiated in FY 81 with a preliminary feasibility study. No further work has been done on this project due to the delays experienced in securing approval and implementing the major new facility in Anchorage. It is anticipated that the remaining balance of \$57,532.00 in the Fairbanks court planning project will be expended in the next 12 months for the purpose of updating the 1981 study and preparing materials to present to the Legislature during the 1986 legislative session.

1. Sitka court building remodeling - the project balance will be lapsed.
3. Kotzebue court addition - this project will be closed as soon as an agreement can be reached between the Department of Labor, the contractor, and the Court System regarding disputes arising in this project.

Recommendation No. 4

Plans for further installation of computers under the statewide automated records project should be reevaluated and the system's accounting module should be improved and enhanced.

The ACRS project was initiated in 1981 to implement stand-alone trial court automation packages in 17 trial courts and the appellate court clerk's office. The goal of this project was and is to improve the operating efficiency and management of our trial courts in order to reduce the need for additional clerical personnel as caseloads in our courts continually increase.

The selection of the specific hardware and software to support this project was based on the following factors:

- (1) The package selected would allow us relatively easy program/record generation capability with limited programming staff;
- (2) The package would allow us to easily and quickly modify the contents of programs/records as field experience dictated without major reprogramming efforts;
- (3) The package provides a relatively simple report generator that would allow clerks of court to create and process their own information/management reports;
- (4) Source code was available for the package so that it would be modified by our staff rather than an outside vendor;
- (5) Purchase and ongoing costs would be significantly less expensive than using the state data processing centers to support our applications around the state; and
- (6) It was the most cost effective software/hardware solution to our project.

To date, 11 trial Court Systems and the appellate court clerk's system have been implemented. We believe these systems to be sound starting points for continued development of automated trial Court Systems.

The court system recognizes that while the concept of implementing stand-alone computer systems in the trial courts of Alaska is an important and valuable step in improving the efficiency of these courts, programs implemented to date have not, in some cases, filled all the needs of these trial courts.

As discussed in the response to Recommendation No. 2, the Court System will be implementing a widespread systems analysis of manual and automated procedures currently in use around the state. It is estimated that this analysis will require approximately six months to complete. This analysis is particularly important to plans for computer installations in Anchorage and the other major court locations. During this period there will be no installation of additional records systems.

Recommendation No. 5

The Court System should strengthen, expand, and upgrade its internal audit capabilities.

The Court System concurs with this recommendation and will be introducing legislation to create an internal audit section functioning directly under the administrative director. The Court System believes that such a section could lead to both improvements in the operations and controls throughout the state as well as develop a system which lends itself more readily to external audit.

Recommendation No. 6

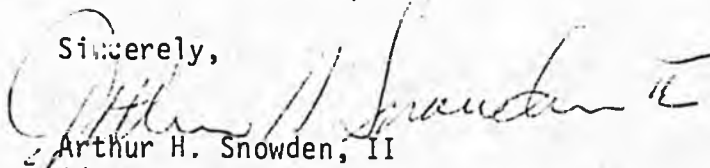
The Court System's unrecorded liability for judicial retirement contributions should be eliminated.

The sum of \$499,400.00 for judicial retirement contributions has been included in the FY 86 budget request of the Court System. If these funds are approved by the Legislature, the Court System will dispose of this liability.

This liability is a result of an error that occurred during the closeout of fiscal year 1982. In August 1982 a document in the amount of \$416,100, which covered the final contributions for FY 82 was forwarded to Finance. The document reported costs for the period May 16 to June 30, 1982. The contributions were erroneously charged to FY 83 rather than to FY 82. This error was detected shortly after submission. Upon being informed of the mistake, the Division of Finance prepared a correction document. For reasons not known to the court, the correction was not processed. The court attempted to make an adjustment after the end of the fiscal year. This was not successful. As a result, FY 82 was charged for only ten and one-half month's of retirement costs. This created an unreported liability for six weeks of contributions. The court system lapsed \$2,447,900 in FY 82 and, therefore, had sufficient funds to cover the cost of the retirement payments, had the final payment been properly processed.

We appreciate the opportunity to respond to your recommendations and comments prior to the formal release of your audit report.

Sincerely,

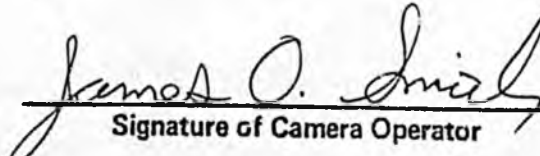

Arthur H. Snowden, II
Administrative Director

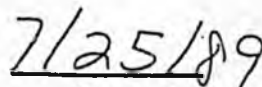


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H H

B B

1 1

1 1

8 8

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS data base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	2/15/85	1:30 pm
" "	2/19/85	1:30 pm

COMMITTEE REPORT
HOUSE

2/22

(7)

FURTHER: FINANCE

1/25/85

Date: 2-19-85

The Committee on JUDICIARY has had HB 118

"An Act relating to the small claims jurisdictional limitation and the duties of magistrates; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 118 (Jud) same title
 new title
- and recommends CS HR 118 DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note Sup 2.1
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Mr. M. Miller

CRUCE WILCOX

[Signature]

John Taylor

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Ed Lockman - no rec

Mr. M. Miller

CHAIRMAN

is passed out

Original sponsor: Judiciary/Chief Justice
Alaska Supreme Court

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 118 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to small claims, and the duties of
7 magistrates; and providing for an effective date."

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

9 * Section 1. AS 22.15.040 is amended to read:

10 Sec. 22.15.040. SMALL CLAIMS. When a claim for relief does not
11 exceed \$5,000 [\$2,000] exclusive of costs, interest and attorney fees,
12 and request is so made, the district judge or magistrate shall hear
13 the action as a small claim unless important or unusual points of law
14 are involved. The supreme court shall prescribe the procedural rules
15 and standard forms to assure simplicity and the expeditious handling
16 of small claims.

17 * Sec. 2. AS 22.15.040 is amended by adding a new subsection to read:

18 (b) All potential small claim litigants shall be informed if
19 mediation, conciliation, and arbitration services are available as an
20 alternative to litigation.

21 * Sec. 3. AS 22.15.120 is amended to read:

22 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
23 HEAR. A magistrate shall preside only in cases and proceedings under
24 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

25 (1) for the recovery of money or damages only when the
26 amount claimed, exclusive of costs, interest, and attorney fees, does
27 not exceed \$5,000 [\$1,000];

28 (2) for the recovery of specific personal property when the
29 value of the property claimed and the damages for the detention do not

1 exceed \$5,000 [\$1,000];

2 (3) for the recovery of a penalty or forfeiture, whether
3 given by statute or arising out of contract, not exceeding \$5,000
4 [\$1,000];

5 (4) to give judgment without action upon the confession of
6 the defendant for any of the cases specified in this section, except
7 for a penalty or forfeiture imposed by statute;

8 (5) to give judgment of conviction upon a plea of guilty by
9 the defendant in a criminal proceeding within the jurisdiction of the
10 district court;

11 (6) to hear, try, and enter judgments in all cases involv-
12 ing misdemeanors, if the defendant consents in writing that the magis-
13 trate may try the case;

14 (7) to hear, try and enter judgments in all cases involving
15 infractions under AS 28 and violations of ordinances of political
16 subdivisions [;

17 (8) REPEALED].

18 * Sec. 4. This Act takes effect on the effective date of an amendment
19 by the Supreme Court to Rule 9(c)(2) of the Rules Governing the Adminis-
20 tration of All Courts raising the filing fee for small claims actions from
21 \$5 to at least \$15.

Levy
2/18/85

Original sponsor: Judiciary/Chief Justice Alaska Supreme Court

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 118 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to small claims, compulsory
7 arbitration, and the duties of magistrates; amending
8 Rule 15, District Court Rules of Civil Procedure; and
9 providing for an effective date."

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

11 * Section 1. AS 22.15.040 is amended to read:

12 Sec. 22.15.040. SMALL CLAIMS. When a claim for relief does not
13 exceed \$5,000 [\$2,000] exclusive of costs, interest and attorney fees,
14 and request is so made, the district judge or magistrate shall hear
15 the action as a small claim unless important or unusual points of law
16 are involved. The supreme court shall prescribe the procedural rules
17 and standard forms to assure simplicity and the expeditious handling
18 of small claims. A party may not be represented by an attorney in a
19 hearing for a small claim under this section. This section does not
20 preclude an attorney from appearing as a party in a hearing for a
21 small claim.

22 * Sec. 2. AS 22.15.040 is amended by adding a new subsection to read:

23 (b) All potential small claim litigants shall be informed that
24 mediation, conciliation, and arbitration services are available as an
25 alternative to litigation.

26 * Sec. 3. AS 22.15.120 is amended to read:

27 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
28 HEAR. A magistrate shall preside only in cases and proceedings under
29 AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

1 (1) for the recovery of money or damages only when the
2 amount claimed, exclusive of costs, interest, and attorney fees, does
3 not exceed \$5,000 [\$1,000];

4 (2) for the recovery of specific personal property when the
5 value of the property claimed and the damages for the detention do not
6 exceed \$5,000 [\$1,000];

7 (3) for the recovery of a penalty or forfeiture, whether
8 given by statute or arising out of contract, not exceeding \$5,000
9 [\$1,000];

10 (4) to give judgment without action upon the confession of
11 the defendant for any of the cases specified in this section, except
12 for a penalty or forfeiture imposed by statute;

13 (5) to give judgment of conviction upon a plea of guilty by
14 the defendant in a criminal proceeding within the jurisdiction of the
15 district court;

16 (6) to hear, try, and enter judgments in all cases involv-
17 ing misdemeanors, if the defendant consents in writing that the magis-
18 trate may try the case;

19 (7) to hear, try and enter judgments in all cases involving
20 infractions under AS 28 and violations of ordinances of political
21 subdivisions [;

22 (8) REPEALED].

23 * Sec. 4. Section 1 of this Act has the effect of amending Rule 15,
24 District Court Rules of Civil Procedure, by prohibiting parties from being
25 represented by an attorney in a hearing for a small claim under AS 22.15.-
26 040.

27 * Sec. 5. This Act takes effect on the effective date of Supreme Court
28 rules adopted to implement the compulsory arbitration provisions of AS 09.-
29 43.190 - 09.43.220 for small claims.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

KS

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 118 (Jud)
 Title: An Act Relating to Small
 Claims and Magistrate Jurisdiction
 Sponsor: Judiciary Committee
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: _____
Administration of Justice
 BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES		94.8	100.5	106.5	112.9	119.7
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES		2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT		9.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		105.8	102.6	108.7	115.2	122.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		105.8	102.6	108.7	115.2	122.1
FEDERAL FUNDS						
OTHER						
TOTAL		105.8	102.6	108.7	115.2	122.1

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME		1	1	1	1	1
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The original fiscal note submitted by the Court System for HB 118 is still correct; however, the costs incurred will be more than offset by the increase in filing fees required under Sec. 4 of the House Judiciary Committee Substitute for HB 118.

ANALYSIS:

Prepared By: Hayden Kaden, Committee Counsel Phone: 465-4990
 Division: House Judiciary Committee Date: 2-20-85
 Approved by [Signature] Chairman Date: 2-20-85
 Agency: _____

Distribution (by Agency preparing fiscal note):

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

12/1/83

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 118
 Title: An Act Relating to Small
Claims and Magistrate Jurisdiction
 Sponsor: _____
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: _____
Administration of Justice
 BRU, Program or Subprogram(s) Affected: _____
Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		94.8	100.5	106.5	112.9	119.7
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES		2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT		9.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		105.8	102.6	108.7	115.2	122.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)


GENERAL FUND		105.8	102.6	108.7	115.2	122.1
FEDERAL FUNDS						
OTHER						
TOTAL		105.8	102.6	108.7	115.2	122.1

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME		1	1	1	1	1
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561
 Division: Alaska Court System Date: 2/4/85
 Approved by Commissioner:  Date: 2/4/85
 Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

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

12/1/83

ALASKA COURT SYSTEM
FISCAL NOTE ANALYSIS

HB 118 - SMALL CLAIMS & MAGISTRATE JURISDICTION

PERSONNEL:	SALARY	BENEFITS	TOTAL COST
1½ COURT CLERK I (Anchorage - 8B)	\$28,926	\$10,418	\$39,344
1 COURT CLERK I (Fairbanks - 8B)	21,744	7,496	29,240
1 COURT CLERK I (Juneau - 8B)	19,284	6,945	26,229

	Total Personnel Costs		94,813
SUPPLIES			2,000
EQUIPMENT (one-time items)			8,996

TOTAL FY 86 COST			\$105,809 =====

Subsequent fiscal years adjusted to reflect 6% inflation.

