

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8937 SENATE LABOR & COMMERCE

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 229

Revision Date:	Dept. Affected: <u>Office of the Governor</u>
Title: <u>"An Act relating to employment contributions and to making the state training and employment program a permanent..."</u>	BRU: <u>Commissions/Special Offices</u>
Sponsor: <u>Rules Committee</u>	Component: <u>Human Resource Investment Council</u>
Requester: <u>Governor</u>	COMPONENT SERIAL NO. <u>2055</u>

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	EY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact.

Prepared by: <u>Mike Andrews, Exec. Director</u>	(Phone): <u>769-7490</u>
Division: <u>Human Resource Investment Council</u>	Date: <u>7/96</u>
Approved by Commissioner: <u>Jim Ayers, Chief of Staff</u>	Date: <u>7/96</u>
Agency: <u>Office of the Governor</u>	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

(For further distribution information, call the Governor's Legislative Office)

FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
Title: An Act relating to employment contributions and the state training program BRU: Employment/Training/Rural Dev.  
Sponsor: Rules Committee Component: Statewide Service Delivery  
Requestor: Governor COMPONENT SERIAL NO. 1178

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	-63.6	-63.6	-63.6	-63.6	-63.6	-63.6
TRAVEL	-18.3	-18.3	-18.3	-18.3	-18.3	-18.3
CONTRACTUAL	-43.0	-43.0	-43.0	-43.0	-43.0	-43.0
SUPPLIES	-4.0	-4.0	-4.0	-4.0	-4.0	-4.0
EQUIPMENT	-1.5	-1.5	-1.5	-1.5	-1.5	-1.5
LAND & STRUCTURES						
GRANTS, CLAIMS	-1,328.2	-1,328.2	-1,328.2	-1,328.2	-1,328.2	-1,328.2
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-1,458.6</b>	<b>-1,458.6</b>	<b>-1,458.6</b>	<b>-1,458.6</b>	<b>-1,458.6</b>	<b>-1,458.6</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1007 VA	-1,458.6	-1,458.6	-1,458.6	-1,458.6	-1,458.6	-1,458.6
<b>TOTAL</b>	<b>-1,458.6</b>	<b>-1,458.6</b>	<b>-1,458.6</b>	<b>-1,458.6</b>	<b>-1,458.6</b>	<b>-1,458.6</b>

Estimate of current year (FY96) costs:

POSITIONS:						
FULL-TIME	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill makes the state training and employment program permanent. The program is funded by a worker contribution on one-tenth of one percent of covered wages collected by the Department of Labor. This is done at no additional cost to the worker by giving a credit of this amount for the employee contribution currently provided for in AS 23.20.290. Budget numbers for information only; this shows impact if legislation does not pass.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708

Division: Division of Administrative Services Date: 01/04/96

Approved by Commissioner: *Mike Husar* Date: 01/04/96

Agency: Community & Regional Affairs

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

# FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to employment contributions and the state training program BRU: Employment/Training/Rural Dev.  
 Sponsor: Rules Committee Component: State Training & Employment Pgm.  
 Requestor: Governor COMPONENT SERIAL NO. 1012

Expenditures/Revenues (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	-11.0	-11.0	-11.0	-11.0	-11.0	-11.0
CONTRACTUAL	-87.1	-87.1	-87.1	-87.1	-87.1	-87.1
SUPPLIES	-2.2	-2.2	-2.2	-2.2	-2.2	-2.2
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-2,065.1	-2,065.1	-2,065.1	-2,065.1	-2,065.1	-2,065.1
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-2,165.4</b>	<b>-2,165.4</b>	<b>-2,165.4</b>	<b>-2,165.4</b>	<b>-2,165.4</b>	<b>-2,165.4</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1007 I/A	-2,165.4	-2,165.4	-2,165.4	-2,165.4	-2,165.4	-2,165.4
<b>TOTAL</b>	<b>-2,165.4</b>	<b>-2,165.4</b>	<b>-2,165.4</b>	<b>-2,165.4</b>	<b>-2,165.4</b>	<b>-2,165.4</b>

Estimate of current year (FY96) costs: \$ 2,165.4

POSITIONS:

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

**ANALYSIS:** (Attach a separate page if necessary)

This bill makes the state training and employment program permanent. The program is funded by a worker contribution on one-tenth of one percent of covered wages collected by the Department of Labor. This is done at no additional cost to the worker by giving a credit of this amount for the employee contribution currently provided for in AS 23.29.290. Budget numbers for information only; this shows impact if legislation does not pass.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
 Division: Division of Administrative Services Date: 01/04/96  
 Approved by Commissioner: *Mike Durbin* Date: 01/04/96  
 Agency: Community & Regional Affairs

# FISCAL NOTE

Bill Version: No. 3  
SB 229

BIL (S) Publish Date: 1/17/96

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: "An Act relating to employment contributions and the state training program..."  
Sponsor: Rules Committee  
Requestor: Governor

Department Affected: Labor  
BRU: Employment Security  
Component: State Training & Employment Program  
COMPONENT SERIAL NO. 1184

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	3,946.2 *	3,946.2 *	3,946.2 *	3,946.2 *	3,946.2 *	3,946.2 *
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>CHANGE IN REVENUE FUND SOURCE #</b>						
--	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1008 GF/MHTA						
1054 St Empl & Trng Pgrm	3,946.2 *	3,946.2 *	3,946.2 *	3,946.2 *	3,946.2 *	3,946.2 *
<b>TOTAL</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>	<b>3,946.2 *</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY96) impact: \$ None

**ANALYSIS:** (Attach a separate page if necessary)

This bill makes the State Training and Employment Program permanent. The program is funded by a worker contribution of one-tenth of one percent of covered wages collected by the Department of Labor. This is done at no additional cost to the worker by diverting a portion of the employee contribution currently provided for in AS 23.20.290.

- Per instruction from the Office of Management & Budget, to avoid disruption to other budgets which rely on this funding, existing expenditure authorization has not been deleted from the department's operating budget. The amounts shown above are for informational purposes only.

Prepared by: Rebecca Nance, Director Phone: 465-2712  
Division: Employment Security Division Date: 12/12/95

Approved by Commissioner: Tom Cashen, Commissioner  
Agency: Department of Labor Date: 12/12/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office

**SB**

**239**

# Alaska State Senate

**SENATOR STEVE RIEGER**  
District 1

Senate Finance Committee  
Chair, Senate Transportation Committee

Legislative Budget and Audit Committee  
Administrative Regulation Review Committee  
Legislative Council



*During Session:*  
State Capitol, Room 516  
Juneau, Alaska 99801  
(907) 465-3870

716 West 4th Avenue, Suite 530  
Anchorage, Alaska 99501  
(907) 258-8188

## Sponsor Statement

### **SB 239 – An Act relating to telephone advertisements, solicitations, and directory listings**

Senate Bill 239 will reduce solicitations by telephone. This legislation allows a residential telephone subscriber to have a notation placed in the telephone directory expressing a desire to not receive telephone solicitations. If a customer has such a notation placed in the directory, a person may not solicit business from that customer through a telephone call.

Under this legislation, local telephone companies will inform residential customers of the provisions of SB 239. If requested, the local telephone company will provide a list of all subscribers who are identified as not wishing to receive telephone solicitations.

This bill is an expansion of the statutes governing unfair practices in the conduct of trade and commerce, as described in AS 45.50.471.

February 2, 1996



# DIRECT MARKETING ASSOCIATION, INC.

1111 19th Street NW, Suite 1100, Washington, DC 20036-3603 • 202/955-5039 • fax 202/955-5085

5 February 1996

10 pages

To: Senator Steve Rieger 907 465 2069  
Senate Labor and Commerce Committee ✓ 907 465 3756

Re: Senate Bill 239

From: Direct Marketing Association (DMA)  
3600 Member Companies Nationwide

Contact: Margaret Gottlieb 800 990 6900  
fax 800 890 6901

DMA opposes SB 239. Many provisions are covered in a new federal law, effective 12-31-95, other federal law, or our industry self regulatory programs. Can we help make your constituents aware of these measures?

### telephone directory listings

If a consumer tells a marketer "do not call again," the marketer may not call and must have systems and procedures in place for a "do not call" list.

- Telephone Consumer Protection Act (TCPA)
- Federal Communications Commission
- Effective 1993
- Telemarketing Sales Rule
- Federal Trade Commission
- Effective 12-31-95

If a consumer wishes to avoid calls from most national telephone sellers, the consumer can write to Telephone Preference Service (TPS), a free service to consumers offered by DMA for 20 years. See attached.

### recorded messages

Recorded messages are prohibited unless the consumer has given prior consent.

TCPA

We note that the local telecommunication companies are asked in this legislation to inform customers. DMA would welcome a cooperative effort whereby consumers could be notified of these laws in their local directory.

Please contact us for questions or information.

Manufacturers  
1170 Avenue of The Americas  
New York, NY 10036  
212/766-7377

1111 19th Street, NW, Suite 1100  
Washington, DC 20036  
202/955-5039

- President • Conference Administration • Computer Programming • Councils • Professional Training & Development
- Seminar Centers • Public Relations • Information Centers • Leasing • Career Development • International Services
- Membership Development • Conference Registration • EDO • Quality Awards • Research • Publication Sales
- Information Systems • Personnel • Finance • Direct Marketing • Trade Shows • Direct Mail • National Organizations

- Direct Mail Lists
- Ethics and Consumer Affairs
- Conference Logistics

THE FOLLOWING PAGES MAY  
NOT FILM LEGIBLY BECAUSE OF  
THE POOR QUALITY OF THE ORIGINAL

FCC Rule

## APPENDIX B

Title 47 of the Code of Federal Regulations, parts 64 and 68, are amended as follows:

1. The table of contents for part 64 is amended by adding subpart L to read as follows:

Subpart L - Restrictions on Telephone Solicitation

§ 64.1200 Delivery restrictions.

2. The authority citation for subpart L is added to part 64 to read as follows:

Authority: 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 218, and 227.

3. Subpart L is added to part 64 to read as follows:

Subpart L - Restrictions on Telephone Solicitation

§ 64.1200 Delivery Restrictions.

(a) No person may

(1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice;

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio communication service, or any service for which the called party is charged for the call;

(2) Initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempt by § 64.1200(c).

- (3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.
- (4) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.
- (b) For the purpose of § 64.1200(a) the term "emergency purposes" means calls made necessary in any situation affecting the health and safety of consumers.
- (c) The term "telephone call" in § 64.1200(a)(2) shall not include a call or message by, or on behalf of, a caller:
- (1) that is not made for a commercial purpose.
  - (2) that is made for a commercial purpose but does not include the transmission of any unsolicited advertisement.
  - (3) to any person with whom the caller has an established business relationship at the time the call is made, or
  - (4) which is a customer request or organization.
- (d) All automatic or programmed telephone messages delivered by an automatic telephone dialing system shall:
- (1) At the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and
  - (2) During or after the message, state clearly the telephone number (other than that of the automatic or programmed message player which placed the call) or address of such business, other entity, or individual.
- (e) No person or entity shall initiate any telephone solicitation to a residential telephone subscriber (1) before the hour of 8 A.M. or after 9 P.M. (local time at the called party's location), and (2) unless such person or entity has instituted procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:
- (1) Written policy. Persons or entities making telephone solicitations must have a written policy, available upon demand, for maintaining a do-not-call list.
  - (2) Training of personnel engaged in telephone solicitations. Personnel engaged in any aspect of telephone solicitations must be informed and trained in the occurrence and use of the do-not-call list.
  - (3) Recording, disclosure of do-not-call numbers. If a person or entity making a telephone solicitation (~~obtains or develops~~ ~~obtains or develops~~ or makes) receives a request from a residential telephone subscriber not to receive

calls from that person or entity, the person or entity must record the request and place the subscriber's name and telephone number on the do-not-call list at the time the request is made. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the solicitation is made, the person or entity on whose behalf the solicitation is made will be liable for any failures to honor the do-not-call request. In order to protect the consumer's privacy, persons or entities must obtain a consumer's prior express consent to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a solicitation is made or an affiliated entity.

(iv) Identification of telephone solicitor. A person or entity making a telephone solicitation must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. If a person or entity makes a solicitation using an artificial or prerecorded voice message transmitted by an autodialer, the person or entity must provide a telephone number other than that of the autodialer or prerecorded message player which placed the call.

(v) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

→ (vi) Maintenance of do-not-call lists. A person or entity making telephone solicitations must maintain a do-not-call list for the purpose of any future telephone solicitations.

(5) As used in this section:

(1) The terms "automatic telephone dialing system" and "autodialer" mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(2) The term "telephone facsimile machine" means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(3) The term "telephone solicitation" means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message: (i) to any person with that person's prior express invitation or permission, (ii) to any person with whom the caller has an established business relationship, or (iii) by a tax-exempt nonprofit organization.

(4) The term "established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(5) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

4. The authority citation for subpart D of part 68 is revised to read as follows:

Authority: 47 U.S.C. §§ 151, 154, 155, 201-205, 218, 227, and 303.

5. Section 68.318(c) is amended by revising paragraph (c)(2) and adding paragraph (c)(3) to read as follows:

§ 68.318 Additional limitations.

• • • • •

(c) • • •

(2) Line seizure by automatic telephone dialing systems. Automatic telephone dialing systems which deliver a recorded message to the called party must release the called party's telephone line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to take or receive other calls.

(3) Telephone facsimile machines: Identification of the sender of the message. It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such message clearly contains, in a margin at the top or bottom of each transmitted page or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. Telephone facsimile machines manufactured on and after December 20, 1992 must clearly mark such identifying information on each transmitted message.

published in the Federal Register for separate comment.<sup>217</sup>

The Commission estimated that approximately 40,000 industry members could be affected by the revised proposed Rule's recordkeeping requirements. It further estimated that no more than 100 companies would find it necessary to develop, modify, construct, or assemble materials or equipment in order to comply with the revised proposed Rule. The Commission further estimated that it would take these 100 entities approximately 100 hours each during the first year of compliance to assemble the necessary equipment, for a total of 10,000 burden hours. It also estimated that the companies that already have recordkeeping systems would require only one hour to comply with the proposed recordkeeping requirements, for a total burden estimate of 49,900 hours. The Commission requested that this figure be rounded up to a burden estimate of 50,000 hours. The additional burden hours, which was a yearly estimate, allowed for approximately 100 new companies to enter the industry during each succeeding year without requiring the Commission to modify the burden estimate.

The revised proposed Rule required sellers and telemarketers to provide certain disclosures in telemarketing transactions. Specifically, the revised proposed Rule required sellers or telemarketers to disclose in an outbound telephone call, the identity of the seller; the purpose of the call; the nature of the goods or services; and that no purchase was necessary to win if a prize promotion was offered in conjunction with a sales offer of goods or services. If requested, the telemarketer was required to disclose the non-purchase entry method for the prize promotion.

The Commission estimated that 40,000 industry members make approximately 9 billion calls per year, or 225,000 calls per year per company. However, under §§ 310.6(d) and (e) of the revised proposed Rule, if an industry member chose to solicit consumers by using advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures, it would be exempted from complying with other disclosures required by the Rule. Because the burden of complying with written disclosures would be much lower than the burden of complying with all the Rule's provisions, the Commission estimated that at least 9,000 firms would choose to adopt telemarketing methods that exempt

them from the revised proposed Rule's oral disclosure requirements. The Commission estimated that it would take 7 seconds for callers to disclose the required information. It also estimated that at least 60% of calls resulted in "hang-ups" before the seller or telemarketer could make all the required oral disclosures and therefore lasted only 2 seconds. Accordingly, the Commission estimated that the total disclosure burden of the revised proposed Rule's requirements was approximately 250 hours per firm or 7.75 million hours.

The revised proposed Rule also required additional disclosures before the customer paid for goods or services. Specifically, the sellers or telemarketers were required to disclose the total costs to purchase, receive, or use the offered goods or services; all material restrictions; all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies if a representation about the policy was part of the sales offer; and that no purchase was necessary to win if a prize promotion was offered in conjunction with a sales offer of goods or services. The telemarketer also had to disclose the non-purchase entry method for the prize promotion. The Commission estimated that approximately 10 seconds were necessary to make these required disclosures orally. However, these disclosures were only required to be made where a call resulted in an actual sale. The Commission estimated that sales occur in approximately 6 percent of telemarketing calls. Accordingly, the estimated burden for the disclosures was 37.5 hours per firm or 1.163 million hours.

Alternately, the disclosures required before the customer paid for goods or services could be made in writing. The Commission estimated that approximately 9,000 firms would choose to comply with the optional written disclosure requirement. Although this burden estimate was difficult to quantify, mailing campaigns appeared to be much less burdensome for firms than were individual oral disclosures. The Commission also found that these disclosure requirements were closely consistent with the ordinary business practices of most members of the industry. Absent the recordkeeping requirements, the Commission believed that this was the type of information that would be retained by these entities in any event during the normal course of business because it would be useful in resolving private, non-governmental inquires and disputes. Nonetheless, the Commission had no reliable data from

which to conclude that there was no separately identifiable burden associated with this provision. Therefore, it estimated that a typical firm would spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule, for an estimated burden estimate of 90,000 hours.

No comments were received addressing the Commission's paperwork burden projections. Therefore the Commission sees no reason to revise its projections of burden per year per covered industry member, or to modify the recordkeeping or disclosure requirements in the revised proposed Rule.

Because the aforementioned requirements would involve the "collection of information" as defined by the regulations of OMB, the Commission was required to submit the proposed requirements to OMB for clearance, 5 CFR 1320.13, and did so as part of this proceeding. OMB approved the request and assigned control number 3084-0097 to the information collection requirements. This approval will expire on July 31, 1998, unless it has been extended before that date.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices. Accordingly, the Commission amends chapter I, subchapter C of 16 CFR by adding a new part 310 to read as follows:

**ETC**

**PART 310—TELEMARKETING SALES RULE**

- § 310.1 Scope of regulations in this part.
  - § 310.2 Definitions.
  - § 310.3 Deceptive telemarketing acts or practices.
  - § 310.4 Abusive telemarketing acts or practices.
  - § 310.5 Recordkeeping requirements.
  - § 310.6 Exemptions.
  - § 310.7 Actions by states and private persons.
  - § 310.8 Severability.
- Authority: 15 U.S.C. 6101-6108.

§ 310.1 Scope of regulations in this part. This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108.

§ 310.2 Definitions.

(a) Acquirer means a business, organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for

money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a State.

(c) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(d) *Commission* means the Federal Trade Commission.

(e) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(g) *Credit card sales draft* means any record or evidence of a credit card transaction.

(h) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(i) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(k) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.

(l) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(m) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(n) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services.

(o) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(p) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer

does not identify the specific item that the person will receive.

(q) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(r) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(s) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(t) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, whenever the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

**§ 3105. Deceptive telemarketing acts or practices.**

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays for goods or services offered, failing to disclose, in

a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature, or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win

1. Where a seller or telemarketer uses a form to a customer to use a coupon to redeem payment, the form or information must state the information required by § 310.2(a)(1) before sending a customer to pick up payment or authorization for payment, or

2. For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z, shall constitute compliance with § 310.2(a)(1) of this Rule.

a prize or to participate in a prize promotion:

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or

(vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;

(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

(A) The date of the draft(s);

(B) The amount of the draft(s);

(C) The payor's name;

(D) The number of draft payments (if more than one);

(E) A telephone number for customer inquiry that is answered during normal business hours; and

(F) The date of the customer's oral authorization; or

(iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(A) All of the information contained in §§ 310.3(a)(3)(i)-(F); and

(B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and

(4) Making a false or misleading statement to induce any person to pay for goods or services.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a) or (c), or § 310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods

or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to § 310.4(b)(1)(ii);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with § 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.

(d) *Required oral disclosures.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a

prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

**§ 310.5 Recordkeeping requirements.**

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;
- (3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;
- (4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and
- (5) All verifiable authorizations required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the manner, form, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be

responsible for complying with §§ 310.3(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section, in the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

**§ 310.6 Exemptions.**

The following acts or practices are exempt from this Rule:

- (a) The sale of pay-per-call services subject to the Commission's "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308;
- (b) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR part 438;
- (c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;
- (d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;
- (e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in §§ 310.4(a)(2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;

(f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(3) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in §§ 310.4(a)(2) or (3), or direct mail solicitations that guarantee

or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and

(g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

**§ 310.7 Actions by States and private persons.**

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its instituting an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this section shall prohibit any attorney general or other authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

**§ 310.8 Severability.**

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission:  
Benjamin I. Berman,  
Acting Secretary.

Concurring Statement of Commissioner Mary L. Arcuonaga to Telemarketing Sales Rule, Matter No. R431001.

As required by the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission today promulgates a Telemarketing Sales Rule. I join my colleagues in promulgating the Rule, which generally should be beneficial in combating telemarketing fraud. I remain concerned, however, about the legal basis for the exemptions and exceptions to the exemptions for certain categories of business activities

<sup>1</sup> For a list of consumer credit products covered by the Truth in Lending Act, 15 U.S.C. 1601 et seq., see Regulation Z, 12 CFR part 226, consistent with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, 12 CFR part 226, consistent with § 310.5(a)(5) of this Rule.



## CONSUMER TIPS: TELEPHONE PREFERENCE SERVICE

### ■ WHO SPONSORS THE TELEPHONE PREFERENCE SERVICE?

The Telephone Preference Service (TPS) is a free consumer service sponsored by the Direct Marketing Association (DMA).

Established in 1917, DMA is the oldest and largest national trade association serving the direct marketing field. Members of DMA market goods and services directly to consumers using such media as direct mail and catalogs, telephone, magazine and newspaper ads and broadcast advertising. DMA does not market commercial telemarketing lists; it acts as neither a source nor a clearinghouse for telemarketing lists directed toward consumers.

