

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4137 SJUD HB 114 - HB 125 1018

of correctional facilities. See, e.g., Harris v. Forsyth, 735 F.2d 1235 (11th Cir. 1984).

Prior to the adoption of this section, no statute existed authorizing the confiscation and forfeiture of excess money. Upon discovery it was placed in the prisoner's account.

This section will deter such illegal activities as gambling and the sale of drugs, which although often cannot be proven, are believed to frequently be the reason that prisoners are discovered in possession of large amounts of money.

Section 33.30.271. Forfeiture of Property.

This section reenacts the portion of former AS 33.-30.290 which makes clear that unless a statute expressly provides for a forfeiture of property as a result of a conviction of a criminal offense, there may be no forfeiture of a prisoner's property.

Section 33.30.281. Crime Against Sentenced Prisoner.

This section is substantially similar to former AS 33.30.300, and makes clear that a crime committed against a sentenced prisoner is to be treated the same as a crime against any person.

Section 33.30.291. Treaties.

This section is necessary for Alaska to be able to participate in prisoner transfer programs entered into by treaty between the United States and foreign countries.

Section 33.30.901. Definitions.

This section defines the terms used in AS 33.30.

Sections 7-8. AS 33.32.015(b), AS 33.32.017, "Free Venture"
Correctional Industries.

Section 7 amends AS 33.32.015 dealing with prisoner employment and correctional industries. AS 33.32.015(b)(4) permits the commissioner to authorize a prisoner to engage in productive employment within or outside a correctional facility or to enter into a contract with a private agency or individual for the employment of a prisoner if the employment will have minimal negative impact on an existing private industry or labor force in the state, as determined by the Correctional Industries Commission.

AS 33.32.015(b)(5) permits the commissioner to enter into a joint cooperative venture with private industry for the employment of prisoners in correctional industries. Such a

joint venture is subject to competitive bidding laws, thus providing an equal opportunity for all interested parties in the private sector. A further safeguard is provided by permitting such a joint cooperative venture only if the Correctional Industries Commission determines that it will have a minimal negative impact on an existing private industry or labor force.

Section 8 is a new section which permits the commissioner, upon the recommendation of the Correctional Industries Commission, to establish a "Free Venture" correctional industries. A "Free Venture" correctional industry is the form of joint venture referred to AS 33.32.015(b)(5) and in which a private industry operates and manages in total or in part a correctional industry within a correctional facility, and provides all machinery, tools, materials, training and marketing of a product in return for which the commissioner provides inmate workers and other services (depending on the circumstances of the agreement) for which the department is paid a weekly sum related to the number of inmates employed and hours worked. The department, of course, pays the prisoners for their labor under AS 33.32.050. The private industry must indemnify and hold the state harmless in the event of any liability arising from injury or damage related to the goods or services produced by the "Free Venture" industry.

"Free Venture" industries have been successfully implemented in a large number of states. The principal reason for adopting this section is the recognition of the high costs involved in getting the correctional industries program operating effectively. This greatly increases the potential for long term cost savings to the state both in resources generated by the industries program as well as in a hoped for decline in recidivism due to the rehabilitative benefits derived from the program.

Section 9. AS 33.32.030(f), Marketing of Correctional Industries Products.

This section amends AS 33.32.030 to exempt "Free Venture" industries from the requirements of this statute, which give preference to correctional industries products to state agencies, set prices for industries products, and limit the sale of industries products to a private industry to certain circumstances requiring the approval of the Correctional Industries Commission. It is a recognition of the fact that the private industry in the "Free Venture" program will do its own marketing, and should have no priority in the marketing of its goods or services to state agencies.

Section 10. AS 39.35.360(e), Earlier Service.

This section is a housekeeping change relating to credited service for correctional employees.

Section 11. AS 44.65.050(d), Restriction on Construction Contracts.

This is a new section which permits the Department of Corrections and the Department of Transportation and Public Facilities to enter into agreements whereby DOTPF may delegate the responsibility for construction, renovation, repair, or alteration of a state correctional facility to the Department of Corrections up to an estimated cost of \$100,000 per project.

Since under present law DOTPF may do this amount of work itself, this section merely allows DOTPF to delegate the work to the Department of Corrections, if the department agrees. This will provide additional productive employment for prisoners (e.g. construction of a greenhouse, etc.) at a substantial cost savings to the state. A number of other departments are provided even greater authority under AS 44.65.050 to perform construction work on projects related to their respective responsibilities. A limitation of \$100,000 is provided for here in recognition of the desire to minimize any impact on an existing labor force or construction industry.

Section 12. Repeal of various sections contained in AS 33.30.-
010--33.30.900.

This section repeals Alaska's existing statutory scheme pertaining to correctional facilities and management and control of prisoners.

Section 13. Regulations.

This section makes clear that regulations already in effect are not nullified because they were adopted under a statute which is amended or repealed by this Act unless they are inconsistent or are in conflict with a provision of this Act.

James
4/28/86 ✓

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 114 (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 correctional facilities, and the
7 imprisonment and rehabilitation of offenders."

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

9 * Section 1. AS 09.10.140 is amended to read:

10 Sec. 09.10.140. DISABILITIES OF MINORITY AND [,] INCOMPETENCY
11 [AND IMPRISONMENT]. If a person entitled to bring an action mentioned
12 in this chapter is at the time the cause of action accrues either (1)
13 under the age of majority, or (2) incompetent by reason of mental
14 illness, [OR (3) IMPRISONED ON A CRIMINAL CHARGE, OR IN EXECUTION
15 UNDER SENTENCE OF A COURT FOR A TERM LESS THAN THE PERSON'S NATURAL
16 LIFE,] the time of the disability is not a part of the time limited
17 for the commencement of the action. The [BUT THE] period within which
18 the action may be brought is not extended in any case longer than two
19 years after the disability ceases.

20 * Sec. 2. AS 09.20.020 is amended to read:

21 Sec. 09.20.020. DISQUALIFICATION OF JURORS. A person is dis-
22 qualified from serving [TO ACT] as a juror if the person

23 (1) has served as a juror in the state within one year of
24 the time of examination for service; or

25 (2) has been convicted of a felony for which the person has
26 not been unconditionally discharged. Unconditional discharge has the
27 meaning given in AS 12.55.185 [FELONY AND THE CIVIL RIGHTS OF THE
28 PERSON HAVE NOT BEEN RESTORED].

29 * Sec. 3. AS 11.56.340 is repealed and reenacted to read:

1 Sec. 11.56.340. UNLAWFUL EVASION IN THE FIRST DEGREE. (a) A
2 person commits the crime of unlawful evasion in the first degree if,
3 while charged with or convicted of a felony,

4 (1) the person fails to return to official detention within
5 the time authorized following temporary leave granted for a specific
6 purpose or limited period, including leave granted under AS 33.30.181;
7 or

8 (2) while on furlough under AS 33.30.101 - 33.30.131 the
9 person fails to return to the place of confinement or residence within
10 the time authorized by those having direct supervision.

11 (b) Unlawful evasion in the first degree is a class A misdemea-
12 or.

13 * Sec. 4. AS 11.56.350 is repealed and reenacted to read:

14 Sec. 11.56.350. UNLAWFUL EVASION IN THE SECOND DEGREE. (a) A
15 person commits the crime of unlawful evasion in the second degree if,
16 while charged with or convicted of a misdemeanor,

17 (1) the person fails to return to official detention within
18 the time authorized following temporary leave granted for a specific
19 purpose or limited period, including leave granted under AS 33.30.181;
20 or

21 (2) while on furlough under AS 33.30.101 - 33.30.131 the
22 person fails to return to the place of confinement or residence within
23 the time authorized by those having direct supervision.

24 (b) Unlawful evasion in the second degree is a class B misde-
25 meanor.

26 * Sec. 5. AS 12.47.050(d) is repealed and reenacted to read:

27 (d) Notwithstanding a contrary provision of law, a defendant
28 receiving treatment under (b) of this section may not be released

29 (1) on furlough under AS 33.30.101 - 33.30.131, except for

1 treatment in a secure setting; or

2 (2) on parole.

3 * Sec. 6. AS 33.30 is amended by adding new sections to read:

4 ARTICLE 1. ESTABLISHMENT, CONTROL, AND MANAGEMENT.

5 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

6 (1) establish, maintain, operate, and control correctional
7 facilities suitable for the custody, care, and discipline of persons
8 charged or convicted of offenses against the state or held under
9 authority of state law;

10 (2) classify prisoners;

11 (3) for persons committed to the custody of the commis-
12 sioner, establish programs, including furlough programs that are
13 reasonably calculated to

14 (A) protect the public;

15 (B) maintain health;

16 (C) create or improve occupational skills;

17 (D) enhance educational qualifications;

18 (E) support court-ordered restitution; and

19 (F) otherwise provide for the rehabilitation and
20 reformation of prisoners, facilitating their reintegration into
21 society;

22 (4) provide necessary medical services for prisoners in
23 correctional facilities or who are committed by a court to the custody
24 of the commissioner, including examinations for communicable and
25 infectious diseases; and

26 (5) provide necessary psychological or psychiatric treat-
27 ment if a physician or other health care provider, exercising ordinary
28 skill and care at the time of observation, concludes that

29 (A) a prisoner exhibits symptoms of a serious disease

1 or injury that is curable or may be substantially alleviated; and
2 (B) the potential for harm to the prisoner by reason
3 of delay or denial of care is substantial.

4 Sec. 33.30.021. REGULATIONS. The commissioner shall adopt
5 regulations to implement this chapter.

6 Sec. 33.30.031. CONTRACT FOR CONFINEMENT AND CARE OF PRISONERS.

7 (a) The commissioner shall determine the availability of state cor-
8 rectional facilities suitable for the detention and confinement of
9 persons held under authority of state law. If the commissioner deter-
10 mines that suitable state correctional facilities are not available,
11 the commissioner may enter into an agreement with a public or private
12 agency to provide necessary facilities. Correctional facilities
13 provided through agreement with a public agency may be in this state
14 or in another state. Correctional facilities provided through agree-
15 ment with a private agency must be located in this state. The commis-
16 sioner may not enter into an agreement with an agency unable to pro-
17 vide a degree of custody, care, and discipline similar to that re-
18 quired by the laws of this state.

19 (b) Unless the purpose is to involve prisoners in a program
20 established under AS 33.30.091 - 33.30.131 or AS 33.30.151 - 33.30.181
21 or to confine prisoners convicted of a misdemeanor, the commissioner
22 may not enter into an agreement with a privately operated correctional
23 facility under (a) of this section.

24 (c) Notwithstanding AS 37.05.230(1)(B), an agreement with a
25 private agency to provide necessary facilities under (a) of this
26 section must be based on competitive bids.

27 (d) A person employed outside the facility while confined in a
28 privately operated correctional facility established under (a) of this
29 section is subject to the provisions of AS 33.30.131.

1 (e) The commissioner may enter into an agreement with the United
2 States, another state, a municipality of this state, or another state
3 agency, to provide a correctional facility for the custody, care, and
4 discipline of a person held under authority of the law of that juris-
5 diction.

6 Sec. 33.30.041. LEASE OF CORRECTIONAL FACILITY TO MUNICIPALITY.

7 (a) If the commissioner determines that it would be in the best
8 interest of the state, the commissioner may enter into an agreement
9 with a municipality of the state for the lease of a state correctional
10 facility or for the use and operation of a state correctional facility
11 for the joint benefit of the municipality and the state.