Introduced: 1/22/85
Referred: Judiciary and
Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

SENATE BILL NO. 77

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the small claims jurisdictional
7 limitation and the duties of magistrates; and
8 providing for an effective date."

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

10 * Section 1. AS 22.15.040 is amended to read:

11 Sec. 22.15.040. SMALL CLAIMS. When a claim for relief does not
12 exceed \$5,000 [\$2,000] exclusive of costs, interest and attorney fees,
13 and request is so made, the district judge or magistrate shall hear
14 the action as a small claim unless important or unusual points of law
15 are involved. The supreme court shall prescribe the procedural rules
16 and standard forms to assure simplicity and the expeditious handling
17 of small claims.

18 * Sec. 2. AS 22.15.120 is amended to read:

19 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
20 HEAR. A magistrate shall preside only in cases and proceedings under
21 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

22 (1) for the recovery of money or damages only when the
23 amount claimed, exclusive of costs, interest, and attorney fees, does
24 not exceed \$5,000 [\$1,000];

25 (2) for the recovery of specific personal property when the
26 value of the property claimed and the damages for the detention do not
27 exceed \$5,000 [\$1,000];

28 (3) for the recovery of a penalty or forfeiture, whether
29 given by statute or arising out of contract, not exceeding \$5,000

1 [\$1,000];

2 (4) to give judgment without action upon the confession of
3 the defendant for any of the cases specified in this section, except
4 for a penalty or forfeiture imposed by statute;

5 (5) to give judgment of conviction upon a plea of guilty by
6 the defendant in a criminal proceeding within the jurisdiction of the
7 district court;

8 (6) to hear, try, and enter judgments in all cases
9 involving misdemeanors, if the defendant consents in writing that the
10 magistrate may try the case;

11 (7) to hear, try and enter judgments in all cases involving
12 infractions under AS 28 and violations of ordinances of political
13 subdivisions. [;

14 (8) REPEALED]

15 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
16 10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 15, 1985

SUBJECT: Right to counsel in small claims hearings
(HB 118)

TO: Representative Don Clocksin
Majority Leader

FROM: Keith B. Levy ^{KBL}
Legislative Counsel

You have asked whether an amendment to HB 118 that prohibits attorneys from appearing in small claims court as a representative of a party violates the party's constitutional due process right to be represented by counsel. In my opinion it does not.

In Prudential Ins. Co. v. Small Claims Court, 173 P.2d 38 (Cal. App. 1946), a California Court of Appeals found that a similar statute, California Code of Civil Procedure, sec. 117g (now sec. 117.4, a copy of which is enclosed), does not violate due process. The court ruled that, although there is a right to be represented by counsel in civil cases, the statute adequately protects that right. The plaintiff is protected because he or she has the choice of bringing suit in a higher court and being represented by counsel. The defendant is protected because, he or she may appeal to a higher court and receive a hearing de novo with full representation of counsel.

Although your amendment to HB 118 does not specifically include these protections, they are incorporated into existing law and court rules. AS 22.15.040 requires cases to be heard as small claims if "request is so made." District Court Civil Rule 8(a) provides, in part, that the small claims rules apply "when all parties to the action elect to be governed by them." Thus, the plaintiff is protected because he or she may elect not to proceed in small claims court. The defendant is protected because

Representative Don Clocksin
February 15, 1985
Page 2

AS 22.10.020 provides that in an appeal to the superior court, the court may hear the case de novo. District Court Civil Rule 18 provides that in an appeal from a small claim must be heard de novo "if the proceedings in the district court were not of record." Although these provisions could be amended to make it clear that a defendant has an absolute right to a hearing de novo in an appeal from a small claim, the existing law probably provides adequate protection.

The policy considerations that influenced the Court in Prudential, the need for an informal setting in which to hear small claims and make these proceedings accessible to those who cannot afford counsel, are likely to prevail before the Alaska Supreme Court as well. Therefore, your amendment to HB 118 does not present a constitutional problem.

An issue that was not addressed in your amendment is the effect it will have on District Court Civil Rule 15. Because Rule 15 allows parties to be represented by counsel in small claims, your amendment has the effect of amending the rule. Accordingly, a title change and a section indicating the effect on the rule is required by Art. IV, sec. 15 of the State Constitution (Leege v. Martin, 379 P.2d 447 (Alaska 1963)), and the Uniform Rules of the Alaska State Legislature, Rule 39(e):

If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases, the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an affirmative vote of two-thirds of the full membership of each house.

Therefore, the amendment should be redone to satisfy this requirement. If I may be of further assistance, please feel free to contact me.

KBL:ojb
J11/101

Enclosure

me. The judge may consult the controversy. If the defendant require plaintiff to present evidence judgment and make such orders as judge deems to be just and equitable provisions of Section 579 of this code

in the small claims court is entitled of enforcing the judgment rendered s of service of the order for the

163 § 1; Stats 1981 ch 958 § 4; Stats 1982 ch 497 h 527 § 5.

subd (a); and (2) added subd (b). of subd (a). e or she" before "deems to be just" in the fifth for "execution upon a judgment" in subd (b).

ar that the prevailing party is entitled to the costs ll claims judgment may be enforced as provided in

is to others: § 579. Jur 3d (Rev) Costs §§ 4, 6, 18, Courts § 151. ic LJ 334.

ocedure? (1974) 49 St BJ 458.

2 ch 527, Stats 1974 chs 120, 247, led by Stats 1976 ch 1289 § 1.]

all be on simple nontechnical forms unci. Such forms or the instructions rform the claimant that he or she and that he or she has no right of claims court; and that, if he or she service of the claim by the sheriff, ask that such fees be waived by the s, using the forms approved by the

958 § 5.

h accompany such forms"; (2) "or she" after "that g "claims court".

d reference. 1 Council Nos. SC-100(79), SC-110(77). ic LJ 241.

§ 117.3. [Appearance date]

When there are two or more defendants and one or more of them resides outside the county in which the action is brought, the date for the appearance of all the defendants shall not be more than 70 nor less than 30 days from the date of the order to appear.

Added Stats 1976 ch 1289 § 2; Amended Stats 1977 ch 46 § 3, effective May 14, 1977. Prior Law: Former § 117d, as amended by Stats 1972 ch 527 § 4.

Amendments: 1977 Amendment: Added "70 nor less than".

Extension of appearance date: § 116.5.

16 Cal Jur 3d Courts §§ 109, 111.

California Garagemen's Liens—Impact and aftermath of *Adams v Department of Motor Vehicles*. (1975) 6 Pacific LJ 98.

Review of Selected 1977 California Legislation. 9 Pacific LJ 389.

§ 117.4. [Attorney may not take part; Permissible assistance; Appearance on behalf of incarcerated plaintiff]

No attorney at law or other person than the plaintiff and the defendant shall take any part in the filing or the prosecution or defense of such litigation in small claims court, unless the attorney is appearing to prosecute or defend an action by or against himself or herself, or by or against a partnership in which he or she is a general partner and in which all the partners are attorneys, or by or against a professional corporation of which he or she is an officer or director and of which all other officers and directors are attorneys at law. Nothing herein shall prevent an attorney from rendering advice to a party to such litigation, either before or after the commencement of such an action; nor shall anything herein prevent an attorney from testifying to facts of which he or she has personal knowledge and about which he or she is competent to testify. However, if the court determines that a party does not speak or understand the English language sufficiently to comprehend the proceedings or give testimony, or cannot properly present his or her own case and needs assistance in so doing, the court may permit another person (other than an attorney at law) to assist such party. A plaintiff incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility shall be entitled to waive personal appearance and submit written declarations to serve as evidence supporting the party's claim, or allow another person (other than an attorney at law) to appear on the plaintiff's behalf.

The presence of the plaintiff or defendant, whether individual or corporate, at the hearing shall not be required to permit the proof of the items of an account but such proof shall be in accordance with the provisions of Sections 1270 and 1271 of the Evidence Code.

Added Stats 1976 ch 1289 § 2; Amended Stats 1977 ch 46 § 4, effective May 14, 1977; Stats 1982 ch 1350 § 1.

Prior Law: Former § 117g, as amended by Stats 1974 ch 120 § 1, Stats 1975 ch 1228 § 2.

Amendments: 1977 Amendment: Added the second paragraph.

1982 Amendment: (1) Generally added feminine pronouns; (2) added the last sentence of the first paragraph; and (3) substituted "Sections" for "Section" in the second paragraph.

Cal Jur 3d Appearance § 11, Appellate Review § 59, Constitutional Law § 360, Courts §§ 108, 111, 112.

Review of Selected 1977 California Legislation. 9 Pacific LJ 389.

Do the small claims courts portend an informal trial procedure? (1974) 49 St BJ 458.

KS



Official Business

Alaska State Legislature House

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Members of House Judiciary Committee

FROM: Max Gruenberg *MGP*

RE: HB 118 JUDICIARY
Proposed Committee Amendment to Sec. 3 (effective date clause) in the nature of a substitute for the present language of this section.

*Sec. 3, This Act takes effect on the effective date of an amendment to Rule 9(c)(2) of the Rules Governing the Administration of All Courts raising the filing fee for small claims actions from \$5.00 to at least \$15.00.


STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 7, 1985

SUBJECT: Effective date for HB 118
TO: Representative Max Gruenberg
FROM: Billy G. Berrier 
Director
Division of Legal Services

You have proposed an amendment to HB 118 which would provide an effective date contingent on a change in court rules increasing the filing fee for small claims from \$5 to \$15. You have asked whether in our opinion this effective date is legally proper.

In my opinion it is proper.

Section 18, Article II of the constitution of the State of Alaska provides:

SECTION 18. EFFECTIVE DATE. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

Although the general statement is frequently made that the purpose of a delayed effective date is to learn of the laws (e.g. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980) and Sutherland, Statutory Construction Sec. 33.07) the constitution does not so limit the legislature. A delayed effective date may be used in order to prevent a hiatus in the law (an example is contained in HB 78 which changes license fees mandated by statute to fees established by regulations and provides the sections relating to establishment of fees become effective when the necessary regulations are adopted.

Frequently an appropriation for cost of a program becomes effective on the date of an Act establishing the program.

Representative Max Gruenberg
February 7, 1985
Page 2

Immediate effective dates are common and most appropriation bills are effective at the beginning of a new fiscal year. The apparent purpose of the proposed effective date is to assure that a revenue source is available when the bill becomes effective which will produce revenue equivalent to the new costs necessitated by the bill. This purpose is not constitutionally prohibited.

An effective date may be conditioned on other action outside control of the legislature if the occurrence of the condition may be objectively determined and if the required condition does not violate other constitutional requirements.

Clearly the occurrence of the condition is objectively verifiable.

The only other constitutional requirement which appears to raise a question is the restriction on delegation of power. The legislature may not delegate to another the powers to make law. The net legal effect of the bill with the conditional effective date is that the amendments become effective when specified action to create a revenue source is taken, otherwise current law remains in effect. In my opinion this does not amount to a delegation of the power to make law, it merely specifies conditions on which one provision or another is applicable and there is a reasonable distinction between the two conditions.

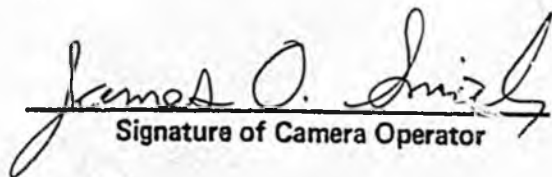
BGB:ojb
J11/065

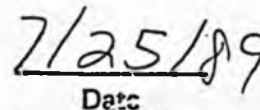


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H B

h b

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3600

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	2-5-85	1:30 pm
"	2-12-86	1:30 pm
"		
"		

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 119
 Title: An Act Relating to District Court Jurisdiction
 Sponsor: _____
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-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: Robert G. Fisher, Fiscal Officer Phone: 264-0561
 Division: Alaska Court System Date: 2/4/85

Approved by Commissioner: *R. D. ...* Date: 2/4/85
 Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

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

12/1/83

Offered: 1/23/85
Referred: Finance

re HB 119

Original sponsors: Ziegler and Ray

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 1 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the jurisdiction of the superior court and the district court; and providing for an effective date."

