

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4107 SJUD SB 363

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RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

10/31/89
Date

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BILL CONTACT/ACTION

DATE	CONTACT/ACTION
2/16	Reed STODOLSKI needs to be contacted when
	bill is in committee because he will
	be bringing in witnesses from 100000 US of
	other MINNESOTA cities (586 5340)
4/1/86	Chuck EGGEN (62191)
	Reed STODOLSKI (6-5340)
	MILWAUKEE GROUP (586-1287/276-0358)

Introduced: 1/27/86
Referred: Judiciary

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

SENATE BILL NO. 363

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to Motion Picture Fair Competition."

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

8 * Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is

9 (1) to establish fair and equitable procedures for bidding and
10 negotiation for the right to exhibit motion pictures in the state in order
11 to prevent unfair and deceptive acts or practices and unreasonable
12 restraints of trade in the business of motion picture distribution and
13 exhibition within the state;

14 (2) to promote fair and effective competition in that business;

15 (3) to prevent the award of motion picture licenses on other
16 than an individual, picture-by-picture, theatre-by-theatre basis;

17 (4) to promote the survival of small, independent exhibitors;
18 and

19 (5) to ensure that an exhibitor has the opportunity to view a
20 motion picture and know its contents before deciding to exhibit the motion
21 picture in the community.

22 * Sec. 2. AS 45 is amended by adding a new chapter to read:

23 CHAPTER 51. EXHIBITION OF MOTION PICTURES.

24 Sec. 45.51.010. PROHIBITED AND REQUIRED PRACTICES. (a) The
25 buying or selling of the right to exhibit a motion picture by blind
26 bidding or blind selling is prohibited in the state.

27 (b) Bids may not be returnable, negotiations for the licensing
28 or exhibition of a motion picture may not take place and a license
29 agreement and its terms may not be agreed upon for the exhibition of a

1 motion picture in the state before the motion picture has been trade
2 screened.

3 (c) A distributor shall provide reasonable and uniform written
4 notice to each exhibitor in the state at least 72 hours before a trade
5 screening.

6 Sec. 45.51.020. SOLICITATION OF BIDS. (a) When a bid is solic-
7 ited from exhibitors for the right to exhibit a motion picture in the
8 state,

9 (1) the invitation to bid shall specify

10 (A) whether the bid being solicited is a first, sec-
11 ond, or subsequent run;

12 (B) whether the run is an exclusive or nonexclusive
13 run and the geographic area for the run;

14 (C) the name of each exhibitor who is being solicited;

15 (D) the date and hour the invitation to bid expires;

16 and

17 (E) the time, date, and the address in the largest
18 city in the state where the bids will be opened;

19 (2) all bids shall be submitted in writing and shall be
20 opened at the same time and in the presence of the exhibitors who
21 submitted bids or their agents who attend the bid opening;

22 (3) immediately upon being opened, the bids shall be ex-
23 amined by the exhibitors who submitted bids or their agents who attend
24 the bid opening;

25 (4) within 10 business days after the bids are opened, the
26 distributor shall advise each exhibitor who submitted a bid

27 (A) of the name of the winning bidder; or

28 (B) that each bid submitted was unacceptable.

29 (b) Once bids are solicited under (a) of this section, the

1 distributor may license the motion picture only by bidding and may
2 solicit rebids only if each bid is unacceptable.

3 (c) The right to exhibit a motion picture for which bids were
4 solicited shall be awarded to the highest bid submitted unless all
5 bids are rejected.

6 (d) If an exhibitor notifies a distributor that it wishes to
7 submit bids for motion pictures released by the distributor in a
8 particular area of the state designated by the exhibitor, the exhibi-
9 tor and each competing exhibitor shall be solicited for bids for the
10 first or second run of each motion picture to be released by the
11 distributor in the designated area.

12 Sec. 45.51.030. REJECTION OF BIDS. The decision of a distribu-
13 tor that a bid is an unacceptable bid or is the highest bid is con-
14 clusive unless a reasonable person could not have made that judgment.

15 Sec. 45.51.040. VIOLATION. A person aggrieved by a violation
16 of this chapter may bring a civil action in superior court to enjoin
17 further violations and to recover damages.

18 Sec. 45.51.050. DAMAGES. (a) If an exhibitor establishes that
19 a violation of this chapter deprived it of a motion picture license
20 that it was otherwise entitled to, the exhibitor is entitled to the
21 greater of

22 (1) actual damages; or

23 (2) liquidated damages equivalent to 20 percent of the
24 gross box office receipts earned by the motion picture at the theatre
25 in which it was exhibited.

26 (b) In addition to other damages that may be awarded under (a)
27 of this section, if the violation of this chapter is determined to be
28 intentional, an aggrieved exhibitor may recover punitive damages
29 necessary to deter a similar violation in the future. Punitive

1 damages may be awarded under this subsection even if damages are not
2 awarded under (a) of this section.

3 Sec. 45.51.060. WAIVER. A purported waiver of rights estab-
4 lished by this chapter is void and unenforceable and this chapter
5 shall be liberally construed to achieve its purpose.

6 Sec. 45.51.100. DEFINITIONS. In this chapter

7 (1) "blind bidding" means an exhibitor's bid or negotiation
8 for or the exhibitor's offer or agreement to terms for the license to
9 exhibit a motion picture at a time either before the motion picture
10 has been trade screened in the state or before the motion picture has
11 been otherwise made available for viewing in the state by all exhibi-
12 tors;

13 (2) "blind selling" means the distributor's agreement to
14 license a motion picture before an exhibitor has been afforded an
15 opportunity to view the motion picture by trade screening;

16 (3) "buying" or "selling" of the right to exhibit a motion
17 picture means the licensing of a theatre to show the motion picture
18 for a specified number of days for a specified price;

19 (4) "distributor" means a person engaged in the business of
20 distributing more than one motion picture during a calendar year to
21 exhibitors by rental, sale, licensing, or other agreement;

22 (5) "highest bid" means a bid for the right to exhibit a
23 motion picture at a particular theatre at a particular time that would
24 probably generate greater film rental for the distributor than a
25 competing bid for the specific run bid;

26 (6) "motion picture" means a feature motion picture exceed-
27 ing 60 minutes in showing time;

28 (7) "run" means the continuous exhibition of a motion
29 picture in a defined geographic area for a specific period of time;

1 (8) "trade screening" means an exhibition of a motion
2 picture, before its release for public exhibition by a distributor;

3 (9) "unacceptable bid" means a bid that is inferior to the
4 lowest bid the distributor would accept for the same run of the same
5 picture in an area having a population equal to or greater than the
6 population of the area for which the inferior bid was made.

Original sponsor: Judiciary Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 363 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Motion Picture Fair Competition."

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

8 * Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is

9 (1) to establish fair and open procedures for bidding and
10 negotiation for the right to exhibit motion pictures in the state in order
11 to prevent unfair and deceptive acts or practices and unreasonable
12 restraints of trade in the business of motion picture distribution and
13 exhibition within the state;

14 (2) to promote fair and effective competition in that business;

15 (3) to prevent the award of motion picture licenses on other
16 than an individual, picture-by-picture, theatre-by-theatre basis;

17 (4) to promote the survival of small, independent exhibitors;

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19 (5) to ensure that an exhibitor has the opportunity to view a
20 motion picture and know its contents before deciding to exhibit the motion
21 picture in the community.

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26 bidding or blind selling is prohibited in the state.

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28 or exhibition of a motion picture may not take place and a license
29 agreement and its terms may not be agreed upon for the exhibition of a

1 motion picture in the state before the motion picture has been trade
2 screened.

3 (c) A distributor shall provide reasonable and uniform written
4 notice to each exhibitor in the state at least 72 hours before a trade
5 screening.

6 Sec. 45.51.020. SOLICITATION OF BIDS. (a) When a bid is solici-
7 ted from exhibitors relating to the exhibition of a motion picture in
8 the state,

9 (1) the invitation to bid shall specify

10 (A) whether the bid being solicited is a first, sec-
11 ond, or subsequent run;

12 (B) whether the run is an exclusive or nonexclusive
13 run and the geographic area for the run;

14 (C) the name of each exhibitor who is being solicited;

15 (D) the date and hour the invitation to bid expires;

16 and

17 (E) the time, date, and the address in the largest
18 city in the state where the bids will be opened;

19 (2) all bids shall be submitted in writing and shall be
20 opened at the same time and in the presence of the exhibitors who
21 submitted bids or their agents who attend the bid opening;

22 (3) immediately upon being opened, the bids shall be ex-
23 amined by the exhibitors who submitted bids or their agents who attend
24 the bid opening;

25 (4) within 10 business days after the bids are opened, the
26 distributor shall advise each exhibitor who submitted a bid

27 (A) of the name of the highest bidder; and

28 (B) the name of the bidder who received the award of

29 exhibition rights; or

1 (C) that each bid submitted was unacceptable.

2 (b) Once bids are solicited under (a) of this section, the
3 distributor may solicit rebids only if each bid is unacceptable.

4 (c) If an exhibitor notifies a distributor that it wishes to
5 submit bids for motion pictures released by the distributor in a
6 particular area of the state designated by the exhibitor, the exhibi-
7 tor and each competing exhibitor shall be solicited for bids for the
8 first or second run of each motion picture to be released by the
9 distributor in the designated area.

10 Sec. 45.51.030. REJECTION OF BIDS. The decision of a distribu-
11 tor that a bid is an unacceptable bid is conclusive unless a
12 reasonable person could not have made that judgment.

13 Sec. 45.51.040. VIOLATION. A person aggrieved by a violation
14 of this chapter may bring a civil action in superior court to enjoin
15 further violations and to recover damages.

16 Sec. 45.51.050. DAMAGES. If the violation of this chapter is
17 determined to be intentional, an aggrieved exhibitor may recover
18 punitive damages necessary to deter a similar violation in the future.

19 Sec. 45.51.060. WAIVER. A purported waiver of rights estab-
20 lished by this chapter is void and unenforceable and this chapter
21 shall be liberally construed to achieve its purpose.

22 Sec. 45.51.100. DEFINITIONS. In this chapter

23 (1) "blind bidding" means an exhibitor's bid or negotiation
24 for or the exhibitor's offer or agreement to terms for the license to
25 exhibit a motion picture at a time either before the motion picture
26 has been trade screened in the state or before the motion picture has
27 been otherwise made available for viewing in the state by all exhibi-
28 tors;

29 (2) "blind selling" means the distributor's agreement to

1 license a motion picture before an exhibitor has been afforded an
2 opportunity to view the motion picture by trade screening;

3 (3) "buying" or "selling" of the right to exhibit a motion
4 picture means the licensing of a theatre to show the motion picture
5 for a specified number of days for a specified price;

6 (4) "distributor" means a person engaged in the business of
7 distributing more than one motion picture during a calendar year to
8 exhibitors by rental, sale, licensing, or other agreement;

9 (5) "motion picture" means a feature motion picture exceed-
10 ing 60 minutes in showing time;

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12 picture in a defined geographic area for a specific period of time;

13 (7) "trade screening" means an exhibition of a motion
14 picture, before its release for public exhibition by a distributor;

15 (8) "unacceptable bid" means a bid that is inferior to the
16 lowest bid the distributor would accept for the same run of the same
17 picture in an area having a population equal to or greater than the
18 population of the area for which the inferior bid was made.
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14-1596
Bradley
1/17/86

1 IN THE SENATE

BY

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Motion Picture Fair Competition."

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

8 * Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is

9 (1) to establish fair and open procedures for bidding and
10 negotiation for the right to exhibit motion pictures in the state in order
11 to prevent unfair and deceptive acts or practices and unreasonable
12 restraints of trade in the business of motion picture distribution and
13 exhibition within the state;

14 (2) to promote fair and effective competition in that business;

15 (3) to prevent the award of motion picture licenses on other
16 than an individual, picture-by-picture, theatre-by-theatre basis;

17 (4) to promote the survival of small, independent exhibitors;

18 and

19 (5) to ensure that an exhibitor has the opportunity to view a
20 motion picture and know its contents before deciding to exhibit the motion
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28 or exhibition of a motion picture may not take place and a license
29 agreement and its terms may not be agreed upon for the exhibition of a

1 motion picture in the state before the motion picture has been trade
2 screened.

3 (c) A distributor shall provide reasonable and uniform written
4 notice to each exhibitor in the state at least 72 hours before a trade
5 screening.

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7 ited from exhibitors for the right to exhibit a motion picture in the
8 state,

9 (1) the invitation to bid shall specify

10 (A) whether the bid being solicited is a first, sec-
11 ond, or subsequent run;

12 (B) whether the run is an exclusive or nonexclusive
13 run and the geographic area for the run;

14 (C) the name of each exhibitor who is being solicited;

15 (D) the date and hour the invitation to bid expires;

16 and

17 (E) the time, date, and the address in the largest
18 city in the state where the bids will be opened;

19 (2) all bids shall be submitted in writing and shall be
20 opened at the same time and in the presence of the exhibitors who
21 submitted bids or their agents who attend the bid opening;

22 (3) immediately upon being opened, the bids shall be ex-
23 amined by the exhibitors who submitted bids or their agents who attend
24 the bid opening;

25 (4) within 10 business days after the bids are opened, the
26 distributor shall advise each exhibitor who submitted a bid

27 (A) of the name of the winning bidder; or

28 (B) that each bid submitted was unacceptable.

29 (b) Once bids are solicited under (a) of this section, the

1 distributor may license the motion picture only by bidding and may
2 solicit rebids only if each bid is unacceptable.