### ■ WHAT IS THE PURPOSE OF TPS?

Experience has shown that many people enjoy receiving information about products or services in their homes over the telephone. Many consumers find telephone shopping to be a convenient way to shop. However, some consumers would like to receive fewer telephone solicitation calls at home. TPS is designed to assist those consumers in decreasing the amount of national commercial calls received.

### ■ HOW DO CONSUMERS REGISTER WITH TPS?

Consumers may register with TPS by writing to:

Telephone Preference Service  
Direct Marketing Association  
P. O. Box 9014  
Farmingdale, NY 11735-9014

The consumer should include his/her name, address and telephone number (with area code) in the letter requesting name removal. Consumers must register with TPS directly; second party requests cannot be processed.

quire intent to harm. — Wilful misconduct means volitional action taken either with a knowledge that serious injury to another will possibly result, or with wanton and reckless disregard of the possible results. *Aetna Cas. & Sur. Co. v. Marion Equip. Co.*, 894 P.2d 664 (Alaska 1995).  
Because the insured was found by a jury

to have acted with reckless disregard of the plaintiff's interests and safety, the insured's injurious behavior is properly termed wilful misconduct. Consequently, this section forbids the indemnity the insurer seeks. *Aetna Cas. & Sur. Co. v. Marion Equip. Co.*, 894 P.2d 664 (Alaska 1995).

**Chapter 50. Competitive Practices and Regulation of Competition.**

**Article:**

- 3. Unfair Trade Practices and Consumer Protection (§§ 45.50.471, 45.50.477)
- 4. Monopolies, Restraint of Trade (§§ 45.50.572, 45.50.592)

**Article 3. Unfair Trade Practices and Consumer Protection.**

**Section**

- 471. Unlawful acts and practices
- 477. Use of titles relating to industrial hygiene

**Sec. 45.50.471. Unlawful acts and practices.** (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

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

- (1) fraudulently conveying or transferring goods or services by representing them to be those of another;
- (2) falsely representing or designating the geographic origin of goods or services;
- (3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;
- (4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
- (5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;
- (6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (7) disparaging the goods, services, or business of another by false or misleading representation of fact;
- (8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

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

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

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

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350;

(23) failing to comply with AS 45.45.130 — 45.45.240;

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of that person's estate; upon demand by the person on whose behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of AS 45.50.800 — 45.50.850 (Alaska Gasoline Products Leasing Act);

(26) failing to comply with AS 45.30 relating to mobile home warranties and mobile home parks;

(27) failing to comply with AS 14.48.060(b)(13);

(28) dealing in bearing aids and failing to comply with AS 08.65;

(29) violating AS 45.45.910(a), (b), or (c);

(30) failing to comply with AS 45.50.473;

(31) violating the provisions of AS 45.45.400;

(32) knowingly selling a reproduction of a piece of art or handicraft that was made by a resident of the state unless the reproduction is clearly labeled as a reproduction; in this paragraph, "reproduction" means a copy of an original if the copy is

(A) substantially the same as the original; and

(B) not made by the person who made the original;

(33) violating AS 08.66.010 — 08.66.090 (motor vehicle dealers);

(34) violating AS 08.66.200 — 08.66.350 (motor vehicle buyers' agents);

(35) violating AS 45.63 (telephonic solicitations);

(36) violating AS 45.68 (charitable solicitations);

(37) violating AS 45.50.474 (on board promotions);

(38) referring a person to a dentist or a dental practice that has paid or will pay a fee for the referral unless the person making the referral discloses at the time the referral is made that the dentist or dental practice has paid or will pay a fee based on the referral;

(39) advertising that a person can receive a referral to a dentist or a dental practice without disclosing in the advertising that the dentist or dental practice to which the person is referred has paid or will pay a fee based on the referral if, in fact, the dentist or dental practice to which the person is referred has paid or will pay a fee based on the referral.

(40) violating AS 45.50.477(a) — (c).

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) *[Repealed, § 21 ch 166 SLA 1978]* (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1974; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 3 ch 197 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978; am § 12 ch 131 SLA 1986; am § 2 ch 59 SLA 1990; am § 3 ch 82 SLA 1990; am § 1 ch 92 SLA 1992; am § 2 ch 118 SLA 1992; am § 6 ch 10 SLA 1993; am § 3 ch 60 SLA 1993; am § 4 ch 109 SLA 1994; am § 2 ch 22 SLA 1995; am § 1 ch 69 SLA 1995)

*Revisor's notes.* — Paragraph (b)(21) was enacted as (b)(23) and paragraph (b)(25) was enacted as (b)(22); renumbered in 1976 Paragraph (b)(28) was enacted as (b)(27), renumbered in 1996 Paragraphs (b)(24) and (25) were enacted as (b)(23) and (b)(22), respectively, renumbered in 1976 Paragraph (b)(28) was enacted as (b)(27), renumbered in 1996 Paragraph (b)(30) was enacted as (b)(29), renumbered in 1990 Paragraph (b)(32) was enacted as (b)(31), renumbered in 1992, at which

"AS 45.45.410" to correct a manifest error in § 2, ch 118, SLA 1992 Paragraphs (b)(35) and (36) were enacted as (b)(33) and (34), respectively, renumbered in 1993 Paragraph (b)(40) was enacted as (b)(38), renumbered in 1995.

*Effect of amendments.* — The first 1995 amendment, effective August 8, 1995, in subsection (b), added paragraphs (38) and (39).

The second 1995 amendment, effective September 3, 1995, added paragraph (b)(40).

#### ~~Sec. 45.50.474. Required disclosures in promotions on board cruise ships.~~

*Cross references.* — For exemption for on shore excursions sold on board a cruise ship, that was in effect from May 19, 1993

through September 29, 1995, see § 2, ch 31, SLA 1995 in the Temporary and Special Acts

~~Sec. 45.50.477. Use of titles relating to industrial hygiene.~~  
 (a) A person may not use the title "industrial hygienist," the initials "I.H.," another term that includes the phrase "industrial hygiene" or similar words, or represent to the public that the person is an industrial hygienist, unless the person has a baccalaureate or graduate

**Sec. 45.50.472. Junk telephone calls.** (a) Making a junk telephone call without the prior written consent of the person called is unlawful.

(b) In this section "junk telephone call" means a telephone call made for the purpose of advertising through the use of a recorded advertisement.

(c) The provisions of AS 45.50.481 — 45.50.561 apply to this section. (§ 1 ch 17 SLA 1978)

**Sec. 45.50.473. Disclosure of costs of certain telephone services.** (a) A person may not provide an alternate operator service without disclosing to the consumer before a charge is incurred the cost of the service provided by the person and the identity of the person providing those services. This section does not affect the power of the Alaska Public Utilities Commission to regulate providers of alternate operator services under AS 42.05 in a manner consistent with this section.

(b) The owner of a place where telephone business from consumers is aggregated, including a hotel, motel, hospital, and pay telephone other than a telephone utility regulated by the Alaska Public Utilities Commission, shall disclose a surcharge added to the cost of local or long distance telephone service before the service is provided. Disclosure may be made by posting the amount of the surcharge on or near the telephone instruments subject to the surcharge or by other reasonable written or oral means.

(c) A violation of this section constitutes an unfair or deceptive act or practice under AS 45.50.471. Notwithstanding AS 45.50.531(a), it is presumed that actual damages to the consumer are equal to the cost of the service provided plus \$200. Additional damages must be proved.

(d) In this section, "alternate operator service" has the meaning given in AS 42.05.325(c). (§ 4 ch 82 SLA 1990)

**Cross references.** — For legislative findings in connection with the enactment of this section, see § 1, ch 82, SLA 1990 in the Temporary and Special Acts

**Sec. 45.50.474. Required disclosures in promotions on board cruise ships.** A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned or featured, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. A violation of this section constitutes an unfair trade practice under AS 45.50.471. In this section, "cruise ship" means a ship that operates at least 120 days a year anywhere in the world, provides cruises of at least 72 hours in length for ticketed passengers, provides

This section is repealed. It is reenacted in Sec. 45.50.475 (2) on page 1, lines 12-13 in SB 239.

overnight accommodations and meals for those passengers, is operated by an authorized cruise ship operator, and is certified under the International Convention for the Safety of Life at Sea or otherwise certified by the United States Coast Guard. (§ 5 ch 109 SLA 1994)

**Effective dates.** — Section 7, ch 109, June 11, 1994, in accordance with AS 1994 makes this section effective 01.10.070(c)

*Sec. 45.50.480. [Repealed, § 1 ch 246 SLA 1970.]*

**Sec. 45.50.481. Exemptions.** (a) Nothing in AS 45.50.471 — 45.50.561 applies to

(1) an act or transaction regulated under laws administered by the state, by a regulatory board or commission except as provided by AS 45.50.471(b)(27) and (30), or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in AS 45.50.471;

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

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or a regulation adopted under the authority of those chapters.

(b) The exemption in (a)(3) of this section does not apply to an act or transaction between a bank and its borrowers, depositors, or other customers or potential customers. (§ 2 ch 246 SLA 1970; am §§ 2, 3 ch 53 SLA 1974; am § 6 ch 64 SLA 1986; am § 5 ch 82 SLA 1990; am § 100 ch 26 SLA 1993)

**Effect of amendments.** — The 1990 amendment inserted "and (30)" after "AS 45.50.471(b)(27)" in paragraph (1) (now (a)(1)). The 1993 amendment, effective January 1, 1994, added subsection (b).

NOTES TO DECISIONS

**Applicability of paragraph (a)(1) exemption.** — Paragraph (1) of this section (now paragraph (a)(1)) exempts only those acts or transactions which are the subject of ongoing, careful regulation. *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980)

Unfair acts or practices are exempt under paragraph (1) of this section (now paragraph (a)(1)) only where the business is both regulated and unfair acts and practices are prohibited. *Matanuska*

*Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980)

The exemption contained in paragraph (1) of this section (now paragraph (a)(1)) was not intended to apply to acts prohibited by the Alaska Restraint of Trade Act. AS 45.50.562 — 45.50.596. *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980)

Since the Restraint of Trade Act, AS 45.50.562 — 45.50.596, does not regulate the dairy industry within the meaning of

paragraph (1) of this section (now paragraph (a)(1)), the exemption does not apply. *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980).

Mere regulation under a separate and distinct statutory scheme satisfies only one prong of paragraph (1) of this section (now paragraph (a)(1)); unfair acts and practices are exempt from the purview of the act only where the business is both regulated elsewhere and the unfair acts and practices are therein prohibited. *State v. O'Neill Investigations, Inc.*, 609 P.2d 820 (Alaska 1980).

This article embraces independent debt collection practices. — See note under this catchline following the article analysis.

Article not applicable to sale of real property. — See note under this catchline following the article analysis. *State v. First Nat'l Bank*, 660 P.2d 406 (Alaska 1982).

Applied in *O.K. Lumber Co. v. Providence Wash Ins Co.*, 759 P.2d 523 (Alaska 1988).

Collateral references. — Scope and exemptions of state deceptive trade practices and consumer protection acts. 89 ALR3d 399.

*Sec. 45.50.490. [Repealed, § 1 ch 246 SLA 1970.]*

**Sec. 45.50.491. Regulations.** The attorney general, in accordance with AS 44.62 (Administrative Procedure Act), may adopt regulations interpreting and forms necessary for administering the provisions of AS 45.50.471 — 45.50.561. (§ 2 ch 246 SLA 1970; am § 4 ch 53 SLA 1974)

**Sec. 45.50.495. Investigative power of attorney general.** (a) If the attorney general has cause to believe that a person has engaged in, is engaging in, or is about to engage in a deceptive trade practice under AS 45.50.471, the attorney general may

(1) request the person to file a statement or report in writing, under oath, on forms prescribed by the attorney general, setting out all facts and circumstances concerning the sale or advertisement of property by the person, and other information considered necessary;

(2) examine under oath any person in connection with the sale or advertisement of property;

(3) examine property or sample of the property, record, book, document, account, or paper that the attorney general considers necessary;

(4) make true copies of records, books, documents, accounts, or papers examined under (3) of this subsection, which may be offered in evidence in place of the originals in actions brought under AS 45.50.471 — 45.50.561; and

(5) under an order of the superior court, impound samples of property that are material to the investigation and retain the sample until proceedings undertaken under AS 45.50.471 — 45.50.561 are completed.

(b) The attorney general, in addition to other powers conferred by this section, may issue subpoenas to require the attendance of wit-

nesses or the production of documents or other physical evidence, administer oaths, and conduct hearings to aid an investigation or inquiry. Service of an order or subpoena shall be made in the same manner as a summons in a civil action in the superior court. (§ 5 ch 53 SLA 1974)

#### NOTES TO DECISIONS

Investigation of acts violating both article 3 and article 4 of chapter. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561, would also violate the Restraint of Trade Act, AS 45.50.582 — 45.50.596, if an act does violate both statutes, an investigation pursuant to this section would be appropriate. *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980).

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an

AS 45.50.582 violation, which is Alaska's equivalent of the Sherman Act, it was appropriate for the state to investigate as well the possible violation of AS 45.50.471, which is Alaska's equivalent of the Federal Trade Commission Act, 16 U.S.C. § 41 et seq. *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980).

The state cannot be expected to know with certainty the exact nature of a suspected violation. This uncertainty is the very reason for conferring precomplaint investigatory authority on the attorney general. *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980).

*Sec. 45.50.500. [Repealed, § 1 ch 246 SLA 1970.]*

**Sec. 45.50.501. Restraining prohibited acts.** (a) When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in AS 45.50.471, and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. The action may be brought in the superior court in the judicial district in which the person resides or is doing business or has the person's principal place of business in the state, or, with the consent of the parties, in any other judicial district in the state.

(b) The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of an act or practice declared to be unlawful by AS 45.50.471. (§ 2 ch 246 SLA 1970)

#### NOTES TO DECISIONS

Article not applicable to sales of real property. — The scope of the consumer protection act does not enlarge to include sales of real property when suit is instituted by the state even though this section contains no limitation to "goods or

services" comparable to that in such sections as AS 45.50.561(4) or AS 45.50.531(a). *State v. First Nat'l Bank*, 660 P.2d 406 (Alaska 1982).

Cited in *State v. Grigan*, 628 P.2d 870 (Alaska 1981).

Collateral references. — Validity of extra statutory grant of power to state to seek, or to court to grant, restitution of fruits of consumer fraud. 59 ALR3d 1222

Sec. 45.50.510. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.511. **Assurances of voluntary compliance.** In the administration of AS 45.50.471 — 45.50.561, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be violative of AS 45.50.471 — 45.50.561 from a person who has engaged or was about to engage in such an act or practice. The assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has the principal place of business in the state. The assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under AS 45.50.501. (§ 2 ch 246 SLA 1970)

Sec. 45.50.521. **When information and evidence confidential and nonadmissible.** (a) [Repealed by § 6 ch 53 SLA 1974.]

(b) Subject to the provisions of AS 45.50.501(a), the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in AS 45.50.471 during an investigation conducted by the attorney general under AS 45.50.471 — 45.50.561, nor are the records of investigation or intelligence information of the attorney general obtained under AS 45.50.471 — 45.50.561 considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy that constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis. (§ 2 ch 246 SLA 1970; am § 6 ch 53 SLA 1974)

Sec. 45.50.531. **Private and class actions.** (a) A person who suffers an ascertainable loss of money or property as a result of another person's act or practice declared unlawful by AS 45.50.471 may bring a civil action to recover actual damages or \$200, whichever is greater. The court may, in cases of wilful violation, award up to three times the actual damages sustained. The court may provide other relief it considers necessary and proper.

(b) [Repealed, § 4 ch 31 SLA 1987.]

(c) Upon commencement of an action brought under this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of an order or judgment

in the action, shall mail a copy of the order or judgment to the attorney general.

(d) [Repealed, § 4 ch 31 SLA 1987.]

(e) A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by AS 45.50.471.

(f) A person may not commence an action under this section more than two years after the person discovers or reasonably should have discovered that the loss resulted from an act or practice declared unlawful by AS 45.50.471.

(g) In an action brought under this section, the court may award the prevailing party all or a portion of the actual costs and attorney fees incurred by the party.

(h) If the basis for the action is the fault of the manufacturer or supplier of the merchandise, the manufacturer or supplier who is at fault is liable for the damages awarded against the retailer under this section. (§ 2 ch 246 SLA 1970, am § 1 ch 225 SLA 1976; am §§ 1 — 4 ch 31 SLA 1987)

Revisor's notes. — In subsections (g) and (h), the word "section" was substituted for "chapter" in 1987 to correct a manifest error.

#### NOTES TO DECISIONS

**Opportunity to cure technical pleading deficiency.** — Although defendant is a New Jersey corporation with its principal place of business in Ohio and plaintiffs failed to set forth in their amended complaint the essential allegation that defendant was "doing business" in Alaska within the meaning of subsection (a) of this section, dismissing the claim on the basis of this technicality was inappropriate, leave to amend the complaint should have been granted in order to afford the

plaintiffs the opportunity to cure their technical pleading deficiency. *Shooshanian v Dennis E. Wagner, Borden, Inc.*, 672 P.2d 453 (Alaska 1983).

Applied in *Swenson Trucking & Excavating, Inc v Truckwell Equip Co.*, 604 P.2d 1113 (Alaska 1980); *State v. First Nat'l Bank*, 660 P.2d 406 (Alaska 1982).

Cited in *O K Lumber Co v Providence Wash. Ins. Co.*, 759 P.2d 523 (Alaska 1988).

**Collateral references.** — Consumer class action based on fraud or misrepresentations. 53 ALR3d 534

Right to private action under state consumer protection act. 62 ALR3d 169

Reasonableness of offer of settlement under state deceptive trade practice and consumer protection acts. 90 ALR3d 1350

Sec. 45.50.541. **Nonnegotiability of consumer paper.** (a) If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, the note, instrument, or evidence

of indebtedness shall have printed on its face the words "consumer paper," and the note, instrument or evidence of indebtedness with the words "consumer paper" printed on it is not a negotiable instrument, within the meaning of AS 45.01 — AS 45.09, AS 45.12, and AS 45.14 (Uniform Commercial Code).

(b) Notwithstanding the absence of such a notice on a note, instrument, or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. An agreement to the contrary has no effect in limiting the rights of a consumer.

(c) The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. (§ 2 ch 246 SLA 1970)

Revisor's notes. — In 1993, under SLA 1993 the citation to the Uniform Code of Commercial Code was revised.

#### NOTES TO DECISIONS

Stated in *Benefits Home Systems v. Jeasop*, 641 P.2d 843 (Alaska 1982).

**Sec. 45.50.542. Provisions not waivable.** A waiver by a consumer of the provisions of AS 45.50.471 — 45.50.561 is contrary to public policy and is unenforceable and void. (§ 7 ch 53 SLA 1974)

**Sec. 45.50.545. Interpretation.** In interpreting AS 45.50.471 due consideration and great weight should be given the interpretations of 15 U.S.C. 45(a)(1) (§ 5(a)(1) of the Federal Trade Commission Act). (§ 8 ch 53 SLA 1974)

#### NOTES TO DECISIONS

The Federal Fair Debt Practices Act, 15 U.S.C. § 1692 (Supp. 1977), expands already existing Federal Trade Commission jurisdiction over unfair or deceptive acts and practices of collection agencies. It is not written on a clean slate. The Federal Trade Commission's prior exercise of jurisdiction in this area is entitled to great weight, and leads to the conclusion that this new act merely supplements the old. *State v. O'Neill Investigations, Inc.*, 609 P.2d 520 (Alaska 1980). Quoted in *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980).

**Sec. 45.50.551. Civil penalties.** (a) A person who violates the terms of an injunction or restraining order issued under AS 45.50.501 shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and the cause shall be continued, and in these cases the attorney

general acting in the name of the state may petition for recovery of the penalties.

(b) In an action brought under AS 45.50.501, if the court finds that a person is using or has used an act or practice declared unlawful by AS 45.50.471, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than \$5,000 per violation.

(c) [Repealed by § 21 ch 166 SLA 1978.] (§ 2 ch 246 SLA 1970; am § 9 ch 53 SLA 1974; am § 21 ch 166 SLA 1978)

#### Sec. 45.50.561. Definitions. In AS 45.50.471 — 45.50.561

(1) "advertising" includes an attempt directly or indirectly by publication, dissemination, solicitation, endorsement, or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault, or columbarium, used or intended to be used for the interment of human remains;

(3) "chain distributor scheme" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these persons does not change the identity of the scheme as a chain distributor scheme, as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(4) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(6) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO. SB 239**

Revision Date: \_\_\_\_\_ Department: Commerce and Economic Development  
 Title: An act relating to telephone advertisements, BRU: AK Public Utilities Commission  
solicitations, and directory listings Component: AK Public Utilities Commission  
 Sponsor: Senator Rieger  
 Requestor: Senate Labor and Commerce COMPONENT SERIAL NO. #364

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

**CAPITAL EXPENDITURES**

**CHANGE IN REVENUES**

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ \_\_\_\_\_

POSITIONS
FULL-TIME
PART-TIME
TEMPORARY

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill would have a zero fiscal impact on the Alaska Public Utilities Commission. Enforcement of this bill would be by the Department of Law.