7

8

9

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

10

* Section 1. AS 22.10.020(a) is amended to read:

11

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including probate and guardianship of minors and incompetents. An action that falls within the concurrent jurisdiction of the superior court and the district court may not be filed in the superior court, except as provided by rules of the supreme court.

12

13

14

15

16

17

* Sec. 2. AS 22.15.030 is amended to read:

18

Sec. 22.15.030. CIVIL JURISDICTION. (a) The district court has jurisdiction of civil cases and proceedings as follows:

19

20

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$25,000 [\$10,000, EXCEPT AS PROVIDED IN (10) OF THIS SUBSECTION];

21

22

23

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$25,000 [\$10,000];

24

25

26

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$25,000 [\$10,000];

27

28

29

(4) to give judgment without action upon the confession of

1 the defendant for any of the cases specified in this section, except
2 for a penalty or forfeiture imposed by statute;

3 (5) for establishing the fact of death of any person in the
4 manner prescribed in AS 09.55.020 09.55.060;

5 (6) [REPEALED.

6 (7) REPEALED.

7 (8)] for the recovery of the possession of premises in the
8 manner provided under AS 09.45.070 - 09.45.160 when the value of the
9 property or of the arrears and damage to the property does not exceed
10 \$25,000 [\$10,000];

11 (7) [(9)] for the foreclosure of a lien when the amount in
12 controversy does not exceed \$25,000 [\$10,000];

13 (8) [(10)] for the recovery of money or damages in motor
14 vehicle tort cases when the amount claimed exclusive of costs, inter-
15 est and attorney fees does not exceed \$25,000 [\$15,000];

16 (9) [(11)] over civil actions for taking utility service
17 and for damages to or interference with a utility line filed under
18 AS 42.20.030;

19 (10) over cases involving injunctive relief for domestic
20 violence under AS 25.35.010 and 25.35.020.

21 (b) Insofar as the civil jurisdiction of the district courts and
22 the superior court is the same, the [SUCH] jurisdiction is concurrent.
23 An action that falls within the concurrent jurisdiction of the super-
24 ior court and the district court may not be filed in the superior
25 court, except as provided by rules of the supreme court.

26 * Sec. 3. AS 22.15.050 is amended to read:

27 Sec. 22.15.050. ACTIONS NOT WITHIN CIVIL JURISDICTION. The
28 jurisdiction of the district courts does not extend to

29 (1) an action in which the title to real property is in

1 question;

2 (2) an action for false imprisonment, libel, slander,
3 malicious prosecution, criminal conversation, seduction upon a promise
4 to marry, actions of an equitable nature (except as otherwise provided
5 by law [IN AS 22.15.030(a)(9)]), or actions in which the state is a
6 defendant.

7 * Sec. 4. AS 22.15.100 is amended to read:

8 Sec. 22.15.100. FUNCTIONS AND POWERS OF DISTRICT JUDGE AND
9 MAGISTRATE. Each district judge and magistrate has the power

10 (1) to issue writs of habeas corpus for the purpose of
11 inquiring into the cause of restraint of liberty, returnable before a
12 judge of the superior court, and the same proceedings shall be had on
13 the writ as if it had been granted by the superior court judge under
14 the laws of the state in such cases;

15 (2) of a notary public;

16 (3) to issue marriage licenses and to solemnize marriages;

17 (4) to issue warrants of arrest, summons and search war-
18 rants according to manner and procedure prescribed by law and the
19 supreme court;

20 (5) to act as an examining judge or magistrate in prelimi-
21 nary examinations in criminal proceedings; to set, receive and forfeit
22 bail and to order the release of defendants under bail;

23 (6) to act as a referee in matters and actions referred to
24 the judge or magistrate by the superior court, with all powers confer-
25 red upon referees by laws;

26 (7) of the superior court in all respects including but not
27 limited to contempts, attendance of witnesses and bench warrants;

28 (8) to order the temporary detention of a minor, or take
29 other action authorized by law or rules of procedure, in cases arising

1 under AS 47.10, when the minor is in a condition or surrounding dan-
2 gerous or injurious to the welfare of the minor or others which
3 requires immediate action; the action may be continued in effect until
4 reviewed by the superior court in accordance with rules of procedure
5 governing these cases;

6 (9) to issue a temporary order for [EMERGENCY] injunctive
7 relief in cases involving domestic violence as provided in AS 25.35.-
8 010 and AS 25.35.020;

9 (10) to review an administrative revocation of a person's
10 driver's license or nonresident privilege to drive, and an administra-
11 tive refusal to issue an original license, when designated as a hear-
12 ing officer by the commissioner of public safety and with the consent
13 of the administrative director of the state court system.

14 * Sec. 5. AS 25.35.010 is amended to read:

15 Sec. 25.35.010. INJUNCTIVE RELIEF IN CASES INVOLVING DOMESTIC
16 VIOLENCE. (a) A person who is subjected to domestic violence may
17 petition a superior or district court for injunctive relief restrain-
18 ing the infliction of further domestic violence against the petitioner
19 by the respondent.

20 (b) Upon receiving a petition under (a) of this section, the
21 [SUPERIOR] court shall schedule a hearing and shall provide at least
22 10 days notice to the respondent of the hearing and of the respon-
23 dent's right to appear and to be heard either in person or by attor-
24 ney. If, at the hearing, the [SUPERIOR] court finds that the peti-
25 tioner has been subjected to domestic violence by the respondent, the
26 [SUPERIOR] court may issue any order it determines to be necessary for
27 the protection of the health, safety or welfare of the petitioner or
28 of a minor child in the care of the petitioner. An order under this
29 subsection may include provisions that [WHICH]

1 (1) restrain the respondent from subjecting the petitioner
2 to domestic violence;

3 (2) direct the respondent to vacate the home of the peti-
4 tioner;

5 (3) restrain the respondent from communicating directly or
6 indirectly with the petitioner;

7 (4) direct the respondent to pay support for the petitioner
8 or for a minor child in the care of the petitioner if there is an
9 independent legal obligation of the respondent to support the peti-
10 tioner or the child;

11 (5) award temporary custody of a minor child to the peti-
12 tioner;

13 (6) direct the respondent to pay medical expenses incurred
14 by the petitioner as a result of the domestic violence;

15 (7) direct the respondent to engage in personal or family
16 counseling;

17 (8) restrain the respondent from entering a propelled
18 vehicle in the possession of or occupied by the petitioner.

19 (c) An order issued under this section remains in effect for a
20 period of time not to exceed 90 days. However, the petitioner may
21 petition the [SUPERIOR] court for an extension of a provision of the
22 order if the provision is described in (b)(1), (b)(2), (b)(3), (b)(7),
23 or (b)(8) of this section. If the [SUPERIOR] court, after notice to
24 the respondent of and a hearing on the petition for the extension in
25 accordance with the procedures described in (b) of this section, finds
26 that an extension of the provision of the order is necessary to pro-
27 tect the petitioner or a minor child in the care of the petitioner
28 from domestic violence, the [SUPERIOR] court may extend the provision
29 of the order for a period of time not to exceed 45 days. The court

1 may not grant more than one extension under this subsection.

2 (d) Proceedings under this section do not preclude any other
3 available civil or criminal remedies.

4 * Sec. 6. AS 25.35.020(a) is amended to read:

5 (a) A person who has been subjected to domestic violence may
6 petition the superior or district court for a temporary order provid-
7 ing for emergency injunctive relief restraining the infliction of
8 further domestic violence against the petitioner by the respondent.
9 [IF THERE IS NO SUPERIOR COURT WITHIN 50 ROAD MILES OF THE RESIDENCE
10 OF THE PERSON SUBJECTED TO DOMESTIC VIOLENCE, THE PERSON MAY PETITION
11 THE NEAREST DISTRICT COURT FOR A TEMPORARY EMERGENCY INJUNCTIVE RELIEF
12 ORDER. IF THERE IS NO DISTRICT COURT WITHIN 50 ROAD MILES OF THE
13 RESIDENCE OF THE PERSON SUBJECTED TO DOMESTIC VIOLENCE, THE PERSON MAY
14 PETITION THE NEAREST MAGISTRATE FOR A TEMPORARY EMERGENCY INJUNCTIVE
15 RELIEF ORDER. THE DISTRICT COURT OR MAGISTRATE SHALL NOTIFY THE
16 SUPERIOR COURT IMMEDIATELY UPON ISSUANCE OF AN ORDER GRANTING EMER-
17 GENCY INJUNCTIVE RELIEF UNDER THIS SECTION.]

18 * Sec. 7. AS 25.35.020(d) is amended to read:

19 (d) If an order under this section is granted without notice, a
20 hearing before the [SUPERIOR] court for injunctive relief under
21 AS 25.35.010 shall be scheduled by the [SUPERIOR] court at the earli-
22 est possible time consistent with the notice provisions of AS 25.-
23 35.010. If at the hearing the petitioner does not proceed with the
24 petition for injunctive relief, the [SUPERIOR] court shall dissolve
25 the emergency injunctive relief order.

26 * Sec. 8. AS 25.35.020(e) is amended to read:

27 (e) On three days notice to the petitioner, or on shorter notice
28 as the [SUPERIOR] court may prescribe, the respondent may make a
29 motion to the [SUPERIOR] court for the dissolution or modification of

1 an order for emergency injunctive relief under this section. The
2 [SUPERIOR] court shall hear and rule on the motion in an expeditious
3 manner.

4 * Sec. 9. AS 34.35.005(a) is amended to read:

5 (a) When an action is required to enforce a lien provided for in
6 [SECS. 5 - 425 OF] this chapter and the action falls within the
7 monetary jurisdiction of the district court, the action shall be
8 started in the district [SUPERIOR] court in the judicial district in
9 which the property upon which the lien attaches is located. An action
10 that exceeds the monetary jurisdiction of the district court shall be
11 started in the superior court in the judicial district in which the
12 property upon which the lien attaches is located. The procedure,
13 except as otherwise provided in [SECS. 5 - 45 OF] this chapter, is the
14 same as in the trial of an action to secure property to hold it for
15 the satisfaction of a lien against it.

16 * Sec. 10. This Act takes effect immediately in accordance with AS 01.-
17 10.070(c).



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

JAN 31 1985

January 31, 1985

Representative Mike Miller
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Mike:

The Senate has passed and sent to the House CSSB 1, which would increase the jurisdiction of the District Court to \$25,000, and make other important changes in existing law.

I cast the lone vote against the bill in the Senate because of one provision which I understand was not analyzed in the Senate Judiciary Committee.

I refer to the provision which requires a plaintiff to file all suits for claims under \$25,000, or for certain injunctions, in the District Court, except to the extent that the Supreme Court may allow, by a possible new rule, filings of such cases in the Superior Court. Heretofore, plaintiffs bringing actions within the jurisdictional limit of the District Court could at their option file such actions in either the Superior Court or the District Court. Under the bill, if enacted, that freedom of choice will be gone.

Aspects of this measure which were not considered in the Senate include the following:

1. The bill would deprive parties of the opportunity to obtain the services of a 12-person jury as the finder of fact, since in the District Court, only 6-person juries are used.
2. Certain cases, although involving sums in dispute of less than \$25,000, raise knotty, unusual, or novel questions of law, and heretofore litigants could invoke the generally greater level of experience and scholarship on the Superior Court bench to consider such questions.

Representative Mike Miller
January 31, 1985
Page Two

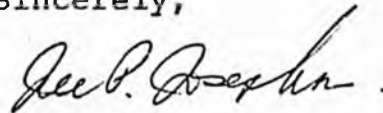
3. Although the purpose may be to reduce the workload of the Superior Court, I foresee the possibility of an increased number of appeals from the District Court to the Superior Court; I am not sure how the Court System evaluates this part of the workload issue.

I am advised that the Alaska Bar Association has not taken a position at this time. By copy of this letter to the Association, I am taking the liberty of inviting its officers to communicate with you, as well as with me, so that the thinking of those who practice in the courts can be taken into account.

Personally, I have no objection to a change in the jurisdictional amount that is contemplated in the bill. My concern is limited to what is, I think, a radical departure from our historic past because of the proposed ban upon filing of certain cases in the Superior Court that have always been cognizable there under concurrent jurisdiction.