3 (c) The right to exhibit a motion picture for which bids were
4 solicited shall be awarded to the highest bid submitted unless all
5 bids are rejected.

6 (d) If an exhibitor notifies a distributor that it wishes to
7 submit bids for motion pictures released by the distributor in a
8 particular area of the state designated by the exhibitor, the exhibi-
9 tor and each competing exhibitor shall be solicited for bids for the
10 first or second run of each motion picture to be released by the
distributor in the designated area.

12 Sec. 45.51.030. REJECTION OF BIDS. The decision of a distribu-
13 tor that a bid is an unacceptable bid or is the highest bid is con-
14 clusive unless a reasonable person could not have made that judgment.

15 Sec. 45.51.040. VIOLATION. A person aggrieved by a violation
16 of this chapter may bring a civil action in superior court to enjoin
17 further violations and to recover damages.

18 Sec. 45.51.050. DAMAGES. (a) If an exhibitor establishes that
19 a violation of this chapter deprived it of a motion picture license
20 that it was otherwise entitled to, the exhibitor is entitled to the
21 greater of

22 (1) actual damages; or

23 (2) liquidated damages equivalent to 20 percent of the
24 gross box office receipts earned by the motion picture at the theatre
25 in which it was exhibited.

26 (b) In addition to other damages that may be awarded under (a)
27 of this section, if the violation of this chapter is determined to be
28 intentional, an aggrieved exhibitor may recover punitive damages
29 necessary to deter a similar violation in the future. Punitive

1 damages may be awarded under this subsection even if damages are not
2 awarded under (a) of this section.

3 Sec. 45.51.060. WAIVER. A purported waiver of rights estab-
4 lished by this chapter is void and unenforceable and this chapter
5 shall be liberally construed to achieve its purpose.

6 Sec. 45.51.100. DEFINITIONS. In this chapter

7 (1) "blind bidding" means an exhibitor's bid or negotiation
8 for or the exhibitor's offer or agreement to terms for the license to
9 exhibit a motion picture at a time either before the motion picture
10 has been trade screened in the state or before the motion picture has
11 been otherwise made available for viewing in the state by all exhibi-
12 tors;

13 (2) "blind selling" means the distributor's agreement to
14 license a motion picture before an exhibitor has been afforded an
15 opportunity to view the motion picture by trade screening;

16 (3) "buying" or "selling" of the right to exhibit a motion
17 picture means the licensing of a theatre to show the motion picture
18 for a specified number of days for a specified price;

19 (4) "distributor" means a person engaged in the business of
20 distributing more than one motion picture during a calendar year to
21 exhibitors by rental, sale, licensing, or other agreement;

22 (5) "highest bid" means a bid for the right to exhibit a
23 motion picture at a particular theatre at a particular time that would
24 probably generate greater film rental for the distributor than a
25 competing bid for the specific run bid;

26 (6) "motion picture" means a feature motion picture exceed-
27 ing 60 minutes in showing time;

28 (7) "run" means the continuous exhibition of a motion
29 picture in a defined geographic area for a specific period of time;

1 (8) "trade screening" means an exhibition of a motion
2 picture, before its release for public exhibition by a distributor;

3 (9) "unacceptable bid" means a bid that is inferior to the
4 lowest bid the distributor would accept for the same run of the same
5 picture in an area having a population equal to or greater than the
6 population of the area for which the inferior bid was made.
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Introduced: __/__/__
Referred: _____, _____
and _____

IN THE HOUSE

BY _____

HOUSE BILL NO. ____
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - SECOND SESSION
A BILL

For an act entitled: "An act relating to Motion Picture Fair Competition."

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

Section 1.

Purpose. The purpose of the chapter is to establish fair and open procedures for bidding and negotiation for the right to exhibit motion pictures in the state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution and exhibition within the state; to promote fair motion picture licenses on other than an individual, picture-by-picture, theatre-by-theatre basis; to promote the survival of small, independent exhibitors; and to insure that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibiting the motion picture in their communities.

Section 2.

Blind bidding or blind selling prohibited -- Trade screening required -- Notice.

- (1) The buying or selling of the right to exhibit a feature motion picture by blind bidding or blind selling is prohibited within the state.
- (2) No bids may be returnable, no negotiations for the exhibition or licensing of a motion picture may take place and no license agreement or any of its terms may be agreed upon, for the exhibition of a feature motion picture within the state before the feature motion picture has been trade screened.
- (3) A distributor shall provide reasonable and uniform written notice at least 72 hours prior to the event of any trade screening to all exhibitors within the state.

Section 3.

Solicitation of bids. When bids are solicited from exhibitors for the right to play a feature motion picture within the state, then:

- (1) The invitation to bid shall specify: (a) Whether the run for which the bid is being solicited is a first, second, or subsequent run; whether the run is an exclusive or non-exclusive run; and, the geographic area for the run; (b) the names of all exhibitors who are being solicited; (c) the date and hour the invitation to bid expires; and (d) the time, date, and location, including the address, where the bids will be opened, which shall be in the largest city within the state.
- (2) All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and who attend the bid opening.
- (3) Immediately upon being opened, the bids shall be subject to examination by the exhibitors, or their agents, who submitted bids, and who are present at the opening. Within ten business days after the bids are opened, the distributor shall notify each exhibitor who submitted a bid either the name of the winning bidder or the fact that each bid submitted was an unacceptable bid.
- (4) Once bids are solicited, the distributor shall award the feature motion picture only by bidding and may solicit rebids if, but only if, each of the submitted bids is an unacceptable bid.
- (5) The right to play any feature motion picture for which bids are solicited shall, unless all bids are rejected, be awarded to the highest bid submitted.

Section 4.

If an exhibitor notifies a distributor that it wishes to submit bids for feature motion pictures released by that distributor in a particular area of the state designated by the exhibitor, then the exhibitor and all competing exhibitors shall be solicited for bids for the first or second runs of all motion pictures to be released by the distributor in the designated area.

Section 5.

The distributor's judgment as to whether a bid is an "unacceptable bid" or is the "highest bid" shall be conclusive unless no reasonable person could have made that judgment.

Section 6.

Violation -- Civil suit -- Attorney's fees. Any person aggrieved by a violation of this chapter may bring a civil action in superior court to enjoin further violations or to recover damages, or both, together with the actual reasonable expenses incurred in bringing the suit and shall be entitled to a trial by jury of every issue of fact raised by the action. In any such action, the court shall award reasonable attorneys' fees to the prevailing party.

Section 7.

If an exhibitor establishes that a violation of this chapter deprived it of a feature motion picture license which it should otherwise have secured, the exhibitor shall be entitled to either the actual damages it suffered by not obtaining the license or liquidated damages equivalent to twenty percent of the gross box office receipts generated by the feature motion picture at the theatre to which it was awarded, whichever is greater.

Section 8.

In addition to any other damages that may have been incurred on account of a violation of this chapter, and even if no actual damages have been incurred, if the violation is found to be intentional, a person aggrieved may recover such punitive damages as are necessary to deter similar violations in the future.

Section 9.

If any provision or portion of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision or portion to other persons or circumstances is not affected.

Section 10.

A purported waiver of the rights created by this chapter is void and unenforceable and the language of this statute shall be construed liberally to achieve its purpose.

Section 11.

Definitions. The definitions contained in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bid" means a written or oral offer or proposal to buy made by an exhibitor to a distributor in response to an invitation to bid for the license or right to exhibit a motion picture, the license stating the terms under which the exhibitor agrees to exhibit the motion picture.

(2) "Blind bidding" means the exhibitor's bidding or negotiating for, or the exhibitor's offering or agreeing to, terms for the license or right to exhibit a feature motion picture at any time either before the feature motion picture has been trade screened within the state or before the feature motion picture has been otherwise made available for viewing within the state by all exhibitors.

(3) "Blind selling" means the practice whereby a distributor licenses a feature motion picture before the exhibitor is afforded an opportunity to view the feature motion picture by trade screening.

(4) "Buying" or "selling" of the right to exhibit a feature motion picture means the licensing of a theater to show the feature motion picture for a certain number of days for a certain price.

(5) "Distributor" means a person engaged in the business of distributing or supplying more than one feature motion picture per year to exhibitors by rental, sale, licensing, or other agreement.

(6) "Exhibit" or "exhibition" means playing or showing a feature motion picture to the public for an admission charge.

(7) "Exhibitor" means a person in the business of operating one or more theaters in which motion pictures are exhibited to the public.

(8) "Feature motion picture" means a motion picture exceeding sixty minutes in duration.

(9) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the license or right to exhibit a feature motion picture.

(10) "Licensing Agreement" means a contract, agreement, understanding, or condition between a distributor and an exhibitor relating to the licensing or exhibition of a feature motion picture by the exhibitor.

(11) "Person" means one or more individuals, firms, partnerships, associations, societies, trusts, organizations, or corporations.

(12) "Run" means the continuous exhibition of a feature motion picture in a defined geographic area for a specific period of time. A "first run" is the first exhibition of the feature motion picture in the defined area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is a run limited to a single theater in a defined geographic area and a "nonexclusive run" is a run in more than one theater in a

defined geographic area.

(13) "Theater" means an establishment in which feature motion pictures are regularly exhibited to the public for an admission charge.

(14) "Trade screening" means the exhibition of a feature motion picture, prior to its release for public exhibition by a distributor, in the largest city within the state.

(15) "Highest bid" means that bid for the right to play a film at a particular theater at a particular time that would probably generate greater film rental for the distributor than any competing bid for the specific run in question.

(16) "Unacceptable bid" means a bid that is inferior to the lowest bid the distributor has accepted or would accept for the same type of run of the same picture in an area having a population equal to or greater than the population of the area for which the inferior bid was made.

(2) A price differential or method of delivery designed to discriminate against or discourage purchases by vehicles of small fuel capacity is prohibited. However, a reasonable discount or differential based upon quantity of delivery shall not be considered discriminatory. [1977 c.429 §10]

646.890 Sale of rights by distributor to exhibit motion picture without first giving exhibitor opportunity to view motion picture prohibited; attorney fees. (1) As used in this section:

(a) "Distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sales, license or any other agreement to sell rights to exhibit a motion picture.

(b) "Exhibitor" means any person engaged in the business of operating one or more theaters in which motion pictures are exhibited to the public for a charge.

(c) "Market" means any geographical area in this state for which a distributor solicits exhibitors to compete, by bidding or other negotiations, for the rights to exhibit a motion picture.

(2) No distributor shall sell rights to exhibit a motion picture in this state unless each exhibitor solicited by the distributor for an offer to exhibit the motion picture is first allowed a reasonable opportunity to view the motion picture within the state. Any waiver of this subsection is void and unenforceable.

(3) Nothing in this section applies to any form of solicitation of offers for, negotiation concerning or sale of rights to exhibit a motion picture:

(a) That has been exhibited in this state before October 3, 1979.

(b) In a market where the motion picture has been exhibited for one week or more.

(c) That is 60 minutes or less in length.

(4) An exhibitor may enforce this section by bringing an action in the appropriate court of this state. In enforcing this section a court may:

(a) Issue an injunction to prohibit violation of this section; and

(b) Award an exhibitor any actual damages arising from violation of this section.

(c) In any suit under subsection (4) of this section, the court shall award reasonable attorney fees at trial and on appeal to the prevailing party. [1979 c.254 §1; 1981 c.897 §84]

PENALTIES

646.990 Penalties. (1) Each violation of any of the provisions of ORS 646.010 to 646.180 by any person, firm or corporation, whether as principal, agent, officer or director, for himself or itself, or for another person, or for any firm or corporation, is punishable, upon conviction, by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail not exceeding six months, or by both.

(2) Violation of ORS 646.860 is a misdemeanor.

(3) Violation of ORS 646.725 or 646.730 is a Class A misdemeanor. [Amended by 1953 c.391 §2; 1967 c.144 §2; 1967 c.599 §4; subsection (8) enacted as 1969 c.395 §2; 1971 c.744 §24; 1975 c.255 §15; subsection (3) enacted as 1975 c.255 §16 (1)]

646.992 Penalty for unlawful delivery of hazardous substances. Violation of ORS 646.870 is a Class A misdemeanor. [1973 c.456 §3]

CHAPTER 19.58—MOTION PICTURE FAIR COMPETITION ACT

Sections	Purpose.	Sections	Purpose.
19.58.010	19.58.040	19.58.040	Solicitation of bids.
19.58.020	Definitions.	19.58.050	Violation—Civil suit—Attorneys' fees.
19.58.030	Blind bidding or blind selling prohibited—Trade screening required—Notice.	19.58.900	Short title.
		19.58.905	Severability—1979 ex.s.c. 29.

CJS Theaters and Shows II 4 to 15.

Key Number Digests: Theaters and Shows 62.

19.58.010 Purpose

The purpose of this chapter is to establish fair and open procedures for bidding and negotiation for the right to exhibit motion pictures in the state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution and exhibition within the state; to promote fair and effective competition in that business; and to insure that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibiting the motion picture in their communities.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 1.]

19.58.020 Definitions

The definitions contained in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bid" means a written or oral offer or proposal to buy made by an exhibitor to a distributor in response to an invitation to bid for the license or right to exhibit a motion picture, the license stating the terms under which the exhibitor agrees to exhibit the motion picture.

(2) "Blind bidding" means the exhibitor's bidding or negotiating for, or the exhibitor's offering or agreeing to, terms for the license or right to exhibit a feature motion picture at any time either before the feature motion picture has been trade screened within the state or before the feature motion picture has been otherwise made available for viewing within the state by all exhibitors.