Prepared by: Robert A. Lohr, Executive Director Phone: (907)276-6222  
 Division: AK Public Utilities Commission Date: February 5, 1996  
 Approved by Commissioner: William L. Hensley Date: 2-5-96  
 Agency: Commerce and Economic Development

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
 For further distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 239

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
"An Act relating to telemarketing, BRU: Civil Division  
advertisements, solicitations and directory listings." Component: General Legal Services  
 Sponsor: Senator Rieger  
 Requester: Senate Labor and Commerce COMPONENT SERIAL NO. 2087

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends the state's consumer protection laws to make it unlawful to engage in telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directory as not wishing to receive telephone solicitations. The bill also requires local exchange telecommunication companies provide for the identification in their telephone directories of those residential customers who do not wish to receive telephone solicitations. Upon request by a person who engages in telephone solicitations, local exchange telephone companies would further be required to provide a list of all telephone numbers in their telephone directories of residential customers who do not wish to receive telephone solicitations. The bill should help reduce unwanted telephone solicitations once sufficient time has run to allow for the telephone directory identification process to occur. Nevertheless, some telephone solicitation organizations may choose to ignore the bill's prohibition against unwanted solicitations, resulting in complaints to the Better Business Bureau, which handles complaint taking for the state. The Department of Law is

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: 2/5/96  
 Date: 2/5/96

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 239

ANALYSIS CONTINUATION:

available for enforcement purposes if there is a large enough number of violations to warrant enforcement. At this time we believe that, once there is sufficient directory identification of those who do not wish to receive telephone solicitations, the number of violations will have a fiscal impact for the Department of Law.

SENATE BILL NO. 239

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY SENATOR RIEGER

Introduced: 1/26/96  
Referred: L&C, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to telephone advertisements, solicitations, and directory listings."

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

3 \* Section 1. AS 45.50.471(b) is amended by adding a new paragraph to read:

4 (41) failing to comply with AS 45.50.475.

5 \* Sec. 2. AS 45.50 is amended by adding a new section to read:

6 Sec. 45.50.475. UNLAWFUL UNWANTED TELEPHONE  
7 ADVERTISEMENTS AND SOLICITATION. (a) A person is in violation of  
8 AS 45.50.471(b)(41) if the person

9 (1) engages in the telephone solicitation of a residential telephone  
10 customer of a telecommunications company and the customer is identified in the  
11 telephone directory as not wishing to receive telephone solicitations; or

12 (2) uses an automated or recorded message as a telephone  
13 advertisement or solicitation.

14 (b) A local exchange telecommunications company and a company that  
15 provides a telephone directory on behalf of a local exchange telecommunications

COMMITTEE OF SENATORS

2

no polling by automated electronic means.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

company shall provide for the identification in the telephone directory of those residential customer who do not wish to receive telephone solicitations.

(c) A local exchange telecommunications company shall, upon request, provide to a person who engages in telephone solicitation a list of all telephone numbers identified in the telephone directory as residential customers who do not wish to receive telephone solicitations. If possible and if requested by the person who engages in telephone solicitation, this list shall be provided in computer readable format.

(d) Local exchange telecommunications companies shall inform residential customers of the provisions of this section. Notification may be made by

(1) annual inserts in the billing statements mailed to residential customers; or

(2) conspicuous publication of the notice in the consumer information pages of local telephone directories.

(e) In this section,

(1) "customer" means a residential telephone customer of a telecommunications company;

(2) "telephone solicitation"

(A) means the solicitation by a person by telephone of a customer at the residence of the customer for the purpose of encouraging the customer to purchase property, goods, or services, or make a donation;

(B) does not include

(i) calls made in response to a request or inquiry by the called customer or communications made during a call made by the customer;

(ii) calls made by a charitable organization, a public agency, or volunteers on behalf of the charitable organization or public agency to members of the organization or agency or to persons who have made a donation to the organization or agency or expressed an interest in making a donation;

(iii) calls limited to polling or soliciting the expression of ideas, opinions, or votes;

B 12.11.15  
DST

D  
A 1/15

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

(iv) business-to-business calls; or

(v) a person soliciting business from prospective purchasers who have previously purchased from the person making the solicitation or from the business enterprise for which the person is calling but only if the person or business enterprise has not received a written request from the prospective purchaser asking that telephone solicitations cease; the person or business enterprise is presumed to have received a written request no later than 10 days after the prospective purchaser mailed it, properly addressed and with the appropriate postage.

\* Sec. 3. AS 45.50.472 is repealed.

**SB**

**253**



**SENATOR JIM DUNCAN**  
*ALASKA STATE LEGISLATURE*

Alaska State Senate

State Capitol • Room 119 • Juneau, Alaska 99801-1182 • (907) 465-4768 • Fax 465-4748

*Memorandum*

**Date:** February 5, 1996

**To:** Senator Tim Kelley, Chair  
Labor and Commerce Committee

**From:** Senator Jim Duncan

**Subject:** SB 253, An Act relating to insurance coverage for costs of prostate detection.

I request that you schedule SB 253, relating to insurance coverage for costs of prostate detection, for a hearing in the Labor and Commerce Committee as soon as possible.

Prostate cancer is a serious health concern to men over the age of fifty. Prostate Specific Antigen (PSA) tests can be done to detect the presence of cancer and alert men of potential health problems. Currently, insurance companies are not required by Alaska law to include this test in their coverage package. SB 253 will require that insurance companies cover the PSA on annual physical exams when appropriate.

The importance of screening for malignant cancer is well documented. Prostate cancer accounts for 36% of all male cancers and is the second leading cause of death in men after lung cancer as reported by the National Cancer Institute. Although often presumed to develop slowly, nearly two thirds of new cancer cases have spread beyond the prostate gland at the time of diagnosis.

Research by the National Cancer Institute states that the PSA clearly can increase the detection rate of early stage cancers, many of which are curable by local modality therapies. Promising techniques are being explored to increase the accuracy of the PSA. While medical technology continues to grow rapidly, it would be wise to require the PSA as a precursor for more advanced and determinate tests.

SB 253 makes men's health issues a priority. I would welcome your support in mandating the PSA test in insurance coverage and request that you schedule this bill for a hearing in the Labor and Commerce Committee as soon as possible.

Attachments

## New Cancer Test For the Prostate Appears Promising

By Ron Wintrow

**Small** **Amount** of **Free** **Prostate** **Antigen** **May** **Be** **Used** **to** **Measure** **Prostate** **Cancer** **Progression**, **Medical** **Researchers** **Said** **in** **a** **New** **Version** **of** **a** **Widely** **Used** **to** **Screen** **Test** **for** **Prostate** **Cancer** **Appears** **to** **Improve** **its** **Accuracy** **in** **Detecting** **the** **Disease**.

**If** **the** **results** **are** **borne** **out** **in** **larger** **studies**, **the** **test** **may** **yield** **fewer** **false** **positive** **readings** **for** **cancer** **and** **thus** **re** **duce** **by** **25** **to** **50** **the** **number** **of** **men** **who** **undergo** **unnecessary** **biopsies** **and** **other** **examinations** **to** **determine** **whether** **they** **have** **cancer**.

**Use** **of** **the** **current** **test**, **known** **as** **PSA**, **for** **prostate** **specific** **antigen**, **has** **in** **creased** **among** **men** **over** **50** **But** **it** **also** **has** **provoked** **controversy** **in** **part** **because** **only** **one** **in** **three** **men** **who** **have** **positive** **readings** **turns** **out** **to** **have** **cancer**. **That** **means** **the** **test** **could** **lead** **two** **out** **of** **three** **to** **undergo** **unnecessary** **and** **sometimes** **pain** **ful** **biopsies** **and** **other** **tests**.

**The** **high** **rate** **of** **false** **positive** **results** **occurs** **because** **PSA** **is** **also** **elevated** **in** **older** **men** **with** **a** **common** **noncancerous** **condition** **called** **benign** **prostatic** **hyperplasia**.

**The** **new** **test** **measures** **two** **forms** **of** **PSA**, **one** **that** **flows** **in** **certain** **blood** **pro** **teins** **and** **another** **that** **is** **free** **floating** **in** **the** **blood** **stream**. **For** **reasons** **not** **under** **stood**, **men** **with** **prostate** **cancer** **have** **significantly** **lower** **levels** **of** **free** **PSA** **than** **men** **with** **BPH**, **said** **William** **J. Catalona**, **chief** **of** **urologic** **surgery** **at** **Washington** **University** **School** **of** **Medicine**, **St. Louis**, **and** **lead** **author** **of** **the** **study**. **As** **a** **result**, **the** **study** **indicated**, **the** **new** **test** **can** **better** **distinguish** **between** **men** **with** **prostate** **cancer** **and** **those** **with** **BPH**.

**In** **the** **study**, **published** **in** **Lancet**, **about** **20** **men** **with** **prostate** **cancer** **and** **20** **men** **with** **BPH** **under** **went** **the** **new** **test** **and** **the** **current** **test**. **The** **new** **test** **correctly** **diagnosed** **18** **of** **the** **20** **men** **with** **prostate** **cancer** **and** **18** **of** **the** **20** **men** **with** **BPH**. **The** **current** **test** **correctly** **diagnosed** **15** **of** **the** **20** **men** **with** **prostate** **cancer** **and** **15** **of** **the** **20** **men** **with** **BPH**.

**In** **general**, **researchers** **found** **that** **men** **whose** **free** **floating** **PSA** **was** **significantly** **below** **20** **of** **their** **total** **PSA** **levels** **were** **more** **likely** **to** **have** **cancer** **than** **those** **with** **free** **PSA** **levels** **above** **20**.

**The** **study** **found** **that** **the** **free** **PSA** **test** **would** **have** **prevalenced** **10** **of** **undetectable** **biopsies** **among** **men** **who** **didn't** **have** **BPH** **and** **20** **of** **the** **biopsies** **among** **those** **with** **the** **benign** **condition**. **In** **a** **third** **group**, **who** **had** **BPH** **and** **no** **abnormal** **symptoms** **when** **doctors** **first** **detected** **the** **prostate** **during** **a** **rectal** **exam**, **the** **free** **PSA** **test** **would** **have** **prevalenced** **10** **of** **undetectable** **biopsies**.

**Dr. Catalona** **said** **a** **new** **National** **PSA** **to** **involve** **12,000** **patients** **at** **eight** **medical** **centers** **around** **the** **U.S.** **has** **been** **launched** **as** **an** **effort** **to** **verify** **the** **results**.

— included in this  
packet of articles  
see JAMA. Oct. 18.

## CURRENT CONCEPTS

## SCREENING FOR PROSTATE CANCER WITH PROSTATE-SPECIFIC ANTIGEN

## An Examination of the Evidence

STEVEN H. WOOLF, M.D., M.P.H.

**A**FTER lung cancer, prostate cancer is the leading cause of deaths from cancer among men in the United States. It will claim 40,000 lives in 1995.<sup>1</sup> Studies in the early 1990s demonstrated that levels of prostate-specific antigen (PSA), a serine protease, are elevated in most men with clinically important prostate cancer and that measuring them is the best means for early detection of the disease.<sup>2,3</sup> In 1993, the American Cancer Society recommended that clinicians measure PSA in all men 50 years of age and older as part of an annual prostate examination and that PSA screening should begin at the age of 40 in men at high risk.<sup>4</sup> The American Urological Association issued similar recommendations. Support for PSA screening is not universal, however. Recommendations against PSA screening have been issued by the U.S. Preventive Services Task Force, the Canadian Task Force on the Periodic Health Examination, and the Canadian Urologic Association.<sup>5-7</sup> Recommendations by the American College of Physicians and the American Academy of Family Physicians are currently under review. Physicians in practice have opposing views about PSA screening.<sup>8</sup>

The debate about whether to perform PSA screening has important implications for both individual and public health, but the setting of appropriate policy has been hindered by inadequate data. Screening may reduce morbidity and mortality associated with prostate cancer, but this hypothesis is unproved. On the other hand, widespread testing may set off a cascade of diagnostic and treatment procedures with potentially serious complications, but the magnitude of these risks is uncertain. The overall balance of benefits and harms is therefore unclear. The economic implications of PSA screening are also unknown; testing all men over the age of 50 could cost the country billions of dollars, but the investment might be justified if suffering from prostate cancer could be reduced.

This article reviews the central scientific arguments in the controversy over PSA screening. The discussion is organized around the principal scientific questions that should be asked when one is evaluating any screening test: Is the target condition serious? Is the screening test accurate? Does early detection improve outcome?

Is screening or treatment harmful? Does screening do more good than harm?

## ANALYTIC ISSUES

## Is Prostate Cancer Serious?

There is little doubt about the seriousness of progressive prostate cancer (tumors that spread beyond the capsule or metastasize). Thousands of men suffer painful complications and die prematurely from such tumors. Ten-year survival rates are 75 percent when the cancer is confined to the prostate, 55 percent with regional extension, and 15 percent with distant metastases.<sup>9</sup> Age-adjusted mortality from prostate cancer has increased by 24 percent in recent years<sup>11</sup> and, largely because of increased screening, the incidence of new cases has risen by 40 percent.<sup>12</sup>

Not all prostate cancers are serious, however, because of the frequently indolent behavior of the disease. Autopsy studies report that about 30 percent of men over the age of 50 have histologic evidence of prostate cancer.<sup>13</sup> Extrapolation of these rates to U.S. census data suggests that as many as 9 million men could harbor latent prostate cancers (Table 1). Since there are about 40,000 deaths each year from the disease,<sup>1</sup> it seems likely that most prostate cancers in the population are not clinically important. Most men with latent prostate cancer die with, rather than from, the disease.

## Is PSA Screening Accurate?

Because it might be unethical for researchers to perform biopsies on men with normal PSA results, the true sensitivity and specificity of PSA screening are unknown. The test has a reported sensitivity of up to 80 percent in detecting prostate cancer in screened men,<sup>8</sup> but it lacks specificity. False positive results due to the presence of benign prostatic hypertrophy or prostatitis are common; 25 to 46 percent of men with benign prostatic hypertrophy have elevated PSA values.<sup>14,15</sup> PSA values may also fluctuate by as much as 30 percent for physiologic reasons.<sup>16</sup> The reported positive predictive value of PSA in screening studies is 28 to 35 percent, which means that one third of men with elevated PSA levels (>4 mg per milliliter) will be found to have prostate cancer on biopsy and two thirds will not (i.e., will have false positive results).<sup>17,18</sup> Participants in these studies were either patients seen at urology clinics or community volunteers, which has caused some to question whether the positive predictive value might be lower when screening occurs in primary care settings.

Promising techniques to improve the accuracy of PSA screening include measuring PSA density<sup>19</sup> (the PSA concentration divided by the volume of the gland) or the rate of change in PSA over time.<sup>20</sup> A third approach is to use age-adjusted reference ranges,<sup>21</sup> since PSA values increase with age. Finally, some advocate measuring the ratio of free to complexed PSA.<sup>22</sup> PSA bound to alpha<sub>1</sub>-antitrypsin accounts for a larger proportion of total PSA in patients with prostate cancer than in those with benign prostatic hypertrophy. No single approach has yet been proved to be more accu-

From the Department of Family Practice, Tufts University School of Medicine, Boston, Massachusetts (Dr. Woolf). Address correspondence and reprint requests to Dr. Woolf at Tufts University School of Medicine, 132 Charles Street, Boston, MA 02129.

rate than another. For now, the best way to reduce the frequency of false positive results is to combine PSA screening with the digital rectal examination, which increases the positive predictive value from 32 to 49 percent if the results of both are abnormal.<sup>9</sup>

A more fundamental problem than false positive results, however, has been how to determine whether cancers detected through PSA screening (true positives) are clinically important. As has already been noted, autopsy studies suggest that 30 percent of men over the age of 50 have latent prostate cancers that are unlikely to produce symptoms or affect survival. It has long been feared that population screening would preferentially identify these latent cancers (rather than aggressive disease) and that thousands of men who are more likely to die of other causes (e.g., coronary artery disease) would be subjected to unnecessary testing and treatment for prostate cancer. Recent evidence suggests, however, that cancers detected through PSA screening may be more aggressive and clinically important than latent cancers found on autopsy. About 31 to 38 percent of cancers identified through PSA screening and radical prostatectomy have evidence of extracapsular extension, poorly differentiated cells, large volume, or metastases.<sup>10-12</sup> These features are associated with an increased risk of progression, although they are not pathognomonic of aggressive disease. Autopsy studies also report capsular penetration, local tissue invasion, and diffuse or poorly differentiated cells in 10 to 88 percent of men with no antemortem prostate history.<sup>13,14</sup> For now, neither PSA values nor histologic findings can predict with certainty whether a newly diagnosed prostate cancer will progress or remain latent.

#### Does Early Detection of Prostate Cancer Improve Outcomes?

Ultimately, accuracy is less important than clinical outcomes in judging the efficacy of screening. Debates about the relative superiority of density, rate-of-change, and other indexes in improving the accuracy of PSA screening are irrelevant unless early detection improves the patient's health. PSA screening is often defended incorrectly on the basis of what has been discussed thus

far, with the evidence that the test can detect organ-confined cancer cited as sufficient grounds for screening. Screening cannot be justified unless patients who are screened have better health outcomes than those who are not. The literature provides such evidence for breast, cervical, and colorectal cancer screening.

There is little direct evidence, however, that screening for prostate cancer reduces morbidity or mortality. Indeed, few controlled studies have ever addressed this question. Observational studies of screening by digital rectal examination reported no benefit,<sup>15,16</sup> and no controlled study of health outcomes after PSA screening has yet been reported. Randomized, controlled trials addressing the health benefits of screening are under way in the United States and Europe, but the results will be unavailable for more than a decade.<sup>17</sup>

There is some indirect evidence that early detection may be beneficial. Men who undergo PSA screening are more likely to have early-stage disease at diagnosis (a phenomenon known as "stage shift") than unscreened men, and the proportion of cancers that are clinically or pathologically advanced appears to decrease with each successive year of testing.<sup>18</sup> Survival data suggest that men with localized tumors at diagnosis live longer than those with more advanced disease.<sup>1</sup> It is unclear, however, whether these findings reflect lead-time and length biases rather than an actual improvement in outcome. (Lead-time bias occurs when survival appears to be lengthened because the diagnosis was made earlier, rather than because death was delayed. Length bias refers to the tendency of screening to generate favorable outcomes by preferentially detecting slowly growing, indolent tumors, as opposed to aggressive tumors that are present in the population relatively briefly.)

One reason for questioning the effectiveness of early detection is the lack of direct evidence that treatment for prostate cancer improves outcomes. Arguments for the effectiveness of the principal treatments for prostate cancer — radical prostatectomy, radiation therapy, and hormonal treatment — are supported mainly by uncontrolled observational reports. The lack of controls and other design flaws limit the persuasiveness of this evidence. A randomized, controlled trial conducted in the 1970s reported that radical prostatectomy did not improve 15-year survival, but the trial suffered from numerous methodologic problems.<sup>19</sup> Well-designed randomized, controlled trials of treatment are now under way in the United States and Europe, but the results will be unavailable for more than a decade.

Skepticism about the efficacy of treatment has been heightened in recent years by evidence that patients with early-stage prostate cancer have good outcomes even without treatment. Johansson<sup>20</sup> and colleagues followed a population-based cohort of 223 Swedish men with initially untreated prostate cancer. After 12.5 years, only 10 percent had died of prostate cancer and 50 percent had died of other causes; the 10-year disease-specific survival rate was 83 percent. Critics argued that survival may have been inflated by the inclusion of a large proportion of older men with small, well-differentiated tumors.<sup>21</sup> Moreover, of the patients

Table 1. Estimated Prevalence of Latent Prostate Cancer in the United States, According to Age.\*

Age Group	U.S. Population	Estimated Prevalence of Latent Prostate Cancer (%)	Estimated Number of Latent Prostate Cancers
50-54	11,657,000	22.8	2,658,612
55-59	9,707,000	28.0	2,717,960
60-64	7,669,000	37.5	2,875,925
65-69	5,144,000	45.7	2,351,788
Total	—	—	12,504,285

\*Values are for men only. The age of 50 was chosen because of the 50 percent probability of prostate cancer in men aged 50 years. The prevalence of latent prostate cancer in men aged 50 years is 22.8 percent, and the number of men aged 50 years is 11,657,000. The prevalence of latent prostate cancer in men aged 55 years is 28.0 percent, and the number of men aged 55 years is 9,707,000. The prevalence of latent prostate cancer in men aged 60 years is 37.5 percent, and the number of men aged 60 years is 7,669,000. The prevalence of latent prostate cancer in men aged 65 years is 45.7 percent, and the number of men aged 65 years is 5,144,000.

Source: Johansson et al.,<sup>20</sup> p. 100.

†The prevalence of latent prostate cancer in men aged 50 years is 22.8 percent, and the number of men aged 50 years is 11,657,000. The prevalence of latent prostate cancer in men aged 55 years is 28.0 percent, and the number of men aged 55 years is 9,707,000. The prevalence of latent prostate cancer in men aged 60 years is 37.5 percent, and the number of men aged 60 years is 7,669,000. The prevalence of latent prostate cancer in men aged 65 years is 45.7 percent, and the number of men aged 65 years is 5,144,000.

who were alive at 10 years, 45 percent had tumor growth or metastasis, prompting speculation that a survival disadvantage might have become apparent if the follow-up period had been longer.