With best wishes, I am

Sincerely,



Joe P. Josephson
State Senator

JPJ:rak

cc: The Honorable Jay Rabinowitz, Chief Justice
Arthur Snowden
Alaska Bar Association

14-0417
Levy
1/19/85 ✓

118

JAN 21 1985

BY THE JUDICIARY COMMITTEE
(For the Chief Justice of
the Alaska Supreme Court)

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the jurisdiction of the superior
7 court and the district court; and providing for an
8 effective date."

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

10 * Section 1. AS 22.10.020(a) is amended to read:

11 (a) The superior court is the trial court of general jurisdic-
12 tion, with original jurisdiction in all civil and criminal matters,
13 including probate and guardianship of minors and incompetents. An
14 action that falls within the concurrent jurisdiction of the superior
15 court and the district court may not be filed in the superior court,
16 except as provided by rules of the supreme court.

17 * Sec. 2. AS 22.15.030 is amended to read:

18 Sec. 22.15.030. CIVIL JURISDICTION. (a) The district court has
19 jurisdiction of civil cases and proceedings as follows:

20 (1) for the recovery of money or damages when the amount
21 claimed exclusive of costs, interest and attorney fees does not exceed
22 \$25,000 [\$10,000, EXCEPT AS PROVIDED IN (10) OF THIS SUBSECTION];

23 (2) for the recovery of specific personal property, when
24 the value of the property claimed and the damages for the detention do
25 not exceed \$25,000 [\$10,000];

26 (3) for the recovery of a penalty or forfeiture, whether
27 given by statute or arising out of contract, not exceeding \$25,000
28 [\$10,000];

29 (4) to give judgment without action upon the confession of

1 the defendant for any of the cases specified in this section, except
2 for a penalty or forfeiture imposed by statute;

3 (5) for establishing the fact of death of any person in the
4 manner prescribed in AS 09.55.020 09.55.060;

5 (6) [REPEALED.

6 (7) REPEALED.

7 (8)] for the recovery of the possession of premises in the
8 manner provided under AS 09.45.070 - 09.45.160 when the value of the
9 property or of the arrears and damage to the property does not exceed
10 \$25,000 [\$10,000];

11 (7) [(9)] for the foreclosure of a lien when the amount in
12 controversy does not exceed \$25,000 [\$10,000];

13 (8) [(10)] for the recovery of money or damages in motor
14 vehicle tort cases when the amount claimed exclusive of costs, inter-
15 est and attorney fees does not exceed \$25,000 [\$15,000];

16 (9) [(11)] over civil actions for taking utility service
17 and for damages to or interference with a utility line filed under
18 AS 42.20.030;

19 (10) over cases involving injunctive relief for domestic
20 violence under AS 25.35.010 and 25.35.020.

21 (b) Insofar as the civil jurisdiction of the district courts and
22 the superior court is the same, the [SUCH] jurisdiction is concurrent.
23 An action that falls within the concurrent jurisdiction of the super-
24 ior court and the district court may not be filed in the superior
25 court, except as provided by rules of the supreme court.

26 * Sec. 3. AS 22.15.050 is amended to read:

27 Sec. 22.15.050. ACTIONS NOT WITHIN CIVIL JURISDICTION. The
28 jurisdiction of the district courts does not extend to

29 (1) an action in which the title to real property is in

1 question;

2 (2) an action for false imprisonment, libel, slander,
3 malicious prosecution, criminal conversation, seduction upon a promise
4 to marry, actions of an equitable nature (except as otherwise provided
5 by law [IN AS 22.15.030(a)(9)]), or actions in which the state is a
6 defendant.

7 * Sec. 4. AS 22.15.100 is amended to read:

8 Sec. 22.15.100. FUNCTIONS AND POWERS OF DISTRICT JUDGE AND
9 MAGISTRATE. Each district judge and magistrate has the power

10 (1) to issue writs of habeas corpus for the purpose of
11 inquiring into the cause of restraint of liberty, returnable before a
12 judge of the superior court, and the same proceedings shall be had on
13 the writ as if it had been granted by the superior court judge under
14 the laws of the state in such cases;

15 (2) of a notary public;

16 (3) to issue marriage licenses and to solemnize marriages;

17 (4) to issue warrants of arrest, summons and search war-
18 rants according to manner and procedure prescribed by law and the
19 supreme court;

20 (5) to act as an examining judge or magistrate in prelimi-
21 nary examinations in criminal proceedings; to set, receive and forfeit
22 bail and to order the release of defendants under bail;

23 (6) to act as a referee in matters and actions referred to
24 the judge or magistrate by the superior court, with all powers confer-
25 red upon referees by laws;

26 (7) of the superior court in all respects including but not
27 limited to contempts, attendance of witnesses and bench warrants;

28 (8) to order the temporary detention of a minor, or take
29 other action authorized by law or rules of procedure, in cases arising

1 under AS 47.10, when the minor is in a condition or surrounding dan-
2 gerous or injurious to the welfare of the minor or others which
3 requires immediate action; the action may be continued in effect until
4 reviewed by the superior court in accordance with rules of procedure
5 governing these cases;

6 (9) to issue a temporary order for [EMERGENCY] injunctive
7 relief in cases involving domestic violence as provided in AS 25.35.-
8 010 and AS 25.35.020;

9 (10) to review an administrative revocation of a person's
10 driver's license or nonresident privilege to drive, and an administra-
11 tive refusal to issue an original license, when designated as a hear-
12 ing officer by the commissioner of public safety and with the consent
13 of the administrative director of the state court system.

14 * Sec. 5. AS 25.35.010 is amended to read:

15 Sec. 25.35.010. INJUNCTIVE RELIEF IN CASES INVOLVING DOMESTIC
16 VIOLENCE. (a) A person who is subjected to domestic violence may
17 petition a superior or district court for injunctive relief restrain-
18 ing the infliction of further domestic violence against the petitioner
19 by the respondent.

20 (b) Upon receiving a petition under (a) of this section, the
21 [SUPERIOR] court shall schedule a hearing and shall provide at least
22 10 days notice to the respondent of the hearing and of the respon-
23 dent's right to appear and to be heard either in person or by attor-
24 ney. If, at the hearing, the [SUPERIOR] court finds that the peti-
25 tioner has been subjected to domestic violence by the respondent, the
26 [SUPERIOR] court may issue any order it determines to be necessary for
27 the protection of the health, safety or welfare of the petitioner or
28 of a minor child in the care of the petitioner. An order under this
29 subsection may include provisions that [WHICH]

1 (1) restrain the respondent from subjecting the petitioner
2 to domestic violence;

3 (2) direct the respondent to vacate the home of the peti-
4 tioner;

5 (3) restrain the respondent from communicating directly or
6 indirectly with the petitioner;

7 (4) direct the respondent to pay support for the petitioner
8 or for a minor child in the care of the petitioner if there is an
9 independent legal obligation of the respondent to support the peti-
10 tioner or the child;

11 (5) award temporary custody of a minor child to the peti-
12 tioner;

13 (6) direct the respondent to pay medical expenses incurred
14 by the petitioner as a result of the domestic violence;

15 (7) direct the respondent to engage in personal or family
16 counseling;

17 (8) restrain the respondent from entering a propelled
18 vehicle in the possession of or occupied by the petitioner.

19 (c) An order issued under this section remains in effect for a
20 period of time not to exceed 90 days. However, the petitioner may
21 petition the [SUPERIOR] court for an extension of a provision of the
22 order if the provision is described in (b)(1), (b)(2), (b)(3), (b)(7),
23 or (b)(8) of this section. If the [SUPERIOR] court, after notice to
24 the respondent of and a hearing on the petition for the extension in
25 accordance with the procedures described in (b) of this section, finds
26 that an extension of the provision of the order is necessary to pro-
27 tect the petitioner or a minor child in the care of the petitioner
28 from domestic violence, the [SUPERIOR] court may extend the provision
29 of the order for a period of time not to exceed 45 days. The court

1 may not grant more than one extension under this subsection.

2 (d) Proceedings under this section do not preclude any other
3 available civil or criminal remedies.

4 * Sec. 6. AS 25.35.020(a) is amended to read:

5 (a) A person who has been subjected to domestic violence may
6 petition the superior or district court for a temporary order provid-
7 ing for emergency injunctive relief restraining the infliction of
8 further domestic violence against the petitioner by the respondent.
9 [IF THERE IS NO SUPERIOR COURT WITHIN 50 ROAD MILES OF THE RESIDENCE
10 OF THE PERSON SUBJECTED TO DOMESTIC VIOLENCE, THE PERSON MAY PETITION
11 THE NEAREST DISTRICT COURT FOR A TEMPORARY EMERGENCY INJUNCTIVE RELIEF
12 ORDER. IF THERE IS NO DISTRICT COURT WITHIN 50 ROAD MILES OF THE
13 RESIDENCE OF THE PERSON SUBJECTED TO DOMESTIC VIOLENCE, THE PERSON MAY
14 PETITION THE NEAREST MAGISTRATE FOR A TEMPORARY EMERGENCY INJUNCTIVE
15 RELIEF ORDER. THE DISTRICT COURT OR MAGISTRATE SHALL NOTIFY THE
16 SUPERIOR COURT IMMEDIATELY UPON ISSUANCE OF AN ORDER GRANTING EMER-
17 GENCY INJUNCTIVE RELIEF UNDER THIS SECTION.]

18 * Sec. 7. AS 25.35.020(d) is amended to read:

19 (d) If an order under this section is granted without notice, a
20 hearing before the [SUPERIOR] court for injunctive relief under
21 AS 25.35.010 shall be scheduled by the [SUPERIOR] court at the earli-
22 est possible time consistent with the notice provisions of AS 25.-
23 35.010. If at the hearing the petitioner does not proceed with the
24 petition for injunctive relief, the [SUPERIOR] court shall dissolve
25 the emergency injunctive relief order.

26 * Sec. 8. AS 25.35.020(e) is amended to read:

27 (e) On three days notice to the petitioner, or on shorter notice
28 as the [SUPERIOR] court may prescribe, the respondent may make a
29 motion to the [SUPERIOR] court for the dissolution or modification of

1 an order for emergency injunctive relief under this section. The
2 [SUPERIOR] court shall hear and rule on the motion in an expeditious
3 manner.

4 * Sec. 9. AS 34.35.005(a) is amended to read:

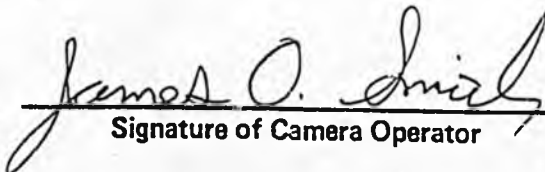
5 (a) When an action is required to enforce a lien provided for in
6 [SECS. 5 - 425 OF] this chapter and the action falls within the
7 monetary jurisdiction of the district court, the action shall be
8 started in the district [SUPERIOR] court in the judicial district in
9 which the property upon which the lien attaches is located. An action
10 that exceeds the monetary jurisdiction of the district court shall be
11 started in the superior court in the judicial district in which the
12 property upon which the lien attaches is located. The procedure,
13 except as otherwise provided in [SECS. 5 - 45 OF] this chapter, is the
14 same as in the trial of an action to secure property to hold it for
15 the satisfaction of a lien against it.

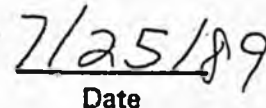
16 * Sec. 10. This Act takes effect immediately in accordance with AS 01.-
17 10.070(c).
18
19
20
21
22
23
24
25
26
27
28
29



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H B

1 2 5

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	2/4/85	1:30 pm
" "	2/8/85	1:30 pm
" "	2/28/85	1:30 pm

COMMITTEE REPORT
HOUSE

4/1

Rules

(7)

FURTHER:

1/25/85

Date: 3-28-85

The Committee on JUDICIARY has had HB 125

"An Act revising the Alaska Unfair Trade Practices and Consumer Protection Act; adding new causes of action for private business; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 125 (Jud) same title
- and recommends it do pass new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] no rec

[Signature] NI

[Signature] NO PASS

[Signature]

CHAIRMAN

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 125 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act revising the Alaska Unfair Trade Practices
7 and Consumer Protection Act; and adding new causes of
8 action for private business."