12 (b) An agreement executed by the commissioner under (a) of this
13 section must provide that

14 (1) the state has the right to detain or confine a prisoner
15 held under authority of law in the correctional facility;

16 (2) the administrator of the correctional facility agrees
17 to implement an order, concerning a prisoner, issued by a court of the
18 state;

19 (3) the administrator of the correctional facility shall
20 comply with the law, and regulations adopted by the commissioner,
21 relating to the custody, care, and discipline of a prisoner detained
22 or confined in the correctional facility; and

23 (4) the commissioner may inspect the correctional facility
24 at any time to determine the conditions under which a prisoner is
25 detained or confined.

26 (c) The agreement executed by the commissioner under (a) of this
27 section may require the administrator of the correctional facility to
28 comply with requirements that the commissioner considers necessary for
29 the protection of the public or for the quality of care and programs

1 for prisoners required by this chapter and regulations adopted by the
2 commissioner.

3 ARTICLE 2. COMMITMENTS, PROGRAMS, AND FURLOUGHS.

4 Sec. 33.30.051. COMMITMENT TO COMMISSIONER. A person convicted
5 of an offense against the state shall be committed to the custody of
6 the commissioner for the term of imprisonment that the court directs.

7 Sec. 33.30.061. COMMISSIONER TO DESIGNATE FACILITY. (a) The
8 commissioner shall designate the correctional facility to which a
9 prisoner is to be committed to serve a term of imprisonment or period
10 of temporary commitment. The commissioner may designate a facility
11 without regard to whether it is maintained by the state, is located
12 within the judicial district in which the prisoner was convicted, or
13 is located in the state.

14 (b) The commissioner may designate an out-of-state facility
15 under this section only if the commissioner determines that rehabili-
16 tation or treatment of the prisoner will not be substantially im-
17 paired.

18 Sec. 33.30.071. RESPONSIBILITY FOR PRISONERS PENDING COMMITMENT.

19 (a) Notwithstanding AS 33.30.011(1), the commissioner of public
20 safety shall provide for the custody, care, and discipline of prison-
21 ers pending arraignment, commitment by a court to the custody of the
22 commissioner of corrections, or admission to a state correctional
23 facility. Except as provided in (c) of this section, the responsibil-
24 ity for providing necessary medical services for prisoners remains
25 with the commissioner of corrections under AS 33.30.011(4). The
26 commissioner of corrections and the commissioner of public safety are
27 not responsible for providing custody, care, and discipline for a
28 person detained under AS 47.30.705 or AS 47.37.170, unless the person
29 is admitted into a state correctional facility.

1 (b) The responsibility of the commissioner of public safety
2 under (a) of this section does not begin until a prisoner is accepted
3 into the custody of the commissioner of public safety, or admitted
4 into a correctional facility or other facility designed for holding
5 prisoners, and the commissioner of public safety is notified of the
6 acceptance or admission.

7 (c) Medical services for a prisoner who is unconscious or in
8 immediate need of medical attention before admission to a correctional
9 facility or commitment by a court to the custody of the commissioner
10 of corrections shall be provided by the law enforcement agency having
11 custody of the prisoner. The law enforcement agency may require the
12 prisoner to compensate the agency for the cost of medical services
13 provided for a preexisting medical condition not arising out of the
14 prisoner's arrest.

15 Sec. 33.30.081. TRANSPORTATION OF PRISONERS. (a) The commis-
16 sioner of public safety is responsible for transporting a prisoner to
17 and from the court having jurisdiction over the prisoner and for
18 delivering a prisoner to a correctional facility upon temporary or
19 final commitment by a court or upon transfer of a prisoner from one
20 correctional facility to another either inside or outside the state.

21 (b) The commissioner of corrections shall make available return
22 transportation to the place of arrest for a prisoner who is released
23 from custody in a state correctional facility.

24 (c) The commissioner of public safety shall make available
25 return transportation to the place of arrest for a prisoner who is
26 released from custody before admission to a state correctional facili-
27 ty.

28 (d) The commissioner of corrections shall adopt regulations
29 governing the furnishing of transportation, discharge payments, and

1 clothing to prisoners upon release from a state correctional facility
2 at any stage of a criminal proceeding.

3 (e) Except as provided in (f) of this section or as necessary in
4 a criminal action pending against the prisoner, a court may not order
5 the transportation of a prisoner.

6 (f) A court may order a prisoner who is a party or witness to a
7 civil action or a witness to a criminal action to appear at a place
8 other than within a correctional facility only if the court deter-
9 mines, after providing a reasonable opportunity for the commissioner
10 to comment, that the prisoner's personal appearance is essential to
11 the just disposition of the action. In making its determination, the
12 court shall consider available alternatives to the prisoner's personal
13 appearance including deposition and telephone testimony.

14 (g) Except as provided in (h) of this section, the expenses
15 associated with the transportation of a prisoner ordered under (f) of
16 this section, including the costs of travel for the prisoner and
17 escorting officers and the salary and per diem costs of the escorting
18 officers, shall be borne by the party who has requested the prisoner's
19 appearance, and shall be paid to the commissioner of public safety
20 before the prisoner is transported.

21 (h) A prisoner who is a party to a civil action is not required
22 to bear the full costs of the prisoner's own transportation under (g)
23 of this section if the court determines that the prisoner is indigent.
24 In these cases, the court may require the prisoner to bear a portion
25 of the costs, and the commissioner of public safety shall bear the re-
26 maining costs of transporting the prisoner. If an indigent prisoner
27 recovers a money judgment, the court may require the prisoner to bear
28 all or part of the expenses required under (g) of this section.

29 Sec. 33.30.091. DESIGNATION OF PROGRAMS. Except as provided in

1 AS 33.30.111 and 33.30.161, the commissioner may assign a prisoner
2 committed to the commissioner's custody to a program established under
3 AS 33.30.011(3) considering

- 4 (1) safeguards to the public;
- 5 (2) the prospects for the prisoner's rehabilitation;
- 6 (3) the availability of program and facility space;
- 7 (4) the prospect of future judicial proceedings requiring
8 the presence of the prisoner;
- 9 (5) the nature and circumstances of the offense for which
10 the prisoner was sentenced;
- 11 (6) the needs of the prisoner as determined by a classi-
12 fication committee and any recommendations made by the sentencing
13 court;
- 14 (7) the record of convictions of the prisoner with particu-
15 lar emphasis on crimes specified in AS 11.41;
- 16 (8) the use of drugs or alcohol by the prisoner;
- 17 (9) the length of the prisoner's sentence; and
- 18 (10) other criteria considered appropriate by the commis-
19 sioner, including experimental evaluation of correctional programs
20 that are consistent with protection of the public and reformation of
21 the prisoner.

22 Sec. 33.30.101. FURLOUGHS. (a) The commissioner shall adopt
23 regulations governing the granting of prerelease and snort-duration
24 furloughs to prisoners to

- 25 (1) obtain counseling and treatment for alcohol or drug
26 abuse;
- 27 (2) secure or attend vocational training;
- 28 (3) obtain medical or psychiatric treatment;
- 29 (4) secure or engage in employment;

1 (5) attend educational institutions;

2 (6) secure a residence or make other preparation for re-
3 lease;

4 (7) appear before a group whose purpose is a better under-
5 standing of crime or corrections; or

6 (8) for any other rehabilitative purpose the commissioner
7 determines to be in the interests of the prisoner and the public.

8 (b) If the commissioner determines with reasonable probability
9 that a prisoner can live under reduced supervision without violating
10 the law or the conditions established for the conduct of the prisoner,
11 the commissioner may grant a furlough after considering

12 (1) the factors in AS 33.30.091;

13 (2) violations, if any, by the prisoner of a condition of a
14 prior furlough;

15 (3) the history, if any, of institutional misconduct by the
16 prisoner; and

17 (4) the best interests of the prisoner and the public.

18 Sec. 33.30.111. PRERELEASE FURLOUGHS. (a) Furlough programs
19 established under AS 33.30.101 must include prerelease furloughs
20 designed to facilitate the reintegration of a prisoner into society.

21 (b) A facility that is specifically adapted to provide a resi-
22 dence outside prison, including a halfway house, group home, or other
23 placement that provides varying levels of restriction and supervision,
24 may be used for a prisoner on a prerelease furlough.

25 (c) The restrictions and supervision required for a prerelease
26 furlough shall provide safeguards that minimize risk to the public and
27 include, as a minimum,

28 (1) frequent contact with the prisoner by persons supervis-
29 ing the prisoner;

1 (2) knowledge by supervisory staff of the location of the
2 prisoner;

3 (3) periodic reports by supervisory staff to the commis-
4 sioner on the performance of the prisoner while on furlough; and

5 (4) a residential setting in which persons supervising a
6 prisoner are obliged to immediately report to the commissioner any
7 violation of a condition set for the prisoner's conduct.

8 (d) Notwithstanding AS 33.30.101(b), and other eligibility
9 criteria established by the commissioner, that relate to risks to the
10 public posed by the proposed furlough of a prisoner,

11 (1) a prisoner sentenced to a definite term of imprisonment
12 of more than one year but less than five years is not eligible for a
13 prerelease furlough until the prisoner has served at least one-third
14 of the sentence; and

15 (2) a prisoner sentenced to a definite term of imprisonment
16 of five years or more is not eligible for a prerelease furlough until
17 the prisoner has served at least one-third of the sentence or is
18 within three years of the release date, whichever is later.

19 (e) A prisoner may request a prerelease furlough under proce-
20 dures adopted by the commissioner. If the commissioner denies a
21 request for a prerelease furlough, the commissioner shall provide the
22 prisoner with a written explanation of the reasons for the denial.

23 (f) Upon request of the victim, in the case of a prisoner con-
24 victed of a crime against a person, notice of the commissioner's
25 intent to consider the prisoner for a prerelease furlough shall be
26 sent to the victim. The victim may comment in writing on the intent
27 of the commissioner to release the prisoner on prerelease furlough
28 status. The commissioner shall consider the comments of the victim
29 before making a final decision to release a prisoner on a prerelease

1 furlough. If the victim requests notification, the commissicner shall
2 make every reasonable effort to notify the victim of an intent to
3 release the prisoner on a prerelease furlough. The notice must con-
4 tain the expected date of the prisoner's release, the geographic area
5 in which the prisoner will reside and other pertinent information
6 concerning the prisoner's release that may affect the victim.

7 Sec. 33.30.121. SHORT-DURATION FURLOUGHS. (a) A short-duration
8 furlough is an authorized leave of absence from a correctional facili-
9 ty for a period not to exceed 12 hours at any one time, except for

10 (1) family visitations, that may not exceed one week or
11 occur more frequently than once in each four-month period; or

12 (2) medical treatment, for which the furlough may not last
13 longer than necessary for the treatment.

14 (b) A short-duration furlough may be granted to a prisoner at
15 any time under regulations adopted by the commissioner.

16 Sec. 33.30.131. PRERELEASE OR SHORT DURATION FURLOUGH OR CORREC-
17 TIONAL RESTITUTION CENTER PLACEMENT INVOLVING EMPLOYMENT. (a) The
18 commissioner may grant a prerelease or short-duration furlough to
19 permit a prisoner to participate in suitable employment under con-
20 ditions and at wages that represent the prevailing standard for the
21 area. A prisoner may not participate in employment where an organized
22 labor dispute is in progress.