More recent studies of conservative treatment have failed to resolve the issue. A review of all men with prostate cancer who died between 1988 and 1990 in Göteborg, Sweden, reported that men with conservatively treated localized tumors had mortality rates of 50 to 100 percent, but the retrospective and selective study design (which included, for example, only decedents, rather than all men with prostate cancer, in the denominator) limits the utility of the data. In the United States, an analysis of prostate cancer cases in Connecticut estimated that, after a mean follow-up of 16 years, life expectancy with conservative treatment of localized prostate cancer (either no treatment or hormonal therapy) was unchanged from that of the general population if the tumor was of low grade but was reduced by as much as 4 to 5 years or 6 to 8 years if the tumor was of moderate or high grade, respectively. These data derive from a retrospective chart review of cases diagnosed between 1971 and 1976, however, and include only patients 65 to 75 years of age.<sup>41</sup>

Researchers have pooled study data to model the natural history of untreated prostate cancer, but their findings have also been criticized. On the basis of data from 144 articles, Wasson et al.<sup>42</sup> estimated that the annual risks of metastasis and death from untreated prostate cancer were low (1.7 percent and 0.9 percent, respectively). This study was criticized for including a large proportion of patients with well-differentiated tumors and patients receiving androgen-deprivation therapy. On the basis of six major studies, Chodak et al.<sup>43</sup> reported that conservative management (delayed hormone therapy but no surgical or radiation therapy) was associated with a 10-year disease-specific survival rate of 87 percent for men with well-differentiated or moderately differentiated tumors and 34 percent for men with poorly differentiated tumors. For patients alive after 10 years, the probability of having metastatic disease was 19 percent, 42 percent, and 74 percent, respectively, for well-, moderately-, and poorly differentiated cancers. Although critics disagree with the study's probability estimates,<sup>44</sup> the findings underscore the role of cell differentiation in predicting future tumor progression.

#### Is Screening or Treatment Harmful?

The potential benefits of any screening test must be weighed against the potential harms of testing and treatment. In the case of PSA screening, the physical effects of venipuncture are trivial, but the consequences of false positive (and false negative) results deserve consideration. If the reported positive predictive value of 28 to 35 percent is assumed to be correct, two out of three men with abnormal results on routine PSA screening will not have cancer. Before cancer can be ruled out, however, they must undergo the inconvenience and discomfort of follow-up testing (e.g., repeat PSA testing, ultrasonography, and biopsy) and the anx-

ety of waiting for results. Needle biopsy is performed in about 20 percent of screened men and is complicated by infection or bleeding in 0.1 to 4 percent of patients and by discomfort and anxiety in 58 to 68 percent of patients.<sup>2,3,45</sup>

A more serious source of concern than testing is the potential complications of treatment (e.g., impotence, incontinence, and death), the probabilities of which are summarized in Table 2. Although experts report anecdotally that their complication rates are lower than those in published reports, complication rates in the community are thought to be higher (Table 3). Reported mortality rates for radical prostatectomy are 0.2 to 2 percent, with lower rates reported by urologists at specialized centers and in studies involving patients under the age of 65.<sup>46,49,51</sup>

#### Does Screening Do More Good Than Harm?

Ultimately, the most important question about PSA screening is whether it improves the overall health and well-being of patients. As has already been noted, clinical trials that will provide this information are currently in progress. In the meantime, researchers have used decision analysis to try to estimate the net effect of benefits and risks on quality-adjusted survival, but both the methods and results of these analyses are controversial. Decision analyses of screening<sup>22-23</sup> have even suggested that quality-adjusted survival is reduced by screening, but the models' assumptions have been challenged.<sup>34</sup> Other decision analyses have focused on the effects of treatment. Fleming et al.<sup>33</sup> concluded that treatment, when compared with observation, increases quality-adjusted survival by less than one year and decreases survival in men over the age of 70 and those

Table 2. Reported Complication Rates for Radical Prostatectomy and External-Beam Radiation Therapy\*

Complication	Reported Incidence (%)
Radical prostatectomy	
Impotence	20-85
Incontinence	1-27
Urethral stricture	10-16
Thromboembolism	2-10
Permanent rectal injuries	1-3
Peroperative death	0.3-2
Radiation therapy	
Acute gastrointestinal or genitourinary complications	3-6 <sup>47</sup>
Chronic complications (including ureters or protracted hospitalization)	1-2
Anorectal complications	2-11
Impotence	43-65 <sup>48</sup>
Urethral or bladder complications	1-17
Incontinence	1-1
Death	0.2-0.9

\*Data were compiled from 21 studies, 11 of which were published in 1990-1991 and 10 of which were published from the entire 1980-1990 period. Reported rates vary partly because of differences in complication rates from study to study and because some complications (e.g., impotence) are common just after the diagnosis of the age group. Reported rates are based on the total number of complications and not on the number of patients who underwent surgery. In addition, some rates have been reported as being based on the use of higher doses of radiation therapy and on limiting the operation to younger and healthier men. Impotence rates for radiation therapy are based on the number of patients who undergo the procedure, not on the number of patients who actually undergo the procedure.

Table 3. Adverse Outcomes of Radical Prostatectomy Reported by a National Probability Sample of Medicare Patients.\*

Complication	% of Men Reporting
Attributable 30-day postoperative mortality	0.6
Cardiopulmonary complications (congestive heart failure, myocardial infarction, pulmonary embolism, or respiratory failures)	4.5
Incontinence	
Wore pads or other devices for incontinence	31
Dripped more than a few drops daily	23
Underwent surgical treatment for incontinence	6
Had a catheter	2
Impotence	
Was able to have erections before surgery	70
Had no full or partial erections since surgery	61
Had erections firm enough for intercourse in previous month	11
Underwent medical or surgical treatment for stricture two to four years after surgery	20

\*Data are from Fowler et al.<sup>11</sup> as reproduced with editorial material in a publication of the U.S. Office of Technology Assessment.<sup>12</sup>

with well-differentiated disease. Critics questioned the probability estimates and the inclusion of a relatively older population of men with small, well-differentiated tumors.<sup>26,27</sup>

In assessing whether PSA testing does more good than harm, one must consider the effect of screening on other health care services. Screening typically occurs in the primary care setting, where busy clinicians are concerned with other preventive services (e.g., breast-cancer screening, immunizations, and smoking cessation) and caring for sick patients. Time devoted to prostate screening may come at the expense of other conditions that pose a greater threat to individual and public health. A similar phenomenon can occur on a national level, where other health care services could be affected by the provision of prostate screening and follow-up to the 28 million American men over the age of 50 to whom the recommendations of the American Cancer Society apply. The first year of screening could cost an estimated \$12 billion to \$28 billion,<sup>28</sup> and subsequent screening might cost \$3 billion per year.<sup>29</sup> If screening can reduce the disease burden from prostate cancer, this large investment might be worthwhile,<sup>28</sup> but its ability to do so remains unproved.<sup>29</sup>

### IS THERE ENOUGH EVIDENCE?

Definitive evidence of whether prostate screening and treatment improve health will be unavailable until the turn of the century, when current clinical trials will be completed. For now, the debate centers on what the appropriate policy should be in the meantime, a period during which thousands of men will die of prostate cancer. Since screening has the potential to save lives (although its actually doing so is unproved), few would question the appropriateness of screening were it not for its potential harm. Proponents and critics of PSA screening differ in the ways they balance the benefits and risks.

Proponents believe that the benefits outweigh the risks; they argue that waiting for better evidence is unnecessary and that withholding screening while men die of prostate cancer is unethical. Critics of screening worry that the risks may outweigh the benefits. They

believe that current evidence does not ensure safety and that encouraging screening without this evidence is unethical (*primum non nocere*). Until better data become available, the true balance of benefits and risks remains a matter of opinion.

### HOW TO ADVISE THE PATIENT

These uncertainties must be acknowledged when physicians counsel patients. Physicians should neither recommend nor discourage PSA testing without, first, ensuring that patients have complete information about potential benefits and risks, and second, determining their personal preferences. Although it is advisable to obtain informed consent for any screening test, it is especially important for PSA screening, because the data are unclear and patients face potentially serious consequences to health and survival by either accepting or declining the test. Patient education is also important, because most men receive incomplete or inaccurate information about PSA from acquaintances, advertisements, and the lay media.

Therefore, the first step in counseling patients is to present the facts about the benefits and harm that can result from testing and treatment. Fact sheets<sup>41</sup> and videotapes<sup>42</sup> can help provide an unbiased summary of both sides. The second step is to assess the patient's preferences. This step is necessary because the fear of cancer, the potential impact of iatrogenic complications on the quality of life, and the absence of "proof" from controlled studies mean more to some men than others. Before deciding on testing, the patient should consider the procedures that would necessarily follow an abnormal screening result and whether he would want to be treated if cancer were diagnosed. In particular, men with a life expectancy of less than 10 years should be advised that screening and treatment are unlikely to be helpful and may worsen the quality of their lives.

Once fully informed about the consequences, some patients find it difficult to make this decision and prefer instead to seek the doctor's advice. Offering an opinion in response to this invitation is entirely appropriate, but physicians who uniformly encourage or discourage PSA testing without first reviewing the facts and exploring preferences are unfairly imposing their values on the patient. For this reason, adding a PSA measurement to a panel of other tests, as one would add a potassium or hemoglobin measurement, is inappropriate if it is not preceded by the kind of discussion described above. It is equally inappropriate for a physician opposed to PSA screening to avoid the topic when patients do not request the test. Patients who are unfamiliar with PSA testing have a right to know about the availability of the test and the recommendations of groups that encourage screening.

### REFERENCES

1. Murray PA, Togg J, Hudson S. Cancer statistics, 1995. *CA Cancer J Clin*. 1995;45:3-26. (Suppl.) *CA Cancer J Clin*. 1995;45:327-81.
2. Cooney WH, Meigs RB, Purkayastha S, et al. Prostate cancer detection in a clinical setting: prostate biopsy, ultrasonography, digital rectal examination, and prostate specific antigen. *J Urol*. 1992;148:1168-72.
3. Catalona WJ, Smith DS, Richoff EL, et al. Measurement of prostate specific antigen serum as a screening test for prostate cancer. *N Engl J Med*. 1991;324:1156-61.

1. Catalona WJ, Richie JP, Ahmann ER, et al. Comparison of digital rectal examination and serum prostate-specific antigen in the early detection of prostate cancer: results of a multicenter clinical trial of 6655 men. *J Urol* 1994; 151:1254-9.
2. Catalona WJ, Smith DS, Ratliff TL, Basler JW. Detection of organ-confined prostate cancer is increased through prostate-specific antigen-based screening. *JAMA* 1993; 270:948-54.
3. Meitin C, Jones G, Averette H, Gusberg SB, Murphy GP. Dehning and updating the American Cancer Society guidelines for the cancer-related checkup: prostate and endometrial cancers. *CA Cancer J Clin* 1993; 43:42-6.
4. Preventive Services Task Force. Guide to clinical preventive services. 2nd ed. Baltimore: Williams & Wilkins, 1995.
5. Canadian Task Force on the Periodic Health Examination. The Canadian guide to clinical preventive health care. Ottawa, Ont: Canada Communication Group, 1994.
6. Hicks RJ, Hamm RM, Bensen DA. Prostate cancer screening: what family physicians believe is best. *Arch Fam Med* 1995; 3:17-22.
7. Kramer BS, Birn M, Pinsky PC, Botinsky AL, Gohagan JK. Prostate cancer screening: what we know and what we need to know. *Ann Intern Med* 1993; 119:914-23.
8. Kriebel LG, Miller BA, Hankes BF, Kossart CL, Hattis A, Edwards BK, eds. SEER cancer statistics review, 1973-1991: tables and graphs. Bethesda, Md: National Cancer Institute, 1994. 371. (DHHS publication no. (SI)94-2789.)
9. Pinsky AL, Miller BA, Albertsen PC, Kramer BS. The role of increasing detection in the rising incidence of prostate cancer. *JAMA* 1995; 273:548-52.
10. Scardino PT. Early detection of prostate cancer. *Urol Clin North Am* 1989; 16:639-55.
11. Sakr WA, Haas GP, Casin BF, Pontes JE, Crissman JD. The frequency of carcinoma and intraepithelial neoplasia of the prostate in young male patients. *J Urol* 1993; 150:379-83.
12. Bureau of the Census. Statistical abstract of the United States, 1993. 117th ed. Washington, DC: US Bureau of the Census, 1993.
13. Francis LM. Latent carcinoma of the prostate. *J Pathol Bacteriol* 1954; 65: 673-16.
14. Baran E, Angrist A. Incidence of occult adenocarcinoma of the prostate. *Arch Pathol* 1941; 32:787-93.
15. Edwards CN, Steinhilberon F, Nicholson D. An autopsy study of latent prostatic cancer. *Cancer* 1953; 6:531-54.
16. Scott R Jr, Mutchnik DL, Lasarowski TZ, Schuller WR. Carcinoma of the prostate in elderly men: incidence, growth characteristics and clinical significance. *J Urol* 1989; 101:762-7.
17. Andrews GS. Latent carcinoma of the prostate. *J Clin Pathol* 1949; 2:197-200.
18. Guillyard JM, Johnson AD, Welch RA, Akaraki K, Correa P. Prevalence of latent prostate carcinoma in two US populations. *J Natl Cancer Inst* 1970; 45:311-6.
19. Dhom G. Epidemiologic aspects of latent and clinically manifest carcinoma of the prostate. *J Cancer Res Clin Oncol* 1993; 119:210-8.
20. Osterling JE. Prostate specific antigen: a critical assessment of the most useful tumor marker for adenocarcinoma of the prostate. *J Urol* 1991; 145: 407-27.
21. Serishon PD, Batts MJ, Osterling JE. Serum prostate specific antigen discriminates men between men with benign prostatic hyperplasia and patients with organ-confined prostate cancer. *Urology* 1994; 44:241-7.
22. Slamon TA, Prestigiacomo A, Kamin A. Physiological variation of serum prostate specific antigen (PSA) from a screening population in the range of 4-10 ng/ml using the Hiberch Tandem R PSA assay. *J Urol* 1995; 153: Suppl 429A, abstract.
23. Hennum MC, Whang IS, Partin A, et al. Prostate specific antigen density: a means of distinguishing benign prostatic hyperplasia and prostate cancer. *J Urol* 1992; 147:915-6.
24. Carter HB, Pearson JD, Miller EJ, et al. Longitudinal evaluation of prostate specific antigen levels in men with and without prostate disease. *JAMA* 1992; 267:2215-20.
25. Osterling JE, Jacobson SJ, Clark CG, et al. Serum prostate specific antigen in asymptomatic, screened population of healthy men: establishment of age-specific reference ranges. *JAMA* 1993; 270:948-4.
26. Steinhilberon F, Lechner H, Althoff H, Hainke S, Torkler A, Gollhofer A. Complex between prostate specific antigen and alpha-1-microglobulin is the major form of prostate specific antigen in serum of patients with prostatic cancer: assay of the complex improves clinical sensitivity for cancer. *Cancer Res* 1991; 51:222-6.
27. Epstein JI, Walsh PC, Carmichael M, Brendler CB. Pathologic and clinical findings to predict outcome of benign prostatic hyperplasia in prostate cancer. *JAMA* 1994; 271:361-74.
28. Meitin C, Murphy GP, Lee J, et al. Characteristics of prostate cancer detected in the American Cancer Society National Prostate Cancer Detection Project. *J Urol* 1994; 152:1717-24.
29. Halpern B, Schuller WR. Carcinoma of the prostate in patients 70 to 79 years old. *Cancer* 1966; 19:695-8.
30. Friedman GD, Hain RA, Quisenberry CP Jr, Selby JV. Case-control study of screening for prostate cancer by digital rectal examinations. *Lancet* 1991; 337:1526-9.
31. Geiber GS, Thompson IM, Thisted R, Chodak GW. Disease specific survival following routine prostate cancer screening by digital rectal examination. *JAMA* 1993; 269:41-4. [Erratum: *JAMA* 1993; 269:591.]
32. Gohagan JK, Pinsky PC, Kramer BS, Cornett JE. Prostate cancer screening in the prostate, lung, colorectal and ovarian cancer screening trial of the National Cancer Institute. *J Urol* 1994; 152:1963-9.
33. Citaverson PH, Nielsen KT, Gasser TC, Coile DK, Madsen PO. Radical prostatectomy versus expectant primary treatment in stages I and II prostatic cancer: a fifteen-year follow-up. *Urology* 1990; 36:493-8.
34. Witt TJ, Hrawer MK. The Prostate Cancer Intervention Versus Observation Trial: a randomized trial comparing radical prostatectomy versus expectant management for the treatment of clinically localized prostate cancer. *J Urol* 1994; 152:1910-4.
35. Johanson JE. Expectant management of early stage prostatic cancer: Swedish experience. *J Urol* 1994; 152:1733-6.
36. Walsh PC. Using prostate specific antigen to diagnose prostate cancer: sailing in uncharted waters. *Ann Intern Med* 1993; 119:928-9.
37. Aus G. Prostate cancer: mortality and morbidity after non-curative treatment with aspects on diagnosis and treatment. *Scand J Urol Nephrol* 1993; 167: Suppl 1:41.
38. Albertsen PC, Eriksson DG, Storer BE, Kolon TF, Fine J. Long-term survival among men with conservatively treated localized prostate cancer. *JAMA* 1995; 274:626-31.
39. Wasson JH, Cushman CC, Brustkowiak RC, Littenberg B, Mulley AG Jr, Wennberg JE. A structured literature review of treatment for localized prostate cancer. *Arch Fam Med* 1993; 2:487-93. [Erratum: *Arch Fam Med* 1993; 2:1010.]
40. Chodak GW, Thisted RA, Geiber GS, et al. Results of conservative management of clinically localized prostate cancer. *N Engl J Med* 1994; 331: 242-8.
41. Catalona WJ. Conservative management of prostate cancer. *N Engl J Med* 1994; 330:1830-1.
42. Desmond PM, Clark J, Thompson IM, Zeitman JJ, Marlice EJ. Morbidity with contemporary prostate biopsy. *J Urol* 1993; 150:1425-6.
43. Aus G, Hermansson LG, Hugosson J, Pedersen KV. Transrectal ultrasound examination of the prostate: complications and acceptance by patients. *Br J Urol* 1993; 71:457-9.
44. Fowler FJ Jr, Barry MJ, Lu-Yan G, Rimm A, Wasson J, Wennberg JE. Patient-reported complications and follow-up treatment following radical prostatectomy: the National Medicare Experience, 1988-1990. *Urology* 1993; 42:652-9.
45. Office of Technology Assessment. Costs and effectiveness in prostate cancer screening in elderly men. Washington, DC: Government Printing Office, 1995. (OTA BP H 145.)
46. Mark DH. Mortality of patients after radical prostatectomy: analysis of recent Medicare claims. *J Urol* 1994; 152:159-8.
47. Andriole GL, Smith DS, Fan G, Goodwin L, Catalona WJ. Early complications of contemporary anatomical radical retropubic prostatectomy. *J Urol* 1994; 152:1459-61.
48. D'Amico SA, Walsh BE, Thompson IM. Morbidity and mortality following radical prostatectomy: a national analysis of Current Health and Medical Program of the Uniformed Services University. *J Urol* 1993; 150: 1870-2.
49. Wild JW, Halpern DR, Bisconti RJ, Marley DS, Wright RA, Spann SF. The evaluation and treatment of men with asymptomatic prostate nodules in primary care: a decision analysis. *J Fam Pract* 1992; 34:561-8.
50. Krahn MD, Mahoney JE, Eckman MH, Trachtenberg J, Parker SG, Dennis AS. Screening for prostate cancer: a decision analytic view. *JAMA* 1994; 272:773-80.
51. Catalona WJ. Screening for prostate cancer. *JAMA* 1995; 273:1174.
52. Deming C, Wasson JH, Albertsen PC, Batts MJ, Wennberg JE. A decision analysis of alternative treatment strategies for clinically localized prostate cancer. *JAMA* 1993; 269:2640-8.
53. Walsh PC. A decision analysis of alternative treatment for clinically localized prostate cancer. *J Urol* 1993; 150:1340-2.
54. Heck JR, Kuzin MW, Miles BJ. A cost-benefit decision analysis for clinically localized prostate cancer. *J Urol* 1991; 147:1984-9.
55. D'Amico SA, Thompson IM. Economic cost of screening for prostatic carcinoma of the prostate. *Urol Clin North Am* 1993; 17:719-33.
56. Rosen MA. Analysis of the potential of a fully implemented prostate cancer screening program. *J Urol* 1995; 153: Suppl 494A, abstract.
57. Lippman PJ, Gannaman AC, Meitin C. The benefit and cost of prostate cancer early detection. *CA Cancer J Clin* 1993; 43:134-49.
58. Hahn DL, Roberts RG. PSA screening for asymptomatic prostate cancer: truth in advertising. *J Fam Pract* 1993; 37:432-6.
59. The PSA decision: what you need to know. Hummer SH. Foundation for Informing Medical Decision Making. 1994. (developed).