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

10 * Section 1. AS 45.50.471(b) is amended by adding new paragraphs to
11 read:

12 (26) failing to comply with AS 45.45.105 - 45.45.110 relat-
13 ing to unsolicited merchandise;

14 (27) failing to comply with AS 45.45.120 relating to disclo-
15 sure of funeral costs.

16 * Sec. 2. AS 45.50.481 is amended to read:

17 Sec. 45.50.481. EXEMPTIONS. Nothing in AS 45.50.471 -
18 45.50.561 applies to

19 (1) an act or transaction regulated under laws administered
20 by the state, by a [ANY] regulator, board or commission, or an officer
21 acting under statutory authority of the state or of the United States,
22 if [UNLESS] the law regulating the act or transaction

23 (A) prohibits [DOES NOT PROHIBIT] the practices de-
24 clared unlawful in AS 45.50.471;

25 (B) does not exempt from regulation the person commit-
26 ting the prohibited act or practice;

27 (C) provides remedies for injured persons equal to or
28 greater than those provided in AS 45.50.471 - 45.50.561; and

29 (D) unless the law is a federal law that preempts

1 state action, provides the state with adequate enforcement and
2 restitution remedies in the public interest similar to those
3 remedies in AS 45.50.501 and 45.50.551;

4 (2) an act done by the publisher, owner, agent, or employee
5 of a newspaper, periodical or radio or television station in the
6 publication or dissemination of an advertisement, when the owner,
7 agent or employee did not have knowledge of the false, misleading or
8 deceptive character of the advertisement or did not have a direct
9 financial interest in the sale or distribution of the advertised
10 product or service;

11 (3) an act or transaction regulated under AS 21.36 or
12 AS 06.05 or a regulation adopted [ANY REGULATIONS PROMULGATED] under
13 the authority of either of those chapters.

14 * Sec. 3. AS 45.50.531(a) is amended to read:

15 (a) A person who purchases or leases an item of value in trade
16 or commerce for use and not for resale, [GOODS OR SERVICES] and who
17 thereby suffers an ascertainable loss of money or real or personal
18 property [, REAL OR PERSONAL,] as a result of another person's act or
19 practice declared unlawful by AS 45.50.471, may bring a civil action
20 [IN THE JUDICIAL DISTRICT IN WHICH THE SELLER OR LESSOR RESIDES OR HAS
21 HIS PRINCIPAL PLACE OF BUSINESS OR IS DOING BUSINESS,] to recover
22 actual damages or \$200, whichever is greater. The jury, or, if the
23 action is tried without a jury, the judge, may, in cases of wilful
24 violation, award up to three times the actual damages sustained. In
25 [, AND IN] all cases the court may provide equitable relief it consid-
26 ers necessary or proper.

27 * Sec. 4. AS 45.50.531(b) is amended to read:

28 (b) A person entitled to bring an action under this section may,
29 [AFTER INVESTIGATION BY AND APPROVAL OF THE ATTORNEY GENERAL,] if the

1 unlawful act or practice has caused similar injury to numerous other
2 persons similarly situated and if the person [HE] adequately repre-
3 sents the similarly situated persons, bring an action on behalf of all
4 [HIMSELF AND OTHER] similarly injured and situated persons to recover
5 actual damages. A person planning to bring an action under this
6 subsection shall deliver [FIRST SUBMIT] to the attorney general a copy
7 of the [HIS PROPOSED] complaint when it is filed with the court [, AND
8 HE MAY NOT FILE THE COMPLAINT IN COURT WITHOUT THE ATTORNEY GENERAL'S
9 APPROVAL]. In an action brought under this subsection, the court may
10 in its discretion order, in addition to damages, injunctive or other
11 equitable relief.

12 * Sec. 5. AS 45.50.531(h) is amended to read:

13 (h) A manufacturer or supplier [MANUFACTURERS OR SUPPLIERS] of
14 merchandise, whose [THE] fault [OF WHICH] is the basis for the action
15 under this chapter, is [ARE] liable for the damages assessed to or
16 suffered by a retailer sued or [RETAILERS] charged under this chapter.
17 A retailer has a private cause of action to recover from a
18 manufacturer or supplier under this subsection the actual damages
19 suffered by the retailer if

20 (1) the retailer has given the manufacturer or supplier
21 reasonable notice and a reasonable opportunity to satisfy the
22 customer's claim;

23 (2) the manufacturer or retailer has not satisfied the
24 customer's claim;

25 (3) the retailer satisfies, before the customer files an
26 action in court, a claim of the customer against the manufacturer or
27 supplier arising under this subsection; and

28 (4) the retailer has suffered damage by satisfying the
29 customer's claim.

1 * Sec. 6. AS 45.50.531 is amended by adding a new subsection to read:

2 (i) A business person whose business is injured and who suffers
3 an ascertainable loss of money or real or personal property as a
4 result of a competitor's act or practice declared unlawful by AS 45.-
5 50.471, may bring a civil action to recover actual damages. The jury,
6 or, if the action is tried without a jury, the judge, may, in cases of
7 wilful violation, award up to three times the actual damages sus-
8 tained. In all cases the court may provide equitable relief it con-
9 siders necessary or proper.

10 * Sec. 7. AS 45.50.541 is amended by adding a new subsection to read:

11 (d) In this section, "consumer" means a person who seeks or
12 acquires goods or services, whether or not affixed to real property,
13 by lease or purchase, for personal, family, or household purposes.

14 * Sec. 8. AS 45.50.542 is amended to read:

15 Sec. 45.50.542. WAIVER VOID. A waiver by a person [CONSUMER] of
16 a provision [THE PROVISIONS] of AS 45.50.471 - 45.50.561 that was
17 enacted to protect that person is contrary to public policy and is
18 unenforceable and void.

19 * Sec. 9. AS 45.50 is amended by adding a new section to read:

20 Sec. 45.50.560. SHORT TITLE. AS 45.50.471 - 45.50.561 may be
21 cited as the Unfair Trade Practices Act.

22 * Sec. 10. AS 45.50.561 is amended by adding new paragraphs to read:

23 (10) "person" has the meaning given in AS 01.10.060;

24 (11) "trade or commerce" means the advertising, offering for
25 sale, barter, or distribution of a service or property, tangible or
26 intangible, real, personal, or mixed, or other article, commodity, or
27 thing of value, wherever situated, and includes trade or commerce
28 directly or indirectly affecting the people of the state;

29 (12) "wilful" means that the person committing the act or

1 practice declared unlawful by AS 45.50.471 knew or should have known
2 that the conduct was an unfair or deceptive trade practice or unfair
3 method of competition.

4 * Sec. 11. AS 45.50.561(6) is repealed.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

PROPOSED COMMITTEE SUBSTITUTE FOR HB 125

CS FOR HOUSE BILL NO. 125
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act revising the Alaska Unfair Trade Practices and Consumer Protection Act; adding new causes of action for private business; and providing for an effective date."

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

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

(26) failing to comply with AS 45.45.105 -- 45.45.110 relating to unsolicited merchandise;

(27) failing to comply with AS 45.45.120 relating to disclosure of funeral costs.

* Sec. 2. AS 45.50.481 is amended to read:

Sec. 45.50.481. EXEMPTIONS. Nothing in AS 45.50.471 -- 45.50.561 applies to

(1) an act or transaction regulated under laws administered by the state, by any regulatory board or commission, or officer acting under statutory authority of the state or of the United States, if [UNLESS] the law regulating the act or transaction

(A) prohibits [DOES NOT PROHIBIT] the practices declared unlawful in AS 45.50.471; and

(B) does not itself exempt from regulation the person committing the prohibited act or practice; and

(C) provides an adequate private cause of action for injured persons similar to that provided in AS 45.50.531; and

(D) unless the law is a federal law which preempts state action, provides the state with adequate enforcement and restitution remedies in the public interest similar to those remedies in AS 45.50.501 and 45.50.551;

(2) an act done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement or did not have a direct financial interest in the sale or distribution of the advertised product or service;

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or any regulations adopted [PROMULGATED] under authority of those chapters.

* Sec. 3. AS 45.50.531(a) is amended to read:

(a) A person who purchases or leases any item of value in trade or commerce for use and not for resale, [GOODS OR SERVICES] and who thereby suffers an ascertainable loss of money or real or personal property[, REAL OR PERSONAL,] as a result of another person's act or practice declared unlawful by AS 45.50.471, may bring a civil action [IN THE JUDICIAL DISTRICT IN WHICH THE SELLER OR LESSOR RESIDES OR HAS HIS PRINCIPAL PLACE OF BUSINESS OR IS DOING BUSINESS,] to recover actual damages or \$200, whichever is greater. The jury, or, if the action is tried without a jury, the judge, may, in cases of wilful violation, award up to three times the actual damages sustained. In [, AND IN] all cases the court may provide equitable relief it considers necessary or proper.

* Sec. 4. AS 45.50.531(b) is amended to read:

(b) A person entitled to bring an action under this section may,

[AFTER INVESTIGATION BY AND APPROVAL OF THE ATTORNEY GENERAL,] if the unlawful act or practice has caused similar injury to numerous other persons similarly situated and if the person [HE] adequately represents the similarly situated persons, bring an action on behalf of all [HIMSELF AND OTHER] similarly injured and situated persons to recover actual damages. A person planning to bring an action under this subsection shall deliver [FIRST SUBMIT] to the attorney general a copy of the [HIS PROPOSED] complaint when it is filed with the court [, AND HE MAY NOT FILE THE COMPLAINT IN COURT WITHOUT THE ATTORNEY GENERAL'S APPROVAL]. In an action brought under this subsection, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

* Sec. 5. AS 45.50.531(h) is amended to read:

(h) Manufacturers or suppliers of merchandise, the fault of which is the basis for the action under this chapter, are liable for the damages assessed to or suffered by retailers sued or charged under this chapter. When a retailer suffers damages due to satisfying, without legal action, a claim by a customer which would have been actionable under this chapter, the manufacturer or supplier of merchandise may be liable for those damages to the retailer, if after reasonable notice from the retailer and opportunity to satisfy the customer's claim, the manufacturer or supplier fails to satisfy the customer's claim. A retailer has a private cause of action to recover damages from a manufacturer or supplier under this subsection.

* Sec. 6. AS 45.50.531 is amended by adding a new subsection to read:

(i) A business person whose business is injured and who suffers an ascertainable loss of money or real or personal property as a result of a competitor's act or practice declared unlawful by AS 45.-50.471 may bring a civil action to recover actual damages. The jury,

or, if the action is tried without a jury, the judge, may, in cases of wilful violation, award up to three times the actual damages sustained. In all cases the court may provide equitable relief it considers necessary or proper.

* Sec. 7. AS 45.50.541 is amended by adding a new subsection to read:

(d) In this section, "consumer" means a person who seeks or acquires goods or services, whether separate or affixed to real property, by lease or purchase, for personal, family, or household purposes.

* Sec. 8. AS 45.50.542 is amended to read:

Sec. 45.50.542. WAIVER. A waiver by a person [CONSUMER] of a substantive provision [THE PROVISIONS] of AS 45.50.471 -- 45.50.561 which was enacted to protect that person is contrary to public policy and is unenforceable and void.

* Sec. 9. AS 45.50 is amended by adding a new section to read:

Sec. 45.50.560. SHORT TITLE. AS 45.50.471 -- 45.50.561 may be cited as the Unfair Trade Practices Act.

* Sec. 10. AS 45.50.561 is amended by adding new paragraphs to read:

(10) "person" has the meaning given to it in AS 01.10.-060(7);

(11) "trade or commerce" means the advertising, offering for sale, barter, or distribution of any service or any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and includes any trade or commerce directly or indirectly affecting the people of this state;

(12) "wilful" means that the person committing the act or practice declared unlawful by AS 45.50.471 knew or should have known that the conduct was an unfair or deceptive trade practice or unfair method of competition.

* Sec. 11. AS 45 50.561(6) is repealed.

* Sec. 12. This Act takes effect immediately in accordance with AS 01.-
10.070(c).