23 (b) Unless alternative arrangements are expressly approved by
24 the commissioner, when a prisoner is employed outside a correctional
25 facility as part of a prerelease or short-duration furlough program,
26 or as part of serving time in a correctional restitution center under
27 AS 33.30.151 - 33.30.181, the earnings of the prisoner shall be de-
28 livered to the commissioner. If an employer transmits the earnings to
29 the commissioner, the employer has no liability to the prisoner for

1 the earnings. The commissioner shall disburse the earnings of the
2 prisoner, in an order determined appropriate, under procedures adopted
3 by the commissioner. to

4 (1) pay for the room, board, and personal expenses of the
5 prisoner in an amount or at a rate determined by the commissioner;

6 (2) pay any restitution or fine ordered by the sentencing
7 court;

8 (3) reimburse the state for an award made for violent
9 crimes compensation under AS 18.67 arising out of the criminal conduct
10 of the prisoner;

11 (4) pay a civil judgment arising out of the criminal con-
12 duct of the prisoner; and

13 (5) support the dependents of the prisoner, and to provide
14 child support payments as required by AS 09.65.132.

15 (c) After making the disbursements authorized under (b) of this
16 section, the commissioner shall retain the balance remaining in the
17 account of the prisoner and give it to the prisoner upon release. The
18 commissioner may permit the prisoner to draw upon a portion of this
19 money for other purposes that the commissioner considers appropriate.

20 (d) Only the earnings retained by the commissioner under (c) of
21 this section are subject to lien, attachment, garnishment, execution,
22 or other proceedings to encumber money or property.

23 Sec. 33.30.141. EFFECT OF VIOLATION OF FURLOUGH CONDITIONS OR
24 FAILURE TO RETURN. (a) If, after a hearing, a prisoner on a furlough
25 is found to have violated the conditions established for the prison-
26 er's conduct, the commissioner may immediately require the return of
27 the prisoner to actual confinement for a period not to exceed the
28 balance of the term of imprisonment or initiate disciplinary proceed-
29 ings authorized by regulations adopted by the commissioner or both.

1 (b) The failure of a prisoner on a furlough to return to the
2 place of confinement or residence within the time specified by those
3 having direct supervision over the prisoner is an unlawful evasion
4 under AS 11.56.340 - 11.56.350.

5 Sec. 33.30.151. CORRECTIONAL RESTITUTION CENTERS. (a) The
6 commissioner shall establish correctional restitution centers in the
7 state. The purpose of the centers is to provide certain nonviolent
8 offenders with rehabilitation through community service and employment
9 while protecting the community through partial incarceration of the
10 offender, and to create a means to provide restitution to victims of
11 crimes.

12 (b) The commissioner shall adopt regulations setting standards
13 for the operation of the centers including

14 (1) requirements that the centers be secure and in compli-
15 ance with state and local safety laws;

16 (2) standards for disciplinary rules to be imposed on
17 prisoners confined to the centers;

18 (3) standards for the granting of emergency absence to
19 prisoners confined to the centers;

20 (4) standards for classifying prisoners to centers;

21 (5) standards for mandatory employment and participation in
22 community service programs in each center; and

23 (6) standards for periodic review of the performance of
24 prisoners confined to the centers.

25 Sec. 33.30.161. ELIGIBILITY TO SERVE TIME IN A CORRECTIONAL
26 RESTITUTION CENTER. (a) The commissioner may not allow a prisoner to
27 serve time in a correctional restitution center unless the commission-
28 er specifically finds that the prisoner meets the eligibility require-
29 ments of this section.

1 (b) To be eligible to serve time in a correctional restitution
2 center, the prisoner

3 (1) must be employable or eligible to work on community
4 service projects approved by the commissioner and agree to secure
5 employment or participate in community service projects and obey the
6 rules of the center;

7 (2) may not have been convicted of an offense, in the state
8 or another jurisdiction, involving violence or the use of force, as
9 defined in AS 11.81.900; in this section, violence or the use of force
10 includes possession of a firearm, as defined in AS 11.81.900, in the
11 commission of an offense, whether or not the firearm was actually
12 used; and

13 (3) may not have been convicted of an offense under AS 11.-
14 41.410 - 11.41.470 or an offense in the state or another jurisdiction
15 having elements substantially identical to an offense under AS 11.-
16 41.410 - 11.41.470.

17 (c) Unless the commissioner determines otherwise for good cause
18 shown, a person sentenced to less than five days who is serving time
19 in a correctional restitution center shall participate in a community
20 service project when available.

21 Sec. 33.30.171. COMMUNITY ADVISORY COMMITTEES. The commissioner
22 shall appoint a community advisory committee for each center, to
23 consist of five members of the community in which the center is locat-
24 ed. The committee shall act as a liaison between the community and
25 the department regarding community concerns with the center.

26 Sec. 33.30.181. CONFINEMENT TO THE CENTER. (a) A prisoner
27 shall be confined to the center at all times except while

28 (1) at work and traveling to and from work;

29 (2) at and traveling to and from a community service

1 project approved by the commissioner;

2 (3) on emergency absence;

3 (4) at and traveling to and from a job interview; or

4 (5) on a furlough approved by the commissioner.

5 (b) Except for an emergency absence or furlough, a prisoner may
6 not be absent from a center under this section for more than 12 hours
7 in a 24-hour period.

8 ARTICLE 3. GENERAL PROVISIONS.

9 Sec. 33.30.191. EMPLOYMENT OF PRISON INMATES. (a) It is the
10 policy of the state that prisoners be productively employed for as
11 many hours each day as feasible, not to exceed 40 hours a week unless
12 overtime has been specifically approved by the commissioner.

13 (b) The commissioner may enter into contracts or cooperative
14 agreements with any public agency for the performance of conservation
15 projects. The commissioner may enter into a contract with an indi-
16 vidual or agency for the employment of prisoners if the work to be
17 performed will have minimal negative impact on an existing private
18 industry or labor force in the state as determined by the Correctional
19 Industries Commission under AS 33.32.015.

20 (c) The commissioner may direct a prisoner to participate in a
21 type of productive employment listed in (d)(1), and (d)(4)-(6) of this
22 section while the prisoner is confined in a correctional facility. A
23 prisoner who refuses to participate in productive employment inside a
24 correctional facility when directed under this section is subject to
25 disciplinary sanctions imposed in accordance with regulations adopted
26 by the commissioner.

27 (d) In this section "productively employed" includes the follow-
28 ing kinds of employment:

29 (1) routine maintenance and support services essential to

1 the operation of a correctional facility;

2 (2) education, including both academic and vocational;

3 (3) industrial, agricultural, and service activities con-
4 ducted in accordance with AS 33.32;

5 (4) public conservation projects, including forest fire
6 prevention and control, forest and watershed enhancement, recreational
7 area development, construction and maintenance of trails and camp-
8 sites, fish and game enhancement, soil conservation, and forest water-
9 shed revegetation;

10 (5) renovation, repair or alteration of existing correc-
11 tional facilities as permitted by AS 44.65.050(d); and

12 (6) other work performed inside or outside of a correction-
13 al facility if the work has minimal negative impact on an existing
14 private industry or labor force in the state as determined by the
15 Correctional Industries Commission under AS 33.32.015.

16 Sec. 33.30.201. PAY OF PRISON INMATES. Each prisoner who is
17 productively employed, as defined in AS 33.30.191(d)(1) or 33.30.-
18 191(d)(3) - (6), may receive for that work compensation at a rate
19 determined by the commissioner under AS 33.32.050 if the money is
20 available from legislative appropriations. The provisions of AS 33.-
21 32.050 and AS 33.32.040(b) apply to prisoners employed in the correc-
22 tional industries program and to prisoners productively employed in
23 activities outside that program.

24 Sec. 33.30.211. TRANSMISSION OF DOCUMENTS. (a) When a prisoner
25 is admitted to a correctional facility, a copy of the commitment shall
26 be delivered with the prisoner as evidence of the authority of the
27 correctional facility to hold the prisoner.

28 (b) When a person is sentenced to a term of imprisonment, copies
29 of the pre-sentence report, sentencing report prepared under

1 AS 12.55.025, and any other information of the probation office or of
2 the court that may affect the person's rehabilitation shall be trans-
3 mitted to the superintendent of the correctional facility in which the
4 prisoner will be confined.

5 (c) The commissioner shall adopt regulations providing for the
6 security, confidentiality, and use of documents transmitted under (b)
7 of this section.

8 Sec. 33.30.221. SUPERINTENDENT OF CORRECTIONAL FACILITY MAY
9 ADMINISTER OATHS AND ACKNOWLEDGMENTS. The superintendent of a correc-
10 tional facility or the superintendent's assistant may administer oaths
11 to and take acknowledgments from a prisoner, but may not request or
12 accept compensation from a prisoner for acts performed under this
13 section.

14 Sec. 33.30.231. TELEPHONE ACCESS AND MONITORING INSIDE CORREC-
15 TIONAL INSTITUTIONS. (a) Except as provided in (b) of this section,
16 a prisoner shall have reasonable access to a telephone.

17 (b) A prisoner who is classified maximum custody, is placed in
18 segregation as punishment for a rule infraction, or is placed in
19 segregation because the prisoner poses a threat to others or to the
20 security of a correctional facility may not have access to a telephone
21 except to communicate with an attorney, to otherwise communicate as
22 provided in AS 12.25.150, or in an emergency as determined appropriate
23 by the commissioner.

24 (c) Notwithstanding AS 42.20.300 and 42.20.310, in order to
25 preserve the security and orderly administration of the institution
26 and to protect the public, the commissioner may authorize the use of
27 monitoring or recording equipment to listen to a telephone conversa-
28 tion of a prisoner if a warning is posted by the telephone informing
29 the prisoner that a call may be monitored or recorded. A telephone

1 call between an attorney and a prisoner may not be monitored or re-
2 corded except when authorized by a court.

3 Sec. 33.30.241. EFFECT OF JUDGMENT OF CONVICTION ON CIVIL
4 RIGHTS. (a) A person who is convicted of a felony involving moral
5 turpitude as defined in AS 15.60.010 is disqualified from voting in a
6 state or municipal election until the person's unconditional dis-
7 charge.

8 (b) A person who is convicted of a felony is disqualified from
9 serving as a juror until the person's unconditional discharge.

10 (c) In this section "unconditional discharge" has the meaning
11 given in AS 12.55.185.

12 Sec. 33.30.251. DISPOSAL OF ABANDONED PERSONAL PROPERTY. (a)
13 Except as provided in (b) of this section, it is the obligation of
14 each person committed to the custody of the commissioner to provide
15 for the appropriate disposition of all of the person's property re-
16 maining at a correctional facility within 90 days of the date of the
17 person's release or transfer from the correction facility.

18 (b) The commissioner shall provide for the shipment to the
19 receiving facility of a reasonable amount of a prisoner's property, as
20 determined by the commissioner, when the prisoner is transferred from
21 one correctional facility to another.

22 (c) A prisoner's personal property that remains at a correction-
23 al facility after 90 days from the date of the prisoner's release or
24 transfer is considered abandoned, and shall be delivered to the De-
25 partment of Administration for disposal under AS 44.71.010.

26 (d) The state is not liable for any loss or damage to personal
27 property properly determined to be abandoned under (c) of this sec-
28 tion.

29 Sec. 33.30.261. EXCESS MONEY AS CONTRABAND. (a) A prisoner who

1 possesses money in an amount greater than that permitted by the com-
2 missioner is subject to disciplinary sanctions under regulations
3 adopted by the commissioner.