- Catalona WJ, Richie JP, Ahmann FR, et al. Comparison of digital rectal examination and serum prostate specific antigen in the early detection of prostate cancer: results of a multicenter clinical trial of 6,630 men. *J Urol* 1994; 151:1283-90.
- Catalona WJ, Smith DS, Rathil TL, Basler JW. Detection of organ-confined prostate cancer is increased through prostate specific antigen based screening. *JAMA* 1993; 270:948-54.
- Metlin C, Jones G, Averette H, Gubner SD, Murphy GP. Dehning and updating the American Cancer Society guidelines for the cancer-related checkup: prostate and endometrial cancers. *CA Cancer J Clin* 1993; 43:42-6.
- Preventive Services Task Force. Guide to clinical preventive services. 2nd ed. Baltimore: Williams & Wilkins, 1995.
- Canadian Task Force on the Periodic Health Examination. The Canadian guide to clinical preventive health care. Ottawa, Ont: Canada Communication Group, 1994.
- Hicks RJ, Himm RM, Remben DA. Prostate cancer screening: what family physicians believe is best. *Arch Fam Med* 1995; 4:317-22.
- Kramer BS, Brown ML, Protonk PC, Polinsky AL, Gohagan JK. Prostate cancer screening: what we know and what we need to know. *Ann Intern Med* 1993; 119:914-23.
- Ries LAG, Miller BA, Hankey BF, Kossars CL, Harris A, Edwards BK, eds. SEER cancer statistics review, 1973-1991: tables and graphs. Bethesda, Md: National Cancer Institute, 1994. 371. (DHHS publication no. (NIH) 93-2759.)
- Polinsky AL, Miller BA, Albertsen FC, Kramer BS. The role of increasing detection in the rising incidence of prostate cancer. *JAMA* 1995; 273:548-52.
- Scardino PT. Early detection of prostate cancer. *Urol Clin North Am* 1989; 16:635-55.
- Sklar WA, Haas GP, Cason BF, Pantes JE, Crivman JD. The frequency of carcinoma and intraepithelial neoplasia of the prostate in young male patients. *J Urol* 1991; 150:379-85.
- Bureau of the Census. Statistical abstract of the United States, 1993. 119th ed. Washington, DC: US Bureau of the Census, 1993.
- Frank L. Latent carcinoma of the prostate. *J Pathol Bacteriol* 1954; 68:903-16.
- Baron E, Angrist A. Incidence of occult adenocarcinoma of the prostate. *Arch Pathol* 1941; 32:787-93.
- Edwards CN, Steinhorsson E, Nicholson D. An autopsy study of latent prostate cancer. *Cancer* 1953; 6:51-54.
- Scott R Jr, Matchuk DL, Laskowski TZ, Schmalhorst WR. Carcinoma of the prostate in elderly men: incidence, growth characteristics and clinical significance. *J Urol* 1969; 101:602-7.
- Andrews GS. Latent carcinoma of the prostate. *J Clin Pathol* 1949; 2:197-208.
- Guleyardo JM, Johnson WD, Welsh RA, Akaraki K, Correa P. Prevalence of latent prostate carcinoma in two US populations. *J Natl Cancer Inst* 1980; 65:311-6.
- Dhoo G. Epidemiologic aspects of latent and clinically manifest carcinoma of the prostate. *J Cancer Res Clin Oncol* 1983; 109:210-8.
- Oesterling JE. Prostate specific antigen: a critical assessment of the most useful tumor marker for adenocarcinoma of the prostate. *J Urol* 1991; 145:897-911.
- Sershon PD, Barry MJ, Oesterling JE. Serum prostate specific antigen discriminates weakly between men with benign prostatic hyperplasia and patients with organ-confined prostate cancer. *Eur Urol* 1994; 25:231-7.
- Stames TA, Prestigiacomo A, Komatsu B. Physiological variation of serum prostate specific antigen (PSA) from a screening population in the range of 4-10 ng/ml using the Hybritech Tandem R PSA assay. *J Urol* 1995; 154 Suppl 420A abstract.
- Henson MC, Whang IS, Pantuck A, et al. Prostate specific antigen density: a means of distinguishing benign prostatic hyperplasia and prostate cancer. *J Urol* 1992; 147:815-6.
- Carter HB, Pearson JD, Metter EJ, et al. Longitudinal evaluation of prostate specific antigen levels in men with and without prostate disease. *JAMA* 1992; 267:2215-20.
- Oesterling JE, Jacobsen SJ, Chute CG, et al. Serum prostate specific antigen in a community based population of healthy men: establishment of age specific reference ranges. *JAMA* 1993; 270:960-4.
- Sienman LH, Leinonen J, Alftan H, Ruuskanen S, Tuohimäki K, Alftan O. A complex between prostate specific antigen and alpha 1-microglobulin is the major form of prostate specific antigen in serum of patients with prostate cancer: assay of the complex improves clinical sensitivity for cancer. *Cancer Res* 1991; 51:222-6.
- Egawa H, Walsh PC, Carmichael M, Brendler CB. Histologic and clinical findings to predict tumor extent of nonpalpable stage T1c prostate cancer. *JAMA* 1994; 271:304-7.
- Metlin C, Murphy GP, Lee J, et al. Characteristics of prostate cancer detected in the American Cancer Society National Prostate Cancer Detection Project. *J Urol* 1994; 152:1737-41.
- Halpern B, Schmalhorst WR. Carcinoma of the prostate in patients 50 to 74 years old. *Cancer* 1966; 19:695-8.
- Friedman GD, Hatt RA, Quesenberry CP Jr, Selby JV. Case-control study of screening for prostate cancer by digital rectal examinations. *Lancet* 1991; 337:1526-9.
- Gerber GS, Thompson IM, Thisted R, Chodak GW. Disease-specific survival following routine prostate cancer screening by digital rectal examination. *JAMA* 1993; 269:61-4. [Erratum: *JAMA* 1993; 269:591.]
- Gohagan JK, Protonk PC, Kramer BS, Corbett JE. Prostate cancer screening in the prostate, lung, colorectal and ovarian cancer screening trial of the National Cancer Institute. *J Urol* 1994; 152:1905-9.
- Graverven PH, Nielsen KT, Gasser TC, Coile DK, Madsen PO. Radical prostatectomy versus expectant primary treatment in stages I and II prostate cancer: a fifteen-year follow-up. *Urology* 1990; 36:493-8.
- Witt TJ, Brauer MK. The Prostate Cancer Intervention Versus Observation Trial: a randomized trial comparing radical prostatectomy versus expectant management for the treatment of clinically localized prostate cancer. *J Urol* 1994; 152:1910-4.
- Johansson JE. Expectant management of early stage prostate cancer: Swedish experience. *J Urol* 1994; 152:1753-6.
- Walsh PC. Using prostate-specific antigen to diagnose prostate cancer: sailing in uncharted waters. *Ann Intern Med* 1993; 119:918-9.
- Aus G. Prostate cancer: mortality and morbidity after non-curative treatment with aspects on diagnosis and treatment. *Scand J Urol Nephrol* 1994; 167 Suppl 1-41.
- Albertsen PC, Fryback DG, Storer BE, Klotz TE, Fine J. Long-term survival among men with conservatively treated localized prostate cancer. *JAMA* 1995; 274:626-31.
- Wasson JH, Cushman CC, Brusckwitz RC, Littenberg B, Mulley AG Jr, Wennberg JE. A structured literature review of treatment for localized prostate cancer. *Arch Fam Med* 1993; 2:467-93. [Erratum: *Arch Fam Med* 1994; 2:1030.]
- Chodak GW, Thisted RA, Gerber GS, et al. Results of conservative management of clinically localized prostate cancer. *N Engl J Med* 1994; 330:242-8.
- Catalona WJ. Conservative management of prostate cancer. *N Engl J Med* 1994; 330:1830-1.
- Devinck PM, Clark J, Thompson IM, Zeidman EJ, Mueller EJ. Morbidity with contemporary prostate biopsy. *J Urol* 1993; 150:1425-6.
- Aus G, Hermansson CG, Hugosson J, Pedersen KV. Transrectal ultrasound examination of the prostate: complications and acceptance by patients. *Br J Urol* 1993; 71:457-9.
- Finley FJ Jr, Barry MJ, Lu Yao G, Roman A, Wasson J, Wennberg JE. Patient-reported complications and follow-up treatment following radical prostatectomy: the National Medicare Experience, 1983-1990. *Urology* 1993; 42:622-9.
- Office of Technology Assessment. Costs and effectiveness of prostate cancer screening in elderly men. Washington, DC: Government Printing Office, 1995. (OTA BP 1614.)
- Mark DH. Mortality of patients after radical prostatectomy: analysis of recent Medicare claims. *J Urol* 1994; 152:396-8.
- Andriole GL, Smith DS, Ross G, Goodenough L, Catalona WJ. Early complications of contemporary anatomical radical retropubic prostatectomy. *J Urol* 1994; 152:1833-6.
- O'Brien SA, Walsh JE, Thompson IM. Morbidity and mortality following radical prostatectomy: a national analysis of Civilian Health and Medical Program of the Uniformed Services Beneficiaries. *J Urol* 1993; 150:1870-2.
- Madsen JW, Halpern DR, Bissani RS, Marlet DS, Wright RA, Spain SJ. The evaluation and treatment of men with asymptomatic prostate nodules in primary care: a decision analysis. *J Fam Pract* 1992; 34:961-8.
- Krahn MD, Mahoney JE, Eckman MH, Trachtenberg J, Pouker SG, DeLia AS. Screening for prostate cancer: a decision analytic view. *JAMA* 1991; 272:773-87.
- Catalona WJ. Screening for prostate cancer. *JAMA* 1992; 273:1174.
- Fleming C, Wasson JH, Albertsen PC, Barry MJ, Wennberg JE. A decision analysis of alternative treatment strategies for clinically localized prostate cancer. *JAMA* 1993; 269:2640-8.
- Walsh PC. A decision analysis of alternative treatment for clinically localized prostate cancer. *J Urol* 1994; 150:1340-2.
- Heik JR, Kattan MW, Miles BJ. A critique of the decision analysis for clinically localized prostate cancer. *J Urol* 1993; 150:1948-9.
- O'Brien SA, Thompson IM. Economics of screening for carcinoma of the prostate. *Urol Clin North Am* 1993; 17:1037.
- Rosen MA. Analysis of the annual cost of a fully implemented prostate cancer screening program. *J Urol* 1995; 153 Suppl 468A abstract.
- Littrop PJ, Gossman AC, Metlin CJ. The benefit and cost of prostate cancer early detection. *CA Cancer J Clin* 1993; 43:334-49.
- Hahn DL, Hubertz RG. PSA screening for asymptomatic prostate cancer: truth in advertising. *J Fam Pract* 1993; 37:432-6.
- The PSA decision: what you need to know. Hanover, NH: Foundation for Informed Medical Decision Making, 1994. (Brochure).

## New Information About Prostate-Specific Antigen and the Paradoxes of Prostate Cancer

The tumor marker prostate-specific antigen (PSA) has changed the way we think about and manage carcinoma of the prostate to a degree unprecedented in human oncology. Elevated serum concentrations can occur in men with benign prostatic hyperplasia but are more frequent and higher in those with cancer. Serum PSA measurements have become indispensable for monitoring disease, but their use for screening is controversial and highlights the paradoxes of this neoplasm.

See also p 289.

What confuses us about prostate cancer is that it usually grows slowly and is predominately a malady of aging. Among men older than 70 years who die of something else, 30% also have "autopsy" cancer of the prostate, usually with cancer volumes less than 0.2 cm<sup>3</sup> and low-grade cell types.<sup>1</sup> Yet prostate cancer is the second leading cause of male cancer death. Clinical cancer of the prostate can only be cured if localized, and then it is usually asymptomatic. Thus, decades ago, a yearly digital rectal examination (DRE) was recommended for all men older than 50 years, but this strategy was not well accepted, and even when broadly applied, only 30% of the cancers detected were curable.<sup>2</sup> With the advent of PSA screening, along with transrectal ultrasonography and spring-loaded biopsy devices that made tissue sampling almost innocuous, clinical studies showed that the positive predictive value of PSA for predicting cancer was 30%, that DRE was complementary with PSA and so both need to be used together for diagnosis, and that with this approach, the cancer detection rate increased two- to fourfold.<sup>3,4</sup> Soon thereafter, the American Urological Association and the American Cancer Society advocated yearly DRE and PSA screening for men older than 50 years, and more recently, the Food and Drug Administration approved a PSA assay for early diagnosis. Most important, the resultant renewed optimism for cure and the development of improved techniques for radical prostatectomy spawned wide adoption of aggressive diagnostic and therapeutic approaches, thereby increasing the incidence rate of clinical prostate cancer by 30% and increasing the number of radical prostatectomies sixfold in the United States.<sup>5</sup>

In this age of medical cost containment, the increase in detection and treatment of prostate cancer alarmed many groups, and numerous scholarly rebuttals were developed and received wide coverage in the medical literature and the media. These responses were as follows: (1) Preventive medicine experts warned about the large numbers of "autopsy" cancers that should not be detected in life and cautioned about the pitfalls of aggressive diagnosis in the elderly because of lead-time and length-time biases.<sup>6</sup> (2) Task forces in the United States and Canada concluded that DRE and PSA testing should not be part of the adult periodic health examination because the evidence was discouraging or insufficient.<sup>7,8</sup> (3) It is widely believed in Britain and Scandinavia that clinically localized prostate cancer need not be treated until symptomatic and then only for palliation. Many centers analyzed their "watch-and-wait" results and observed that they yielded the same quality and quantity of life as aggressive treatments.<sup>9</sup> (4) Literature on prostate cancer screening and treatment outcomes was analyzed extensively and used for decision analysis modeling. It was concluded that aggressive diagnosis and treatment (with radical prostatectomy or radiation therapy) are marginally beneficial especially when quality-of-life adjustments are made and are not beneficial after age 70 years.<sup>7,8</sup>

The article by Gann et al<sup>9</sup> in this issue of THE JOURNAL adds substantially to the PSA story and may be historically significant. These investigators measured PSA levels in entry blood samples from the Physicians' Health Study and analyzed 366 men who eventually were diagnosed with carcinoma of the prostate (usually without the aid of PSA testing) and 1098 controls. They found impressively high sensitivities and specificities for detecting prostate cancer. For example, the sensitivity for detecting "aggressive" cancers, ie, those that were high grade and/or extended outside the prostate, was 87% for cancers occurring within the first 4 years and 56% overall. The specificity was 91% and changed little during the study period. The average lead time to diagnosis was 5.5 years; among aggressive cancers, PSA testing would have detected almost 85% of all aggressive cancers discovered within 5 years and 50% of those diagnosed up to 10 years later. Moreover, their observations suggest that the results would have been even more impressive had serial PSA levels been available. Recently, a comparable study by Whittemore et al<sup>10</sup> found similar results. What is historic about the article by Gann et al<sup>9</sup> is that this group concluded that "PSA has the highest validity of any circulating cancer screening marker discovered thus far, and that intensive

efforts

poratin  
The  
their fi  
mation  
prostat  
years.

First  
alone i  
would  
test th  
quently  
DRE v  
today.

Seco  
eling c  
rates  
model  
realist  
those  
experi  
therap  
shown  
wait e  
greate

This  
that c  
with i  
ease.  
from w  
biased  
sentat  
ticular

Fou  
analyse  
perhaj  
screen  
cancer  
discov  
than 1  
after  
logical

In l  
with C  
for pr  
studie  
Two s  
Obser  
tute P  
ing pr  
they -

From the Department of Urology, University of Washington School of Medicine, Seattle.  
Address requests to Department of Urology, University of Washington School of Medicine, Box 357320, Seattle, WA 98195-7320.

efforts to identify cost-effective screening strategies incorporating PSA testing are warranted."

The recommendations of Gann et al<sup>1</sup> are based not only on their findings, but also on new theoretical and factual information favoring aggressive strategies for the management of prostate cancer in men with life expectancies greater than 10 years.

First, in the PSA era, every urologist realizes that DRE alone is a poor diagnostic test. Using it as the screening tool would be like using pulse palpation as the diagnostic tool to test the validity of early screening for hypertension. Consequently, data analysis schemes based on literature in which DRE was the primary diagnostic tool have little relevance today.<sup>11</sup>

Second, other problems with initial prostate cancer modeling efforts have come to light. For example, metastatic rates are sensitive in current models, but in the original model article,<sup>2</sup> they may have been too low. When more realistic metastatic rates were used in the model, such as those from more recent compilations of the watch-and-wait experiences<sup>6</sup> or those from populations who received brachytherapy for prostate cancer, aggressive approaches were shown to be significantly more beneficial than watch-and-wait strategies, provided the patient had a life expectancy greater than 10 years.<sup>12</sup>

Third, the watch-and-wait experiences reinforce the idea that carcinoma of the prostate is a heterogeneous disease with indolent and virulent varieties of clinically localized disease. However, many experts believe that the populations from which the watch-and-wait data were generated are highly biased toward indolent cancer and therefore are not representative of early localized prostate cancer in general, particularly as it relates to men younger than 70 years.<sup>11,13</sup>

Fourth, after radical prostatectomy, PSA and pathological analysis are excellent surrogate end points for cure, and perhaps for survival. It appears that the large aggressive screening trials are "capturing" the virulent forms of prostate cancer because relatively few (<15%) incurable cancers are discovered among men serially screened. Alternatively, less than 15% of specimens removed by radical prostatectomy after screening contain cancers that seem indolent pathologically.<sup>11,14</sup>

In light of all these facts, what should we do now? I agree with Gann et al<sup>1</sup> that the true cost-effectiveness of screening for prostate cancer can only be determined in randomized studies of screening and of aggressive localized therapies. Two such studies, the Prostate Cancer Intervention Versus Observation Trial (PIVOT) and the National Cancer Institute Prostate, Lung, Colon, Ovarian Cancer (PLCO) screening project, have been launched in the United States, and they should be supported.<sup>11</sup> Also, we must improve methods

to efficiently and accurately educate patients about the facts and uncertainties regarding prostate cancer and truly involve them in decisions about care. Until these trials are completed (10 to 15 years), it should be acknowledged now by all concerned groups that the modern data<sup>11,20</sup> strongly favor an aggressive approach to significant localized prostate cancer for men with life expectancies greater than 10 years. Simultaneously, we must accelerate efforts to enhance the efficiency of diagnosis, to better distinguish indolent prostate cancer so to avoid unnecessary treatment, and to discover new therapies for those patients who still develop metastases. This task will probably require the discovery of new markers of disease progression using modern molecular techniques. Finally, while the paradoxes of early prostate carcinoma are now less confusing, we cannot forget that when counseling the individual patient, the physician's constant burden "to know the facts and practice the art" still looms large in this disease.

Paul H. Lange, MD

1. Stamey T, Freiha F, McNeal J, Redwine E, Whittemore A, Schmid H. Localized prostate cancer: relationship of tumor volume to clinical significance for treatment of prostate cancer. *Cancer*. 1993;71:933-938.
2. Gerber GS, Thompson IM, Thisted R, Chodak GW. Disease-specific survival following routine prostate cancer screening by digital rectal examination. *JAMA*. 1993;269:61-64.
3. Brawer MK. Screening for prostate cancer. *Monogr Urol*. 1994;15:1-24.
4. Ohori CA, Goluboff ET. Detection and treatment of prostate cancer: perspective of urologists. *J Urol*. 1994;152:1695-1699.
5. Kramer HS, Brown ML, Proch PC, Polosky AL. Prostate cancer screening: what we know and what we need to know. *Ann Intern Med*. 1993;119:914-923.
6. Chodak GW, Thisted RA, Gerber GS, et al. Results of conservative management of clinically localized prostate cancer. *N Engl J Med*. 1994;330:242-248.
7. Fleming C, Wasson JH, Albertson PC, Barry MJ, Wennberg JE. A decision analysis of alternative treatment strategies for clinically localized prostate cancer. *JAMA*. 1993;269:2650-2658.
8. Krahn MD, Mahoney JE, Eckman MH, Trachtenberg J, Pauker SG, Detsky AS. Screening for prostate cancer: a decision analytic view. *JAMA*. 1994;272:773-780.
9. Gann PH, Hennekens CH, Stampfer MJ. A prospective evaluation of plasma prostate-specific antigen for detection of prostate cancer. *JAMA*. 1995;273:289-294.
10. Whittemore AS, Lile C, Friedman GD, Stamey TA, Bogelman JH, Orentreich N. Prostate-specific antigen as predictor of prostate cancer in black and white men. *J Natl Cancer Inst*. In press.
11. Lange PH. Future studies in localized prostate cancer: what should we think? what can we do? *J Urol*. 1994;152:1932-1934.
12. Reek JR, Kattan MW, Miles HJ. Critique of decision analysis for clinically localized prostate cancer. *J Urol*. 1994;152:1894-1899.
13. Catalona WJ. Expectant management in natural history of localized prostate cancer. *J Urol*. 1994;152:1751-1752.
14. Ohori M, Wheeler TM, Dunn JK, Stamey TA, Scardino PT. Pathological features in prognosis of prostate cancer detectable with current diagnostic tests. *J Urol*. 1994;152:1714-1720.
15. Epstein JI, Walsh PC, Carmichael M, Broderick CB. Pathological and clinical findings to predict tumor extent of nonpalpable (stage T1c) prostate cancer. *JAMA*. 1994;271:368-374.
16. Catalona W, Smith DS, Rathilff T, Basler JW. Detection of organ-confined prostate cancer is increased through prostate-specific antigen-based screening. *JAMA*. 1993;270:948-954.
17. Partin A, Pound C, Clemens J, et al. Serum PSA after anatomic radical prostatectomy: the Johns Hopkins experience after 10 years. *Urol Clin North Am*. 1991;20:713-725.
18. Ohori M, Ghossein JR, Wheeler TM, Eastham JA, Thompson JC, Scardino PT. Can radical prostatectomy alter progression of poorly differentiated prostate cancer? *J Urol*. 1994;152:1843-1847.
19. Paulson DF. Impact of radical prostatectomy in the management of clinically localized disease. *J Urol*. 1994;152:1826-1830.
20. Stapley WC. Radical treatment with radiolabeled early stage prostate cancer: impressive results with long term follow-up. *J Urol*. 1994;152:1571-1575.

# Evaluation of Percentage of Free Serum Prostate-Specific Antigen to Improve Specificity of Prostate Cancer Screening

William J. Catalona, MD, Deborah S. Smith, PhD; Robert L. Wolfert, PhD; Tang J. Wang, PhD; Harry G. Rittenhouse, PhD, Timothy L. Ratliff, PhD, Robert B. Nadler, MD

**Objective.**—To evaluate measurement of percentage of free prostate-specific antigen (PSA) in serum to improve the specificity of prostate cancer screening in men with serum PSA levels between 4.1 and 10.0 ng/mL.

**Design.**—Retrospective, nonrandomized analysis using a research assay for measuring free PSA in frozen serum from men with a spectrum of prostate sizes and digital rectal examination results.