- House Judiciary

No participants in Fairbanks. -

```

*
* DELIVER TO: TCJNU
*
* ORIGINAL
* SENT: 03/28/85 TIME: 14:38
* FROM: DAVID JENSEN
* SUBJECT: HOU JUDICIARY STATS (3-28-85)
* PRINT DATE: 03/28/85 TIME: 15:17
*
*
*

```

*** FINAL T/C STATS ***

```

DATE: _____ MARCH 28, 1984- THURSDAY _____
SITE: _____ ANCHORAGE - MAIN MEETING ROOM _____
SPONSOR: _____ HOUSE JUDICIARY COMMITTEE _____
SUBJECT: _____ HB 125 : CONSUMER PROTECTION ACT LEGIS. _____
LOCAL MODERATOR: _____ DAVID J _____

```

TESTIFIED:

NAME/REPRESENTING	ADDRESS	PHONE
FRED WITZLEBEN/WITZLEBEN HOMES	P O BOX 02351 ANCH	274-7176
FRED KEHL	BOX 111 7 ANCH	29511 344-1427

OBSERVED:

NAME/REPRESENTING	ADDRESS	PHONE
BARBARA HENDRICKSEN	DEPARTMENT OF LAW ANCH	
ROBERT MINTZ	DEPARTMENT OF LAW ANCH	
BRIAN MATHEWS	ADDRESS NOT GIVEN	

```

TESTIFIED: _____ 02 _____
OBSERVED: _____ 03 _____
TOTAL: _____ 05 _____

```

```

TIME START: _____ 1:30 _____
TIME END: _____ 2:40 _____

```

Alaska State Legislature



House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

Contents - HB 125
March 28, 1985

HB 125
Fiscal Note, Dept. of Law
3/27/85 letter from Linda O'Bannon with Sectional Analysis
of committee substitute
Proposed Committee Substitute for HB 125
2/21/85 letter from Linda O'Bannon with litigation report
2/13/85 Attorney General Opinion re Civil Rule 89
2/8/85 untitled memo re changes
Swenson Trucking, Etc. v. Truckweld Equip
AS 09.05.015
House Journal 1/25/85
2/11/85 Letter from Gruenberg to Witzleben
2/7/85 Witzleben letter
Consumer Protection information

Handwritten initials/signature

88 142

Revision Date: _____

REQUEST
 Bill/Resolution No.: HB 125
 Title: "...relating to unfair trade practices."
 Sponsor: House Rules/by req. of Gov.
 Requestor: Governor's Ofc./OMB
 Date of Request: 12/11/84

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 85	FY 86	FY 87	FY 88	FY 89	FY 90
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						

ANALYSIS: Attach a separate page if necessary

Prepared By: Richard I. Pegues, Director
 Division: Administrative Services
 Approved by Commissioner: Norman C. Forsuch
 Agency: Department of Law

Phone: 465-3672
 Date: 12/12/84
 Date: 12/12/84

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

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).

The changes to AS 45.50.501(a)(1) and (2) and AS 45.50.531(a) are actually venue changes, but the changes were recommended in response to the Alaska Supreme Court's remarks about AS 45.50.531 in Swenson Trucking, Etc. v. Truckweld Equipment 604 P.2d 1113 (Alaska 1980). The court did not reach the question whether the ban against unfair trade practices contained in AS 45.50.471 applies to acts committed outside the State of Alaska, but did hold that the court lacked subject matter jurisdiction in that particular case because the defendant's residence and principal place of business were in Washington State. The court noted the plaintiff made no argument that the defendant was "doing business" (the term used in § 531) in Alaska.

In a footnote the court remarked:

We do not imply a decision of whether Truckweld's association with Alaska - namely, repairing a product which Truckweld knew or should have known would be used in Alaska is sufficient to permit personal jurisdiction over Truckweld within Alaska's long arm jurisdiction statutes, AS 09.05.015. Id. at 1119, 20 n. 17

Therefore, we suggest an amendment to § 501 and 531, taking out the venue provisions which the Supreme Court was looking at in questioning subject matter jurisdiction and therefore personal jurisdiction. Thus, if you adopt HB 115 or some other venue statute and want to conform the suggested amendment to § 501, that would be acceptable, but you probably should take out the language in § 531(a) as suggested because the venue provision is

really not needed in that section and could lead to some confusion as evidenced by the court's remarks in Swenson Trucking. The venue provision in § 501 may be needed if there is subject matter jurisdiction over an out-of-state business (therefore personal jurisdiction) to explain that the Attorney General can file the action in judicial district of AG's choice.

SWENSON TRUCKING, ETC. v. TRUCKWELD EQUIP. Alaska 1113

Cite as, Alaska, 604 P.2d 1113

Although the circumstances surrounding the scene of a violent crime are far different from a traffic stop the general principle is equally applicable. Police should be free to ask questions to determine what has happened. Only then can an officer exercise judgment as to what action to take. Again, each case turns on its particular facts. At some point, the on-the-scene questioning may become a custodial interrogation. See *State v. Darnell*, 8 Wash.App. 627, 508 P.2d 613, 615 (Wash.App.1973), cert. denied, 414 U.S. 1112, 94 S.Ct. 842, 38 L.Ed.2d 739; *United States v. LeQuire*, 424 F.2d 341, 343-44 (5th Cir. 1970).

I conclude that the circumstances in this case did not amount to custodial interrogation. Therefore, I can agree with the majority that there was no error in the admission of Palmer's statement.

BOOCHEVER, Justice, concurring.

With reference to the videotaping and recording of the sobriety tests at the police headquarters, I am of the opinion that one in defendant's position would have had no actual or subjective expectation of privacy. From all indications, the testing was performed in a public area and not in a private room which might give rise to such an expectation. Moreover, the vary nature of the testing was for the obvious purpose of making the results public. Therefore, I would rest the holding that there was no violation of Palmer's right to privacy on the lack of subjective expectation of privacy.

I am not at all sure that if the circumstances were such as to give rise to an actual and subjective expectation of privacy, that society would not be prepared to recognize such an expectation as reasonable. A sense of fairness based on a requirement of being open and above board would seem to require notification that one's actions are being videotaped and recorded, if the testing were performed under circumstances giving rise to a subjective expectation of privacy. See *State v. Glass*, 583 P.2d 872 (Alaska 1978).

I further would not speculate as to whether a *Miranda* warning would be required if the statements of the accused made during the testing are regarded as testimonial in character. The trooper indicated that the breathalyzer test results indicated that Palmer had a blood alcohol level of .16 percent, to which Palmer replied "Oh no." That exclamation could hardly be regarded as incriminating, and I find it unnecessary to make any general holding as to whether the remarks were the result of custodial interrogation so as to require a *Miranda* warning. There are too many factual variations which may arise to justify such a sweeping holding. For example, a police officer could give a false statement of a high breathalyzer reading hoping to elicit an admission of where a defendant had been drinking or some statement as to the amount consumed. Even under the circumstances here involved, had Palmer answered "I only had six drinks," a close question would be presented. There can be no dispute of the fact that Palmer was in custody.¹ The United States Supreme Court has held that direct questioning is not required to trigger the requirement of *Miranda* warnings. *Brewer v. Williams*, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977).



SWENSON TRUCKING & EXCAVATING, INC., Appellant,

v.

TRUCKWELD EQUIPMENT COMPANY, Appellee.

No. 4288.

Supreme Court of Alaska.

Jan. 4, 1980.

Action for damages arising out of a defective weld in the original manufacture

1. See *Hanter v. State*, 590 P.2d 888 (Alaska 1979).

SWENSON TRUCKING, ETC. v. TRUCKWELD EQUIP. Alaska 1119

Cite as, Alaska, 604 P.2d 1113

minds could draw different inferences and reach different conclusions from the fact the issue must be reserved for trial.¹³

III. BREACH OF EXPRESS AND IMPLIED WARRANTIES

Counts II and III of Swenson's complaint alleged breach of express and implied warranties. Swenson claims that "the repairs requested by Swenson and the bill presented by Truckweld constituted a sales transaction within the definition of the Uniform Commercial Code."¹⁴

[10] The U.C.C. does not apply to this transaction. AS 45.05.046(a) (U.C.C. § 2106(a)) provides:

In §§ 36-242 of this chapter,¹⁵ unless the context otherwise requires, "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (§ 126). A "present sale" means a sale which is accomplished by the making of the contract. [emphasis added]

AS 45.05.094, .096, and .098, the Code's warranty provisions, expressly apply only to

13. Quoting *Gross v. Southern Ry. Co.*, 414 F.2d 292, 297 (5th Cir. 1969) (citations omitted).

14. The Alaskan version of the U.C.C. is codified at AS 45.05.

15. This refers to Article II, the "Uniform Commercial Code—Sales." Ch. 114, § 2.106, SLA 1962.

16. AS 45.50.471 provides, in pertinent part:

(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a

sales of goods. Truckweld was not a seller of the defective ram assembly. Since Swenson claims no other basis for relief on its theory of breach of warranty, summary judgment was appropriate.

IV. AS 45.50.471

[11] Swenson claims damages from alleged unfair trade practices committed by Truckweld, in violation of AS 45.50.471(b)(4), (6), (12) and (15).¹⁶ The dismissal of this claim was correct because the superior court lacked subject matter jurisdiction over the claim. AS 45.50.531 states:

Private and class actions. (a) A person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of another person's act or practice declared unlawful by § 471 of this chapter, may bring a civil action in the judicial district in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or \$200, whichever is greater.

Truckweld's residence and principal place of business is in Washington state. Swenson makes no argument that Truckweld was "doing business" in Alaska within the meaning of AS 45.50.531.¹⁷ We do not reach the question whether the ban against

sponsorship, approval, status, affiliation, or connection that he does not have;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

17. We do not imply a decision on whether Truckweld's association with Alaska—namely, repairing a product which Truckweld knew or

unfair trade practices contained in AS 45-50.471 applies to acts committed outside the State of Alaska.

As we have discussed in section II of this opinion, there are triable issues of fact concerning Truckweld's duty of care to Swenson. Consequently, we reverse the trial court's grant of summary judgment on Swenson's negligence claim.

should have known would be used in Alaska—is sufficient to permit personal jurisdiction over Truckweld within Alaska's long arm jurisdiction statute, AS 09.05.015. Compare *Modern Trailer Sales, Inc. v. Traweck*, 561 P.2d 1192

AFFIRMED in part, REVERSED in part, and REMANDED.



(Alaska 1977) (defendant had insufficient contact with Alaska for personal jurisdiction), with *Jones Enterprises, Inc. v. Atlas Service Corp.*, 442 F.2d 1136 (9th Cir. 1971) (sufficient contact with Alaska for personal jurisdiction).

12
STATE of

Antonio Gamez
No
Supreme

No
Rehearing

Defendant,
was convicted by
Pima County, C
Gin, J., of false
and he appealed
prisonment by v
ly included off
Court of Appea
Court, Hays, J.
that false impr
essarily include
statutes.

Judgment o
sion of Court of

1. False Imprisonment
Essence of
ment" is unlaw
erty of another
is provided if
menace, fraud,
infringement o
ular means by
A.R.S. §§ 13-9

See publi
for other
definitions.

2. Indictment
Kidnappin
violation of p
compasses :
set forth in f:
cluding violer
thus, false im
essarily inclu
statute. A.R
[B], 13-961, 1

Collateral references. — 5 Am. Jur. 2d, Appearance, § 1 et seq.; 20 Am. Jur. 2d, Courts, §§ 87-171.

21 C.J.S., Courts, §§ 15-119.

Setting aside default judgment for failure of statutory agent on whom process was served to notify defendant. 20 ALR2d 1179.

Tolling of statute of limitations when process is not served before expiration of limitation period, as affected by statutes defining commencement of action, or expressly relating to interruption of running of limitations. 27 ALR2d 236.

Appealability of order overruling or sustaining motion to quash or set aside service of process. 30 ALR2d 287.

Necessity of service of process upon infant itself in juvenile delinquency and dependency proceedings. 90 ALR2d 293.

Construction and effect of provision for service of process against minor on a parent, guardian, or other designated person. 92 ALR2d 1336.

Inclusion or exclusion of first and last days in computing time for service of process which must take place a certain number of days before a known future date. 98 ALR2d 1398.

Statute permitting new action after failure of original action commenced within period of limitation, as applicable in cases where original action failed for lack of jurisdiction. 6 ALR3d 1043.

Mistake or error in middle initial or middle name of party as vitiating or invalidating civil process, summons, or the like. 6 ALR3d 1179.

Tolling of statute of limitations during absence from state as affected by fact that party claiming benefit of limitations remained subject to service during absence or nonresidence. 55 ALR3d 1158.

Validity of service of summons or complaint on Sunday or holiday. 63 ALR3d 423.