4 (b) Money in the possession of a prisoner in an amount greater
5 than that permitted by the commissioner is contraband. If, after a
6 hearing under regulations adopted by the commissioner, a prisoner is
7 found to have been in possession of contraband under this section, the
8 contraband shall be forfeited and deposited into the general fund.

9 Sec. 33.30.271. FORFEITURE OF PROPERTY. A conviction of a
10 person for a crime does not work a forfeiture of property, except in
11 cases where a forfeiture is expressly provided by law.

12 Sec. 33.30.281. CRIME AGAINST SENTENCED PRISONER. A person who
13 commits a crime against a sentenced prisoner is punishable as if the
14 prisoner was not sentenced and incarcerated.

15 Sec. 33.30.291. TREATIES. If a treaty in effect between the
16 United States and a foreign country provides for the transfer or
17 exchange of prisoners sentenced to serve a term of incarceration to
18 the country where they are citizens or nationals, the commissioner
19 may, on behalf of the state and subject to the terms of the treaty,
20 consent to the transfer or exchange of prisoners and take any other
21 action necessary to initiate the participation of the state in the
22 treaty.

23 Sec. 33.30.901. DEFINITIONS. In this chapter, unless the con-
24 text requires otherwise,

25 (1) "center" means a correctional restitution center;

26 (2) "commissioner" means the commissioner of the Department
27 of Corrections;

28 (3) "community service" means work on projects designed to
29 reduce or eliminate environmental damage, protect the public health,

1 or improve public services, lands, forests, parks, roads, highways,
2 facilities, or education; community service may not confer a private
3 benefit on a person except as may be incidental to the public benefit;

4 (4) "correctional facility" or "facility" means a prison,
5 jail, camp, farm, half-way house, group home, or other placement
6 designated by the commissioner for the custody, care, and discipline
7 of prisoners; a "state correctional facility" means a correctional
8 facility owned or run by the state;

9 (5) "court" means the supreme court, the court of appeals,
10 the superior court, the district or magistrate court, or a justice or
11 judge of a court;

12 (6) "crime against a person" means a crime as set out in
13 AS 11.41, except custodial interference under AS 11.41.320 and 11.41.-
14 330; or a crime against a person in this or another jurisdiction
15 having elements substantially identical to those of a crime as set out
16 in AS 11.41, except custodial interference under AS 11.41.320 and
17 11.41.330;

18 (7) "department" means the Department of Corrections;

19 (8) "furlough" means an authorized leave of absence from
20 actual confinement for a designated purpose and period of time;

21 (9) "health care provider" means

22 (A) a physician's assistant or nurse practitioner
23 licensed to practice in the state and working under the direct
24 supervision of a licensed physician or psychiatrist; or

25 (B) a mental health professional as defined in AS 47.-
26 30.915;

27 (10) "municipality" means a municipality authorized by law
28 to establish a correctional facility;

29 (11) "prisoner" means a person, other than a juvenile, held

1 under authority of state law in official detention as defined in
2 AS 11.81.900(b);

3 (12) "temporary commitment" means detention of a person for
4 any period under authority of state law, but does not include confine-
5 ment upon conviction and judgment of a court of this state;

6 (13) "victim" has the meaning given in AS 12.55.185.

7 * Sec. 7. AS 33.32.015(b) is amended to read:

8 (b) The commissioner of corrections may

9 (1) subject to the Fiscal Procedures Act (AS 37.05), use,
10 purchase, lease, equip, and maintain buildings, machinery, and other
11 equipment, and may purchase materials and enter into contracts, which
12 may be necessary for the correctional industries program;

13 (2) provide for prisoners to be employed in rendering
14 services and producing articles, materials, and supplies needed by a
15 state agency, a political subdivision of the state, an agency of the
16 federal government, other states or their political subdivisions, or
17 for use by nonprofit organizations;

18 (3) if the Correctional Industries Commission established
19 in AS 33.32.070 approves, employ prisoners to provide services or
20 products as needed by private industry if the services or products
21 have potential for contributing to the economy of the state and will
22 have minimal negative impact on an existing private industry or labor
23 force in the state;

24 (4) authorize a prisoner to engage in productive employment
25 within or outside a correctional facility or enter into a contract
26 under AS 33.30.191 for the employment of a prisoner if the Correction-
27 al Industries Commission determines that the employment will have
28 minimal negative impact on an existing private industry or labor force
29 in the state; and

1 (5) subject to the provisions of AS 37.05, enter into joint
2 cooperative ventures with private industry for the establishment and
3 operation of "Free Venture" industries under AS 33.32.017, if the
4 Correctional Industries Commission determines at the time of inception
5 that the "Free Venture" industry will not compete with an existing
6 private industry or labor force in the state.

7 * Sec. 8. AS 33.32 is amended by adding a new section to read:

8 Sec. 33.32.017. "FREE VENTURE" CORRECTIONAL INDUSTRIES. (a)
9 Upon recommendation of the Correctional Industries Commission estab-
10 lished under AS 33.32.070, the commissioner may establish "Free Ven-
11 ture" correctional industries for the sale of goods or services to the
12 public or private sector. A "Free Venture" correctional industry is a
13 correctional industry that is operated and managed in total or in part
14 by a private industry or organization within a correctional facility
15 under an agreement entered into under AS 33.32.015(b)(5).

16 (b) The commissioner shall provide security and inmate workers
17 to the private industry or organization. The commissioner may also
18 provide appropriate space and utilities to the private industry or
19 organization.

20 (c) Unless the commissioner determines otherwise, the private
21 industry or organization shall provide all machinery, tools, supplies,
22 materials, transportation, training, supervisory personnel, management
23 marketing, and insurance necessary for the operation of the "Free
24 Venture" industry.

25 (d) In exchange for the inmate workers and other services pro-
26 vided to it, the private industry or organization shall pay to the
27 commissioner a weekly payment in an amount not less than the sum of
28 the existing minimum hourly wage, established under AS 23.10.065,
29 multiplied by the total number of hours worked during that week by

1 inmates employed in the "Free Venture" correctional industry.

2 (e) The private industry or organization shall indemnify, save
3 harmless, and defend the state, its agents, officers, and employees
4 from liability of any kind resulting from injuries or damages sus-
5 tained by a person or property as a result of the manufacture, prepa-
6 ration, or use of the goods or services of the "Free Venture" indus-
7 try.

8 * Sec. 9. AS 33.32.030 is amended by adding a new subsection to read:

9 (f) The provisions of this section do not apply to "Free Ven-
10 ture" industries established under AS 33.32.017.

11 * Sec. 10. AS 39.35.360(e) is amended to read:

12 (e) An employee of a detention facility provided by a local
13 government unit to the territorial or state government under AS 33.-
14 30.031 or former AS 33.30.060, who continues in state employment upon
15 transfer of the facility to the state, is entitled to credited service
16 for prior service with the facility if the employee remains in contin-
17 uous employment with the state until July 1, 1976. To obtain credited
18 service the employee is required to make retroactive contributions for
19 the period of service between January 1, 1961, and the effective date
20 of the transfer of the facility to the state.

21 * Sec. 11. AS 44.65.050 is amended by adding a new subsection to read:

22 (d) The Department of Corrections and the Department of Trans-
23 portation and Public Facilities may enter into agreements under this
24 chapter for the construction, renovation, repair or alteration of
25 state correctional facilities as defined in AS 33.30.301. An agree-
26 ment entered into under this subsection is limited to an estimated
27 cost of \$100,000 for each project as determined by the terms of the
28 agreement.

29 * Sec. 12. The following laws are repealed: AS 33.30.010, 33.30.020,

1 33.30.030, 33.30.040, 33.30.050, 33.30.060, 33.30.062, 33.30.070, 33.30.-
2 080, 33.30.090, 33.30.100, 33.30.110, 33.30.120, 33.30.130, 33.30.140,
3 33.30.150, 33.30.160, 33.30.170, 33.30.180, 33.30.185, 33.30.190, 33.30.-
4 225, 33.30.227, 33.30.250, 33.30.260, 33.30.282, 33.30.283, 33.30.284,
5 33.30.286, 33.30.288, 33.30.290, 33.30.300, 33.30.310, 33.30.320, and
6 33.30.900.

7 * Sec. 13. Regulations adopted under a statute amended or repealed by
8 this Act continue in effect until amended or repealed by the commissioner
9 of corrections, except to the extent that a regulation is inconsistent or
10 in conflict with a provision of this Act.

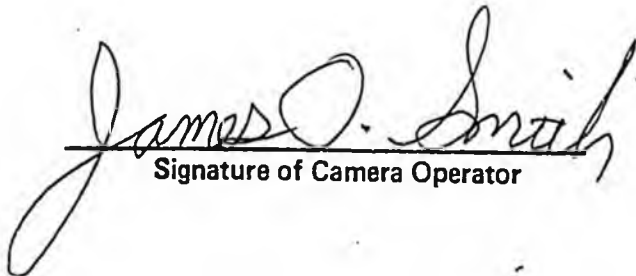
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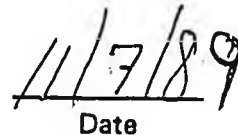


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Signature of Camera Operator


Date

HB

118

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
3/14	Bill received in committee
3/15	Letter from Rabinowitz - "please hold until next session."
4/2	Court system - "O.K."
4/15	Letter from Elizabeth Cuadra
4/18	Passed out.

file

LAW OFFICES

YERBICH & ASSOCIATES

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ANCHORAGE, ALASKA 99501-2268

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AREA CODE 907
274-5631

THOMAS J. YERBICH
M. JANE PETTIGREW
~~OF COUNSEL~~
~~JAMES T. STANLEY~~

March 7, 1986

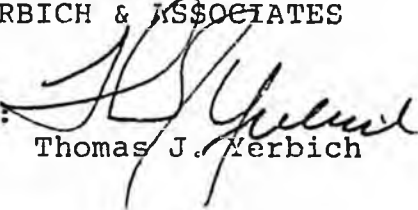
Senator Patrick Rodey, Chairman
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99711

Re: Small Claims Jurisdiction [HB 118]

Dear Pat:

Thank you for your response to my inquiry regarding increasing the small claims jurisdictional limit. HB 118 does, as you noted, address the areas of concern of the Anchorage Chamber of Commerce.

Very truly yours,
YERBICH & ASSOCIATES

By: 
Thomas J. Yerbich

TJY/mm

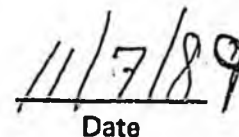


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Signature of Camera Operator


Date

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BILL CONTACT/ACTION

DATE	CONTACT/ACTION
4/28	LINDA OBANNON NOTIFIED OF 5/1
	MEETING & THAT ITS BEING RECONVENED
	ALSO J.P. TANGEN (6-2286)
	" JIM TAYLOR

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 125

January 25, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends and re-names art. 4 of AS 45.50, which is currently titled "Un-fair Trade Practices and Consumer Protection." (AS 45.50.-471 -- 45.50.561 or "the UTP Act.") The title change emphasizes the intent of this bill's amendments and makes clear that the article includes protections for "businesses" as well as for "consumers." If enacted, this bill would be the first comprehensive revision of these statutes since 1974. The bill was prepared by the consumer protection section of the Department of Law in response to decisions by our courts under the present statutes, and is based on the suggestions of businesses, consumers, attorneys, and legislators in our state.