(3) "Blind selling" means the practice whereby a distributor licenses a feature motion picture before the exhibitor is afforded an opportunity to view the feature motion picture by trade screening.

(4) "Buying" or "selling" of the right to exhibit a feature motion picture means the licensing of a theater to show the feature motion picture for a certain number of days for a certain price.

(5) "Distributor" means a person engaged in the business of distributing or supplying more than one feature motion picture per year to exhibitors by rental, sale, licensing, or other agreement.

(6) "Exhibit" or "exhibition" means playing or showing a feature motion picture to the public for an admission charge.

(7) "Exhibitor" means a person in the business of operating one or more theaters in which motion pictures are exhibited to the public.

(8) "Feature motion picture" means a motion picture exceeding sixty minutes in duration.

(9) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the license or right to exhibit a feature motion picture.

(10) "Licensing agreement" means a contract, agreement, understanding, or condition between a distributor and an exhibitor relating to the licensing or exhibition of a feature motion picture by the exhibitor.

(11) "Person" means one or more individuals, firms, partnerships, associations, societies, trusts, organizations, or corporations.

(12) "Run" means the continuous exhibition of a feature motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of the feature motion picture in the defined area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is a run limited to a single theater in a defined geographic area and a "nonexclusive run" is a run in more than one theater in a defined geographic area.

(13) "Theater" means an establishment in which feature motion pictures are regularly exhibited to the public for an admission charge.

(14) "Trade screening" means the exhibition of a feature motion picture, prior to its release for public exhibition by a distributor, in the largest city within the state, which is open to all exhibitors from whom the distributor intends to solicit bids or with whom the distributor intends to negotiate for the license or right to exhibit the feature motion picture.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 2.]

19.58.030 Blind bidding or blind selling prohibited—Trade screening required—Notice

(1) The buying or selling of the right to exhibit a feature motion picture by blind bidding or blind selling is prohibited within the state.

(2) No bids may be returnable, no negotiations for the exhibition or licensing of a motion picture may take place, and no license agreement or any of its terms may be agreed upon, for the exhibition of a feature motion picture within the state before the feature motion picture has either been trade screened or otherwise made available for viewing by all exhibitors within the state.

(3) A distributor shall provide reasonable and uniform notice of the trade screening of feature motion pictures to those exhibitors within the state from whom bids will be solicited or with whom negotiations will be conducted for the license or right to exhibit the feature motion picture.

(4) A purported waiver of the prohibition in this chapter against blind bidding or blind selling is void and unenforceable.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 3.]

19.58.040 Solicitation of bids

If bids are solicited from exhibitors for the licensing of a feature motion picture within the state, then:

(1) The invitation to bid shall specify: (a) whether the run for which the bid is being solicited is a first, second, or subsequent run; whether the run is an exclusive or nonexclusive run; and, the geographic area for the run; (b) the names of all exhibitors who are being solicited; (c) the date and hour the invitation to bid expires; and (d) the time, date, and location, including the address, where the bids will be opened, which shall be within the state.

(2) All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and who attend the bid opening.

(3) Immediately upon being opened, the bids shall be subject to examination by the exhibitors, or their agents, who submitted bids, and who are

19.58.040 BUSINESS REGULATIONS

present at the opening. Within ten business days after the bids are opened, the distributor shall notify each exhibitor who submitted a bid either the name of the winning bidder or the fact that none of the bids were acceptable.

(4) Once bids are solicited, the distributor shall license the feature motion picture only by bidding and may solicit rebids if none of the submitted bids are acceptable.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 4.]

19.58.050 Violation—Civil suit—Attorneys' fees

Any person aggrieved by a violation of this chapter may bring a civil action in superior court to enjoin further violations or to recover the actual damages sustained, or both, together with the costs of the suit. In any such action, the court shall award reasonable attorneys' fees to the prevailing party.

[Enacted Laws 1st Ex Sess 1979 ch 26 § 5.]

19.58.900 Short title

This chapter may be known and cited as the Washington motion picture fair competition act.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 0.]

19.58.905 Severability—1979 ex.s. c 29

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[Enacted Laws 1st Ex Sess 1979 ch 29 § 8.]

CHAPTER 19.60—PAWN BROKERS AND SECOND-HAND DEALERS

19.60.010 "Pawn broker"—Defined—Purchasers of precious metals

(1) Every person engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits or conditional sales of personal property, shall be deemed to be a pawnbroker.

(2) Every person engaged in whole or in part in the business of purchasing precious metals in a place other than a place of business where precious metals are ordinarily and customarily purchased shall be deemed to be a pawnbroker doing business in a first class city: *Provided*, That any report required to be furnished to the chief of police shall be furnished to the county sheriff in the absence of a chief of police.

[Amended by Laws 1981 ch 279 § 3.]

19.60.050 Retention of property

Where pawnbroker recognizes title in rightful owner to property which had been stolen and refuses to return property unless pawn fee is first paid, affirmative defense of "good faith claim of title" is inapplicable in prosecution of pawnbroker under theft ordinance. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

Where pawnbrokers acquired pawned property without knowledge it was stolen and were unwilling to return pawned property to their rightful owners, such conduct amounted to larceny by conversion, as to which conduct theft ordinance, under which pawnbrokers were charged with theft for allegedly having "obtained or exerted unau-

BUSINESS REGULATIONS 19.62.010

Authorized control over the property of another . . . provided fair notice of proscribed conduct and ascertainable standards for adjudication. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

19.60.062 Attorney fees in action to recover possession

Whenever the owner of stolen goods locates said stolen goods in the possession of a pawnbroker or second-hand dealer, and brings an action to recover possession, including proceedings pursuant to chapters 7.04 and 12.28 RCW, the owner shall be entitled to reasonable attorney fees and costs in connection with said action.

[Added by Laws 1st Ex Sess 1979 ch 41 § 1.]

CJS Pawnbrokers §§ 8 to 12.

Key Number Digests: Consumer Credit ⇨7.

19.60.063 Penalty

Larceny—Receiving stolen property: RCWA 9A.56.140-9A.56.170.
Obstructing Justice: RCWA Chapters 9A.72 and 9A.76.

Prosecution of pawnbroker under theft ordinance did not violate due process by requiring defendant, under risk of criminal prosecution, to relinquish property in his possession without prior determination of ownership where city was required to prove that claimant was owner of property and that defendant knew said claimant was owner. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

As against true owner, pawnbroker acquires no right to retain possession, as security for loan, of article pawned without knowledge, consent or authority of owner. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

True owner is entitled to possession of chattel pawned by unauthorized pawnor without repaying pawnbroker amount advanced by him to pawnor. *City of Seattle v Shepherd* (1980) 93 Wn 2d 861, 613 P2d 1158.

19.60.064 Owner of stolen goods entitled to attorney fees and costs when required to bring action for recovery [Repealed]

Repealed by Laws 1st Ex Sess 1979 ch 41 § 2.

Later enactment, see RCWA 19.62.062.

CHAPTER 19.62—PROPERTY SALES AND LOANS—DOCUMENT OR INSTRUMENT PREPARATION

Sections	Sections
19.62.010 Preparation of documents for property sales or loan by certain persons or entities—When.	19.62.020 Standard of care. 19.62.900 Severability—1979 ex.s. c 107.

19.62.010 Preparation of documents for property sales or loans by certain persons or entities—When

The following individuals, firms, associations, partnerships, or corporations:

(1) Any person or entity doing business under the laws of this state or the United States relating to banks, trust companies, bank holding companies and their affiliates, mutual savings banks, savings and loan associations, credit unions, insurance companies, title insurance companies and their duly authorized agents exclusively engaged in the title insurance business, federally approved agencies or lending institutions under the National Housing Act 1; or

WASHINGTON
HB 58

1 AN ACT relating to the exhibition of motion pictures; and adding CR72B
2 a new chapter to Title 14 RCW. Y

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: X

4 NEW SECTION. Section. 1. The purpose of this chapter is -548;
5 to establish fair and open procedures for bidding and 1
6 negotiation for the right to exhibit motion pictures in the PASTA
7 state in order to prevent unfair and deceptive acts or practices ;1
8 and unreasonable restraints of trade in the business of motion 10
9 picture distribution and exhibition within the state; to promote 11
10 fair and effective competition in that business; and to insure 11
11 that exhibitors have the opportunity to view a motion picture 12
12 and know its contents before committing themselves to exhibiting 13
13 the motion picture in their communities. 14

14 NEW SECTION. Sec. 2. The definitions contained in this 16
15 section apply throughout this chapter unless the context clearly 17
16 requires otherwise. 17

17 (1) "Bid" means a written or oral offer or proposal to 18
18 buy made by an exhibitor to a distributor in response to an 19
19 invitation to bid for the license or right to exhibit a motion 20
20 picture, the license stating the terms under which the exhibitor 21
21 agrees to exhibit the motion picture. 21

22 (2) "Blind bidding" means the exhibitor's bidding or 22
23 negotiating for, at the exhibitor's offering or agreeing to, 23
24 terms for the license or right to exhibit a feature motion 23
25 picture at any time either before the feature motion picture has 24
26 been trade screened within the state or before the feature 25
27 motion picture has been otherwise made available for viewing 26
28 within the state by all exhibitors. 26

29 (3) "Blind selling" means the practice whereby a 27
30 distributor licenses a feature motion picture before the 28

1 exhibitor is afforded an opportunity to view the feature motion
2 picture by trade screening.

3 (4) "Buying" or "selling" of the right to exhibit a
4 feature motion picture means the licensing of a theater to show
5 the feature motion picture for a certain number of days for a
6 certain price.

7 (5) "Distributor" means a person engaged in the business
8 of distributing or supplying more than one feature motion
9 picture per year to exhibitors by rental, sale, licensing, or
10 other agreement.

11 (6) "Exhibit" or "exhibition" means playing or showing a
12 feature motion picture to the public for an admission charge.

13 (7) "Exhibitor" means a person in the business of
14 operating one or more theaters in which motion pictures are
15 exhibited to the public.

16 (8) "Feature motion picture" means a motion picture
17 exceeding sixty minutes in duration.

18 (9) "Invitation to bid" means a written or oral
19 solicitation or invitation by a distributor to one or more
20 exhibitors to bid or negotiate for the license or right to
21 exhibit a feature motion picture.

22 (10) "Licensing agreement" means a contract, agreement,
23 understanding, or condition between a distributor and an
24 exhibitor relating to the licensing or exhibition of a feature
25 motion picture by the exhibitor.

26 (11) "Person" means one or more individuals, firms,
27 partnerships, associations, societies, trusts, organizations, or
28 corporations.

29 (12) "Run" means the continuous exhibition of a feature
30 motion picture in a defined geographic area for a specified
31 period of time. A "first run" is the first exhibition of the
32 feature motion picture in the defined area; a "second run" is
33 the second exhibition; and "subsequent runs" are subsequent
34 exhibitions after the second run. "Exclusive run" is a run
35 limited to a single theater in a defined geographic area and a
36 "nonexclusive run" is a run in more than one theater in a

1* defined geographic area.

2 (13) "Theater" means an establishment in which feature
3 motion pictures are regularly exhibited to the public for an
4 admission charge.

5 (14) "Trade screening" means the exhibition of a feature
6 motion picture, prior to its release for public exhibition by a
7 distributor, in the largest city within the state, which is open
8 to all exhibitors from whom the distributor intends to solicit
9 bids or with whom the distributor intends to negotiate for the
10 license or right to exhibit the feature motion picture.

11 ARTICLE SECTION. Sec. 3. (1) The buying or selling of the
12 right to exhibit a feature motion picture by blind bidding or
13 blind selling is prohibited within the state.

14 (2) No bids may be returnable, no negotiations for the
15 exhibition or licensing of a motion picture may take place, and
16 no license agreement or any of its terms may be agreed upon, for
17 the exhibition of a feature motion picture within the state
18 before the feature motion picture has either been trade screened
19 or otherwise made available for viewing by all exhibitors within
20 the state.

21 (3) A distributor shall provide reasonable and uniform
22 notice of the trade screening of feature motion pictures to
23 those exhibitors within the state from whom bids will be
24 solicited or with whom negotiations will be conducted for the
25 license or right to exhibit the feature motion picture.

26 (4) A purported waiver of the prohibition in this
27 chapter against blind bidding or blind selling is void and
28 unenforceable.

29 ARTICLE SECTION. Sec. 4. If bids are solicited from
30 exhibitors for the licensing of a feature motion picture within
31 the state, then:

32 (1) The invitation to bid shall specify: (a) whether
33 the run for which the bid is being solicited is a first, second,
34 or subsequent run; whether the run is an exclusive or
35 nonexclusive run; and, the geographic area for the run; (b) the
36 needs of all exhibitors who are being solicited; (c) the date

1 and hour the invitation to bid expires; and (d) the time, date,
2 and location, including the address, where the bids will be
3 opened, which shall be within the state.

4 (2) All bids shall be submitted in writing and shall be
5 opened at the same time and in the presence of those exhibitors,
6 or their agents, who submitted bids and who attend the bid
7 opening.

8 (3) Immediately upon being opened, the bids shall be
9 subject to examination by the exhibitors, or their agents, who
10 submitted bids, and who are present at the opening. Within ten
11 business days after the bids are opened, the distributor shall
12 notify each exhibitor who submitted a bid either the name of the
13 winning bidder or the fact that none of the bids were
14 acceptable.

15 (4) Once bids are solicited, the distributor shall
16 license the feature action picture only by bidding and may
17 solicit rebids if none of the submitted bids are acceptable.