Sec. 09.05.010. Jurisdiction of action. From the time of the service of a copy of the summons and complaint, or of the completion of the publication when service by publication is ordered, the court acquires jurisdiction and has control of all the subsequent proceedings. The voluntary appearance of the defendant is equivalent to personal service of a copy of the summons and complaint upon the defendant. (§ 5.05 ch. 101 SLA 1962)

Collateral references. — Immunity from service of process of nonresident witness appearing in other than strictly judicial proceedings. 35 ALR2d 1353.

Sufficiency of designation of court or place of appearance in original civil process. 93 ALR2d 376.

Jurisdiction of court to permit sterilization of mentally defective person in absence of specific statutory authority. 74 ALR3d 1210.

Sec. 09.05.015. Personal jurisdiction. (a) A court of this state having jurisdiction over the subject matter has jurisdiction over a person served in an action according to the rules of civil procedure

(1) in an action, whether arising in or out of this state, against a defendant who, when the action is commenced,

(A) is a natural person present in this state when served;

(B) is a natural person domiciled in this state;

(C) is a domestic corporation; or

of first and last
or service of pro-
a certain num-
future date. 96

w action after
on commenced
n, as applicable
action failed for
3d 1043.
iddle initial or
is vitiating or
ummons, or the

itations during
ted by fact that
of limitations
during absence
d 1158.
ummons or com-
lay. 63 ALR3d

e of the ser-
letion of the
urt acquires
edings. The
onal service
t. (§ 5.05 ch.

to permit
effective person
tory authority.

of this state
over a per-
cedure

e, against a

ed;

(D) is engaged in substantial and not isolated activities in this state, whether the activities are wholly interstate, intrastate, or otherwise;

(2) in an action which may be brought under statutes of this state which specifically confer grounds for personal jurisdiction over the defendant;

(3) in an action claiming injury to person or property in or out of this state arising out of an act or omission in this state by the defendant;

(4) in an action claiming injury to person or property in this state arising out of an act or omission out of this state by the defendant, provided, in addition, that at the time of the injury either

(A) solicitation or service activities were carried on in this state by or on behalf of the defendant; or

(B) products, materials or things processed, serviced or manufactured by the defendant were used or consumed in this state in the ordinary course of trade;

(5) in an action which

(A) arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services in this state or to pay for services to be performed in this state by the plaintiff;

(B) arises out of services actually performed for the plaintiff by the defendant in this state, or services actually performed for the defendant by the plaintiff in this state if the performance in this state was authorized or ratified by the defendant;

(C) arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive in this state or to ship from this state goods, documents of title, or other things of value;

(D) relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant or the order or direction of the defendant; or

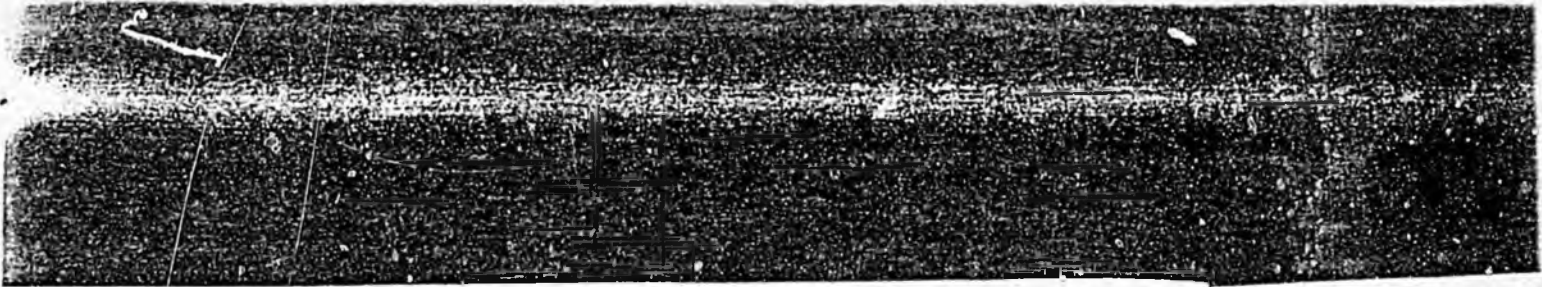
(E) relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant, without regard to where delivery to the carrier occurred;

(6) in an action which arises out of

(A) a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or to protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this state;

(B) a claim to recover a benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated in this state either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

(C) a claim that the defendant return, restore, or account to the plaintiff for an asset or thing of value which was in this state at the time the defendant acquired possession or control over it;



§ 09.05.015

ALASKA STATUTES

§ 09.05.015

§ 09.05.0

(7) in an action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other security agreement executed by the defendant or a predecessor of the defendant to whose obligations the defendant has succeeded and the deficiency is claimed

(A) in an action in this state to foreclose upon real property situated in this state;

(B) following sale of real property in this state by the plaintiff; or

(C) following resale of tangible property in this state by the plaintiff;

(8) in an action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of the corporation while the defendant held office as a director or officer;

(9) in an action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority after April 10, 1968;

(10) in an action which arises out of a promise made to the plaintiff or some third party by the defendant to insure upon or against the happening of an event if

(A) the person insured was a resident of this state when the event out of which the cause of action is claimed to arise occurred;

(B) the event out of which the cause of action is claimed to arise occurred in this state; or

(C) the promise to insure was made in the state;

(11) in an action against a personal representative to enforce a claim against the deceased person represented if one or more of the grounds stated in (a)(2) — (10) of this section would have furnished a basis for jurisdiction over the deceased if living, and it is immaterial under this paragraph whether the action was commenced during the lifetime of the deceased;

(12) in an action for annulment, divorce or separate maintenance when a personal claim is asserted against the nonresident party, if

(A) the parties resided in this state in a marital relationship for not less than six consecutive months within the six years preceding the commencement of the action;

(B) the party asserting the personal claim has continued to reside in this state; and

(C) the nonresident party receives notice as required by law.

(b) In an action brought in reliance upon jurisdictional grounds stated in (a)(2) — (10) of this section, there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

(c) The jurisdictional grounds stated in (a)(2) — (10) of this section are cumulative and in addition to any other grounds provided by the common law. (§ 1 ch 87 SLA 1968; am § 1 ch 92 SLA 1972)

Legislative report on ci see 1967 H

Broad long arm - regarded as to establish extent per v. Garrett A No. 744 (F 1971); Pac F. Supp. 96 Air Serv. Corp., 378 Modern Tr Sup. Ct. Op P.2d 1192

The law tion, subje Alaska pro due process tion." This that, and it this section: Inc. v. Atl. 19th Cir. 19

The Ala assertion o extent per v. New Mo 1253 (File

The sup: section to the maxim guarantees amendmen Klippan, S 4336, 4368 U.S. 974, 1 (1980).

Since construed court to es: mum exte: federal cou asserting j would viol: fourteenth N. Am. v. 1266 19th C

The foll evaluatin defendant nonresiden consumma: forum or purposefull of conduct

CONSUMER INFO

CONSUMER PROTECTION SECTION

The Consumer Protection Section of the Attorney General's office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to handle consumer complaints.

WHY WE NEED YOUR COMPLAINT IN WRITING

Consumer Protection is here to serve you. We can do a better job and process your complaint faster if you help us. We need to have your complaint in writing because written complaints help you give us all the details we need and help us work faster than with initial interviews. (We can handle several complaints in the time it takes to do an interview, and somebody still has to write out all the details.) If we need more details after reading your complaint, we will contact you.

If you aren't sure whether you have a complaint, go ahead and fill out one of our complaint forms anyway. If you don't have a complaint, we will contact you promptly. Usually you do have a complaint or you wouldn't be here.

WHAT WE DO WITH YOUR COMPLAINT

A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We send the business a letter and a copy of your complaint, asking them to tell their side of the story. When we get their reply, we will contact you for your comments or to tell you about any proposed settlement offer from the business. Much of the time, this process yields satisfactory results.

If there is no voluntary offer of settlement or the proposed settlement is not acceptable to you, you must then proceed privately through the Small Claims Court or a private attorney. The state can only take formal action when there is a serious indication of deceptive practices in violation of law. The fact that we do not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential; we do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

YOU SHOULD REALIZE THAT:

- 1** THE CONSUMER PROTECTION OFFICE CANNOT ACT AS YOUR ATTORNEY. WHEN THE ATTORNEY GENERAL SUES A BUSINESS, HE SUES FOR THE STATE--TO STOP THE PRACTICE AND COLLECT FINES.
- 2** THE COMPLAINT HANDLING PROCESS USUALLY TAKES AT LEAST SIXTY (60) DAYS.
- 3** IT IS NOT POSSIBLE FOR THE STATE TO SUE EVERY TIME A CONSUMER IS TREATED UNFAIRLY OR EVEN DEFRAUDED. THE STATE CAN ONLY ACT IN THE GENERAL PUBLIC INTEREST.
- 4** EVEN THOUGH YOU FILE A CONSUMER COMPLAINT WITH OUR OFFICE YOU MAY ALSO WANT TO CONSULT A PRIVATE ATTORNEY, OR THE LEGAL SERVICES ATTORNEY, OR FILE A CLAIM IN SMALL CLAIMS COURT AT THE SAME TIME.

Anchorage

1031 W. 4th
Suite 110
Anchorage, AK
99501
279-0428

Fairbanks

604 Barnette
State Court Bldg.
Fairbanks, AK
99701
456-8588

Juneau

S.S. Fuller Bldg.
4th & Harris
Suite 214
Juneau, AK 99811
465-3692

Valdez

P.O. Box 671
Valdez, AK 99686
835-2462



CONSUMER COMPLAINT

ATTORNEY GENERAL

[Empty box for stamp or date]

ANCHORAGE

FAIRBANKS

JUNEAU

VALDEZ

1031 W. 4th
Suite 110
Anchorage, AK
99501
279-0428

1st National Center
100 Cushman, Ste.400
Fairbanks, AK
99701
456-8588

S.S. Fuller Bldg.
4th & Harris, Ste.214
Pouch K
Juneau, AK 99811
465-3692

P. O. Box 671
Valdez, AK
99686
835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME Last First M.I.			2. TODAY'S DATE		
3. MAILING ADDRESS			CITY	STATE	ZIP CODE
4. HOME ADDRESS (if different)			CITY	STATE	ZIP CODE
5. HOME TELEPHONE NO.			6. BUSINESS TELEPHONE NO.		
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT,			NAME OF SALESPERSON:		
8. COMPANY'S ADDRESS,			CITY	STATE	ZIP CODE
9. COMPANY'S TELEPHONE NO.			10. DATE OF TRANSACTION		
11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO					
12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?					
13. WAS A WRITTEN CONTRACT SIGNED? <input type="checkbox"/> YES <input type="checkbox"/> NO					
14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? <input type="checkbox"/> YES <input type="checkbox"/> NO			15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED.		
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? <input type="checkbox"/> YES <input type="checkbox"/> NO			17. IF YES, NAME OF ATTORNEY.		
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? <input type="checkbox"/> YES <input type="checkbox"/> NO			19. IF YES, NAME COURT OR AGENCY.		

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	DID YOU RECEIVE IT?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	DID YOU RECEIVE IT?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
DID COSTS EXCEED WRITTEN ESTIMATE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
			DID YOU RECEIVE IT?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.
------	------	-------	--------

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Signature

On the reverse side of this form Summarize your complaint. Be brief, But complete.

BUSINESS RESPONSE INFORMATION

Consumer Protection Section

The Consumer Protection Section of the Attorney General's Office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to handle consumer complaints.

Consumer Complaints

Any consumer who believes that he/she has been subjected to an unfair or deceptive trade practice may file a complaint with this state office. A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We do not attempt to prejudge the merits of complaints by either refusing to handle some complaints or by assuming that one or the other side is "right." It would be impossible, as well as unfair, to make any assumptions on so little information. We do screen complaints to verify that we have jurisdiction to handle the subject matter of the complaint.

The Complaint Resolution Process

Our complaint handling process is informal and relies upon cooperation from all parties. Whenever a consumer files a complaint against you, we will send the complaint to you as a respondent. By doing so, we are requesting your cooperation in clarifying the situation and resolving the problem. We cannot force you as a respondent to offer a settlement, nor can we force a settlement on either party.