**Setting.**—General community outpatient prostate cancer screening program at a university center.

**Patients.**—One hundred thirteen men aged 50 years or older, 99% of whom were white, with serum PSA concentrations of 4.1 to 10.0 ng/mL, including 63 men with histologically confirmed benign prostatic hyperplasia, 30 with prostate cancer with an enlarged gland, and 20 with cancer with a normal-sized gland. All study volunteers had undergone prostatic ultrasonography and biopsy.

**Main Outcome Measures.**—Percentage of free PSA in serum and percentage of free PSA cutoff that maintained at least 90% sensitivity for prostate cancer detection.

**Results.**—Median percentage of free PSA was 9.2% in men with cancer and a normal-sized gland, 15.9% in men with cancer and an enlarged gland, and 18.8% in men with benign prostatic hyperplasia ( $P < .001$ ). The percentage of free PSA cutoff was higher in men with an enlarged gland and in those with a palpably benign gland. In men with an enlarged, palpably benign gland, a free PSA cutoff of 23.4% or lower detected at least 90% of cancers and would have eliminated 31.3% of negative biopsies.

**Conclusions.**—Measurement of percentage of free serum PSA improves specificity of prostate cancer screening in selected men with elevated total serum PSA levels and can reduce unnecessary prostate biopsies with minimal effects on the cancer detection rate; however, further studies are needed to define optimal cutoffs. Final evaluation of PSA screening also must consider the ability of current treatments to improve the prognosis of screen-detected prostate cancer.

(JAMA. 1996;274:1214-1220)

From the Division of Urologic Surgery, Department of Surgery, Washington University School of Medicine, St Louis, Mo (Drs Catalona, Smith, Wolfert, and Nadler); and Department of Research and Development, Tech, Incorporated, San Diego, Calif (Drs Wolfert, Wang, and Rittenhouse).

Reprint requests to Division of Urologic Surgery, 4400 Children's Pl, St Louis, MO 63110 (Dr Catalona).

MEASUREMENT of serum prostate-specific antigen (PSA) concentrations is widely used as an aid in the early detection of prostate cancer.<sup>1</sup> Although concern has been expressed that screening with PSA may detect insignificant can-

cers, this has not been borne out. The large majority of cancers detected have the pathological features of progressive cancers.<sup>1,2</sup> Recent studies using frozen serum samples from more than a decade ago have shown that men who developed prostate cancer 5 to 10 years after their serum was drawn could have been identified with high accuracy based on their initial serum PSA levels.<sup>3,4</sup>

In screening studies, most men with elevated serum PSA concentrations have PSA levels in the 4.1 to 10.0 ng/mL range, and many have enlarged, palpably benign prostate glands on digital rectal examination. Overall, only one quarter of these men have cancer detected by an initial prostatic needle biopsy.<sup>5,6</sup> However, rebiopsy of these patients within 6 to 12 months shows that the initial biopsy missed cancers and that closer to one third of patients in this group actually had prostate cancer.<sup>6</sup> Most prostate cancer patients with slightly elevated PSA concentrations have early-stage disease, whereas more than half of patients with PSA concentrations higher than 10.0 ng/mL have advanced disease.<sup>7,8</sup> Thus, the detection of prostate cancer in its curable stages requires the use of relatively low PSA cutoffs (4.0 ng/mL) for screening. Unfortunately, the use of low PSA cutoffs produces high false-positive rates, leading to unnecessary biopsies (ie, negative for cancer). The most common causes of false-positive PSA elevations are benign prostatic hyperplasia and prostatitis.<sup>9</sup> One potential way of reducing false-positive results is measurement of the free and bound forms of PSA in serum.<sup>10,11</sup>

Frostate-specific antigen in serum is und predominantly to the protease nhibitors:  $\alpha_1$ -antichymotrypsin (PSA-T) and  $\alpha_2$ -macroglobulin (PSA-AMG); rum PSA also binds in trace amounts  $\alpha_1$ -antitrypsin and inter-alpha tryp- i inhibitor.<sup>10,12</sup> Most complexed PSA asured in commercial immunoassays PSA-ACT. Virtually all of the remain- g measurable PSA in serum is in the e form. Failure to detect PSA-AMG ue to the concealment of the relevant tigenic epitopes.<sup>11,13</sup>

Experimental immunoassays have en developed for separate measure- ent of free PSA and PSA-ACT. Pre- nary evidence in heterogeneous ient populations suggests that (for nknown reasons) the proportion of free SA is lower with prostate cancer than th benign prostatic hyperplasia, and at measurements of PSA forms could lp distinguish between hyperplasia d cancer.<sup>4,11,13</sup>

In the current study, we examined e usefulness of free PSA measure- ents in men with serum PSA concen- tations of 4.1 to 10.0 ng/mL. We also aluated the free PSA cutoffs needed maintain at least 90% sensitivity in lecting cancer in subsets of men with fferent ultrasonographically measured ostate sizes and findings on digital ctal examination.

## METHODS

### Subjects and Procedures

From July 1989 through March 1995, e measured total serum PSA levels in 1249 ambulatory men aged 50 years or der (range, 50 to 90 years; mean [ $\pm$ SD] e, 62.7 [ $\pm$ 6.9] years).<sup>2,14</sup> These men sponded to a press release asking althy men to participate in a study of SA measurement as a screening test r prostate cancer. None had a history prostate cancer, and those with a his- ry of prostatitis were excluded. Men th symptoms of benign prostatic hy- rplasia were not excluded. We did not rform a digital rectal exa mination at e time of the blood test.

We have previously described the dy protocol, which was approved by e Human Studies Committee of Wash- ington University.<sup>2,14</sup> We obtained in- rmed consent from all study subjects. Men whose initial serum PSA levels re 4.0 ng/mL or lower, no further aluation was performed. Rather, their SA levels were measured again at month intervals for the duration of e study unless the PSA level increased higher than 4.0 ng/mL. If the value as higher than 4.0 ng/mL, another blood mple was collected within 1 to 2 weeks r verify the elevation. Men who had

two serum PSA concentrations higher than 4.0 ng/mL within the 1- to 2-week period underwent both digital rectal ex- amination and prostatic ultrasonog- raphy. If either or both of these proce- dures revealed abnormal or suspicious findings, we performed a needle biopsy of the prostate under ultrasound guid- ance. If the PSA concentration was higher than 4.0 ng/mL but the rectal and ultrasound examinations yielded normal findings, no biopsy was per- formed. Men whose biopsy specimens did not show cancer had serum PSA measurements at 6-month intervals. Re- peated rectal examination, ultrasonog- raphy, and biopsy, if indicated, were re- commended for men whose PSA levels were again higher than 4.0 ng/mL at a later evaluation. Fewer than 1% of the screening volunteers were African American, Asian, or Hispanic.

We measured serum PSA concentra- tions using an immunoenzymetric assay (Tandem-E PSA, Hybritech Inc, San Diego, Calif). We used the normal range recommended by the manufacturer (0 to 4.0 ng/mL) and considered PSA val- ues higher than 4.0 ng/mL grounds for suspecting prostate cancer. The perfor- mance characteristics of the assay have been reported.<sup>12,14</sup>

The following data were recorded: (1) findings on digital rectal examination, which were categorized as normal, abnor- mal but benign (including enlargement), or suspicious for cancer (including in- duration, asymmetry, and irregularity); (2) ultrasound findings, categorized as normal, abnormal but benign (including enlargement, asymmetry, calculi, and transition-zone hypochoic areas), or sus- picious for cancer (hypochoic area in the posterior peripheral zone); (3) PSA level in serum drawn before each rectal examination, ultrasonographic examina- tion, or biopsy; (4) results of biopsy; (5) clinical and pathological tumor stage; and (6) tumor grade.

**Monoclonal Antibody Immunoassay Specific for Free PSA.**—A sandwich im- munoassay was developed using a mono- clonal antibody highly specific to free PSA and a second monoclonal antibody recognizing free and bound PSA equally. In this format, less than 0.7% cross-re- activity to PSA-ACT was demonstrated.

The solid-phase capture antibody was incubated with 200  $\mu$ l of sample for 2 hours at room temperature, washed, and then incubated for an additional 2 hours with the second monoclonal antibody conjugated to alkaline phosphatase. Beads were washed, incubated for 1 hour with the chemiluminescent substrate 4-methoxy-4-(3-phosphatophenyl)spiro [1,2-dioxetane-3,2'-adamantane] di- sodium salt (LumPhos 480, Lumigen, Inc,

Southfield, Mich), and read in a lumi- nometer (MGM Instruments, Inc, Ham- den, Conn). The free PSA calibrators, with the range of 0 to 10.0 ng/mL, were value assigned by the Tandem-R PSA assay to obtain mass-weight values. The analytical detection limit of the free PSA immunoassay was 0.05 ng/mL. The intra- assay coefficient of variation was be- tween 2.5% and 12.5% across the cali- brator range. The interassay coefficient of variation was 6.3% at 0.77 ng/mL con- centration and 4.8% at 3.98 ng/mL con- centration.

**Measurement of Free PSA in Se- lected Subgroups.**—Serum samples had been routinely frozen at  $-80^{\circ}\text{C}$  and stored for all study volunteers enrolled from July 1989 through January 1991. We systematically selected a sample of study volunteers for whom frozen stored serum samples were available for measurement of free and total PSA concen- trations. Because men with borderline PSA elevations (4.1 to 10.0 ng/mL) fre- quently pose a diagnostic dilemma, we first identified all men enrolled before January 1991 whose initial PSA screen- ing measurements were in this range. Since the purpose of our study was to determine the percentage of free PSA in men with a spectrum of ultrasono- graphically measured prostate sizes with or without detectable prostate cancer, this sample was further subdivided ac- cording to estimated prostate volume and biopsy results. Prostate volume was calculated via the prolate spheroid for- mula<sup>15</sup> using the transrectal ultrasound scan from the first biopsy.

Using these additional parameters, we identified the following study groups: (1) 67 men with biopsy-verified benign prostatic hyperplasia as determined by three or more sets of prostatic biopsy specimens (four to six biopsy cores in each set) that were negative for pros- tate cancer (ultrasonographically esti- mated gland volume of  $\geq 40$   $\text{cm}^3$ ); (2) 33 men with biopsy-verified prostate cancer and an enlarged prostate gland (ie, ultrasonographically estimated gland volume of  $\geq 40$   $\text{cm}^3$ ) with prostate cancer detected within 24 months of the initial screening visit (to include the can- cers that were missed on the initial bi- opsies); and (3) 21 men with prostate cancer and a relatively normal-sized gland (ie, ultrasonographically estimated gland volume  $< 40$   $\text{cm}^3$ ) with prostate cancer detected within 24 months of the initial screening visit. In total, frozen serum samples from 121 men were se- lected for further study. All of the men with prostate cancer had clinically lo- calized cancer, and all but one were treated with radical prostatectomy.

Using the Hybritech research assay

specific for free PSA and the Tandem-E PSA assay for measurement of total PSA, we measured free PSA and reassessed total PSA in the stored serum samples from the initial screening visit in the three study groups.

Since other researchers<sup>6</sup> have reported loss of detectable PSA immunoreactivity following long-term storage of serum samples, we evaluated the stability of total serum PSA as measured in fresh and frozen stored serum samples. The mean coefficient of variation ( $\pm$ SD) for total serum PSA concentration in all fresh and stored pairs was 9.2% ( $\pm$ 16.6%). Overall, total PSA as measured in stored serum decreased in 82.6% (100 of 121) of the samples and increased in the remainder. The mean ratio ( $\pm$ SD) of stored to fresh total PSA (ie, [total PSA measured in stored serum]/[total PSA measured in fresh serum]) was 0.88 ( $\pm$ 0.14) for the 100 cases in which the total PSA decreased and 1.05 ( $\pm$ 0.06) for the 21 cases in which the total PSA increased when reassessed in stored serum. For the cases in which PSA decreased, outliers that fell below 1 SD of the mean ratio of stored to fresh total PSA (ie, the stored total PSA was  $<$ 74% of total PSA as measured in fresh serum) were eliminated from further analyses ( $n=5$ ). Similarly, for cases in which total PSA increased, outliers that increased more than 1 SD above the mean ratio of stored to fresh total PSA (ie, the stored total PSA was  $>$ 111% of fresh total PSA) also were eliminated ( $n=3$ ). Overall, 6.6% of cases were eliminated from further analysis (final  $n=113$ ); elimination of cases was uniform across the three study groups described above (generalized Fisher's exact test,<sup>16</sup>  $P=.80$ ).

**Pathological Tumor Staging.**—Pathological staging was performed as previously described.<sup>3</sup> For this analysis, study volunteers whose cancer was confined to the prostate and had clear margins were categorized as having pathologically organ-confined cancer (stage pT1 or pT2). Those with microscopic periprostatic cancer extension and those whose resected prostate gland contained cancer at the margins (stage pT2a), those with cancer invading into the seminal vesicles (stage pT3b), and those with lymph node metastases (stage N1) were classified as having pathologically advanced cancer.

**Tumor Grading.**—Gleason score was recorded for the radical prostatectomy specimens (49 [98%] of 50 of the included cancer cases were treated with radical prostatectomy). In three cases (6%), the pathologist recorded only the tumor grade (ie, well, moderately, or poorly differentiated). To estimate Gleason score for these cases, we graded the remainder of the tumors as wpl (Gleason score of 2 to

4), moderately (Gleason score of 5 to 7), or poorly (Gleason score of 8 to 10) differentiated and calculated the median Gleason score for each grade. This value was substituted for Gleason grade when Gleason score was not recorded.

#### Statistical Analysis

We calculated one-way analysis of variance, Mann-Whitney  $U$  tests, and  $\chi^2$  tests to assess differences in the study groups with regard to clinical characteristics (ie, age at first screening visit, proportion with digital rectal examination results suspicious for prostate cancer at the most recent biopsy, and estimated prostate volume at first biopsy).

Since previous studies have suggested that the percentage of free PSA (vs the absolute free PSA value) best discriminates between prostate cancer and benign hyperplasia,<sup>13</sup> we calculated the percentage of free PSA as the ratio of free PSA to total PSA multiplied by 100. The total PSA concentration was that measured in the repeated assay performed on the stored serum samples. We compared total PSA and the percentage of free PSA across the three study groups via a Kruskal-Wallis test. We used Mann-Whitney  $U$  tests for post hoc pairwise comparisons. To reduce the likelihood of type I error, the significance level for the post hoc comparisons was corrected for the number of comparisons (ie, Bonferroni correction =  $\alpha$  divided by the number of comparisons).<sup>17</sup> Therefore, we considered a  $P$  value  $\leq .02$  (.05/3) significant for all post hoc pairwise comparisons.

Combining the two study groups of men with cancer, we used hierarchical logistic regression analysis to assess the importance of percentage of free PSA in predicting prostate cancer while controlling for age at first screening visit, presence of suspicious findings on rectal examination, and total serum PSA concentration (estimated prostate volume was not included in this model since by design our study groups differed in prostate volume). We report the Wald statistic and the adjusted odds ratio (OR) with 95% confidence interval (CI) for the percentage of free PSA.<sup>18</sup>

To determine whether the percentage of free PSA remained a significant predictor of prostate cancer in the subset of men with an enlarged prostate gland (ie, ultrasonographically estimated gland volume of  $\geq 40$  cm<sup>3</sup>), we computed a second logistic model excluding the study group of men with prostate cancer and a relatively normal-sized gland. Similar to the first logistic model, the significance of the percentage of free PSA in predicting prostate cancer was assessed after controlling for age at first screening visit, presence of suspicious

findings on rectal examination, and total serum PSA concentration. Since the estimated prostate volume differed between those with and without prostate cancer, estimated volume was included as an additional predictor.

Before we calculated the logistic models, the assumption of a linear relationship with presence of prostate cancer was confirmed for each continuously scaled predictor. We determined quartiles for the distribution of each predictor (ie, age, total serum PSA concentration, estimated prostate volume, and percentage of free PSA) and calculated the ORs for the prediction of cancer based on the comparison of each quartile to the lowest quartile. We then plotted the log of the OR against the midpoint of each quartile to assess the shape of the relationship.<sup>18</sup> Visual inspection indicated that none of the continuously scaled predictors were associated with the presence of prostate cancer in a markedly nonlinear manner. Consequently, we modeled these predictors as simple linear effects in the logistic models.

To assess whether using the percentage of free PSA as a screening test for prostate cancer would increase the specificity of PSA-based screening, we preset sensitivity to at least 90% and determined the cutoffs for percentage of free PSA for the combined study groups of men with prostate cancer, for the study group with cancer and a gland 40 cm<sup>3</sup> or larger, and for the study group with cancer and a gland smaller than 40 cm<sup>3</sup> (here "sensitivity" is used in the context of specific subgroups and not the general screening population; that is, we do not include the full range of normal and elevated serum PSA concentrations). We then computed specificity (ie, the proportion of men without prostate cancer who would have been considered to have a negative screening test) using each percentage of free PSA cutoff. We repeated this analysis in the subsample of men without findings suspicious for prostate cancer on digital rectal examination (all had serum PSA concentrations between 4.1 and 10.0 ng/ml, initially).

Finally, we calculated a point biserial  $r$  to assess the relationship between the presence of pathologically advanced cancer and the percentage of free PSA. A Pearson correlation coefficient was calculated to assess the relationship between Gleason score and the percentage of free PSA.

## RESULTS

### Comparison of Clinical Characteristics Across Study Groups

Table 1 summarizes the clinical characteristics (ie, age at first screening visit

Table 1—Clinical Characteristics of Study Groups

Characteristic	Benign Prostatic Hyperplasia (n=63)	Cancer With Gland $\geq 40$ cm <sup>3</sup> (n=30)	Cancer With Gland $< 40$ cm <sup>3</sup> (n=20)	P*
Age in years, mean ( $\pm$ SD)	66.3 ( $\pm$ 5.6)	68.5 ( $\pm$ 6.5)	66.2 ( $\pm$ 4.3)	.20
Rectal examination findings suspicious for prostate cancer, No. (%)†	14/62 (22.6)	14/30 (46.7)	10/20 (50.0)	.02
Median ( $\pm$ SIR‡) prostate volume	60.8 ( $\pm$ 11.0)	49.5 ( $\pm$ 7.2)	30.1 ( $\pm$ 3.9)	.005

\*P values for age and digital rectal examination results represent three-way comparisons via one-way analysis of variance and  $\chi^2$ , respectively. The P value for prostate volume represents a Mann-Whitney U test comparing men with benign prostatic hyperplasia and men with prostate cancer with an enlarged gland ( $\geq 40$  cm<sup>3</sup>).  
 †Findings from digital rectal examination were unavailable for one study volunteer.  
 ‡SIR indicates semi-interquartile range ((75th percentile - 25th percentile)/2).

Table 2—Median Total Serum PSA Concentration and Percentage of Free Serum PSA Concentration for Study Groups\*

Concentration	Benign Prostatic Hyperplasia (n=63)	Cancer With Gland $\geq 40$ cm <sup>3</sup> (n=30)	Cancer With Gland $< 40$ cm <sup>3</sup> (n=20)	P†
Median ( $\pm$ SIR) total PSA	6.0 ( $\pm$ 1.4)	6.6 ( $\pm$ 1.5)	5.3 ( $\pm$ 1.3)	.60
Median ( $\pm$ SIR) % free PSA	18.8 ( $\pm$ 6.8)	15.9 ( $\pm$ 3.9)	9.2 ( $\pm$ 3.3)	<.001

\*PSA indicates prostate-specific antigen, and SIR, semi-interquartile range ((75th percentile - 25th percentile)/2).  
 †P values represent three-way comparisons via Kruskal-Wallis tests. For the percentage of free PSA, all Mann-Whitney U pairwise comparisons between groups were significant at P<.002.

digital rectal examination results at the time of the most recent biopsy, and estimated prostate volume at first biopsy) for the three study groups. The study groups did not differ with regard to mean age ( $P=.20$ ). As expected, men with prostate cancer were significantly more likely to have digital rectal examination findings suspicious for prostate cancer ( $\chi^2[2]=8.0$ ;  $P=.02$ ). As defined by our selection criteria, the study groups also differed significantly with regard to estimated prostate volume. A pairwise comparison indicated that the men with benign prostatic hyperplasia had significantly larger prostate glands than the men with prostate cancer and an enlarged prostate gland (Mann-Whitney  $U P=.005$ ).

#### Distribution of Total PSA and the Percentage of Free PSA in Stored Samples

As shown in Table 2, total PSA as measured in stored samples did not differ across study groups (Kruskal-Wallis  $P=.60$ ). In contrast, the percentage of free PSA differed significantly across groups (Kruskal-Wallis  $P<.001$ ). Men with prostate cancer (with a normal-sized or an enlarged prostate) had a significantly lower percentage of free PSA than men with benign prostatic hyperplasia only (all Mann-Whitney  $U P$  values  $<.002$ ). Additionally, men with prostate cancer and a normal-sized prostate had a significantly lower percentage of free PSA than men with prostate cancer and an enlarged prostate ( $P=.002$ ).

#### Use of Percentage of Free PSA for Differentiating Benign Prostatic Hyperplasia From Prostate Cancer

The results of the logistic regression model including both study groups of

men with prostate cancer (113 men) indicated that the percentage of free PSA added significantly to the prediction of cancer in men with elevated PSA levels, even after controlling for age, suspicious findings on rectal examination, and total serum PSA (Wald  $\chi^2[1]=19.3$ ;  $P<.001$ ; adjusted OR, 0.4 [95% CI, 0.3 to 0.6] for each 5% increase in the percentage of free PSA).