18 NEW SECTION. Sec. 5. Any person aggrieved by a
19 violation of this chapter may bring a civil action in superior
20 court to enjoin further violations or to recover the actual
21 damages sustained, or both, together with the costs of the suit.
22 In any such action, the court shall award reasonable attorneys'
23 fees to the prevailing party.

24 NEW SECTION. Sec. 6. This chapter may be known and
25 cited as the Washington motion picture fair competition act.

26 NEW SECTION. Sec. 7. Sections 1 through 6 of this act
27 shall constitute a new chapter in Title 19 RCW.

28 NEW SECTION. Sec. 8. If any provision of this act or
29 its application to any person or circumstance is held invalid,
30 the remainder of the act or the application of the provision to
31 other persons or circumstances is not affected.

CCI

CAPRI THEATRE CORPORATION

CAPRI - CONSOLIDATED INDUSTRIES

THEATRICAL & ENTERTAINMENT MEDIA DIVISION

POST OFFICE BOX 933 - ANCHORAGE, ALASKA 99510-0933

PHONE (907) 243-4525/243-4544 243-1244

March 17, 1986

Patrick M. Rodey
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Pat:

This week you will be hearing House Bill 551 dealing with the Fair Motion Picture Trade Act.

I would like to encourage your support for this bill as it will be most important to small independent theatre operators in the years to come.


Competition between theatre operators will increase with more and more outside companies investing in Alaska, this bill will protect all operators by making sure that bids are opened in front of all of the interested parties and the consequences can be reviewed by same.

This bill should also make it possible for theatre operators to know what they are buying before they make a bid.

Being a small operator myself, I can assure you this is the only way theatres of my caliber will continue to exist in the future.

Thank you for your time and consideration in support of House bill 551.

Sincerely yours,


Rand Thornsley
Vice-president
Capri Theatre Corporation

RT/

xc: Mitch Gravo

Just -

Just Bill = SB 363

Gross-Alaska, Inc.

W.D. Gross II, President



"Pioneering Alaska Since 1897"

(907) 586-3634

222 Front Street • Penthouse Suite 600 • Juneau, Alaska 99801

February 6, 1986

The Honorable Patrick Rodey
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: Senate Bill No. 363

Dear Chairman:

As you may be aware, there has been a bill introduced through the Senate Judiciary Committee relating to "motion picture fair competition." We would sincerely appreciate your effort in opposing any such legislation for the procurement of motion picture product in the State of Alaska.

Senate Bill No. 363 appears, at face value, to protect the small, independent motion picture exhibitor from the large producers and distributors. In reality, it allows the largest motion picture exhibitor, who has the "financial capability," of literally putting the smaller, independent exhibitor out of business. This, in fact, has been done and is a matter of record by the party that has requested this legislation.

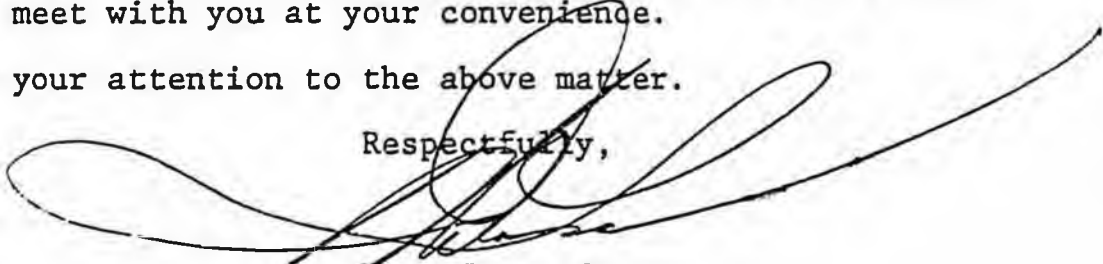
Our family has been in business in Alaska for 89 years -- since the time that my grandfather traveled throughout Alaska with his motion picture machine. We have survived competition at various times throughout those years. We would like to continue living in Alaska and doing business in Alaska. The bill before the Senate, if passed, would most certainly be the demise of four generation's lifetime commitments.

We have discussed Senate Bill No. 363 with all of the other independent exhibitors in the State of Alaska. They also oppose this legislation and are aware of its consequences.

For your information, I am enclosing copies of letters, as well as a Position Paper regarding the above referenced bill. If I can be of further help to you in establishing our point, I would be more than happy to meet with you at your convenience.

Thank you for your attention to the above matter.

Respectfully,


W.D. Gross II
President & General Manager

Coliseum Twin Theatre
405 Mission Street
Ketchikan, Alaska 99901
Phone: (907) 225-2294

Coliseum Twin Theatre
315 Lincoln Street
Sitka, Alaska 99835
Phone: (907) 747-6920

Glacier Cinema 1 & 2
9091 Cinema Drive
Juneau, Alaska 99801
Phone: (907) 789-9191

20th Century Twin
222 Front Street
Juneau, Alaska 99801
Phone: (907) 586-4055

POSITION PAPER

In Opposition To State Regulation Of Motion Picture Licensing

Background

Motion pictures in Alaska, as in most other states, are licensed to theater owners either by bidding or by negotiated agreements. In negotiations, the distributor seeks the best price and terms for the rights to exhibit a movie, and is free to consider all other relevant factors to a successful business arrangement. In addition to price, the distributor may also take into account theater quality, maintenance, location, past performance, seating capacity, advertising, parking facilities, and other factors which contribute to a pleasurable public viewing experience.

Frequently, the theater owner previews the full length film in advance of negotiations. On occasion, and in particular when a film has a number of special effects, film clips and descriptive materials are used in lieu of the full film preview. This process is termed advanced bidding and is sometimes called "blind bidding". For the Alaska market, film previews usually take place in Seattle or Portland, for the convenience of the theater chains which are headquartered there, and for the booking agents which handle most of the remainder of the independently-owned Alaskan theaters.

Alaska now has 52 theater screens in operation. Sixty-eight percent (35 screens) are owned by out-of-state chains; 15% (8 screens) by an Alaskan based chain; and 17% (9 screens) by other Alaskan independent owners. Tom Moyer Theatres, based in Portland, is the largest out-of-state owner with 24 screens in Anchorage and Fairbanks. Festival Enterprises from California owns 12 screens in Anchorage and Eagle River. Gross-Alaska Theatres, based in Juneau, owns 8 screens in Juneau, Sitka and Ketchikan. The remaining screens are small independents located in Petersburg, Seward, Kodiak, Juneau and Soldotna.

Issue

The Moyer Theatre chain has requested introduction of SB 363, which would for the first time establish State regulation of motion picture licensing. This legislation, which has provisions nearly identical to legislation being sought by Moyer Theatres in the State of Washington, would require that all films licensed in Alaska be first trade screened and that when requested by a theater owner, all licensing be on a sealed bid basis, with the highest numerical bid required to be accepted by the distributor without regard to the other factors cited above.

While the proposed legislation has been portrayed as beneficial to all theater owners, including the Alaskan based businesses, this is not the case. In reality, while purporting to fix problems which do not exist, the proposal favors the Moyer chain at the expense of other owners. This special interest legislation should be viewed as a "Trojan Horse."

The Moyer chain is the tenth largest in the U.S., and therefore has the financial resources to outbid the other theaters in the short run, thus preventing them from getting the best films. It is also in an aggressive take-over posture, having offered to purchase many of the remaining Alaskan based theaters. Passage of the proposed legislation would facilitate this chain's drive to become a monopoly in Alaska.

While creating a competitive advantage for Moyer Theatres, the proposal creates disadvantages for other theater owners. It would significantly raise the cost of previewing films by requiring an unnecessary trade screening in Alaska. It eliminates the right to subsequent renegotiation of contracts where films do not generate as much revenue as anticipated. It prevents distributors from considering critical factors other than the highest monetary bid, which discourages high-quality theater operations, and it increases the potential for litigation, when most independent owners do not have the resources for expensive court fights as do the large chains like Moyer Theatres. It would also hurt the movie-going public by risking delay in the opening of films and increasing the cost of admission tickets.

Summary

The current unregulated environment for the motion picture business in Alaska has worked well since territorial days when Cap Lathrop and W. D. Gross first showed hand cranked moving pictures to frontier saloon patrons. The status quo is fair to both in-state and out-of-state distributors, booking agents, and theater owners. It has even allowed Moyer Theatres to dominate in the Anchorage and Fairbanks market. Let's not spend time imposing unnecessary regulations on problems which do not exist.

Gross-Alaska Theaters
Juneau, Alaska (Juneau, Sitka, Ketchikan)

Festival Theaters (Anchorage Eagle River)
Walnut Creek, California

Motion Picture Association of America

Motion Picture Exhibitors Association (Northwest U.S.)

7/rs/5

Hickel Investment Company

BOX 101700

ANCHORAGE, ALASKA 99510-1700

EXECUTIVE OFFICES
PHONE (907) 276-7400

RECEIVED JAN 0 6 1986

January 3, 1986

Honorable Arliss Sturgulewski
Alaska State Senator
2957 Sheldon Jackson
Anchorage, AK 99508

Dear Arliss:

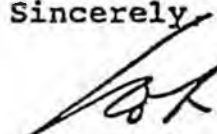
It has come to my attention that there may be an effort by the Luxury Theatre chain to attempt to introduce legislation in this session that would force film distributors to accept the highest bids for their pictures from the exhibitors who are the theatre operators.

You should be aware that Festival Enterprises, Inc., an operator of several movie screens in the Anchorage area, opposes such legislation for the simple fact that it would interfere with the free market system, and in effect could result in price fixing and restraint of trade.

I would appreciate it if you would keep me abreast of any development that might result in this being proposed as legislation during this session.

Have a good new year, and a successful session.

Sincerely


Robert J. Hickel
President

cc: Mr. Dick Jeha ✓
Festival Enterprises

same letter sent to Senators Jan Falke, Tim Kelly & Rick Halford
also Representatives Sam Cotten, H.A. Boucher, Virginia Collins &
Randy Phillips...

Moyer Theatres

1953 N. W. KEARNEY STREET
PORTLAND, OREGON 97209
503/226-2735

December 31, 1985

Mr. D. Bruce Gardiner
Motion Picture Exhibitors
of Washington, Alaska & Northern Idaho
1644 116th N. E.
Bellevue, WA 98004

Dear Bruce:

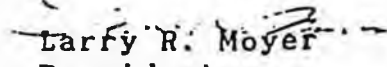
As a member of your organization with two theatres in the State of Washington, I am writing to express my concerns in the proposed amendment to the Motion Pictures Fair Trades Act.

Moyer Theatres was founded in 1933 and has a total of 41 screens in Oregon and Washington. We are the No. 2 exhibitor in Portland, Oregon. We were nearly forced out of business and bankrupt by the No. 1 exhibitor three years ago because we were not able to bid enough money for pictures and our competitor was bidding sometimes as much as the picture would gross. During the period from 1975 to 1980 we were able to stay in business by several film companies choosing not to sell our competitor and selling us all their product without bidding. When we were forced to bid for their product, we were then put into the position I have outlined above and were forced to make an out-of-court settlement in our Anti-Trust suit so that we could remain in business.

I have strong doubts that this legislation will help the small exhibitor. The small exhibitor could be very vulnerable to the large companies with their capital resources. The distributor should be free in picking the best theatres for their product. I think that each theatre has its own economic advantage over others whether it be size, location or different clientele that patronize the theatre. For example, action motion pictures do well in some theatres and don't do well in others. I definitely do not think the legislature should try to regulate our industry.

Respectfully,

MOYER THEATRES


Larry R. Moyer
President

LRM:bbs

Gross-Alaska, Inc.

W.D. Gross II, President

Alaska Since 1977

(907) 586-3634

222 Front Street • Penthouse Suite 600 • Juneau, Alaska 99801

February 4, 1986

Mr. Bruce Gardiner
12040 98th N.E.
Kirkland, Washington 98034

Dear Mr. Gardiner:

This letter is to advise you that Tom Moyer, who is the largest theatre owner in Alaska, has requested the introduction of Senate Bill 363 in the Alaska Legislature which would control the motion picture licensing practices of exhibitors in our State.

This bill is identical to the bill that he has had introduced in the Washington Legislature. Where a theatre owner so requests, it would compel a distributor to award both first and second run pictures to the highest numerical bidder. Renegotiation of contracts for films which are less successful than anticipated is prohibited where bidding is used to license films.

This proposed legislation would eventually allow Tom Moyer to monopolize the Alaska film industry, which he already dominates. Virtually all of the other exhibitors in Alaska are opposed to the legislation as we would be unable to compete on Tom Moyer's terms.

Sincerely,

GROSS-ALASKA, INC.



W. D. Gross, II

WDG:RS:sd/1.52

Coliseum Twin Theatre
405 Mission Street
Ketchikan, Alaska 99901
Phone: (907) 225-2294

Coliseum Twin Theatre
315 Lincoln Street
Sitka, Alaska 99835
Phone: (907) 747-6920

Glacier Cinema 1 & 2
9091 Cinema Drive
Juneau, Alaska 99801
Phone: (907) 789-9191

20th Century Twin
222 Front Street
Juneau, Alaska 99801
Phone: (907) 586-4055

Gross-Alaska, Inc.

W.D. Gross II, President



"Pioneering Alaska Since 1897"

(907) 586-3634

222 Front Street • Penthouse Suite 600 • Juneau, Alaska 99801

February 6, 1986

The Honorable Patrick Rodey
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: Senate Bill No. 363

Dear Chairman:

As you may be aware, there has been a bill introduced through the Senate Judiciary Committee relating to "motion picture fair competition." We would sincerely appreciate your effort in opposing any such legislation for the procurement of motion picture product in the State of Alaska.