The bill has seven major goals:

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

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

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

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

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

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

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

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

SECTION-BY-SECTION ANALYSIS

Section 1. Actions in which Attachment is Authorized

Section 1 is just a compatibility amendment to make sure that the current statute listing the actions in which attachment is authorized, AS 09.40.010(a), is consistent with the new language in AS 45.50.501(i)(1) (which appears in sec. 5 of the bill).

Section 2. Consolidating Consumer Laws

Section 2 of the bill amends AS 45.50.471(b), which is a list of examples of the type of unfair or deceptive trade practices that the Act prohibits. Two practices are added to the list, failure to comply with AS 45.45.105 -- 45.45.110, regarding unsolicited merchandise, and failure to comply with AS 45.45.120 regarding disclosure of funeral costs. Although these statutes contain no enforcement provisions, it has been the informal opinion of the attorney general that they may be enforced under the UTP Act, since they are clearly meant to protect consumers. Their express inclusion in the Act more clearly provides for their en-

forcement. Alaskans are frequent victims of unsolicited merchandise schemes from the lower 48, and of funeral home over-reaching in sales to bereaved families.

Section 3. Exemptions from the Act

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

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

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

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

Section 4. Investigations by the Attorney
General

Section 4 of this bill is a comprehensive revision of AS 45.50.495, which deals with the investigative powers of the attorney general. Currently, the grant of investigative powers focuses on the use of a "subpoena," without describing the method by which the attorney general decides to issue a subpoena, nor the rights of the subpoenaed person to challenge the scope or method of the investigation. This section of the bill more clearly sets out the steps the attorney general must follow before and during formal investigations.

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

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

The bill adds new AS 45.50.495(c), describing the way in which the attorney general may serve a civil investigative demand. Previously, a subpoena had to be served by a process server or a state trooper, which often caused undue alarm to the person being served. Under this new subsection, service may be made the same way as for a subpoena from a civil court action, which is much less onerous and does not always require delivery by a process server or a law enforcement officer.

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

file a petition in court, asking the court to grant the request.

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

Section 5. Public Interest Lawsuits
by the Attorney General

Section 5 of the bill would expand and clarify AS 45.50.501, which is the section under which the attorney general brings public interest actions in the courts to stop unfair and deceptive trade practices. The attorney general does not have power to order a business to stop, but must go to court and prove a civil case before a business will be ordered by the court to stop a particular practice.

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

The new language in AS 45.50.501(a) and (b) also clarifies that not only may the attorney general seek a temporary, preliminary, or permanent order or injunction against unlawful practices, but that the attorney general may also, acting on behalf of citizens injured by an unlawful act or practice, seek to restore the status quo by a court order to return to victims whatever money or property they may have lost by the unlawful actions of the business defendant.

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

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

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

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

New AS 45.50.501(g) ensures that procedural requirements will not interfere with speedy law enforcement by the attorney general, so that requirements for consumer notice and elections to opt-in or opt-out of the public interest action would not delay a request by the attorney general for an order or injunction to halt the unlawful activity.

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

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

This addition to existing AS 45.50.501(b) is needed because of court rulings that under our prejudgment attachment statute, AS 09.40.010, the courts do not have power to grant prejudgment attachment of money upon request of the attorney general in an action enforcing the UTP Act. When the attorney general wins a case at final trial, one or two years after the fraud actually occurs, the business has often transferred its assets or filed for bankruptcy. With this amendment, the courts may use all legal or equitable remedies that may be necessary to restore the status quo, and make whole all persons injured by an unlawful act.

Sections 6 -- 9. Private and Class Actions for
Consumers and Businesses

Section 6 of the bill amends AS 45.50.531(a) and expands the private and class actions that may be brought by individual members of the public. The new language in subsec. (a) makes it clear that any person who purchases or leases any item of value in trade or commerce for use and not for resale (not merely the traditional household or family consumer buying goods or services), may bring a private cause of action against a party who uses an unfair trade practice which harms the purchaser or lessee. Another amendment to subsec. 531(a) deletes the existing clause

specifying in which judicial district the injured person must sue. This designation is moved to new AS 45.50.531(j), in sec. 9 of the bill.

Section 7 of the bill amends the private class action portion of the UTP Act (AS 45.50.531(b)) to eliminate the requirement that an injured person wishing to bring a class action on behalf of himself and other similarly situated persons is required first to get the approval of the attorney general. Such a prerequisite is an unfair and perhaps unconstitutional barrier to a private party's right to seek redress from the courts.

Section 8 of the bill amends AS 45.50.531(h), which allows Alaskan merchants who are found liable for damages in a court action under the Act to seek redress in turn from their manufacturer or supplier of merchandise. The bill amends this provision to enable a retailer also to seek redress from the manufacturer or supplier when the retailer satisfies a customer's claim without a legal action. The retailer must give reasonable notice and an opportunity to satisfy the customer's claim to the manufacturer or supplier, but if the manufacturer or supplier does not do so, the retailer would have a private cause of action to recover the cost of satisfying the customer.

Section 9 of the bill amends AS 45.50.531 in a very important way by adding a new provision that a business that is injured by a competitor who commits an unfair or deceptive trade practice has a private cause of action against the competitor. This cause of action may be inferred in the current UTP Act, but, in order to enhance the rights of private business competitors to guard their own place in the market against unfair competition, a clearly spelled out private cause of action for the injured competitor is needed.

Section 9 also cures a serious potential defect in the Act, by clarifying in new AS 45.50.531(j) that a private consumer or business that exercises the private right of action under sec. 531 is entitled to seek relief not only against a business located in Alaska, but also against outside businesses that solicit trade with Alaskans or send merchandise or services into Alaska. As with the amendment to AS 45.50.501(a) in sec. 5 of the bill, dealing with the attorney general's lawsuits, this revision is necessary to eliminate the ambiguity caused by the 1980 Alaska Supreme Court decision in the Swenson Trucking case, which implied that the existing Act might not apply to a Seattle business

that did not maintain a place of business within Alaska. Under Alaska's "long-arm" jurisdiction statute, AS 09.05.015, most outside businesses that deal with Alaska would be subject to the "personal" jurisdiction of our courts, but perhaps not to the "subject matter" jurisdiction of this Act. This ambiguity will be cured by adding new AS 45.50.531(j).

Sections 10 -- 13. Revised and Expanded Definitions
of Who is Protected by the UTP Act; Short Title

Section 10 of the bill amends AS 45.50.541, the only section of the UTP Act where it is appropriate to restrict the word "consumer" to mean a person who acquires goods or services for personal, family, or household purposes (as opposed to a business or municipal "consumer" who purchases goods for use in the work place). AS 45.50.541 is concerned with the non-negotiability of consumer installment contracts or "paper," such as the three-year contract signed by a consumer purchasing a health spa membership or an automobile. The special protections in this section are necessary only for a consumer who finances the traditional type of consumer purchase made for personal, family, or household use. Therefore, a restrictive definition of "consumer" is added to AS 45.50.541 as subsec. (d).

Section 11 of the bill deals with a similar problem. Presently, AS 45.50.542 contains a provision that "consumers" cannot waive their protections under the Act. To make it clear that this Act covers all types of customers, and not merely a restrictively defined "consumer," the bill amends this section to read that a waiver by any person who is the intended beneficiary of the protections in the Act is contrary to public policy, and is void.

In sec. 12 of the bill, new AS 45.50.560 provides for a short title by which to cite AS 45.50.471 -- 45.50.561, "The Unfair Trade Practices Act." (Normally, of course, this would be the last section in the article; however, in this instance there is no room left after the definition section and before the next article begins.)

Section 13 of the bill amends AS 45.50.561 by adding three definitions. The first, AS 45.50.561(10), clarifies that whenever the word "person" is used in the UTP Act, it has the meaning given to it in the general definition section for the Alaska Statutes, AS 01.10.060(7), which is "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

The second new definition, AS 45.50.561(11), is a crucial component of this bill. It adds a definition of "trade or commerce" that affects the operative section of the entire Act, AS 45.50.471, which forbids unfair or deceptive practices in "the conduct of trade or commerce." Recent court decisions have limited the coverage of the UTP Act to merely the sale of "goods or services," which would eliminate real property and commercial intangibles, such as commodity futures, from the Act. However, it is the opinion of the attorney general that it was the original intent of the legislature to prohibit all unfair trade practices, not only in the sale of goods or services, but in the conduct of any type of "trade or commerce." The new definition of trade or commerce includes not only a sale or lease, but all advertisements or offers for sale, or the barter or any other type of distribution of any type of goods, services, or any type or property, article, commodity, or other thing of value.

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

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

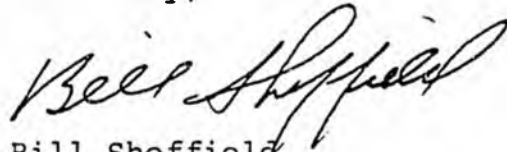
HB 236, introduced during the 1983 session, contained the same definition of "trade or commerce."

Section 13 also adds, as AS 45.50.561(12), a definition of what it means for a person to "wilfully" violate the statute. The term "wilful" is not relevant in public actions brought by the attorney general, but is the operative language that gives rise to triple damages in private actions brought by consumer victims or honest competitor victims who use their private cause of action against unfair trade practices.

Section 14 of the bill repeals AS 45.50.561(6), the definition of "consumer." Section 10 of the bill adds a more restrictive definition of "consumer" only to AS 45.50.541, concerning the non-negotiability of consumer paper, where it is appropriate.

In summary, this bill reflects the practical experience of the attorney general's staff, as well as that of consumers and businesses in the state, over the last 10 years of using the existing Unfair Trade Practices Act. Such a vital law enforcement tool as this Act is due for a well-planned refinement to better serve our citizens. I therefore urge your prompt and favorable action on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield". The signature is written in dark ink and is positioned above the typed name and title.

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Handwritten initials and scribbles

88142

Revision Date: _____

REQUEST

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

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

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

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

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

HB 125
page 282

December 12, 1984

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

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

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

April 29, 1986

BILL SHEFFIELD, GOVERNOR

REPLY TO

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FAIRBANKS, ALASKA 99701
PHONE: (907) 456-8588
- S.S. FULLER BLDG
4th & HARRIS, SUITE 214
POUCH K
JUNEAU, ALASKA 99811
PHONE: (907) 465-3692
- STATE COURTHOUSE, ROOM 26
P.O. BOX 671
VALDEZ, ALASKA 99686
PHONE: (907) 835-2462

The Honorable Pat Rodey
Senate Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Re: HB 125

Dear Senator Rodey:

The purpose of this letter is to summarize CS HB 125 and to provide the committee with information concerning the need for passage of this legislation. We also are providing the committee with a section by section analysis of the bill.

This bill would make three major changes to the Unfair Trade Practices Act: First, it makes clear that the Unfair Trade Practices and Consumer Protection Act protects businesses as well as consumers. Second, the proposed legislation would, by changing the definition of trade and commerce, make it clear that consumer real property transactions would be entitled to the protection of the Act. And third, this proposed legislation clarifies the exemption provisions in the Act.

Protection for Business

Some of the most prevalent types of consumer scams or rip-offs today are often directed at the small business. Under the present Unfair Trade Practices Act it is not clear whether a small business would have the protection an individual consumer would have in these situations. One type of scam that is often perpetrated against small businesses is to send solicitations which appear to be bills or invoices. Often these solicitations are for a subscription to some type of alleged trade or professional journal. Sometimes these solicitations are for a listing in a trade directory or for advertising in a specialized magazine or other circulated printed matter. Very often the small business appoints a person to pay the bills, take care of bookkeeping tasks, etc., who is not informed on purchasing security. Therefore, the phony solicitation which is generally for a small amount, under \$100, is paid because it appears to be a bill that was actually incurred for an item ordered. In truth and fact the scam operator often never publishes the alleged directory or if it is printed it is only circulated to those

businesses who subscribed to it.