Similar results were found for the logistic model that included only the 93 men with an enlarged prostate gland. Measurement of the percentage of free PSA added significantly to the prediction of prostate cancer, even after controlling for age, findings suspicious for cancer on rectal examination, total serum PSA, and estimated prostate volume (Wald  $\chi^2[1]=4.6$ ;  $P=.03$ ; adjusted OR, 0.6 [95% CI, 0.4 to 0.9] for each 5% increase in the percentage of free PSA).

These results indicate that measurement of the percentage of free PSA gives predictive information about the presence or absence of prostate cancer above that provided by other clinical indexes such as age, total PSA level, suspicious results on rectal examination, and prostate size. Figure 1 illustrates for our combined study groups the systematic decrease in the simple proportion of men with prostate cancer with each 5% increase in the percentage of free PSA.

#### Percentage of Free PSA as a Screening Test for Prostate Cancer

To determine whether assessment of percentage of free PSA could increase the specificity of PSA-based prostate cancer screening in men with serum PSA levels of 4.1 to 10.0 ng/mL, we calculated percentage of free PSA cutoff points that would predict cancer with at

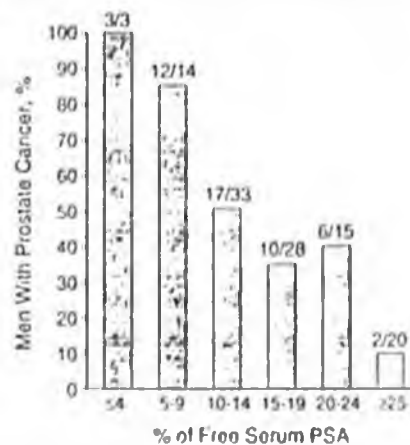


Figure 1—Decreasing simple proportion of men in the combined study groups found to have prostate cancer on biopsy with each 5% increase in the percentage of free prostate-specific antigen (PSA) in serum (ratio of free PSA to total PSA multiplied by 100)

least 90% sensitivity. As shown in Table 3, we calculated a percentage of free PSA cutoff point combining both study groups of men with prostate cancer. Cutoff points for percentage of free PSA also were calculated separately for each study group. As expected, the percentage of free PSA cutoff point was lower in the men with prostate cancer and a normal-sized gland.

Setting sensitivity to at least 90% would have resulted in five missed cancers in the combined cancer study groups. All five men had clinically localized cancer and underwent radical prostatectomy; two were pathologically upstaged to grade pT3. Two of the men had well-differentiated tumors and three had moderately differentiated tumors.

The proportion of men in the benign prostatic hyperplasia study group that would exceed the percentage of free PSA cutoffs and therefore would be considered "true negatives" also is presented in Table 3. Using a free PSA cutoff of 20.3% or lower (which would result in 90% sensitivity if both prostate cancer study groups were combined) would have resulted in negative screens in 38.1% of the benign prostatic hyperplasia group. Consequently, if this cutoff had been used as a criterion for prostatic biopsy, 38.1% of the men with benign prostatic hyperplasia would have been spared biopsy (see Figure 2, patients with benign prostatic hyperplasia above the cutoff line).

Since current standard medical practice mandates the performance of prostate biopsies in men with rectal examination findings suspicious for prostate cancer, we determined the percentage of free PSA cutoffs (and resultant specificity) for prediction of cancer in men with nonsus-

Table 3—Percentage of Free PSA Cutoff Points and Resultant Specificity for Predicting Cancer With at Least 90% Sensitivity\*

Variable	No. With Cancer	No. Without Cancer	% Free PSA Cutoff	Specificity (95% CI)
In All the Men				
All cancers	50	63	≤20.3	38.1 (25.4-50.8)
Cancer with gland ≥40 cm <sup>3</sup>	30	63	≤20.5	38.1 (25.4-50.8)
Cancer with gland <40 cm <sup>3</sup>	20	63	≤13.7	76.2 (64.8-87.6)
In Men with Nonsuspicious Findings on Digital Rectal Examination				
All cancers	26	48	≤23.4	31.3 (17.2-45.4)
Cancer with gland ≥40 cm <sup>3</sup>	16	48	≤23.4	31.3 (17.2-45.4)
Cancer with gland <40 cm <sup>3</sup>	10	48	≤13.8	79.2 (66.8-91.6)

\*PSA indicates prostate-specific antigen; and CI, confidence interval.  
†Proportion of biopsies with findings negative for prostate cancer that could be eliminated using the percentage of free PSA cutoff as a criterion for performing the biopsy.

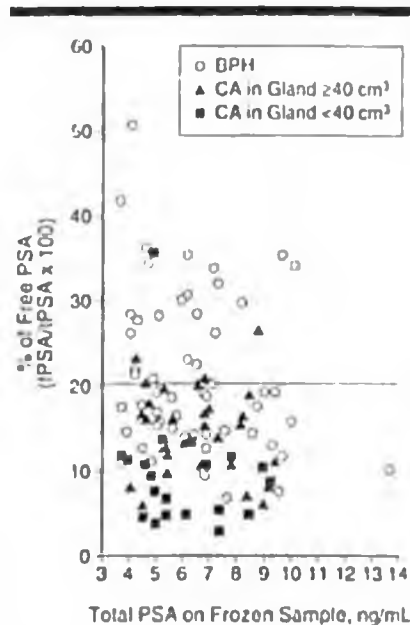


Figure 2—Percentage of free prostate-specific antigen (PSA) and total PSA (IPSA) concentration in frozen serum from men with benign prostatic hyperplasia (BPH) and men with prostate cancer (CA), regardless of findings of rectal examination. Cutoff point of 20.3% for greater than 90% sensitivity eliminates 38.1% of biopsies in BPH group.

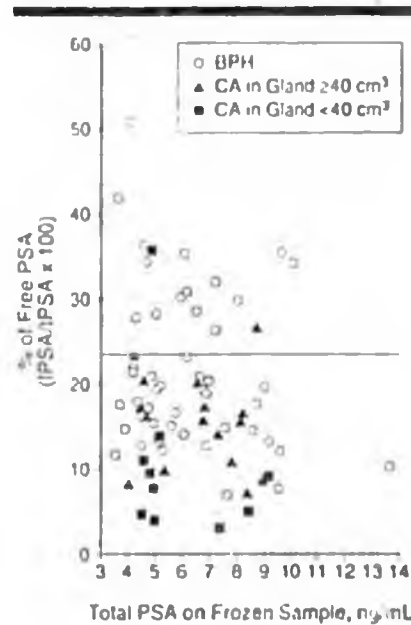


Figure 3—Percentage of free prostate-specific antigen (PSA) and total PSA (IPSA) concentration in frozen serum from men with benign prostatic hyperplasia (BPH) and men with prostate cancer (CA). The group includes only men without suspicious findings on rectal examination. Cutoff point of 23.4% for greater than 90% sensitivity eliminates 31.3% of biopsies in BPH group.

picious digital rectal examination results (Table 3). Overall, a free PSA cutoff point of 23.4% or lower would have eliminated 31.3% of the biopsies while maintaining 90% sensitivity (Figure 3).

#### Correlation of Percentage of Free PSA With Cancer Stage and Grade

Within the relatively narrow range of cancer stages represented in our study population, the percentage of free PSA was not associated with the presence of pathologically advanced cancer ( $r=0.10$ ;  $P=.50$ ). Similarly, the percentage of free PSA was not correlated with Gleason score ( $r=-0.07$ ;  $P=.60$ ). Pathological stage and tumor grade were missing for one man who did not undergo radical prostatectomy.

#### COMMENT

Serum PSA testing for early prostate cancer detection is widely used. Recent studies have shown that measurements of PSA in frozen serum samples drawn more than a decade ago can identify accurately men who developed prostate cancer within 5 to 10 years after the blood samples were drawn.<sup>6,7</sup> These cancers had a high lethal potential, with those patients having high initial serum PSA levels being most likely to have incurable disease.

Prostate-specific antigen may prove to be a valid screening test for early prostate cancer, and a reduction in prostate cancer mortality rates may be achieved by detecting and treating early-

stage prostate cancer in men whose life expectancy exceeds 10 years. However, to prove the utility of screening, a reduction in mortality or increase in quality of life in screened patients would have to be demonstrated in prospective studies with length and quality of life as end points.

The chance of achieving cure can be high only with the use of low total serum PSA cutoffs for screening, but low cutoffs (4.0 ng/mL) produce appreciable false-positive results (ie, the positive predictive value is only about 37%) caused by benign hyperplasia or prostatitis. This is particularly true with PSA levels of 4.1 to 10.0 ng/mL, in men with findings of benign enlargement on digital rectal examination. Only about 20% of such men have cancer diagnosed by biopsy; however, some men also will have cancer detected by repeated biopsies.<sup>8</sup>

Alternative measures proposed to increase the specificity of serum PSA testing include measuring the rate of change of the serum PSA concentration, called PSA velocity<sup>12,20</sup>; assessing the ratio of blood PSA concentration to ultrasonographically measured gland volume, called PSA density<sup>21</sup>; and using age-specific PSA reference ranges.<sup>22,23</sup> Each of these measures has its own sensitivity-specificity trade-offs that result in either missing a substantial proportion of curable cancers or yielding a high false-positive rate.<sup>24,25</sup> Although it was beyond the scope of this study, we computed sensitivity and specificity in our study groups using published standards for PSA density (ie, 0.15)<sup>27</sup> and PSA age-specific reference ranges (ie, age 50 through 59 years, >3.5 ng/mL; age 60 through 69 years, >4.5 ng/mL; age ≥70 years, >6.5 ng/mL).<sup>22</sup> These calculations show low sensitivity for both measures (48% and 72%, respectively), high specificity for PSA density (87%), and low specificity for age-specific reference ranges (16%). However, these findings cannot be considered a direct comparison with the results reported for the percentage of free PSA because we present sensitivity for this measure. In a separate logistic model, including age, total PSA, rectal examination results, PSA density, and percentage of free PSA (with both PSA density and percentage of free PSA entered as continuously scaled predictors), both PSA density and percentage of free PSA independently contributed significantly to the prediction of prostate cancer (data not shown). Prospective studies are needed to further compare these methods.

Previous studies have demonstrated that the percentage of serum PSA that exists in the free form is lower in patients with prostate cancer than in those

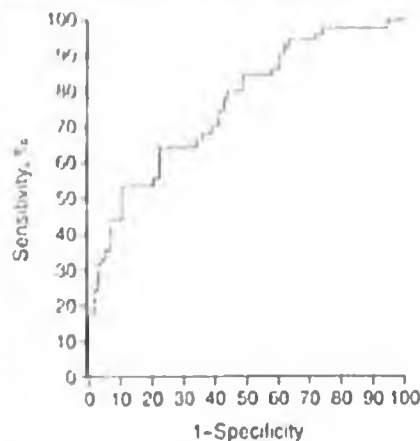


Figure 4—Receiver operating characteristic curve for detection of prostate cancer based on the percentage of free prostate-specific antigen in frozen serum from men with benign prostatic hyperplasia and men with prostate cancer, regardless of findings on digital rectal examination.

with benign hyperplasia; this disparity can be exploited clinically to distinguish between cancer and hyperplasia.<sup>6,10,12</sup> Stenman et al<sup>6,11</sup> and Leinonen et al<sup>12</sup> reported that the use of the ratio of PSA-ACT to total PSA could eliminate half of the false-positive results without appreciable loss of sensitivity in a study group of men whose total serum PSA concentrations ranged from 2.5 to 25.0 ng/mL. Christensson et al<sup>13</sup> reported similar results in 66 men with untreated prostate cancer; specificity was increased using a cutoff level of less than 18% free PSA with only a 10% loss of sensitivity. However, these studies both included heterogeneous patient populations with a wide spectrum of total serum PSA concentrations, prostatic sizes, and digital rectal examination findings.

Currently there is little argument about the need for performing prostatic biopsies in men with very high serum PSA concentrations (>10 ng/mL) or those whose rectal examination findings are suspicious for cancer. For men with these findings, measurement of free PSA does not materially influence the decision-making process. However, it is important to examine the results of free serum PSA measurements in men with PSA concentrations of 4.1 to 10.0 ng/mL and benign findings on digital rectal examination for whom some physicians may not recommend biopsy. These men frequently present a diagnostic dilemma.

The results from our logistic regression models confirm the findings of previous studies, showing that within the range of PSA concentrations tested (4.1 to 10.0 ng/mL), the percentage of free PSA provides independent predictive information about the presence of prostate cancer. Our results extend these

observations, showing that the free PSA cutoff required to maintain at least 90% sensitivity of cancer detection was higher in men with an enlarged prostate gland and those with a benign-feeling gland. For example, in men whose prostate size was relatively normal (<40 cm<sup>3</sup>), a free PSA cutoff of 13.7% or less would have detected at least 90% of the cancers while eliminating 76.2% of the unnecessary biopsies; however, a cutoff of 20.5% or less was required to detect at least 90% of the cancers in men with a larger gland. This higher cutoff still would eliminate 38.1% of the unnecessary biopsies. For free PSA measurements to be helpful in men whose prostate gland was both enlarged and palpably benign (and whose PSA level was 4.1 to 10.0 ng/mL), the cutoff would have to be increased to 23.4% to detect at least 90% of the cancers. If this cutoff had been used, 31.3% of unnecessary biopsies could have been eliminated. However, under present practice, some physician would not perform biopsies on older men or men with very large glands.

While avoiding unnecessary biopsies is desirable, missing 10% of the cancers is still of concern. Additionally, not pursuing the diagnosis in men with elevated PSA levels may be more psychologically problematic to some physicians and patients as compared with not pursuing diagnosis in men with normal PSA levels. It has been suggested that this loss of sensitivity may be acceptable because of the general slow development of prostate cancer; however, not all cancers missed are low grade and indolent, and the consequences in terms of missing opportunities for cure also may be greater than for men with normal PSA levels.

We evaluated the reciprocal relationship between sensitivity and specificity by plotting true-positive (sensitivity) vs false-positive (1 - specificity) results in a receiver operating characteristic curve. As shown in Figure 4, sensitivity could have been increased in our sample (ie, >90%) with a modest loss in specificity.

In our study, measurements of the percentage of free PSA did not distinguish between early and advanced cancers, nor did they correlate with Gleason score; however, the range of cancer stages and grades represented in our study was narrow.

Our results should be interpreted with caution. Our study is not definitive in that our sample size is small, especially when cases with suspicious rectal examination findings and/or prostate cancer with a small gland are removed for subset analysis. Additionally, possible loss of detectable PSA immunoreactiv-

ity may have occurred from long-term storage of the serum samples. Stenman et al<sup>6</sup> compared the geometric mean of PSA concentrations in fresh control serum samples with those of comparable men whose serum samples had been stored at -20°C for 9 to 13 years (and thawed and refrozen once during that interval) and found a 38% lower mean PSA concentration in the frozen samples. Stenman et al concluded that measurable PSA was lost with prolonged freezing and that the PSA-ACT form was preferentially lost. In contrast, our samples were kept frozen at -80°C, were frozen for 3 to 5 years, and were not thawed and refrozen before testing. As a result, our repeated analyses of total PSA levels showed a much more modest loss in immunoreactivity.

Furthermore, preliminary studies performed in 11 serum samples (excluding one outlier) indicate that both the free PSA and total PSA immunoreactivity remained stable for at least 3 months when stored at -20°C or -70°C. The mean (±SD) free PSA immunoreactivity was 93.1% (±3.7%) of the initial baseline value when serum was stored at -20°C and 99.9% (±3.3%) of baseline when stored at -70°C. The mean (±SD) total PSA immunoreactivity was 97.7% (±2.8%) and 95.4% (±4.6%) of the baseline value when stored at -20°C and -70°C, respectively. The free-to-total ratio (96.4% [±5.5%] of the baseline value when stored at -20°C and 105.3% [±8.5%] when stored at -70°C) also remained stable. Serum specimens (n=4) subjected to five freeze-thaw cycles showed a mean recovery of 99.8% (±4.6%) of baseline values. However, serum samples stored at 2°C to 8°C lost approximately 30% of free PSA and about 15% of total PSA immunoreactivity after 15 days. Further studies of the stability of PSA forms are in progress. In addition, initial sample handling is important; samples frozen within 24 hours showed minimal loss of reactivity, whereas those stored at 4°C for longer periods showed considerable decay. In the current study, samples that showed the greatest divergence on repeated analysis (in either a positive or negative direction) were eliminated; however, our results should be verified using fresh serum samples.

Another caveat in interpreting the results of our study is that our volunteers were selected from a small geographic area and examined by selected clinicians. Since our study groups were neither a randomly selected nor a consecutive series, a selection bias also could have been introduced. For example, our volunteer sample may have been enriched for men with symptoms of benign hyperplasia.

This may have exaggerated the ability of percentage of free PSA to distinguish between benign prostatic hyperplasia and prostate cancer in the 4.1 to 10.0 ng/mL range. Although we did not collect symptom information in the study population from which our samples were drawn, we can estimate likely symptom prevalence from a second PSA screening study currently ongoing at our institution.<sup>1</sup> In a population of community volunteers recruited in a similar fashion, approximately 50% of the men without prostate cancer and with PSA levels between 4.1 and 10.0 ng/mL reported

one or more symptoms at study entry. For these reasons, the extrapolation of our results to other patient populations is not established and should be confirmed in prospective studies of representative groups of men.

Our results suggest that the use of measurements of free PSA concentrations can reduce unnecessary biopsies in selected men with elevated total serum PSA levels who are undergoing evaluation for prostate cancer. Further studies are needed to define appropriate cutoffs for men with modest total serum PSA elevations and enlarged, palpably benign

findings on digital rectal examination, to evaluate the percentage of free PSA in fresh serum samples, and to examine cost-effectiveness of screening with the percentage of free PSA. Ultimately, final evaluation of PSA screening in general also must consider the ability of current treatments to improve the prognosis of men with screen-detected cancers.

This study was supported in part by a grant from Hybritech Inc, San Diego, Calif, and grant 120 CA58193 from the National Cancer Institute, Bethesda, Md.

The authors gratefully acknowledge the collaboration of Paula C. Southwick, PhD, on this study and her critical review of the manuscript.

#### References

- Catalona WJ, Richie JP, Ahmann FR, et al. Comparison of digital rectal examination and serum prostate specific antigen in the early detection of prostate cancer: results of a multicenter clinical trial of 6,630 men. *J Urol*. 1994;151:1283-1290.
- Catalona WJ, Smith DS, Rathliff TL, Basler JW. Detection of organ-confined prostate cancer is increased through prostate-specific antigen-based screening. *JAMA*. 1993;270:948-954.
- Smith DS, Catalona WJ. The nature of prostate cancer detected through prostate specific antigen based screening. *J Urol*. 1994;152:1732-1736.
- Epstein JI, Walsh PC, Carmichael M, Brendler CB. Pathologic and clinical findings to predict tumor extent of nonpalpable (stage T1c) prostate cancer. *JAMA*. 1994;271:364-374.
- Stormont TJ, Farrow GM, Myers RP, et al. Clinical stage B0 or T1c prostate cancer: non palpable prostate cancer identified by an elevated serum prostate-specific antigen concentration. *Urology*. 1993;41:3-8.
- Stenman U-H, Hakama M, Knekt P, Aromaa A, Teppo L, Leinonen J. Serum concentrations of prostate specific antigen and its complex with  $\alpha$ -1-antichymotrypsin before diagnosis of prostate cancer. *Lancet*. 1994;344:1594-1598.
- Gann PH, Hennekens CH, Stampfer MJ. A prospective evaluation of plasma prostate specific antigen for detection of prostatic cancer. *JAMA*. 1995;273:289-294.
- Keetch DW, Catalona WJ, Smith DS. Serial prostate biopsies in men with persistently elevated serum prostate specific antigen values. *J Urol*. 1994;151:1571-1574.
- Stamey TA, Yang N, Hay AR, McNeal JE, Frezza FS, Redwine E. Prostate-specific antigen as a serum marker for adenocarcinoma of the prostate. *N Engl J Med*. 1987;317:909-916.
- Lilja H, Christensson A, Dahlen U, et al. Prostate-specific antigen in serum occurs predominantly in complex with  $\alpha$ -1-antichymotrypsin. *Clin Chem*. 1991;37:1618-1625.
- Stenman U-H, Leinonen J, Alfthan H, Rannikko S, Tuukkanen K, Alfthan O. A complex between prostate-specific antigen and  $\alpha$ -1-antichymotrypsin is the major form of prostate specific antigen in serum of patients with prostate cancer: assay of the complex improves clinical sensitivity for cancer. *Cancer Res*. 1991;51:2222-2226.
- Leinonen J, Lovgren T, Voranen T, Stenman U-H. Double-label time-resolved immunofluorometric assay of prostate-specific antigen and of its complex with  $\alpha$ -1-antichymotrypsin. *Clin Chem*. 1993;39:2098-2103.
- Christensson A, Bjork T, Nilsson O, et al. Serum prostate specific antigen complexed to  $\alpha$ -1-antichymotrypsin as an indicator of prostate cancer. *J Urol*. 1993;150:100-105.
- Catalona WJ, Smith DS, Rathliff TL, et al. Measurement of prostate-specific antigen in serum as a screening test for prostate cancer. *N Engl J Med*. 1991;324:1156-1161. Erratum: *N Engl J Med*. 1991;325:1324.
- Tennis MK, Stamey TA. Determination of prostate volume by transrectal ultrasound. *J Urol*. 1991;145:984-987.
- Mehta CR, Patel NR. A network algorithm for performing Fisher's exact test in  $r \times c$  contingency tables. *J Am Stat Assoc*. 1983;78:427-434.
- Hayes WL. *Statistics* 3rd ed. New York, NY: Holt Rinehart & Winston; 1981:435.
- Hosmer DW, Lemeshow S. *Applied Logistic Regression*. New York, NY: John Wiley & Sons; 1989:16, 89.
- Carter HB, Pearson JD, Metter J, et al. Longitudinal evaluation of prostate-specific antigen levels in men with and without prostate disease. *JAMA*. 1992;267:2215-2220.
- Smith DS, Catalona WJ. Rate of change in serum prostate specific antigen levels as a method for prostate cancer detection. *J Urol*. 1994;152:1163-1167.
- Benson MC, Whang IS, Pantuck A, et al. Prostate specific antigen density: a means of distinguishing benign prostatic hypertrophy and prostate cancer. *J Urol*. 1992;147:815-816.
- Oesterling JE, Jacobsen SJ, Chute CG, et al. Serum prostate-specific antigen in a community-based population of healthy men: establishment of age-specific reference ranges. *JAMA*. 1993;270:860-864.
- Dalkin HI, Ahmann FR, Kopp JB. Prostate specific antigen levels in men older than 60 years without clinical evidence of prostatic carcinoma. *J Urol*. 1993;150:1837-1839.
- Mettlin C, Littrup PJ, Kane RA, et al. Relative sensitivity and specificity of serum prostate specific antigen (PSA) level compared with age-referenced PSA, PSA density, and PSA change: data from the American Cancer Society National Prostate Cancer Detection Project. *Cancer*. 1994;74:1615-1620.
- Catalona WJ, Richie JP, deKernion JB, et al. Comparison of prostate specific antigen concentration versus prostate specific antigen density in the early detection of prostate cancer: receiver operating characteristic curves. *J Urol*. 1994;152:2031-2035.
- Catalona WJ, Hudson MA, Scardino IT, et al. Selection of optimal prostate specific antigen cutoffs for early detection of prostate cancer: receiver operating characteristic curves. *J Urol*. 1994;152:2037-2042.
- Seaman E, Katz A, Cooner WC, et al. An algorithm for prostate cancer detection based upon PSA, TRUS, DRE, PSA density and PSA velocity. *J Urol*. 1993;149(pt 2):1414A. Abstract.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 253