Senate Bill No. 363 appears, at face value, to protect the small, independent motion picture exhibitor from the large producers and distributors. In reality, it allows the largest motion picture exhibitor, who has the "financial capability," of literally putting the smaller, independent exhibitor out of business. This, in fact, has been done and is a matter of record by the party that has requested this legislation.

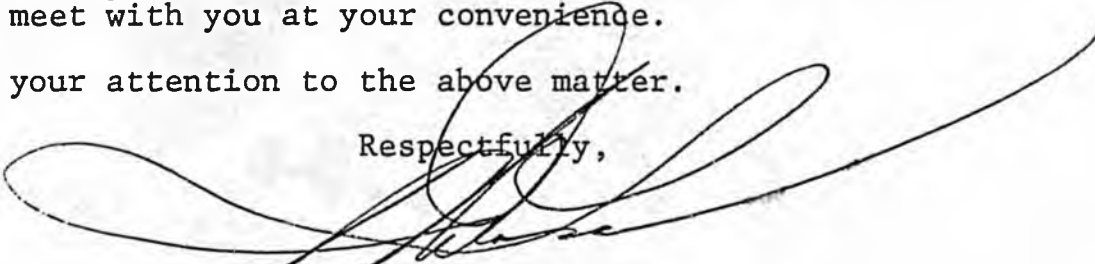
Our family has been in business in Alaska for 89 years -- since the time that my grandfather traveled throughout Alaska with his motion picture machine. We have survived competition at various times throughout those years. We would like to continue living in Alaska and doing business in Alaska. The bill before the Senate, if passed, would most certainly be the demise of four generation's lifetime commitments.

We have discussed Senate Bill No. 363 with all of the other independent exhibitors in the State of Alaska. They also oppose this legislation and are aware of its consequences.

For your information, I am enclosing copies of letters, as well as a Position Paper regarding the above referenced bill. If I can be of further help to you in establishing our point, I would be more than happy to meet with you at your convenience.

Thank you for your attention to the above matter.

Respectfully,


W.D. Gross II
President & General Manager

Coliseum Twin Theatre
405 Mission Street
Ketchikan, Alaska 99901
Phone: (907) 225-2294

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POSITION PAPER

In Opposition To State Regulation Of Motion Picture Licensing

Background

Motion pictures in Alaska, as in most other states, are licensed to theater owners either by bidding or by negotiated agreements. In negotiations, the distributor seeks the best price and terms for the rights to exhibit a movie, and is free to consider all other relevant factors to a successful business arrangement. In addition to price, the distributor may also take into account theater quality, maintenance, location, past performance, seating capacity, advertising, parking facilities, and other factors which contribute to a pleasurable public viewing experience.

Frequently, the theater owner previews the full length film in advance of negotiations. On occasion, and in particular when a film has a number of special effects, film clips and descriptive materials are used in lieu of the full film preview. This process is termed advanced bidding and is sometimes called "blind bidding". For the Alaska market, film previews usually take place in Seattle or Portland, for the convenience of the theater chains which are headquartered there, and for the booking agents which handle most of the remainder of the independently-owned Alaskan theaters.

Alaska now has 52 theater screens in operation. Sixty-eight percent (35 screens) are owned by out-of-state chains; 15% (8 screens) by an Alaskan based chain; and 17% (9 screens) by other Alaskan independent owners. Tom Moyer Theatres, based in Portland, is the largest out-of-state owner with 24 screens in Anchorage and Fairbanks. Festival Enterprises from California owns 12 screens in Anchorage and Eagle River. Gross-Alaska Theatres, based in Juneau, owns 8 screens in Juneau, Sitka and Ketchikan. The remaining screens are small independents located in Petersburg, Seward, Kodiak, Juneau and Soldotna.

Issue

The Moyer Theatre chain has requested introduction of SB 363, which would for the first time establish State regulation of motion picture licensing. This legislation, which has provisions nearly identical to legislation being sought by Moyer Theatres in the State of Washington, would require that all films licensed in Alaska be first trade screened and that when requested by a theater owner, all licensing be on a sealed bid basis, with the highest numerical bid required to be accepted by the distributor without regard to the other factors cited above.

While the proposed legislation has been portrayed as beneficial to all theater owners, including the Alaskan based businesses, this is not the case. In reality, while purporting to fix problems which do not exist, the proposal favors the Moyer chain at the expense of other owners. This special interest legislation should be viewed as a "Trojan Horse."

The Moyer chain is the tenth largest in the U.S., and therefore has the financial resources to outbid the other theaters in the short run, thus preventing them from getting the best films. It is also in an aggressive take-over posture, having offered to purchase many of the remaining Alaskan based theaters. Passage of the proposed legislation would facilitate this chain's drive to become a monopoly in Alaska.

While creating a competitive advantage for Moyer Theatres, the proposal creates disadvantages for other theater owners. It would significantly raise the cost of previewing films by requiring an unnecessary trade screening in Alaska. It eliminates the right to subsequent renegotiation of contracts where films do not generate as much revenue as anticipated. It prevents distributors from considering critical factors other than the highest monetary bid, which discourages high-quality theater operations, and it increases the potential for litigation, when most independent owners do not have the resources for expensive court fights as do the large chains like Moyer Theatres. It would also hurt the movie-going public by risking delay in the opening of films and increasing the cost of admission tickets.

Summary

The current unregulated environment for the motion picture business in Alaska has worked well since territorial days when Cap Lathrop and W. D. Gross first showed hand cranked moving pictures to frontier saloon patrons. The status quo is fair to both in-state and out-of-state distributors, booking agents, and theater owners. It has even allowed Moyer Theatres to dominate in the Anchorage and Fairbanks market. Let's not spend time imposing unnecessary regulations on problems which do not exist.

Gross-Alaska Theaters

Juneau, Alaska (Juneau, Sitka, Ketchikan)

Festival Theaters (Anchorage Eagle River)

Walnut Creek, California

Motion Picture Association of America

Motion Picture Exhibitors Association (Northwest U.S.)

7/rs/5

Hickel Investment Company

BOX 101700
ANCHORAGE, ALASKA 99510-1700

EXECUTIVE OFFICES
PHONE (907) 274-7400

RECEIVED JAN 0 6 1986

January 3, 1986

Honorable Arliss Sturgulewski
Alaska State Senator
2957 Sheldon Jackson
Anchorage, AK 99508

Dear Arliss:

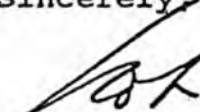
It has come to my attention that there may be an effort by the Luxury Theatre chain to attempt to introduce legislation in this session that would force film distributors to accept the highest bids for their pictures from the exhibitors who are the theatre operators.

You should be aware that Festival Enterprises, Inc., an operator of several movie screens in the Anchorage area, opposes such legislation for the simple fact that it would interfere with the free market system, and in effect could result in price fixing and restraint of trade.

I would appreciate it if you would keep me abreast of any development that might result in this being proposed as legislation during this session.

Have a good new year, and a successful session.

Sincerely,


Robert J. Hickel
President

cc: Mr. Dick Jeha ✓
Festival Enterprises

same letter sent to Senators Jan Faiks, Tim Kelly & Rick Halford
also Representatives Sam Cotten, H.A. Boucher, Virginia Collins &
Randy Phillips...

Moyer Theatres

1953 N. W. KEARNEY STREET
PORTLAND, OREGON 97209
503/226-2735

December 31, 1985

Mr. D. Bruce Gardiner
Motion Picture Exhibitors
of Washington, Alaska & Northern Idaho
1644 116th N. E.
Bellevue, WA 98004

Dear Bruce:

As a member of your organization with two theatres in the State of Washington, I am writing to express my concerns in the proposed amendment to the Motion Picture Fair Trades Act.

Moyer Theatres was founded in 1933 and has a total of 41 screens in Oregon and Washington. We are the No. 2 exhibitor in Portland, Oregon. We were nearly forced out of business and bankrupt by the No. 1 exhibitor three years ago because we were not able to bid enough money for pictures and our competitor was bidding sometimes as much as the picture would gross. During the period from 1975 to 1980 we were able to stay in business by several film companies choosing not to sell our competitor and selling us all their product without bidding. When we were forced to bid for their product, we were then put into the position I have outlined above and were forced to make an out-of-court settlement in our Anti-Trust suit so that we could remain in business.

I have strong doubts that this legislation will help the small exhibitor. The small exhibitor could be very vulnerable to the large companies with their capital resources. The distributor should be free in picking the best theatres for their product. I think that each theatre has its own economic advantage over others whether it be size, location or different clientele that patronize the theatre. For example, action motion pictures do well in some theatres and don't do well in others. I definitely do not think the legislature should try to regulate our industry.

Respectfully,

MOYER THEATRES


Larry R. Moyer
President

LRM:bbs

Gross-Alaska, Inc.

W.D. Gross II, President

Alaska Since 1897

(907) 586-3634

222 Front Street • Penthouse Suite 600 • Juneau, Alaska 99801

February 4, 1986

Mr. Bruce Gardiner
12040 98th N.E.
Kirkland, Washington 98034

Dear Mr. Gardiner:

This letter is to advise you that Tom Moyer, who is the largest theatre owner in Alaska, has requested the introduction of Senate Bill 363 in the Alaska Legislature which would control the motion picture licensing practices of exhibitors in our State.

This bill is identical to the bill that he has had introduced in the Washington Legislature. Where a theatre owner so requests, it would compel a distributor to award both first and second run pictures to the highest numerical bidder. Renegotiation of contracts for films which are less successful than anticipated is prohibited where bidding is used to license films.

This proposed legislation would eventually allow Tom Moyer to monopolize the Alaska film industry, which he already dominates. Virtually all of the other exhibitors in Alaska are opposed to the legislation as we would be unable to compete on Tom Moyer's terms.

Sincerely,

GROSS-ALASKA, INC.

W. D. Gross, II

WDG:RS:sd/1.52

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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1986

SUBJECT: Motion Picture Fair Competition
(SB 363)

TO: Senator Pat Rodey
Chair, Senate Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described bill.

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

Section 1 of the bill states the legislative purposes of the bill.

Section 2 of the bill would enact a new chapter 51 to AS 45: EXHIBITION OF MOTION PICTURES.

Sec. 45.51.010(a) provides that the blind bidding or the blind selling of the right to exhibit a motion picture in the state is prohibited. The bill defines "blind bidding" as an "exhibitor's bid or negotiation for or the exhibitor's offer or agreement to terms for the license to exhibit a motion picture at a time before the motion picture has been trade screened in the state or before the motion picture has been otherwise made available for viewing in the state by all exhibitors;" [see Sec. 45.51.100(1)]; "blind selling" is similarly defined as the "distributor's agreement to license a motion picture before an exhibitor has been afforded an opportunity to view the motion picture by trade screening" [see Sec. 45.51.100(2)]; and "buying" or "selling" of the

right to exhibit a motion picture is defined as "the licensing of a theatre to show the motion picture for a specified number of days for a specified price" [see Sec. 45.51.100(3)].

Sec. 45.51.010(b) provides that before the motion picture has been "trade screened", bids may not be returnable, negotiations for the licensing of exhibition of the motion picture may not take place, and a license agreement and its terms may not be agreed upon for the exhibition of the motion picture. Sec. 45.51.100(8) defines "trade screening" as an "exhibition of a motion picture before it release for public exhibition by a distributor".

Sec. 45.51.010(c) provides that a distributor shall provide "reasonable and uniform written notice to each exhibitor in the state at least 72 hours before a trade screening."

Sec. 45.51.020(a) relates to the solicitation of bids. It specifies the elements that the solicitation of the bid for the exhibition of a motion picture must contain, requires that the bid be in writing and that the bids be opened at the same time, permits the bids to be examined by those bidding, and requires the distributor to advise each exhibitor either of the name of the winning bidder or that each bid was unacceptable.

Sec. 45.51.020(b) provides that a distributor may license a motion picture only by bidding and may solicit rebids only if each bid is unacceptable.

Sec. 45.51.020(c) provides that the right to exhibit shall be awarded to the highest bidder unless all bids are rejected.

Sec. 45.51.020(d) permits a distributor to bid for rights to distribute in a "particular area of the state".

Sec. 45.51.020 provides that the decision of a distributor that a bid is an unacceptable bid or is the highest bid is conclusive "unless a reasonable person could not have made that judgment."

Sec. 45.51.040 permits a person aggrieved by a violation to bring an action for damages and to enjoin future violations.

Sec. 45.51.050 relates to damages.

Senator Pat Rodey
Page 3
February 24, 1986

Sec. 45.51.050(a) provides that an exhibitor may recover the greater of "actual damages" or "liquidated damages equivalent to 20 percent of the gross box office receipts earned by the motion picture" where it was exhibited.

Sec. 45.51.050(b) permits punitive damages if the violation is determined to have been intentional. And punitive damages may be awarded even if damages were not awarded under Sec. 45.51.050(a).

Sec. 45.51.060 provides that a purported waiver of rights established under the chapter is void and that the chapter be liberally construed.

Sec. 45.51.100 defines the terms used in the bill, including, "blind bidding", "blind selling", "buying" or "selling", "distributor", "highest bid", "motion picture", "run", "trade screening", and "unacceptable bid".

No effective date section is added; the bill would therefore be effective 90 days after enactment.

If I may be of further assistance, please advise.