Another type of scam that is perpetrated against small businesses is what is often referred to as the "paper pirates" or office supply hustlers scam. This type of scam has many variations. One of the more common variations is to phone a small business in Anchorage or other location in Alaska and say "We have shipped a supply of name-brand toner that can be used in your copying machine to another business. They just went out of business and are not able to take that shipment. It is sitting in the airport in Anchorage, if you take the shipment we'll sell it to you at half-price." The unsuspecting secretary, receptionist or office manager in a small business who receives such a phone call is likely to act on impulse and agree to such an order. Of course, the toner is not sitting in the Anchorage airport; there was never another business that ordered it; and in fact, it not only is not the brand-name product, but use of it in the brand-name product machine will void the warranty and will cause a need for expensive repairs.

The changes proposed in Section 3 to AS 45.50.541(a) and the change in Section 10 to the definitions AS 45.50.561(10) to give "person" the definition found in AS 01.10.060(7) would clarify that businesses are entitled to the same protection from fraudulent operators as are consumers whenever businesses are acting as consumers and not purchasing merchandise for resale.

Business Private Causes of Action

Another important aspect of this legislation would be to provide a method for businesses to privately enforce the UTP Act against unscrupulous competitors and competitors who because of violations in the Act harm the honest business. These changes are found in Section 6 of the proposed committee substitute amending AS 45.50.531. This is a very desirable change in the statute from a budgetary view. As the population of Alaska grows and the volume of trade or commerce increases, the need for additional state enforcement efforts may also increase, coupled with decreases in revenue adequate enforcement levels may not be possible. To some extent this problem might be avoided by allowing private enforcement of the Act. Regularly we receive calls and complaints from businesses who are concerned about the actions of their competitors. While the state may act on those cases to stop any violations of law, we are not, nor should the state be in a position to recover any damages for the honest competitor harmed. Nevertheless, the honest competitor should have a remedy that would encourage the seeking of such damages, assuming the competitor could prove that the violations caused

the damages. The treble damage award proposed in the statute would act as a penalty provision in such cases of private enforcement.

Consumer Real Property Transactions

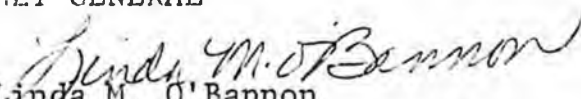
Finally the proposed bill would make it clear that the protective provisions of the UTP Act are applicable to consumer real property transactions as well as the sale of goods and services. Thus, the most costly and important consumer transaction, the purchase of a family home -- whether it be a condominium or a single family home would be afforded protection of the UTP Act.

We urge the Senate Judiciary Committee to give this bill careful consideration and to pass the bill.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By:


Linda M. O'Bannon
Assistant Attorney General
Chief, Consumer Protection
Section

LMO/ssr
cc: Art Peterson

Section by Section Analysis to Proposed
Committee Substitute to HB 125

Prepared by: Department of Law
Consumer Protection Section
April 29, 1986

Section 1

New paragraphs (27) and (28)

These two paragraphs are additions to the "laundry list" in 45.50.471(b) of specifically enumerated "unfair or deceptive acts or practices." There is little doubt that violations of either statute referred to in paragraphs (27) and (28) would already be considered "unfair methods of competition and unfair or deceptive acts or practices" under AS 45.50.471(a) as both statutes were enacted to protect consumers. In other words, a violation of AS 45.45.105-110 (paragraph 27) or AS 45.45.120 (paragraph 28) would be a per se violation of AS 45.50.471(a). Nevertheless, it is clearer and provides better notice to the public and the business community to specifically reference the two statutes in paragraphs (27) and (28) in AS 45.50.471(b).

Paragraph (27)

The unordered merchandise provisions, AS 45.45.105-110, were clearly enacted to protect consumers from the unfair business practice of mailing or delivering unordered merchandise to a consumer than demanding payment for that merchandise. AS 45.45.110 provides that "unsolicited merchandise received shall be considered an unconditional gift to the recipient." The enactment of this statute and similar ones in other states greatly reduced this type of consumer fraud for the obvious reason if a consumer can keep the unordered merchandise or throw it in the trash, without owing anything to the merchant - most businesses aren't going to send or deliver unordered merchandise. The practice has not totally disappeared and some consumers spend time and money in an attempt to return unordered merchandise and stop fraudulent billings for the merchandise.

Paragraph (28)

It is already the informal opinion of the Attorney General that violation of AS 45.45.120 with respect to disclosure of funeral costs is an unfair or deceptive act or practice pursuant to AS 45.50.471(a). AS 45.45.120 was enacted to protect consumers in perhaps the most vulnerable time of arranging for the funeral of loved ones. The Funeral Disclosure Act merely requires written disclosures of the itemized costs of specific funeral services listed in the act before the time of rendering the service or providing the merchandise.

Section 2

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

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

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

An example of the current confusion that could occur in AS 45.50.481(1) would be that an argument could be made that Barbers and Hairdressers whose professions are regulated in AS 08.13.010-220 are exempt from the UTP Act. The licensing statute does not, however, address any consumer remedies or any enforcement of fraudulent business activities. Thus, a hairdresser could consistently advertise \$15 hair cut prices, but charge each customer in the shop \$25 yet refuse to cooperate in any enforcement efforts under the UTP Act because s/he is "regulated" under the licensing statutes. There are no provisions in the UTP Act that would attempt to regulate the quality of service

of the hairdresser but the UTP Act does prohibit dishonesty, misrepresentations and fraud in business and provides consumer remedies.

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

Sections 3 - 6. Private and Class Actions for Consumers and Businesses

Section 3

Section 3 of the bill amends AS 45.50.531(a) and expands the private and class actions that may be brought by individual members of the public. The new language in subsection (a) makes it clear that any person who purchases or leases any item of value in trade or commerce for use and not for resale (not merely the traditional household or family consumer buying goods or services), may bring a private cause of action against a party who uses an unfair trade practice which harms the purchaser or lessee. Thus a business concern buying airline tickets for employees, or a village corporation buying office photocopier supplies as well as the individual who purchases an automobile for personal use would have UTP Act protection. Another amendment to subsection 531(a) deletes the existing clause specifying in which judicial district the injured person must sue. The general venue laws and rules would apply.

Section 4

Section 4 of the bill amends the private class action portion of the UTP Act (AS 45.50.531(b)) to eliminate the requirement that an injured person wishing to bring a class action on behalf of himself and other similarly situated persons is required first to get the approval of the attorney general. Such a prerequisite is an unfair and perhaps unconstitutional barrier to a private party's right to seek redress from the courts.

Section 5

Section 5 of the bill amends AS 45.50.531(h), which allows Alaska merchants who are found liable for damages in a court action under the Act to seek redress in turn from their manufacturer or supplier of merchandise. The bill amends this provision to enable a retailer also to seek redress from the manufacturer or supplier when the retailer satisfies a customer's claim without legal action. The retailer must give reasonable

notice and an opportunity to satisfy the customer's claim to the manufacturer or supplier, but if the manufacturer or supplier does not do so, the retailer would have a private cause of action to recover the cost of satisfying the customer.

Section 6

Section 6 of the bill amends AS 45.50.531 in a very important way by adding a new provision that a business that is injured by a competitor who commits an unfair or deceptive trade practice has a private cause of action against the competitor. This cause of action may be inferred in the current UTP Act, but, in order to enhance the rights of private business competitors to guard their own place in the market against unfair competition, a clearly spelled out private cause of action for the injured competitor is needed. Businesses who often have the resources to pursue private causes of action should not have to depend on state action to stop unfair practices by their competitors.

Sections 7 - 11. Revised and Expanded Definitions of Who is Protected by the UTP Act; Short Title

Section 7

Section 7 of the bill amends AS 45.50.541, the only section of the UTP Act where it is appropriate to restrict the word "consumer" to mean a person who acquires goods or services for personal, family, or household purposes (as opposed to a business or municipal "consumer" who purchases goods for use in the work place). AS 45.50.541 is concerned with the non-negotiability of the consumer installment contracts or "paper," such as the three-year contract signed by a consumer purchasing a health spa membership or an automobile. The special protections in this section are necessary only for a consumer who finances the traditional type of consumer purchase made for personal, family, or household use. Therefore, a restrictive definition of "consumer" is added to AS 45.50.541 as subsection (d).

Section 8

Section 8 of the bill deals with a similar problem. Presently, AS 45.50.542 contains a provision that "consumers" cannot waive their protections under the Act. To make it clear that this Act covers all types of customers, and not merely a restrictively defined "consumer," the bill amends this section to read that a waiver by any person who is the intended beneficiary of the protections in the Act is contrary to public policy, and is void.

Section 9

Section 9 of the bill, new AS 45.50.560 provides for a short title by which to cite AS 45.50.471 -- 45.50.561, "The Unfair Trade Practices Act." (Normally, of course, this would be the last section in the article; however, in this instance there is no room left after the definition section and before the next article begins.)

Section 10

Section 10 of the bill amends AS 45.50.561 by adding three definitions. The first, AS 45.50.561(10), clarifies that whenever the word "person" is used in the UTP Act, it has the meaning given to it in the general definition section for the Alaska Statutes, AS 01.10.060(7), which is

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

The second new definition, AS 45.50.561(11), is a crucial component of this bill. It adds a definition of "trade or commerce" that affects the operative section of the entire Act. AS 45.50.471, which forbids unfair or deceptive practices in "the conduct of trade or commerce." Recent court decisions have limited the coverage of the UTP Act to merely the sale of "goods or services," which would eliminate real property and commercial intangibles, such as commodity futures, from the Act. However, it is the opinion of the attorney general that it was the original intent of the legislature to prohibit all unfair trade practices, not only in the sale of goods or services, but in the conduct of any type of "trade or commerce." The new definition of trade or commerce includes not only a sale or lease, but all advertisements or offers for sale, or the barter or any other type of distribution of any type of goods, services, or any type of property, article, commodity, or other thing of value.

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

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Section 11 of the bill repeals AS 45.50.561(6), the present definition of "consumer." Section 7 of the bill adds a more restrictive definition of "consumer" only to AS 45.50.541, concerning the non-negotiability of consumer paper, where it is appropriate.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION**

February 21, 1985

XX REPLY TO

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— 1st NATIONAL CENTER
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— S S FULLER BLDG
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— STATE COURTHOUSE ROOM 26
P O BOX 671
VALDEZ ALASKA 99686
PHONE (907) 835-2462

Honorable M. Mike Miller
Chairman
House Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

During the House Judiciary Committee hearing on February 8, 1985, on HB 125, Representatives Pettyjohn and Gruenberg requested a listing of the current litigation cases in the Consumer Protection Section of the Department of Law. I have enclosed that information for the committee's use. In the listing we included all litigation cases that were opened or closed during this fiscal year to date with a very brief summary about the cases. We hope this information is useful to you and the committee members. If we can provide any further information please don't hesitate to contact us.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:

Linda M. O'Bannon

Linda M. O'Bannon
Assistant Attorney General
Chief, Consumer Protection
Section

LMO/ssr
Encl.