We recognize that there are two sides to every story, and we listen to both sides. We know that sometimes consumer complaints are inaccurate or unreasonable. The fact that both sides may be angry does not make either one of them "right."

By our mediation efforts, we hope to give both sides to a consumer complaint a chance to better understand each other and, once understood, resolve their problem. Much of the time, this process yields satisfactory results for both sides.

How to Respond to a Complaint

We request that you respond, in writing, to the complaint. Written responses help you give us all the details we need, avoid misunderstandings, and help us work faster. (We can handle several matters in the time it takes to do an interview, and somebody still has to write all the details.)

To enable both this office and the consumer to better understand your position, we ask that you investigate the complaint; for instance, talk to the employees involved and check your business records. We request that you respond with a discussion of the facts of this complaint and any figures that might be necessary to better understand the situation. Often, it is important to include a statement of your standard business procedure so that there is a context in which to view this particular complaint. Finally, please include a statement of your position on this consumer complaint, as well as any suggestions or plans you may have for resolving this matter.

What Happens When Mediation Fails

If mediation fails (or if you fail to respond), we will review the information we obtained to determine whether or not there is a pattern or serious indication of deceptive practices which justifies formal action by the state. Formal actions include conducting a formal investigation or, in the face of serious violations of the law, filing a lawsuit seeking an injunction to stop the disputed practice and to seek restitution for consumers and civil penalties.

If we determine that formal state action is not appropriate, we will usually advise consumers that they have the right to proceed privately through small claims court or a private attorney if they so choose. The fact that the state does not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential. We do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

ANCHORAGE

1031 West 4th Avenue,
Suite 110
Anchorage, AK 99501
(907) 279-0428

JUNEAU

S.S. Fuller Building
4th & Harris, Suite 214
Pouch K
Juneau, AK 99811
(907) 465-3692

FAIRBANKS

1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
(907) 455-8588

VALDEZ

P.O. Box 671
Valdez, AK 99686
(907) 835-2462

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS



Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4968

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

HB 125

February 11, 1985

Mr. Fred Witzleben
P.O. Box 102351
Anchorage, AK 99510

Dear Mr. Witzleben:

Thank you for your public opinion message on HB 125. I have brought your message to the attention of the other members of the House Judiciary Committee. As a result, the Chairman is going to hold teleconference hearings with Anchorage and we will make sure that you get notified.

For your information I am enclosing a copy of the bill. If you have any additional questions or comments, please let me know.

Thank you again for your message.

Cordially,

A handwritten signature in cursive script that reads "Max F. Gruenberg, Jr.".

Max F. Gruenberg, Jr.

Encls.

cc: Hayden Kayden, House Judiciary staff

Alaska State Legislature



House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 565-4990

April 5, 1985

The Honorable Mike Navarre
Chairman, House Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Mike:

The House Judiciary Committee, in the course of hearings on HB 125, "An Act revising the Alaska Unfair Trade Practices and Consumer Protection Act", received testimony from several funeral home operators on the bill.

While the concerns expressed by these representatives of the funeral and mortuary business appeared well founded, the committee was reluctant to delve into the merits of their arguments. The bill's purpose was narrowly drawn to clear up existing provisions of the Unfair Trade Practices Act and to provide for causes of action for private businesses. It was felt that the issues raised by Mr. Kehl in his testimony and the attached letter would be better dealt with in a separate bill.

The Judiciary Committee told Mr. Kehl that it would forward his letter to the Labor and Commerce Committee for a determination on whether your committee wished to deal with the subject in a bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "M.M. Miller".

M.M. Miller, Chairman
House Judiciary Committee

cc: Alfred O. Kehl

March 1, 1985

Senator Mitch Abood
State Capitol
Pouch "V"
Juneau, AK 99811

Re: HB 125 Sec. 2 (24)

Dear Senator Abood:

As we have earlier discussed, my company heartily endorses and applauds the Governor's efforts to clarify and delineate unfair trade practices and consumer protection as it applies to funeral homes and related service providers.

The referenced House Bill, which was introduced at the request of the Governor, in Section 24 is apparently being offered for the purpose of preventing service providers from collecting funds for services to be rendered in the future and failing to properly account for those funds pending the actual time the services are provided. That protection is desirable and experience tells us may be necessary. On the other hand, we all understand that if those of us who are in the industry are to provide at today's prices a service to be rendered at some point in time in the future (and with Alaskans that probably would stretch to 15 to 20 years per purchaser), it is necessary to either invest the funds so as to hedge against inflation, or in the alternative set the price so high as to cover any possible increase which may occur over that rather substantial period of time.

Since the latter cure is unfeasible and unrealistic, the only reasonable solution if such services are to be provided to Alaskans would be to allow the provider to aggregate the funds of the various purchasers into a single trust account which is liquidable upon demand or withdrawal, but which account can earn interest in order to cover the vicissitudes of time. As mentioned, since we are anticipating periods of up to 20 years before the service is actually provided, it is almost impossible to anticipate what may occur in the interim. On the other hand, there is no question but that if the service is not provided or if the purchaser wishes to withdraw, the funds should be kept separate and available, including accrued interest on them, for return.

Senator Mitch Abood
March 1, 1985
Page Two

For the foregoing reasons, we would request that you consider offering an amendment to the current language being proposed by the Governor to include the following language:

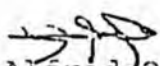
Said trust funds may be aggregated in one or more accounts so long as adequate auditable records of the funds of the individual purchaser may be made, and provided that the parties may contract that if all services or materials purchased are certified to have been satisfactorily furnished, the accrued interest may be applied to the purchase price.

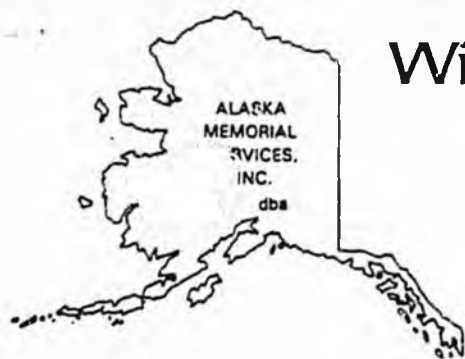
As you can see, our requested amendment would continue the funds in separate and auditable individual accounts for withdrawal or refund according to necessity, but would permit the parties to apply accrued interest to the purchase price if a representative of the family certifies to the trustee that the services have been satisfactorily performed. As earlier stated, this language is not intended to dilute or divert the protection afforded to the purchaser, but on the other hand makes it possible for the service provider to offer to members of the public the opportunity to provide for their desired funeral arrangements at today's prices and under their own personal direction. The alternative may be to prohibit such offers, which would result in a disservice to the public.

We have been informed by the Executive Director of the Order of the Golden Rule, which is an organization of funeral service providers, that the various versions of the foregoing language have been accepted in most other states.

Your careful consideration of our request is solicited.

Very truly yours,

 "Fred"
Alfred O. Kehl
Funeral Director
Forest Lawn Memorial Chapel
and Crematory, Inc.
11621 Old Seward Highway
Anchorage, AK 99515



Witzleben Family Funeral Homes and Crematory

P.O. Box 102351
Anchorage, Alaska 99510-2351

February 7, 1985

FEB 11 1985

Members of the House Judiciary Committee
Alaska House of Representatives
Juneau, Alaska 99811

Re: HB 125, Section 2, Paragraph (27)

Dear Representatives:

I secured a copy of this legislation on February 4, 1985, along with a copy of the House Journal of January 25, 1985 (specifically p. 148, section 2). I have some real difficulties with the stated intent of these proposed changes. Frankly, I'm weary of being flaggelated by State officials and agencies because I'm in a profession that performs a very necessary public service. It seems most trendy to attack funeral directors as wanton abusers of the public. Yet isn't it your job as legislators to sift through the hype and come up with legislation that is fair both to the consumer and to the businesses that serve the consumers? Some of us have requested public hearings in locations accessible to us because we are concerned that once again legislation is being considered that drastically effects our ability to continue to serve the public, but none of you have contacted any of us to ascertain the real problems we face every day, that probably haven't even occurred to you.

In as much as I was party to the writing of, and hearings on AS 45.45.120 when it was being considered in 1976, I would like to remind you that there are some problems inherent in serving a state the size of Alaska, that are not found in the rest of the country. We told the legislators then that the clause ".....shall give to the person arranging for the disposition at the time the arrangements are completed **AND BEFORE THE TIME OF RENDERING SERVICE OR PROVIDING THE MERCHANDISE A WRITTEN STATEMENT**" was not workable or realistic much of the time. Yet this exact wording is now proposed in HB 125, Section 2, Paragraph (27).

There are MANY times that we are NOT dealing with a local party, but are, in fact, dealing via long distance or radio phone either with a family in a village, with a family and/or funeral home in the other 49 states, or a family/consulate in a foreign country.

Whenever possible, we do request, after we have quoted the charges for the services requested and/or required to the "person arranging" (be that a family, friend, funeral home, or official agency), a telegram authorizing

6th Avenue Chapel
1023 East 6th Avenue
(907) 274-7576

Our Family Serving Your Families

Bragaw Chapel
1707 South Bragaw
(907) 277-1682



Witzleben Family Funeral Homes and Crematory

P.O. Box 102351
Anchorage, Alaska 99510-2351

Members of the House Judiciary Committee
February 7, 1985
Page 2

those charges. Often we are told by families in the villages and families/funeral homes in rural parts of the other 49 states that there aren't any telegraphic services readily accessible. Others complain about the added costs. Can you imagine their reaction if we told them we couldn't do anything at all until we had their written authorization on our written statement?

Please tell me how I am to give the "person arranging...a written statement." Is it actually a requirement of AS 45.45.120 and this new legislation that we must forward "a written statement" via U.S. Postal Service and await its return **"BEFORE THE TIME OF RENDERING SERVICE OF PROVIDING THE MERCHANDISE"???** Can you comprehend the delay that this would, in reality, cause? We'd eternally be being charged with holding a body for ransom, simply because we were attempting to comply with the law.

Additionally, if the statute is to be read very strictly should a funeral establishment not even remove the deceased from the place of death? That is, after all, part of the service a funeral director renders. What happens if a death occurs at 2:00 A.M., be it in a hospital, residence, or accident scene, and no family is available? Are telephone directives from a family/funeral home to a hospital, the police, or a funeral home unacceptable under this law?

We have NO problem with providing "a person arranging" a full and itemized written statement. In fact, those we've provided since 1976 under the itemization section of AS 45.45.120 are even more extensive than those required by the Federal Trade Commission. The problem is being able to do this in the sequence that appears to be required by this legislation. The practical reality of being able to expeditiously serve families who do not reside in the immediate metropolitan area **MUST BE ADDRESSED** in a realistic way.

Without amendments to this statute at this time, you will only be compounding the existing problem we've been trying for months to work out with the Department of Health and Social Services, that have resulted from ill-conceived legislation passed last session - AS 12.65 (which covers some of the itemized costs that are covered in AS 45.45.120) for a selected group of deceased individuals, namely coroner's cases. If we, as private business people, did what the State has done in fixing prices, we would be charged with Restraint of Trade! Again, legislation was passed without prior input from the industry professionals who know the day-to-day logistical realities.

6 Avenue Chapel
1C. East 6th Avenue
(907) 274-7576

Our Family Serving Your Families

Bragaw Chapel
1707 South Bragaw
(907) 277-1682



Witzleben Family Funeral Homes and Crematory

P.O. Box 102351
Anchorage, Alaska 99510-2351

Members of the House Judiciary Committee
February 7, 1985
Page 3

I'm a little resentful that you take so much guidance from State financed attorneys and bureaucrats who don't know the industry, and then we get to go broke hiring individual private attorneys to try to correct what never should have been done in the first place. There are two sides to EVERY story. I'm a consumer too and therefore value balanced, reasoned consumer legislation. However, as a business person, I don't judge this to be balanced or reasoned.

Before action is taken to enact this legislation, I would again request that hearings be scheduled for Anchorage or Fairbanks, to allow the maximum number of funeral service professionals the opportunity to speak on this legislation, without causing them undue expense or time away from their businesses.

If I can be of assistance to you, please feel free to contact me or other members of the funeral profession.

Sincerely yours,


F. J. Witzleben, President

cc: Alaskan Funeral Establishments

6th Avenue Chapel
1023 East 6th Avenue
(907) 274-7576

Our Family Serving Your Families

Bragaw Chapel
1707 South Bragaw
(907) 277-1682