RAB:mkr
m3/072

Anti-Blind Bidding Laws — A Summary Report

Charted below are the basic provisions of the 26 Anti-Blind Bidding Laws enacted as of September, 1985:

STATE	DATE OF LAW	WHERE TO TRADE SCREEN	PERTAINING TO GUARANTEES	OPEN BID	WHERE BIDS ARE OPENED	OTHER	PENALTY
ALABAMA	4/18/78	Not specified	None	Yes	Not specified		Civil
ARKANSAS	7/1/81	Within state	Cannot condition award based on guarantees or advances	Yes	Within state	Clearance clause	Misdemeanor
GEORGIA	3/21/79	Within state	None	No			Civil
IDAHO	7/1/79	Not specified	Cannot condition award based on guarantees or advances	No			Misdemeanor
INDIANA	9/1/80	Within state	None	Yes	Not specified		Civil
KANSAS	7/1/81	Within 1 of 3 largest cities	None	Yes	Not specified		Not specified
KENTUCKY	7/15/80	Lexington, Paducah & other cities of distributor's choice	Cannot condition award based on guarantees or advances	Yes	Within state		Civil
LOUISIANA	7/1/78	Within state	None	Yes	Within state	Amended 7/18/80	Civil
MAINE	9/16/79	Within Metropolitan area where exchange is located	None	Yes	Same as Trade Screen	Extended 2 years Must be reviewed in 1983	Known as a deceptive Trade Practice
PRINCE GEORGE'S COUNTY, MD.	1/11/82	Prince George's, Montgomery County D.C. or Va.	Not stipulated	Yes	Within trade screen area	None	Office of law may bring action in name of county for temporary restraining order and preliminary injunction
MASSACHUSETTS	1/14/80	Within commonwealth	None	Yes	Same as Trade Screen		Known as a deceptive Trade Practice
MISSOURI	8/13/82	In the two largest metropolitan areas	Not stipulated	Yes	Within state	Two Pictures per year may be blind bid — also others, under certain conditions	Damages set by distributor to be paid to exhibitor if distributor in violation
MONTANA	3/31/81	Within 1 of 11 western states with Blind Bidding Laws	Guarantees prohibited	No			Misdemeanor
NEW MEXICO	7/3/79	Within 1 of 3 largest cities	None	Yes	Within state		Not specified
NORTH CAROLINA	7/1/79	Within state	None	Yes	Within state		Misdemeanor
OHIO	10/23/78	Within 1 of 5 largest cities	Cannot condition award of picture on guarantee nor advance more than 14 days prior to playdate	Yes	Within state	Constitutionality upheld 7/9/80 — now under appeal	Not specified
OREGON	10/5/79	Within state	None	No			Exhibitors may bring action in State Court
PENNSYLVANIA	5/5/80	Within state	Guarantees and advances prohibited	Yes		First-run clearance maximum 42 days	
PUERTO RICO	6/14/80	Within commonwealth	No guarantees No unreasonable advances	Yes	Within commonwealth		Felony
SOUTH CAROLINA	5/30/78	Within South Carolina or North Carolina	None	Yes	Same as Trade Screen	May be waived if all first-run exhibitors agree in writing	Misdemeanor
TENNESSEE	4/18/79	Within state	Prohibited	No			Civil
UTAH	7/1/79	Within 1 of 3 largest cities	None	No		No Per Capita	Class A Misdemeanor
VIRGINIA	7/1/78	Within state or Washington, D.C. or Prince George or Montgomery Counties, Maryland	None	Yes	Same as Trade Screen		Civil
WASHINGTON	9/1/79	Largest city within state	None	Yes	Within state		Civil
WEST VIRGINIA	6/7/79	Within state or Local Exchange Area serving state	None	Yes	Same as Trade Screen	Waived within 20 miles of border of state without Blind Bidding Law	Not specified
WISCONSIN	5/10/84	Within 1 of 3 largest cities	Prohibited	No			Civil

Motion picture negs.
SB 363

FESTIVAL ENTERPRISES INC.

1460 MARIA LANE, SUITE 420, WALNUT CREEK, CA 94596

TELEPHONE: 415-934-8652

January 16, 1986

The Honorable Patrick Rodey
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Rodey:

We understand that a bill may be introduced in the Alaska Legislature which would require film companies to put out their pictures for bid, rather than enabling them to distribute their product as they wish according to their best business judgment.

We recently opened two theatre complexes in Alaska, the University Cinemas in Anchorage and the Valley River Cinemas in Eagle River. In conjunction with our landlord, Hickel Investment Company, these complexes represent an investment of nearly \$10,000,000. We provide employment for nearly 100 people, many of them young, first time employees.

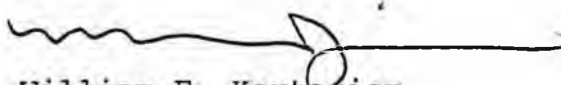
We are extremely proud of these new theatres which bring to the State of Alaska "state of the art" theatrical entertainment. The response of the people of Alaska has been extremely gratifying, justifying our belief that we had discovered a market which deserved an investment of the magnitude we made.

We would be extremely disappointed if, after making this substantial commitment in Alaska, we were confronted with a situation in which government mandate rather than free market processes were to dictate the future of our business. There is nothing like the proposed legislation in any other State, and in our opinion, nothing is different in the State of Alaska which should require the consideration of such legislation. If such legislation had been in effect when we were deciding to invest in Alaska, we may well have done other than we did, and we would think that anybody else in our industry would come to the same conclusion.

We urge you to defeat this proposal.

Thank you for your consideration.

Sincerely,



William F. Kartozian

WFK/md

cc: Robert J. Hickel

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

January 31, 1986

SUBJECT: Motion Picture Fair Competition
(SB 363)

TO: Senator Pat Rodey
Chair, Senate Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel 

Katie has asked that the provisions relating to the mandated award to the highest bidder be eliminated. I am advised that the goal of the bill, as amended, would be to open up the exhibition award process without tying the award to the highest bidder.

My first reaction was that secs. 30 - 50 of the bill would necessarily be dropped.

On rethinking the question, I suspect that some aspects of those provisions may remain but I suspect that they are more shell-like than real.

In sec. 30, I have deleted "or is the highest bid". Since there are no benefits to having the highest bid under sec. 20(b), sec. 30 should be amended as suggested.

And while a "violation" (sec. 40) can still exist, it consists of failing to comply with sec. 10.

I have deleted sec. 50(a). While the exhibitor may have some nominal damages from being excluded from screening -- since there is no obligation to make the award to the highest bidder, I fail to see what actual or liquidated damages could be proven under the Act.

But I left sec. 50(b) in; while I think the burden on actual damages is high, perhaps some punitive damages may be

Senator Pat Rodey
Page 2
January 31, 1986

obtained for "intentional" violations of sec. 10.

Finally, I deleted the definition of "highest bid", sec. 100(5).

If I may be of further assistance, please advise.

RAB:mkr
M2:121

LAW OFFICES OF
MITCHELL D. GRAVO, INC.
A PROFESSIONAL CORPORATION
625 W. 5TH AVENUE, SUITE C
ANCHORAGE, ALASKA 99501
(907) 276-0358

October 28, 1985

Senator Pat Rodey
C/O Legislative Information Office
1024 West Sixth Avenue
Anchorage, Alaska 99501

Dear Pat:

Per our discussion, please review the following material regarding anti-blind bidding legislation for Alaska. On behalf of my client, Luxury Theatres, I'm requesting that you sponsor such legislation in the Senate.

Sincerely,



Mitchell D. Gravo

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ASSOCIATED FILM DISTRIBUTION CORPORATION, et al.	:	CIVIL ACTION
	:	
vs.	:	
	:	
THE HONORABLE DICK THORNBURGH, et al.	:	NO. 80-1179

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I uphold the constitutionality of the Pennsylvania Feature Motion Picture Fair Business Practices Law.¹ That Act regulates certain trade practices in the licensing relationship between those who distribute films and those who exhibit them. The distributors contend that the Act violates their rights to freedom of speech, offends the right of Congress to regulate interstate commerce, is preempted by federal copyright legislation, and is contrary to the Pennsylvania Constitution's prohibition of "special laws."²

1/ 73 P.S. §§ 203-1 through 203-11.

2/ The history of this case includes a grant of summary judgment for the plaintiffs on the grounds that the Act violated the First and Fourteenth Amendments and the Supremacy Clause of the United States Constitution. See Associated Film Distributors, et al. v. Thornburgh, 520 F.Supp. 971 (E.D. Pa. 1981) (hereinafter AFD I). The Court of Appeals reversed the order. 683 F.2d 808 (3d Cir. 1982) (hereinafter AFD II).

I. Background: Mutual Dependency

The relationship between exhibitors and distributors is one of mutual dependence. Distributors need theatres in which to play their films; exhibitors need films to play in their theatres. This symbiotic relationship has given rise to a long history of sharp dealing. See United States v. Paramount Pictures, 334 U.S. 131 (1948).

The plaintiffs in this action are the major distributors of motion pictures in the United States. They distribute most films. Those which they do not distribute are released by foreign companies or small independents.

Although there are national theatre chains, most theatres in Pennsylvania are owned by local chains or by independent exhibitors. The exhibition business in some areas of the Commonwealth is competitive, while in other areas a chain or an individual owns all the theatres. If a distributor wishes to play a film in a certain area, it must license that film to an exhibitor in that area. Not all theatres are alike. Factors such as seating capacity, location,

and parking are important in what is a prime theatre.

All exhibitors depend on the product available from distributors. Theatre owners need new pictures on their screens. Exhibitors fear the mythical screen without a picture; distributors fear the mythical film without a theatre.

During the peak seasons, Christmas, Easter and summer, there is usually ample product for exhibitors. At other times, however, distributors release fewer films. This is a problem for both small exhibitors operating one theatre and for the giants of the exhibition field who own all the screens in an area. The more screens an exhibitor owns, the more devouring its need for film product. While a theatre owner can subsist on the average film, the eternal hope is to garner a blockbuster.

Distributors license films by two methods, bidding and negotiation. The Pennsylvania Act defines a bid as

[a] written or oral proposal by an exhibitor to a distributor, which proposal is in response to an invitation to bid or negotiate and states the terms under which the exhibitor will agree to exhibit a feature motion picture.

73 P.S. § 203-3

In practice, distributors use bidding in areas where competition among exhibitors exists. Although bidding may take place over the telephone, normally the distributor sends exhibitors in the area an

"invitation to bid" which contains a brief description of the film, the time at which it will be available and the suggested licensing terms. The exhibitor submits a bid which will include not only financial terms, but also minimum length of run and any requested "clearances" over other theatres in the area. A clearance is an assurance that another theatre will not obtain the same film. The distributor, taking into account both the quality of the theatre and the terms of the bid, presumably selects the most favorable bid. The distributor can reject all bids. Before the Pennsylvania Act, the distributor could negotiate with individual theatres after rejecting all bids. Traditionally, terms on licenses procured by bidding are "firm"; the distributor will not be expected to reduce the agreed terms if the picture is unsuccessful.

Distributors normally use negotiation in areas where there is little or no competition among exhibitors. Under negotiation, a representative of the distributor contacts a specific exhibitor and, without soliciting other offers, attempts to work out a licensing arrangement. Traditionally, terms under negotiated licenses are not firm. If a picture bombs, the distributor may renegotiate the terms downward.

Another method of licensing is "competitive negotiation." Competitive negotiation is oral bidding. The distributor contacts the exhibitor and indicates that he is soliciting offers from more than one theatre. As with bidding, the industry practice is that terms licensed under competitive negotiation are considered firm.

In the 1950's and 1960's films were usually licensed by flat rental or by a sliding scale in which exhibitors paid a higher percentage of the box-office gross as the gross increased. As time went on,

distributors stopped using sliding scales and flat rentals. Film rental is now calculated by percentage rental and a house allowance. Under this system, the distributor and exhibitor agree on a house allowance, a specific dollar amount which is supposed to represent the exhibitor's weekly expenses. The exhibitor keeps 10% of the weekly gross above this house allowance; the remaining 90% inures to the distributor. The contract, however, almost always provides that the distributor will receive a minimum percentage of the box office gross. The amount of this minimum percentage has increased over the years. Currently, the distributor usually demands a minimum of seventy percent of the box office gross for the first week of the exhibition (or "run"). The percentage decreases in the succeeding weeks of the run.

Several events occurred in the past few decades which have made business more difficult for exhibitors. The first was a significant decrease in the amount of film product available. The second was the increase of "blind bidding," defined in the Pennsylvania Act as

[b]idding, negotiating, offering terms, accepting a bid or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the feature motion picture that is the subject to the agreement.³

73 P.S. § 203-3.

3/ A trade screening is the showing of a feature motion picture by a distributor which is within the Commonwealth and is open to any exhibitor. See 73 P.S. § 203-3.

A consent decree between most of the major distributors and the United States Department of Justice limited blind bidding between 1968 and 1975 by preventing the distributors from blind bidding more than three pictures per year. When the decree expired, the practice of blind bidding increased dramatically. By the late 1970's most films, and virtually all those that were considered potential "blockbusters," were blind bid.

Economic power is highly concentrated in the hands of a few distributors who control most feature films. Concentration of exhibitors in local markets is growing. In the business relationship between distributors and exhibitors, the distributors probably have the upper hand.

II. Making a Motion Picture

Making a film is a complicated process, characterized by ingenuity in adjusting. While it may be true that there is no business like show business, show business is also big business. An average movie costs ten to twenty million dollars to make and distribute.