CURRENT CONSUMER PROTECTION CASES

SUMMARY OF CASES OPENED, PENDING,
OR CLOSED DURING FY 85
Consumer Protection Section
Department of Law

State v. Marvin L. Hanson 122-679-83

The defendant in this case, a surveyor, allegedly obtained advance payments from some 70 consumers to survey fishing set net sites in the Bristol Bay area and then failed to complete the work promised. This impeded the consumers' efforts to get state shorefishery leases for their sites. The case is still pending, but after long delays the defendant has recently made substantial progress toward completing the surveys.

State v. MD Associates, Inc. and
Donald Burke 122-741-83

The State brought this action against a California corporation and its local distributor who manufactured and distributed an imitation milk beverage, MDA Farms. The State alleged that misrepresentations were made about the nutritional properties of the imitation milk product in comparison with real milk. The State also alleged misrepresentations concerning the cost savings of the product. Allegations were also made about defendants multi-level marketings plan. The State and the defendants entered into a consent judgment and injunction which was approved by the court. The defendants agreed to pay the State a total of \$5000 in penalties, costs and attorney's fees, and agreed to an injunction prohibiting certain activities in future conduct and providing consumer restitution in the form of refunds to purchasers of the product.

State v. Nugget Properties
d/b/a Brigantine Bay, William
Lange, Ted Hanson, et al. 122-761-84

The State sued the developers of a timeshare project located near Seward, Alaska for various misrepresentations in the sale of timeshares. These misrepresentations included information given to persons solicited to attend timeshare presentations as well as persons who actually attended and purchased timeshares.

The defendants and the State entered into a consent judgment and injunction approved by the court which provided for a payment of \$25,000 in penalties, costs and attorney's fees to the State. Consumers who had relied on the defendant's misrepresentations in the purchase of timeshare units at Brigantine Bay were offered restitution pursuant to the consent judgment.

State v. John Jarrett
d/b/a Kennelly and Associates,
Inc. 122-486-85

This case involves a contractor who used an illegal pre-printed form contract from the State of Washington to contract with Alaskan consumers. Alaska's door-to-door solicitation statute allows a consumer five business days in which to cancel or revoke an offer to purchase. The defendant's contract stated a three day cancellation period. Further the defendant contracted with several Alaskan consumers, received consumer down payments and in some cases, payments in full for the work to be done and never performed the work. One Alaskan consumer paid \$10,000 to the defendant and to date has not seen or heard from him again. In several cases in Fairbanks, this same contractor received full payment from consumers and failed to pay the supplier. The supplier sent "notice of right to lien" to these consumers forcing these consumers to hire attorneys to protect their homes from liens. Another consumer paid to have work completed on their home and the work was not done in a professional manner and some of the work agreed upon was not done at all. The consumer used his home as collateral for a loan from the contractor to do the work and the contractor has since assigned that deed of trust to a third party. The consumer can not now stop paying for the work that was not done for fear that the third party will foreclose on his home. We have just recently obtained service and are awaiting defendant's answer. Defendant is believed to be now residing in Louisiana.

State v. Brunner J22-122-82

This litigation involves misrepresentations made to consumers who hired defendants for guided hunting in Alaska.

State v. George Smith
d/b/a A and M Associates 122-420-84

The State filed this action against the defendant tax preparer after he did not return to his business premises after April 16, 1983. Defendant had taken consumer deposits for tax preparation work. Not only did consumer tax returns not get filed by defendant as promised but consumers could not obtain their tax records in order to complete their tax preparation or have another tax preparer complete their tax preparation. There was a court hearing in this case and the court entered a preliminary order requiring the defendant to

give notice to all his clients as to his present location and how they could go about obtaining their tax documents. In addition certain consumer deposits were ordered to be refunded. No time has been set for an action on a permanent injunction. The case is still pending but apparent compliance with the court's order and each of further violations suggests the case may be closed without requirement of actually going to trial.

State v. American Home Furnishings,
Olympus Waterbed, Mike Ryan,
Mitchell Ryan, Valley Home
Furnishings, American Waterbeds,
et al. 122-687-84

The State filed this action to halt false advertising claims made by defendants in their various going out-of-business sales. It was alleged that defendants moved merchandise from location to location during the sales. Further it was alleged that advertising of going out-of-business sales was deceptive because although the various stores were owned by the same person their different names suggested they were in competition with each other, coupled with the fact that rather than actually having a going out-of-business sale that would liquidate the entire stock of a particular retail outlet the stock was just transferred from location to location. Defendants entered into a consent judgment with the State and agreed to pay the State \$5000 in costs, attorney's fees and penalties.

State v. Alaska Towing and
Wrecking 122-917-84

The State and Alaska Towing and Wrecking entered into an Assurance of Voluntary Compliance which was approved by the court. Alaska Towing and Wrecking agreed to refrain from asserting any lien rights not granted them by statute. By statute Alaska Towing and Wrecking is entitled to a lien on a motor vehicle for towing and storage charges. Alaska Towing and Wrecking had been implying that they also had a lien for other charges such as a Department of Motor Vehicle title or ownership search or other administrative costs.

State v. Saleh, Baghdadi,
and Enus d/b/a National
Chemical Co. 122-089-85

The defendant and the State of Alaska entered into a

Voluntary Assurance which was approved by the court. Defendants were selling a home cleaning fluid for approximately \$68 per gallon. Defendants agreed to comply with Alaska's door-to-door sales law and to refrain from misrepresentations about the product in the future as well as pay the State \$1000 in investigative costs. Further defendants agreed not to represent that the cleaning fluid was safe around food and food preparation areas.

State v. Mary O'Brannon
d/b/a Alaska Directory
Service, Inc.

122-209-85

The State of Alaska and the defendant entered into an Assurance of Voluntary Compliance in which she agreed to return consumer business deposits for advertising in a telephone directory that was never published.

State v. United Financial
Incentives

122-735-83

The State sued this Pennsylvania corporation for operation of a chain referral sales plan which is a violation of the Unfair Trade Practices Act. The plan was the United Financial Incentives Grocery Tape Purchase Plan. The defendant offered distributorships promising \$20,000 per month income for collecting grocery tape receipts. Defendant entered into an Assurance of Voluntary Compliance with the State, agreeing not to conduct a chain referral or chain distributor plan in Alaska and to pay the State \$1000 in costs and investigative fees. The corporation ultimately went out of business.

State v. Alaska Financial
and Insurance Co. d/b/a
Stepp Brothers Lincoln/
Mercury

122-959-84

This Assurance of Voluntary Compliance entered into by the State of Alaska and Michal D. Stepp, president, on June 4, 1984, requires the defendant to conduct repossession sales in a "commercially reasonable manner". It had been alleged previously that in the course of repossessing vehicles, for whatever reason, defendant had not followed the standards set out by federal or state law in regards to notice provisions and timeframes within which the dispossessed owner would have an opportunity to redeem. Further it was alleged that defendant did not have a public sale whereby it sold the repossessed vehicle to the highest bidder as required by law.

State v. Northwest Trade
Corporation

122-383-80

This case involved a health club which rented temporary quarters and began a advertisement campaign to stimulate the purchase of memberships. After a large number of memberships were sold in the Anchorage area, the Northwest Trade Corporation closed its doors with the money and did not re-open. This has been indicative of a number of national health clubs which will open temporary branches, obtain money and then close their doors claiming they are going out of business. In the case of Northwest Trade Corporation we were unable to obtain restitution for all consumers involved.

State v. David Pillott et al. 122-740-83

This case involved an outside distributor who began advertising Necchi sewing machines for sale. Alaska law, federal law, and Alaska Retail Advertising Regulations state that you cannot misrepresent the price of goods, the manufacturer's suggested retail price, or the regular price in an effort to mislead consumers into thinking they are buying at a discounted price. The defendant advertised that the sewing machines were regularly sold at \$729 and \$629 and that he was offering them for sale for \$399 and \$299 respectively. The truth of the matter was that these sewing machines cost substantially less than the price for which they were being sold and were not worth near the \$629 and \$729 as stated in the advertisement. Further defendant indicated that it was a public sale and that these were "unclaimed school orders" and "must be sold" creating the impression of special or circumstances forcing a sale when in fact this was not the case. Consumers were misled and deceived into thinking that they were buying a certain quality sewing machine when in fact they were buying a lesser quality sewing machine. The State obtained injunctive relief and civil penalties in the amount of \$500.

State v. Capetti d/b/a
Capetti and Associates

122-258-85 .

This case involved a concert promoter who scheduled a program for the Sullivan Arena. When he saw that the attendance was not going to be as he hoped it would be, he cancelled the show but failed to refund money to consumers. He had received approximately \$9000 from consumers and consumers were unable to contact him for refunds. Alaska

law requires a concert promoter to refund money within 10 days after the date of a program which has been cancelled and also to place on the tickets an address where the promoter can be reached for refunds. The concert promoter in this case failed to provide consumers with the necessary information for refunds and failed to refund monies to consumers. The State obtained an Assurance of Voluntary Compliance and full refunds for all consumers.

MEMORANDUM

State of Alaska

TO: Mike Miller, Chair
House Judiciary Committee
Alaska State Legislature

DATE: March 27, 1985

FILE NO: 377-033-85

TELEPHONE NO: 279-0428

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: HB 125

By: *Linda M. O'Bannon*
Linda M. O'Bannon
Assistant Attorney General
Chief, Consumer Protection Section

Attached is a draft proposed committee substitute for consideration by the committee as requested.

LMO/mf

Attachment

cc: Rep. Don Clocksin
Rep. Max F. Gruenberg, Jr.
Rep. Fritz Pettyjohn
Rep. Randy Phillips
Rep. John Sund
Rep. Robin L. Taylor

Section by Section Analysis to Proposed
Committee Substitute to HB 125

Prepared by: Department of Law
Consumer Protection Section
March 27, 1985

Section 1

New paragraphs (27) and (28)

These two paragraphs are additions to the "laundry list" in 45.50.471(b) of specifically enumerated "unfair or deceptive acts or practices." There is little doubt that violations of either statute referred to in paragraphs (27) and (28) would already be considered "unfair methods of competition and unfair or deceptive acts or practices" under AS 45.50.471(a) as both statutes were enacted to protect consumers. In other words, a violation of AS 45.45.105-110 (paragraph 27) or AS 45.45.120 (paragraph 28) would be a per se violation of AS 45.50.471(a). Nevertheless, it is clearer and provides better notice to the public and the business community to specifically reference the two statutes in paragraphs (27) and (28) in AS 45.50.471(b).

Paragraph (27)

The unordered merchandise provisions, AS 45.45.105-110, were clearly enacted to protect consumers from the unfair business practice of mailing or delivering unordered merchandise to a consumer then demanding payment for that merchandise. AS 45.45.110 provides that "unsolicited merchandise received shall be considered an unconditional gift to the recipient." The enactment of this statute and similar ones in other states greatly reduced this type of consumer fraud for the obvious reason if a consumer can keep the unordered merchandise or throw it in the trash, without owing anything to the merchant - most businesses aren't going to send or deliver unordered merchandise. The practice has not totally disappeared and some consumers spend time and money in an attempt to return unordered merchandise and stop fraudulent billings for the merchandise.

Paragraph (28)

It is already the informal opinion of the Attorney General that violation of AS 45.45.120 with respect to disclosure of funeral costs is an unfair or deceptive act or practice pursuant to AS 45.50.471(a). AS 45.45.120 was enacted to protect consumers in perhaps the most vulnerable time of arranging for the funeral of loved ones. The Funeral Disclosure Act merely requires written disclosures of the itemized costs of specific funeral services listed in the act before the time of rendering the service or providing the merchandise.

Section 2

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

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

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

An example of the current confusion that could occur in AS 45.50.481(1) would be that an argument could be made that Barbers and Hairdressers whose professions are regulated in AS 08.13.010-220 are exempt from the UTP Act. The licensing statute does not, however, address any consumer remedies or any enforcement of fraudulent business activities. Thus, a hairdresser could consistently advertise \$15 hair cut prices, but charge each customer in the shop \$25 yet refuse to cooperate in any enforcement efforts under the UTP Act because s/he is "regulated" under the licensing statutes. There are no provisions in the UTP Act that would attempt to regulate the quality of service

of the hairdresser but the UTP Act does prohibit dishonesty, misrepresentations and fraud in business and provides consumer remedies.

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

Sections 3 - 6. Private and Class Actions for Consumers and Businesses

Section 3

Section 3 of the bill amends AS 45.5.531(a) and expands the private and class actions that may be brought by individual members of the public. The new language in subsection (a) makes it clear that any person who purchases or leases any item of value in trade or commerce for use and not for resale (not merely the traditional household or family consumer buying goods or services), may bring a private cause of action against a party who uses an unfair trade practice which harms the purchaser or lessee. Thus a business concern buying airline tickets for employees, or a village corporation buying office photocopier supplies as well as the individual who purchases an automobile for personal use would have UTP Act protection. Another amendment to subsection 531(a) deletes the existing clause specifying in which judicial district the injured person must sue. The general venue laws and rules would apply.

Section 4

Section 4 of the bill amends the private class action portion of the UTP Act (AS 45.50.531(b)) to eliminate the requirement that an injured person wishing to bring a class action on behalf of himself and other similarly situated persons is required first to get the approval of the attorney general. Such a prerequisite is an unfair and perhaps unconstitutional barrier to a private party's right to seek redress from the courts.

Section 5

Section 5 of the bill amends AS 45.50.531(h), which allows Alaska merchants who are found liable for damages in a court action under the Act to seek redress in turn from their manufacturer or supplier of merchandise. The bill amends this provision to enable a retailer also to seek redress from the manufacturer or supplier when the retailer satisfies a customer's claim without legal action. The retailer must give reasonable

notice and an opportunity to satisfy the customer's claim to the manufacturer or supplier, but if the manufacturer or supplier does not do so, the retailer would have a private cause of action to recover the cost of satisfying the customer.

Section 6

Section 6 of the bill amends AS 45.50.531 in a very important way by adding a new provision that a business that is injured by a competitor who commits an unfair or deceptive trade practice has a private cause of action against the competitor. This cause of action may be inferred in the current UTP Act, but, in order to enhance the rights of private business competitors to guard their own place in the market against unfair competition, a clearly spelled out private cause of action for the injured competitor is needed. Businesses who often have the resources to pursue private causes of action should not have to depend on state action to stop unfair practices by their competitors.

Sections 7 - 11. Revised and Expanded Definitions of Who is Protected by the UTP Act; Short Title

Section 7

Section 7 of the bill amends AS 45.50.541, the only section of the UTP Act where it is appropriate to restrict the word "consumer" to mean a person who acquires goods or services for personal, family, or household purposes (as opposed to a business or municipal "consumer" who purchases goods for use in the work place). AS 45.50.541 is concerned with the non-negotiability of the consumer installment contracts or "paper," such as the three-year contract signed by a consumer purchasing a health spa membership or an automobile. The special protections in this section are necessary only for a consumer who finances the traditional type of consumer purchase made for personal, family, or household use. Therefore, a restrictive definition of "consumer" is added to AS 45.50.541 as subsection (d).

Section 8

Section 8 of the bill deals with a similar problem. Presently, AS 45.50.542 contains a provision that "consumers" cannot waive their protections under the Act. To make it clear that this Act covers all types of customers, and not merely a restrictively defined "consumer," the bill amends this section to read that a waiver by any person who is the intended beneficiary of the protections in the Act is contrary to public policy, and is void.

Section 9

Section 9 of the bill, new AS 45.50.560 provides for a short title by which to cite AS 45.50.471 -- 45.50.561, "The Unfair Trade Practices Act." (Normally, of course, this would be the last section in the article; however, in this instance there is no room left after the definition section and before the next article begins.)

Section 10

Section 10 of the bill amends AS 45.50.561 by adding three definitions. The first, AS 45.50.561(10), clarifies that whenever the word "person" is used in the UTP Act, it has the meaning given to it in the general definition section for the Alaska Statutes, AS 01.10.060(7), which is

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

The second new definition, AS 45.50.561(11), is a crucial component of this bill. It adds a definition of "trade or commerce" that affects the operative section of the entire Act. AS 45.50.471, which forbids unfair or deceptive practices in "the conduct of trade or commerce." Recent court decisions have limited the coverage of the UTP Act to merely the sale of "goods or services," which would eliminate real property and commercial transactions, such as commodity futures, from the Act. However, it is the opinion of the attorney general that it was the original intent of the legislature to prohibit all unfair trade practices, not only in the sale of goods or services, but in the conduct of any type of "trade or commerce." The new definition of trade or commerce includes not only a sale or lease, but all advertisements or offers for sale, or the barter or any other type of distribution of any type of goods, services, or any type of property, article, commodity, or other thing of value.

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

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

Section 10 also adds, as AS 45.40.561(12), a definition of what it means for a person to "willfully" violate the statute. The term "willful" is not relevant in public actions brought by the attorney general, but is the operative language that gives rise to triple damages in private actions brought by consumer victims or honest competitor victims who use their private cause of action against unfair trade practices.

Section 11 of the bill repeals AS 45.50.561(6), the present definition of "consumer." Section 7 of the bill adds a more restrictive definition of "consumer" only to AS 45.50.541, concerning the non-negotiability of consumer paper, where it is appropriate.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1985

SUBJECT: House Bill 125 and Alaska Rule of
Civil Procedure 89

TO: Representative M. Mike Miller
Chairman, House Judiciary Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested the following:

1. an opinion whether Section 1 of HB 125 conflicts with Alaska Rule of Civil Procedure 89 and how a conflict should be addressed in the bill; and
2. a draft of new language for Civil Rule 89 conforming it to HB 125.

From my review of the pertinent authorities, it is my opinion that the ability to apply for pre-judgment attachment of property is a matter of substance rather than a matter of procedure. "[S]ubstantive law creates, defines and regulates rights, while procedural law prescribes the method of enforcing the rights." Ware v. City of Anchorage, 439 P.2d 793, 794 (Alaska, 1968). The remedy of pre-judgment attachment gives the plaintiff a substantial right, that of preventing the defendant from exercising defendant's normal rights over its property during the pendency of the action. The court in Nolan v. Sea Airmotive, Inc., 627 P.2d 1035, 1042-43 (Alaska 1981), used as the criteria for distinguishing between procedure and substance, whether the matter was more related to judicial rule-making power or to the making of public policy. The right of one party in a court action to restrict the other party's use of its property during the action appears to me to be a matter of policy to be set by the legislature rather than a rule of procedure to be set by the court system. It creates a new right in one party and removes a right in the other party.

The basic authority to seek pre-judgment attachment comes from AS 09.40.010(a). That statute lists the areas in which the remedy is available. In addition to contract matters, AS 09.40.010(a) gives the remedy to a state in the collection of its state taxes or license fees. The source of the remedy is statute, not court rule. Civil Rule 89 sets up the procedure for obtaining the remedy.

With regard to the relationship between § 1 of the bill and Civil Rule 89, it is my opinion that Section 1 of the bill does not conflict with Civil Rule 89. Part (a) of civil Rule 89 indicates that the right of pre-judgment attachment given in AS 09.40.010-110 is to be pursued in accordance with the provisions of Civil Rule 89. In other words, the substantive matter in the statute is to be handled by the procedure in the rule.

The addition, of another cause of action that is entitled to seek pre-judgment attachment relief, to AS 09.40.010 cannot conflict with the rule as it is now worded. Part (b)(1)-(3) of Civil Rule 89 apparently was designed only for the contracts portion of AS 09.40.010, since it does not apply to state taxes or license fees. The Rule could use some re-working, and the court system may want to do so, but it is unnecessary for the legislature to re-write it because of HB 125. Re-writing the problematical language of Civil Rule 89 (b) (1)-(3) may also create a problem with Article IV, Section 15 of the Alaska Constitution. Since Part (b) establishes the form and contents of a document to be submitted for the relief, it is very possible that it would be held to constitute a rule for the internal administration of the court and, therefore, not available for amendment by the legislature.

In light of the above, I have not re-worked the court rule. However, if you still wish that to be done, please so advise.

TLB:obj
J11/083

B 123

Urge your prompt action on this bill.

Sincerely,

/s/

Bill Sheffield
Governor"

B 124

HOUSE BILL NO. 124 by the Rules Committee by request of the Governor, entitled:

"An Act extending the Older Alaskans Commission; and providing for an effective date."

was read the first time and referred to the State Affairs and the Health, Education & Social Services Committee.

A zero fiscal note with an analysis was attached and appears in House Journal Supplement No. 8.

The Governor's transmittal letter, dated January 25, 1985, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to extend the life of the Older Alaskans Commission for four years. The commission is currently scheduled to "sunset" (under AS 4.66.010(a)(10)) on June 30, 1985. I view the work of this commission as essential, and believe that the commission should be extended for another four years. I urge you to join me in providing this support to our senior citizens.

Sincerely,

/s/

Bill Sheffield
Governor"

B 125

HOUSE BILL NO. 125 by the Rules Committee by request of the Governor, entitled:

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

was read the first time and referred to the Judiciary

HB 125

A zero fiscal note with an analysis was attached and appears in House Journal Supplement No. 8.

The Governor's transmittal letter, dated January 25, 1985, follows:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends and re-names art. 4 of AS 45.50, which is currently titled "Unfair Trade Practices and Consumer Protection." (AS 45.50.-471 -- 45.50.561 or "the UTP Act.") The title change emphasizes the intent of this bill's amendments and makes clear that the article includes protections for "businesses" as well as for "consumers." If enacted, this bill would be the first comprehensive revision of these statutes since 1974. The bill was prepared by the consumer protection section of the Department of Law in response to decisions by our courts under the present statutes, and is based on the suggestions of businesses, consumers, attorneys, and legislators in our state.

The bill has seven major goals:

1. to clarify that every Alaskan who buys or leases any item in trade or commerce for use (not for resale) is a protected consumer under these statutes, whether the buyer is an individual buying a car, a business concern buying airline tickets for employees, or a village corporation buying office photocopier supplies;
2. to clarify that honest business competitors may bring a private cause of action for damages against their less scrupulous competitors who injure them through the use of unfair or deceptive trade practices;
3. to clarify and simplify the investigative procedures used by the attorney general, and to make them less threatening to a business under investigation;
4. to clarify the role of the attorney general when bringing an enforcement action on behalf of the general public to stop an unlawful practice and to seek restitution for injured consumers;
5. to eliminate any barriers to private victims of fraud who wish to seek their own redress in the courts;
6. to ensure that out-of-state businesses which reach into our marketplace to do business with Alaskans are covered by the UTP Act, and to further ensure that all aspects of "trade or commerce" in the Alaskan marketplace are also covered, not just the narrow area of "goods or services";
7. to cure substantive, procedural, and language defects which have made the UTP Act difficult to enforce in the past.

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

TRANSMITTAL