It is difficult to predict how long it will take to make a film. Target dates are set before shooting begins. Such factors as script revision, the health of stars and key members of the crew and the weather can cause significant delays. Principal photography lasts three to five months. When shooting is finished, the post-production process begins. Post-production may take up to a year. It is during this time that music

and special effects are added, the quality of the sound and color are improved and the film is edited.

During post-production, a "rough cut" of the film is made from the original negative. The director turns the "work-in-progress" into a finished product. Some directors work quickly, others at a snail's pace.

The main circumstances which may slow the production and post-production processes have always existed and have nothing to do with legislation. It is often necessary to accelerate post-production by adding technicians, renting extra equipment or paying for costly overtime. Once a release date for a film is set, changing that date is expensive. Distributors buy national television advertising time for a film a year before its release. A delay in release means decline in the effectiveness of the advertising. Postponement forces the filmmaker and distributor to incur extra interest costs, creates a risk that a timely film will become stale, and may cause a film to miss a prime release season. Acceleration is the way the problem is solved. It is rare for a film to miss its release date.

III. The Pennsylvania Act

The Pennsylvania Feature Motion Picture Fair Business Practices Law was enacted in 1980. The legislature described its purposes in passing the Act in 73 P.S. §203.2:

The General Assembly of the Commonwealth of Pennsylvania finds and declares that the licensing and distribution of feature motion pictures to theatres in this Commonwealth, including the rights and obligations of distributors and

exhibitors, vitally affects the general economy as well as the access of the public to works of artistic expression and opinion. In order to promote the public interest and public welfare of this Commonwealth to:

- (1) insure unabridged access for the public to artistic expression and opinion in feature motion pictures at reasonable prices and at many different locations;
- (2) avoid undue control of the exhibitors by the distributors;
- (3) foster vigorous and healthy competition in offering feature motion pictures for the benefit of the public by prohibiting practices through which fair and honest competition is restrained, destroyed or inhibited.
- (4) promote the wide geographical dissemination at reasonable prices to the public of ideas, opinions and artistic expression in feature motion pictures;
- (5) prevent delay in the exhibition of feature motion pictures to the public in theatres playing subsequent to the first run showing;
- (6) prevent theatres from unnecessarily going out of business, thereby resulting in reducing the number of small independent businesses and unemployment with loss of tax revenues and other undesirable consequences;
- (7) prevent unfair and deceptive acts or practices and

unreasonable restraints of trade in the business of distribution and exhibition of feature motion pictures within the Commonwealth;

(8) promote fair and effective competition in that business;

(9) benefit the movie going public by limiting the long and extensive first runs so that additional theatres, in a given area, may also exhibit the same feature motion picture and at possibly a lower admission price; and

(10) prohibit blind bidding by insuring that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibit it in their communities;

it is necessary to legislate regulations and standards pursuant to the exercise of the police power of this Commonwealth governing the relationship between feature motion picture distributors or licensors and exhibitors serving the public by establishing fair business practice procedures for the licensing and distribution of feature motion pictures within the Commonwealth of Pennsylvania and to provide remedies for the violation of this act, including damages and attorneys' fees.

In order to effectuate the objectives described, the Pennsylvania Act regulates the licensing of films in the Commonwealth.

First, the Act flatly prohibits the practice of blind bidding. The act prevents exhibitors and distributors from

negotiating for a license or entering into a licensing agreement before a film is trade screened in Pennsylvania.⁴ 73 P.S. § 203-4.

The Act does not permit licensing agreements to include provision for the payment of guarantees or advances. 73 P.S. § 203-5, 6. A guarantee is a promise by the exhibitor to the distributor to pay a minimum fixed dollar amount regardless of box office gross.⁵

When a film does not earn as much as its guarantee, the difference is "unearned film rental." This sum is not refundable. An advance is a promise by the exhibitor to pay part of the film's anticipated rental to the distributor before the exhibition. If the film rental does not equal the advance, the distributor is supposed to refund the difference.

The Act also contains a "42-day clause," which prevents distributors from granting exhibitors exclusive runs for more than 42 days without making provision to expand the run to other theatres within the geographical area.⁶ 73 P.S. § 203-7.

4/ Approximately one half of the states have enacted similar trade screening requirements.

5/ The Act prohibits guarantees only where payment to the distributor is otherwise based in whole or in part on attendance or box office receipts. Thus, the Pennsylvania Act does not forbid distributors and exhibitors from entering into agreements where the exhibitor's only payment to the distributor consists of a "flat rental."

6/ § 203-3 of the Act defines a "run" as:

[T]he continuous exhibition of a feature motion picture in a defined geographical area for a specified period of time. A "first run" is the first exhibition of a feature motion picture in the designated area; a "second run" is the second exhibition and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is any run limited to a single theatre in a defined geographical area and a "nonexclusive" or "multiple run" is any run in more than one theatre in a defined geographical area.

The Feature Motion Picture Fair Business Practices Law also regulates bidding procedures. 73 P.S. § 203-8. It requires open bidding. Those exhibitors who submitted bids have a right to be present when bids are opened. Within sixty days after bids are opened, a bidding exhibitor may examine any bid that was made for that particular run, even if the distributor has rejected all bids. When a distributor accepts a bid, it must notify all the bidding exhibitors of the identity of the successful exhibitor and the terms of the successful bid. The Act also requires rebidding. If a distributor rejects all bids, it must so inform all bidding exhibitors, issue new bid solicitations, and bid the film again. Thus, once a distributor chooses to license by bidding, it cannot switch to negotiation if the terms offered in the bids received prove disappointing.

IV. The Effect of the Act

The effect of the Act on the motion picture business is relatively minor. Both sides exaggerate its effect. The extravagant claims of the parties give rise to a mythology about the effects of the Act which far outdistances the credible evidence. The distributors' claims, unsupported by credible evidence, range from complaints that the Act inhibits the artistic development of pictures to complaints that compliance with the Act requires expenditure of great sums for distribution, promotion and marketing. There were claims that the Act has contributed to the elimination of certain types of special effects

and has precluded the use of shopping mall promotions. The exhibitors, on the other hand, claim that the Act is a panacea protecting them from their helplessness in the market place against the overwhelming market power of the distributors. In fact, there are both distributors and exhibitors who are unfair competitors. The distributors' history includes the practices leading to the Paramount decree. Some exhibitors have engaged in collusive conduct by agreeing to split available film with competitors. The range of unfair practices by both sides is extensive. While distributors have often misrepresented the quality, nature and critical reception of a film, powerful exhibitors have often oppressed smaller competitors by using their deeper pockets to offer guarantees unrelated to the merits of a bidding situation. Favored arrangements between large distributors and large exhibitors led in the past to sneak looks at competitors' bids. Clearances for some theatres unreasonably restricted wide and prompt dissemination of films. "Customer relationships" still exist, in which some exhibitors commit screens to particular distributors long before trade screening. There are also claims of sham bidding, where an exhibitor bids high terms but consistently pays at a lower renegotiated rate.

Against this background of seamy conduct and exaggerated claims, the Pennsylvania Act modestly regulates a variety of unfair trade practices. The Act does not restructure the movie industry, nor does it address all its inequities. The failure of the law to correct all of the problems of this complex and sometimes shady business, however, is no reason to strike down a modest effort at reform.

A. The Trade Screening Requirement

Plaintiffs have attacked the trade screening requirement of the Pennsylvania Act on several grounds. The distributors maintain that they prefer to trade screen whenever possible. They allege, however, that the trade screening requirement causes delay in the release of motion pictures and that, because they cannot license until after a film has been screened, they are often foreclosed from prime theatres.

The distributors see themselves faced with a Hobson's Choice. Delaying a release date is costly and, because timing can be a key element in a film's success, potentially disastrous. The other alternative is to accelerate work on the project in order to complete a "trade screening" print to be shown to exhibitors. Such prints represent the work-in-progress and are not equivalent to the print ultimately released to the public. The distributors complain that this process diverts resources from the completion of the final print, is extremely expensive, and is wasteful because trade screening prints are ultimately useless. They claim that trade screening prints are usually incomplete, unpolished and, therefore, in no way representative of the final product. The evidence at trial, however, showed that there are substantial benefits to trade screening and that the burdens alleged by plaintiffs have been overstated.

The main benefit of the trade screening requirement is prevention of certain deceptive trade practices by distributors. The evidence supported the notion that before trade screening legislation, distributors were licensing films by tactics ranging from exaggeration to outright misrepresentation.

In the days of blind bidding, licensing often took place about a year before the actual release of a film. The only information an exhibitor received about a picture besides industry rumor was the puffing contained in a brief bid solicitation letter. The letters usually included the name of the film, the director and a paragraph summarizing the plot. Such letters uniformly described the upcoming film in glowing terms. With this information, the exhibitor had no rational way to differentiate a blockbuster from a disaster, nor could it determine whether a film would play well in a particular area. Bid solicitation sometimes passed beyond hype into deception.

A 1977 bid solicitation for "THE SWARM" promised "another giant spectacular." The letter touted the film as starring several celebrities. By the time these letters were sent out, however, Warner Brothers had already performed a study of marketing opportunities for "THE SWARM," which showed little audience interest in seeing the film. Moreover, most of the actors advertised as "starring" in the movie had only cameo roles. The film was a disappointment at the box office. As a result of a lawsuit brought by Texas exhibitors against Warner Brothers under the Texas Deceptive Practices Act, a jury in federal district court in Texas explicitly found that Warner Brothers committed false, misleading or deceptive acts or practices.⁷

^{7/} The jury, however, failed to find that those acts or practices proximately caused injuries to the plaintiffs. See Presidio Enterprise, Inc. et al. v. Warner Brothers Distributing Corporation, Civil Action No. A-79-CA-290 (W.D. Texas).

A more recent example is the Paramount film, "BEST DEFENSE." The bid solicitation stated that Dudley Moore and Eddie Murphy would "join forces in an all-out assault at the military and the funny-bone." The movie was touted as "a rare and extraordinary treat, bringing together two of the screen's hottest and most versatile comic giants" In fact, Murphy was on screen for only fifteen to twenty minutes and he and Moore did not have one scene together.

Exhibitors admit that their judgment on films is far from perfect but testimony supported the common sense notion that the best way to evaluate the box office potential of a film is to see it. Knowing a film's stars, its director or the book on which it is based is no substitute for actually seeing the film. It does not matter that the sound and visual effects or editing are incomplete. The overall impression of the story and performances are the most important features in judging a film and they can be assessed even when the film is screened with an unfinished print.

Trade screening also allows exhibitors to determine whether a film is likely to sell to their particular community. Films which are blind bid have often not received a rating

from the Motion Picture Association of America at the time they are licensed.

Trade screening allows exhibitors to predict at which location a film will receive the best reception. Even large exhibitors who license virtually every picture gain from trade screening, which allows them to judge whether to place a given picture in a large or small theatre and to vary their bid according to what they perceive to be the worth of the film.⁸

The plaintiffs contend that trade screening cannot be too important to exhibitors because of sparse attendance at some screenings. They base their argument on sign-in sheets for screenings. These sheets are somewhat misleading. One exhibitor had no recollection of ever being asked to sign in. Major exhibitors almost always send a representative and many small exhibitors sometimes employ a single booking agent to license films.

^{8/} Some exhibitors maintain customer relationships with distributors in which they commit screens to that distributor in advance of trade screening. The plaintiffs argue that this undercuts the need for anti-blind bidding legislation. Customer relationships, however, are not universal. Small exhibitors do not have such arrangements. Those large exhibitors with customer relationships contend that they have only tentatively committed a screen to a certain company. The decision of what film to play on which screen has not been made. Trade screening also determines the terms they will bid for the film. Even with a customer relationship, an exhibitor is unlikely to offer high percentage terms or a long run if a picture does not seem likely to do well.

The plaintiffs concede that screenings for films rumored to be potential blockbusters are well attended. These are the movies for which an exhibitor may bid high terms and a long run. If an exhibitor licenses such a picture on those terms and the picture proves to be a flop, the exhibitor, especially the small one, may be faced with disaster. The Pennsylvania Act allows movie exhibitors to use their own judgment to determine whether such a film will succeed. The public benefits from requiring reasonable disclosure to afford the opportunity of an informed choice.

One ancillary benefit to trade screening is its benefit to unknown but worthwhile film makers. Trade screening allows exhibitors to judge films on what they perceive as real worth, rather than purely on the basis of reputation. Successful films which would otherwise be passed up because they contain unknown quantities receive more exposure. This may benefit the smaller and often more innovative distribution company.

While the benefits of the trade screening requirements are substantial, the burdens alleged by the plaintiffs are overstated.

There was a great deal of testimony about the costs of delaying a film's release date. Trade screening legislation, however, has simply not caused delay in the release of motion pictures. Plaintiffs point to a handful of films which missed their release dates, none because of the trade screening requirement. Meeting the deadline for producing a trade screening print is a burden which plaintiffs exaggerate in this litigation; the real world burden is the deadline of a national release date. The latter deadline causes the costs which plaintiffs attribute to the trade screening requirement. If a film comes close to meeting its production schedule, there will

be no delay because of trade screening. A distributor can successfully license a film within 24 to 48 hours of trade screening. There are, of course, films delayed because of factors unrelated to the trade screening requirement. These other factors may include a director who takes an extraordinarily long time to edit a film or the illness of a star. The distributors made no credible showing that the trade screening requirement has had any effect on the number of films that missed their release date.⁹

Plaintiffs contend that the trade screening requirement reduces the effectiveness of advertising because it usually prevents films from being licensed to specific theatres until shortly before release. These contentions are unfounded. Local advertising can link a film to a theatre on short notice before release. National advertising tends not to be theatre specific and such advertising can therefore appear in advance of licensing. The evidence indicated, in fact, that there has been no change in strategy concerning national advertising because of the Act.

The plaintiffs also complain that because they cannot license their films far enough in advance they are often precluded from placing their movies in prime theatres. The requirement of trade

^{9/} The Court gave little weight to the testimony actually offered that a given film was delayed because of the trade screening law. Such testimony was presented in a conclusory fashion and was not very helpful to the Court's resolution of the complex issues presented in this case.

screening pictures does not foreclose distributors from access to the more desirable theatres at peak seasons. Before the Act, distributors could book theatres long before the product was available. The Act changes the race's starting line to the availability of a trade screening print. It gives the race to the swift producers of movies rather than to the swift pre-emptors of theatres. In doing so, it makes the merits of the films more relevant. Moreover, the industry as a whole is not injured. If one company has production difficulties and is unable to screen its new film until a month before the release date, the company which finished its film according to schedule and trade screened two months in advance benefits. This is hardly an irrational result.¹⁰

Plaintiffs' next complaint is that the act forces the production of a separate trade screening print which is expensive to make and diverts valuable resources from the work being performed on the final print. As to the first contention, the costs of producing a trade screening print are insignificant when compared to other production and post-production expenses. The oft-told tale of the horrors of inconvenience in using the corporate Lear Jet to shuttle a trade screening print between cities makes one wonder from what important missions the jet was diverted. As to the second contention, plaintiffs' own witnesses testified that acceleration of post-production has always

^{10/} Plaintiffs' farfetched claim that the act effectively precludes the use of mall promotions because such promotions must be planned long in advance and must be tied to a theatre which will show the film is without merit. There are myriad methods to promote and advertise new films unaffected by the passage of the Pennsylvania Act.

been a way of life in the movie business. There was no credible evidence that the diversion of resources to make a trade screening print has had any effect on the quality of pictures being released.

The distributors have also contended that a trade screening print is simply not representative of the final product. Such prints often lack titles, music, color-coding and various other special effects and finishing touches. The exhibitors who testified, however, all agreed that the quality of the prints is adequate to judge the basic worth of the film.¹¹ Also telling is the fact that certain distributors have on occasion shown trade screening prints as sneak previews for audiences and the press.

B. Guarantees and Advances

The most troublesome regulation in the Pennsylvania Act is the prohibition of guarantees and advances.¹² The distributors'

11/ The Court viewed the first reels of two trade screening prints and compared them to the finished prints of those reels. Although there were clear differences between the unfinished and final prints, the trade screening prints adequately represented the final versions. I felt able to determine the nature of the films from the screening prints. Moreover, both films contained disclaimers that the prints were unfinished.

12/ The Ohio statute regulating licensing practices in the movie industry does not outlaw all guarantees and advances, but forbids conditioning licenses on the payment of guarantees and advances. Thus, distributors may not solicit guarantees and advances, but exhibitors may offer them. Moreover, the Ohio Act regulates only advances more than fourteen days before the first exhibition of a picture. Ohio R.C. §1333.06.

mythology is that guarantees and advances enable small town exhibitors to obtain films earlier than they otherwise would by ensuring that the distributor will receive enough to cover the cost of the print. The exhibitors' claim is that the law against guarantees and advances is necessary to protect them against the extortionate demands of the distributors against which they are otherwise helpless. I do not believe either claim.¹³ I do find, however, that there is significant public benefit to the prohibition of guarantees and advances and that the burdens of such provisions are minimal.

The most significant benefit of prohibiting guarantees and advances is the protection of independent exhibitors from the predatory practices of larger exhibitors. Large exhibitors often use their deep pockets to put up substantial guarantees and advances. The small exhibitor simply cannot compete fairly even if his theatre and the terms he offers are as good or better than the larger exhibitor.¹⁴ He may have to seek bank financing to pay even a modest guarantee or advance.

13/ The exhibitors' claim that the distributors' use of guarantees is unfair had more validity when blind bidding was permitted. There was a great deal of testimony about exhibitors losing large sums of money because they put up substantial guarantees based on inaccurate information about a film.

14/ At trial, a representative of AMC, the third largest exhibitor in the country, testified that his company viewed guarantees as a "viable" method of licensing film. Other witnesses from large exhibition chains freely admitted offering sizeable guarantees when competing against smaller theatres.

An exhibitor with a deep pocket is able to put films beyond the reach of a smaller competitor regardless of which theatre is the more appropriate showcase. It is to the public's benefit that there be competition in exhibiting films and that large exhibitors do not squeeze smaller ones out of business.

Plaintiffs' position that guarantees and advances help small exhibitors break into the market and allow theatres in small towns to obtain film is unsupported by credible evidence. Unless two theatres are relatively equal, distributors choose on the basis of box office potential. A smaller, less attractive theatre will rarely, if ever, beat out a larger, more attractive theatre in a good location. Moreover, plaintiffs' own expert testified that a guarantee is a useful competitive tool for an exhibitor only when it is substantial enough to approximate the amount the distributor expects to earn from the license. Offering a marginal sum as a guarantee will not help the small exhibitor who would find it impossible to come up with a guarantee sizeable enough to secure a film.

The credible evidence also fails to support plaintiffs' theory that films which would otherwise not play in small towns are able to appear when exhibitors can offer guarantees large enough to cover print costs. There was testimony from exhibitors with theatres in small communities that they had at times attempted to buy a film print in order to show a particular film. These offers were rejected. The experience of these exhibitors was that guarantees had never made the difference in obtaining or not obtaining a film.

When exhibitors put up sizeable guarantees on films which produce disappointing box office receipts, they often play these pictures for longer than they normally would to reduce losses. Despite sagging popularity, exhibitors milk the runs of such films to the exclusion of otherwise available movies. Thus, the prohibition of guarantees benefit the public by reducing the incentive of exhibitors to play motion pictures beyond their useful life.¹⁵

Again, plaintiffs overstate the burdens arising from the prohibition of advances and guarantees. They claim that guarantees moderate the risk the distributor takes in producing a film by shifting some of that risk to exhibitors. Plaintiffs' statistical study indicated that in unregulated periods in Pennsylvania, 4.3% of plaintiffs' total film rental was unearned guarantee income. Plaintiffs' own economics expert testified that the presence or absence of guarantees does not have a significant impact on film rental.

^{15/} There was also evidence that some exhibitors occasionally raised ticket prices on films for which they paid large guarantees.

Plaintiffs argued that advances serve the purpose of assuring payment from exhibitors who are considered poor credit risks or slow payers. There are, however, other effective methods to deal with film rental delinquencies. One such method is not supplying film to delinquent exhibitors. There was also evidence that advances were often solicited from exhibitors with excellent payment records, casting doubt on plaintiffs' argument about the purpose of advances. When film rental does not equal the advance, the distributor does not usually repay the theatre owner at the end of the run, but holds the money as a credit balance until the next picture. Such a practice is onerous for the small exhibitor. While both distributors and exhibitors pay their debts to each other with small honor, there is no credible evidence that the prohibition of advances materially affects the credit relationship or the collection of debts.¹⁶

C. The 42 Day Clause

§203-7 of the Pennsylvania Act provides:

^{16/} Plaintiffs have made some farfetched claims about the evils of prohibiting guarantees and advances. Their proposed Findings of Fact complain that these provisions "may reduce the amount of internal capital available for other films and may, over the long run, reduce the distributors' willingness and ability to finance films without a built-in market." Plaintiffs, before trial, abandoned their claim that the Act affects financing for films and presented no evidence on this issue. The distributors have also contended that an exhibitor who has paid a substantial guarantee for a film will promote the film more vigorously than one who licenses a film without a guarantee term. This position is not supported by the evidence.

No license agreement shall be entered into between distributor and exhibitor to grant an exclusive first run or an exclusive multiple first run for more than 42 days without provision to expand the run to a second run or subsequent run theatres within the geographical area and license agreements and prints of said feature motion picture shall be made available by the distributor to those subsequent run theatres that would normally be served on subsequent run availability.

This part of the statute was inartfully drafted,¹⁷ and distributors interpret its requirements differently. Some read it to mean that no theatre may play a film for longer than 42 days. There is no support for such an interpretation, however. The clause prohibits contracts which grant an exhibitor an exclusive run in an area for more than 42 days. There is nothing in the law that prevents a distributor and exhibitor from agreeing to a run of more than six weeks as long as the license provides for expansion on the 43rd day. There is nothing in the law which prevents a distributor from contracting with an exhibitor for an exclusive run of six weeks and then, after bidding or negotiation contracting for another exclusive engagement with the same theatre owner.

Plaintiffs contend that some films have opened late in Pennsylvania because of the 42-day clause. Distributors release

^{17/} For instance, the statute leaves the definition of a "geographical area" unclear. It is not necessary for me to resolve these ambiguities.

films which are likely to start slowly at the box office and then build in popularity on what is called a "platform" release strategy. These films open initially in a handful of theatres in a few big cities and rely on word-of-mouth to gain audience size. Distributors nurture these films slowly and do not release them broadly until they have attained a certain level of popularity. The plaintiffs contend that the 42-day clause prevents them from maintaining control over this type of slow release and that, as a result, they have chosen not to open some films in Philadelphia at the early states of platform release. The Act however, does not cause such a delay. At most, it is a minor factor in marketing decision exclusively within the control of the distributor. It is the distributors' strategic choice, not the Act, which may delay release. In addition, this problem affects so few pictures that its impact is minimal.¹⁸

Plaintiffs' next complaint is that as a result of the 42 day clause exhibitors are less likely to offer high rental terms on certain films because the distributors cannot guarantee an exclusive run of longer than six weeks. Such complaints are not supported by any credible evidence in the record. It is more likely that the clause will

^{18/} One picture which allegedly opened late in Philadelphia because of the 42 day clause was "THE KILLING FIELDS." The film opened for an exclusive run in Boston in December and opened in Philadelphia on January 18. The movie, however, opened in Washington, D.C., an unregulated jurisdiction, on the same day that it opened in Philadelphia and in both Boston and Philadelphia the picture was more broadly released on February 1.

increase film rental for those films that are blockbusters or which turn out to be more popular than expected. When such films are reoffered after 42 days, they will probably garner higher percentage rental terms for the first weeks of the new license than they would for the seventh and succeeding weeks of the original agreement.¹⁹

The 42 day clause also has benefits for the Pennsylvania moviegoer. The purpose of the provision is to promote the wider dissemination of films in the Commonwealth. The evidence showed that the Act has achieved that purpose. Some films have opened in suburban and rural areas more quickly since the Act took into effect. Indeed, some have done so on exactly the 43rd day after the initial area release.

^{19/} Administrative expense caused by having to reoffer a film after six weeks is minimal.

D. Regulation of Bidding Procedures

The open bidding provision of the Act and the provision requiring re-bidding when the distributor rejects all bids serve a useful function by preventing certain unfair licensing practices. Before the Act, some distributors frequently gave favored exhibitors secret glances at competitors' bids, called "5 o'clock looks." Collusion between favorites often controlled the bidding for pictures. The open bidding and re-bidding requirements eliminate the 5 o'clock look, place all exhibitors on equal footing, and remove the bidding process from the dark. The distributors argue that open bidding encourages collusion among exhibitors. They admit that "documented examples of such abuse have been sparse." In fact, documented examples of such abuse are non-existent.

Plaintiffs also contend that because open bidding allows exhibitors to compare bids, they ultimately receive less favorable terms on film licenses. There is no evidence that this has occurred.²⁰ It seems equally likely that an exhibitor will bid higher terms after seeing his competition's bids.²¹

Plaintiffs next complain that distributors often prefer to accept low bids rather than submit to the time-consuming rebidding

^{20/} In fact, the evidence indicated that those distributors who have adhered most closely to the open bidding provision have received higher film rental percentages since the act.

^{21/} The plaintiffs complain that the Act allows the exhibitor who submits a bid stating only that he is "willing to negotiate" to learn about the competition's bidding practices. This position is based on a misreading of the statute. Under §203-3 a bid "states the terms under which the exhibitor will agree to exhibit a feature motion picture." The exhibitor who is merely "willing to negotiate" has not submitted a bid and is not entitled to examine competitors' bids.

process. Rebidding, however, can take place almost instantaneously. The Act permits oral bid solicitation and oral bids. The plaintiffs have not made a credible showing that this has been a problem of any significance.

Finally, the distributors allege that the Act's regulation of bidding procedures is so onerous that it has forced some distributors to license all films in Pennsylvania by negotiation, which usually results in lower film rentals. The problem with this argument is that while some distributors have switched to negotiation, others bid just as frequently and others use bidding more frequently. Those distributors who switched to negotiation have done so as a business judgment. The Act leaves open to the choice of distributors whether to license by bidding or negotiation. There is no credible evidence that the Act has caused any distributor to stop licensing pictures by bidding.²²

E. Plaintiffs' and Defendants' Statistical Claims

Both parties to this lawsuit have presented statistical evidence relating to the burdens imposed by the Pennsylvania Act.

Plaintiffs' study was far more ambitious than defendants. They collected information on every new film license issued by plaintiffs in six metropolitan areas: Philadelphia, Pittsburgh,

^{22/} Plaintiffs argue that those distributors who continue to bid may be able to "hold their percentage rental figures up, but may, . . . be licensing fewer runs than sought or accepting offers from sub-run theatres." First, the record does not support this contention. Second, the premise behind plaintiffs' statistical study is that distributors try to maximize their film rental percentages. The argument they make here undercuts this premise by acknowledging that percentage rentals are not necessarily the bottom line for distributors.