Revision Date \_\_\_\_\_  
 Title An Act relating to insurance coverage for costs of prostate cancer detection  
 Sponsor Duncan  
 Requestor \_\_\_\_\_

Department Affected All Agencies  
 BRU All Agencies  
 Component All Agencies  
 COMPONENT SERIAL NO. 64

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	00	00	00	00	00	00
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>

<b>CAPITAL EXPENDITURES</b>	00	00	00	00	00	00
-----------------------------	----	----	----	----	----	----

<b>CHANGE IN REVENUES ( )</b>	00	00	00	00	00	00
-------------------------------	----	----	----	----	----	----

**FUND SOURCE:**

(Thousands of Dollars)

1002 Federal Receipts	00	00	0	00	00	00
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>

Estimate of any current year (FY 96) cost: \$ zero

**POSITIONS:**

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

**ANALYSIS: (Attach a separate page if necessary)**

Currently the State's plan pays for the Prostate Specific Antigen (PSA) test only when there are clinical signs or symptoms of prostate disease. This bill would expand health coverage to include routine prostate cancer screening. The State's health insurance premiums are based on the experience of the plan. We anticipate an increase in health costs of approximately \$60,000 per year.

Prepared by Robert F. Stalnaker *Robert F. Stalnaker*  
 Division Retirement & Benefits

Phone 465-4470  
 Date \_\_\_\_\_

Approved by Commissioner Mark Boyer *M. Boyer*  
 Agency Department of Administration

Date 3/7/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 253

Revision Date: \_\_\_\_\_  
Title: Insurance for Prostate Cancer Testing

Department: Commerce and Economic Development  
BRU: Insurance  
Component: Operations

Sponsor: Senator Duncan  
Requestor: Labor & Commerce Committee

COMPONENT SERIAL NO. #354

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	00	00	00	00	00	00

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	00	00	00	00	00	00

Estimate of any current year (FY 96) cost: \$ 00

POSITIONS

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

**ANALYSIS:** (Attach a separate page if necessary)  
No fiscal impact.

Prepared by: Joan Brown, Administrative Officer *JAB* Phone: 465-2597  
 Division: Insurance Date: 2/8/96  
 Approved by Commissioner: William L. Hensley *W. Hensley* Date: 2-3-96  
 Agency: Commerce and Economic Development

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
For further distribution information, call the Governor's Legislative Office

**SB**

**261**

# Alaska State Legislature

Senator Tim Kelly, Chair  
Senator John Torgerson, Vice Chair  
Senator Mike Miller  
Senator Jim Duncan  
Senator Judy Salo



STATE CAPITOL SUITE 101  
JUNEAU, ALASKA 99801-1182  
PHONE: (907) 465-3822  
FAX: (907) 465-3756

## SENATE LABOR AND COMMERCE COMMITTEE

716 W 4TH, SUITE 400  
ANCHORAGE, AK 99501-2133  
PHONE: (907) 258-8180  
FAX: (907) 258-4524

### Sponsor Statement

#### SB 261

**"An Act relating to the release of employment security records; relating to an injunction or an employer's security for delinquent unemployment insurance contributions..."**

SB 261 was requested by the Department of Labor and makes several changes to the Employment Security Act in six major areas: (1) federal income tax withholding; (2) confidentiality of records; (3) contributions and collection; (4) benefit overpayments; (5) finality of determinations; (6) appeals. SB 261 also contains a few minor cleanup provisions and technical amendments.

The six major changes are outlined here:

**Income Tax Withholding.** One important change brings the Employment Security Act into conformity with a new federal provision that requires states to allow claimants to have income withheld from their benefits to cover their federal income tax liability.

**Confidentiality of Records.** Proposed changes to current law would allow the Department of Labor to provide additional specific unemployment insurance information to other entities under strict disclosure guidelines. This information exchange will support and enhance the department's own programs, as well as assisting other state programs. The information would be used only to protect the unemployment compensation fund, enhance employment, training, and labor market information programs, and assist state eligibility verification and collection functions. These changes do not rescind public disclosure prohibitions already in statute. They are intended only to increase efficiency of state government while retaining current privacy safeguards.

**Contributions and Collections.** Two provisions would provide important tools for collecting delinquent contributions. First, the department would be authorized to require a deposit or bond from an employer who is at least two quarters delinquent in making contributions to the unemployment compensation fund. SB 261 would also allow the Department to enjoin a delinquent employer from operating. Additionally, the bill allows the Department to notify employing units of their contractor's or subcontractor's liability for contributions to the unemployment compensation fund. This information will help employers to meet their obligation to require contribution bonds of their subcontractors before making contract payments.

**Benefit Overpayments.** The standard for waiving unemployment insurance overpayments would be changed from "great hardship" to "equity and good conscience." The new standard would allow the Department to consider other factors, such as the degree of good faith in claiming benefits. The bill would also permit the Department to write off uncollectible overpayments after two years. Practice has shown that most recoverable overpayments are collected within two years.

**Finality of Determinations.** The Department would be given authority to correct any determination during the benefit year of an unemployment claim. This change will increase the accuracy of claim adjudication.

**Appeals.** The bill would clarify the legal effect of appeal decisions. It would make it clear that findings of fact and conclusions of law in unemployment hearings are not binding in another proceeding. This change to current law will prevent excessive litigation by parties based on the effects of the Departments rulings in later civil litigation. This change should keep unemployment hearings speedy, informal, and inexpensive.

**Other Minor Changes.** Additional changes would allow an insured worker to continue receiving unemployment while attending the funeral of an immediate family member; require a worker to file a compensable claim for the week immediately before jury duty or attendance at a funeral in order to receive an eligibility exemption for those reasons; exempt extended benefit claimants from the work search requirement while attending an approved training course; correct the definition of "waiting week" in the Employment Security Act; and clarify the treatment of "cafeteria plan" payments under the wage definition in the Act.

# ALASKA STATE LEGISLATURE

Senator Tim Kelly, Chair  
Senator John Torgerson, Vice Chair  
Senator Mike Miller  
Senator Jim Duncan  
Senator Judy Salo



STATE CAPITOL, SUITE 101  
JUNEAU, ALASKA 99801-1182  
Phone (907) 465-3822  
FAX: (907) 465-3756

716 W. 4TH, SUITE 400  
ANCHORAGE, AK 99501-2133  
PHONE (907) 258-8180  
FAX: (907) 258-4524

## SENATE LABOR AND COMMERCE COMMITTEE

### Sponsor Statement

#### SB 261

"An Act relating to the release of employment security records; relating to an injunction or an employer's security for delinquent unemployment insurance contributions..."

SB 261 was requested by the Department of Labor and makes several changes to the Employment Security Act in six major areas: (1) federal income tax withholding; (2) confidentiality of records; (3) contributions and collection; (4) benefit overpayments; (5) finality of determinations; (6) appeals. SB 261 also contains a few minor cleanup provisions and technical amendments.

The six major changes are outlined here:

**Income Tax Withholding.** One important change brings the Employment Security Act into conformity with a new federal provision that requires states to allow claimants to have income withheld from their benefits to cover their federal income tax liability.

**Confidentiality of Records.** Proposed changes to current law would allow the Department of Labor to provide additional specific unemployment insurance information to other entities under strict disclosure guidelines. This information exchange will support and enhance the department's own programs, as well as assisting other state programs. The information would be used only to protect the unemployment compensation fund, enhance employment, training, and labor market information programs, and assist state eligibility verification and collection functions. These changes do not rescind public disclosure prohibitions already in statute. They are intended only to increase efficiency of state government while retaining current privacy safeguards.

**Contributions and Collections.** Two provisions would provide important tools for collecting delinquent contributions. First, the department would be authorized to require a deposit or bond from an employer who is at least two quarters delinquent in making contributions to the unemployment compensation fund. SB 261 would also allow the Department to enjoin a delinquent employer from operating. Additionally, the bill allows the Department to notify employing units of their contractor's or subcontractor's liability for contributions to the unemployment compensation fund. This information will help employers to meet their obligation to require contribution bonds of their subcontractors before making contract payments.

**Benefit Overpayments.** The standard for waiving unemployment insurance overpayments would be changed from "great hardship" to "equity and good conscience." The new standard would allow the Department to consider other factors, such as the degree of good faith in claiming benefits. The bill would also permit the Department to write off uncollectible overpayments after two years. Practice has shown that most recoverable overpayments are collected within two years.

**Finality of Determinations.** The Department would be given authority to correct any determination during the benefit year of an unemployment claim. This change will increase the accuracy of claim adjudication.

**Appeals.** A proposed amendment would provide a uniform 30-day time period for filing appeals from any determination made by the department. The current 15-day period probably impacts rural parties unfairly and may not allow enough time to review and consider an appeal. A longer period will still allow for prompt disposition of claims and assessments.

The bill would clarify the legal effect of appeal decisions. It would make it clear that findings of fact and conclusions of law in unemployment hearings are not binding in another proceeding. This change to current law will prevent excessive litigation by parties based on the effects of the Department's rulings in later civil litigation. This change should keep unemployment hearings speedy, informal, and inexpensive.

Both the 30-day appeal period and the provision restricting the scope of department decisions address concerns of a recent legislative audit of the unemployment insurance appeals process.

**Other Minor Changes.** Additional changes would allow an insured worker to continue receiving unemployment while attending the funeral of an immediate family member; require a worker to file a compensable claim for the week immediately before jury duty or attendance at a funeral in order to receive an eligibility exemption for those reasons; exempt extended benefit claimants from the work search requirement while attending an approved training course; correct the definition of "waiting week" in the Employment Security Act; and clarify the treatment of "cafeteria plan" payments under the wage definition in the Act.

SECTION BY SECTION ANALYSIS  
SENATE BILL NO. 261

Section 1 amends AS 23.20.110(a) in the following two areas:

- a. Employer access to information. A clarifying amendment gives employing units access to confidential information necessary to protect their rights under the Employment Security Act. This change would make it clear that both claimants and employing units have the right to information necessary to present or contest any claim or determination under the Act.
- b. Information shared with AHRIC-sponsored programs. The Alaska Human Resource Investment Council now has responsibility for coordinating all state employment and training programs under AS 44.19. This amendment would allow sharing of employment security information necessary to carry out the council's mandate.

Sec. 2 amends AS 23.20.110(d) to allow the department to charge persons for the cost of providing information. This change is consistent with an amendment proposed in section 3 of the bill which allows sharing of confidential information with authorized persons and agencies.

Sec. 3 amends AS 23.20.110 by adding subsections (l)-(n) to allow the department to provide unemployment insurance information to other persons and entities under strict disclosure guidelines. The information would be used only to protect the unemployment compensation fund and assist state eligibility verification and collection functions. These changes do not rescind the public disclosure prohibitions in AS 23.20.110; they would increase

Court System

efficiency of state government while retaining current privacy safeguards. Specific changes:

- a. Eligibility verification and collection. New AS 23.20.110(1) would allow the department to share information as necessary to verify the eligibility of applicants for state benefits, assist in the collection of fines and judgements, and collect money owed the unemployment compensation fund.

Proposed paragraph (1) would allow the department to release information for purposes such as verifying permanent fund dividend applications or determining public defender eligibility of criminal defendants. Under current law, the department must deny requests from the court system and other state agencies for residency, wage, and other information in departmental records.

Paragraph (2) would allow the department to release information to the Department of Law to verify the location and income of obligors. There is currently a large backlog of uncollected judgements, and this information would help the Department of Law determine probability of collection and focus collection efforts appropriately.

Paragraph (3) would allow the department to release information on persons or employing units that are delinquent in paying contributions or repaying benefit overpayments. Release would be restricted to information necessary for collection of the amounts due. The restriction would apply to the kind and amount of information released, as well as to the agencies or persons to whom the information would be released. Permitting disclosure would improve the department's ability to collect money owed the fund. The department is currently

prohibited, for example, from releasing the identity of even fraudulently overpaid claimants to a collection agency.

- b. Information release agreement. New AS 23.20.110(m) would require an information release agreement between the department and the requestor prior to any release of information. The agreement would confirm the purposes for the information and the procedures for transmission, use, and safeguarding of the information. The statute already requires verification of a requestor's safeguarding procedures under federally-mandated disclosure provisions. This amendment would extend these requirements to any information release, and it would provide more consistent procedures for maintaining the confidentiality of the information.
  
- c. Statistical reports. New AS 23.20.110(n) would allow the department to include firm name, address, industrial classification code, census code, and staff information in the department's labor market information reports. This would increase the usefulness of the reports, without revealing payroll or wage data.

Sec. 4 adds two new sections to the Employment Security Act, dealing with delinquent contributions. New AS 23.20.247 would give the department authority to require a bond or security from an employer whose contributions to the unemployment fund are more than two quarters delinquent. New AS 23.20.248 would allow the department to seek an injunction against a delinquent employer who refuses to post the bond. The injunction would not be sought until the employer had been given 30 days to post the bond or security. The department would have authority to waive the bond requirement after the delinquency was satisfied

The above provisions would be used when other collection remedies in the Act were not effective. For example, the delinquent account of an employer who operates on leased equipment and has no attachable assets is largely uncollectible using current procedures. In the past two years, the department has declared uncollectible 180 accounts, totalling \$454,213. About half these accounts had significant delinquent balances, and many were not collectible using currently available collection remedies.

Sec. 5 amends AS 23.20.265 to allow the department to notify employing units of their subcontractors' liability for contributions to the fund. Under current law an employing unit is liable for the fund obligations of its contractors or subcontractors, if it makes payment to them before they post a bond sufficient to cover contributions, penalties, and interest owed to the fund. Providing employing units with information on subcontractor liability will allow them verify compliance.

Sec. 6-9 amend the current appeal provisions to provide a uniform 30-day time period in which an employing unit may file an appeal from rate determinations and assessments made by the department. The current 15-day time period is unnecessarily short, considering the complexity of some of these cases. The 30-day appeal period was a recent legislative audit recommendation.

Sec. 10 allows the department to redetermine monetary or non-monetary unemployment insurance determinations within one year from the department's initial determination. The current provision allows the department to correct only a monetary determination. The amendment would allow the department to correct any determination resulting from inaccurate information or an error in computation, identity, or application of law. This change will improve the accuracy and fairness of the department's claim adjudication.

Sec. 11 amends AS 23.20.340(e) to provide a uniform 30-day appeal period for all benefit determinations under the Employment Security Act. The 30-day appeal period was a recommendation of a recently-completed legislative audit of the department's employment security appeals function. The current time period for filing appeals is 15 days from the date the department's decision is mailed to a claimant or other interested party. The 15-day period probably impacts rural parties disparately, due to mail delays, and it may not allow enough time to review and consider an appeal. A longer period would reduce this impact and still allow for prompt disposition of claims.

Sec. 12 amends the availability for work provision in AS 23.20.378 to allow an insured worker to receive benefits while attending the funeral of an immediate family member for a period no longer than seven days. Benefits would be paid only if the worker filed a compensable claim for the week before the funeral attendance. The proposed amendment would also extend this compensable claim requirement to any claimant seeking an availability exemption under AS 23.20.378.

Sec. 13 changes the standard for waiving unemployment insurance overpayments under AS 23.20.390(b) from the current "great hardship" standard to one of "equity and good conscience". The new standard would allow the department to consider other factors, such as the degree of good faith in claiming benefits, the exact cause of the overpayment, whether the claimant received only normal benefits or a duplicate payment, and the extent of the claimant's detrimental reliance on the award of benefits, in addition to financial hardship. The equity and good conscience standard is well-established in other jurisdictions, both federal and state, so there is ample precedent to guide the department in applying the standard.

Sec. 14 allows the department to declare uncollectible an overpayment that has not been repaid within two years and to remove it from the department's books. The current statute requires the department to carry overpayments for six years before they may be declared uncollectible.

Sec. 15 increases the appeal period for overpayment liability determinations to 30 days. This is consistent with the other appeal period changes made in the bill.

Sec. 16 adds a new section to the Employment Security Act to allow voluntary income tax withholding on unemployment insurance benefits. This change is necessary to bring the Act into conformity with Public Law 103-465, which requires states to allow claimants the option of withholding from their benefits to cover their federal income tax liability on those benefits.

Sec. 17 exempts extended benefit claimants from the work search requirement while attending an approved training course. These claimants are already exempted under federal law; this change simply brings the Act into full agreement with federal extended benefit law.

Sec. 18-19 amend the appeal provisions in AS 23.20.430-435 to provide a 30-day time period for filing an appeal from a decision of the appeal tribunal and to allow the department 30 days to initiate review of a decision of the appeal tribunal. These changes are consistent with the 30-day appeal period for tax and benefit determinations elsewhere in the bill.

Sec. 20 amends AS 23.20.455 to clarify the scope of the department's rulings in unemployment insurance cases. It restricts the scope of the department's declaration of legal principles to only those cases decided under the Employment

Security Act. This change is consistent with the amendment proposed in sec. 21 of the bill.

Sec. 21 adds a new section to the Employment Security Act to clarify the legal effect of appeal decisions. Under this provision, findings of fact and conclusions of law only have preclusive effect in proceedings before the department, and are not binding in another forum or proceeding. The purpose of the amendment is to prevent parties from excessively litigating issues based on the effect the department's rulings may have on later civil litigation. For example, under this provision a finding of fact or conclusion of law made by the department regarding whether an employee was terminated for misconduct could not be given preclusive effect in a subsequent civil lawsuit for wrongful discharge. The change is intended to help keep unemployment insurance hearings speedy, informal, and inexpensive.

Sec. 22 is a technical amendment that corrects the "waiting week" definition in AS 23.20.520(20). It simply adds another provision to the current incomplete list of disqualifying provisions which would disqualify a week for use as a "waiting week."

Sec. 23 amends the list of employee compensation payments in AS 23.20.530(b) which are not deemed "wages" and are therefore not subject to employment security contributions. It specifies that "cafeteria plan" payments are not considered wages so long as the payments would not be otherwise treated as wages under AS 23.20.530. For example, payments made to a cafeteria plan for retirement or medical expenses would not be considered wages, because those payments are excluded elsewhere in the definition of wages. On the other hand, payments made under the plan that an employee elects to take in the form of cash would still be considered wages. Cafeteria plans have been treated this way for some time for federal withholding and payroll tax purposes. The

Federal Unemployment Tax Act (FUTA) was amended in 1986 (Public Law 99-514) to make it clear that the cafeteria plan exemption applied to both FUTA and Federal Insurance Contributions Act (FICA) taxes. This change will bring Alaska and federal law into harmony on this point.

Sec. 24 provides an effective date of July 1, 1996.

**SB**

**273**

# ALASKA STATE LEGISLATURE

Senator Georgia Lincoln



State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4732  
Fax (907) 465-2652

Committees  
Resources  
Transportation  
Legislative Council  
Minority Caucus  
Budget Subcommittee  
Natural Resources  
Collections

## DISTRICT

- 1st
- 2nd
- 3rd
- 4th
- 5th
- 6th
- 7th
- 8th
- 9th
- 10th
- 11th
- 12th
- 13th
- 14th
- 15th
- 16th
- 17th
- 18th
- 19th
- 20th
- 21st
- 22nd
- 23rd
- 24th
- 25th
- 26th
- 27th
- 28th
- 29th
- 30th
- 31st
- 32nd
- 33rd
- 34th
- 35th
- 36th
- 37th
- 38th
- 39th
- 40th
- 41st
- 42nd
- 43rd
- 44th
- 45th
- 46th
- 47th
- 48th
- 49th
- 50th
- 51st
- 52nd
- 53rd
- 54th
- 55th
- 56th
- 57th
- 58th
- 59th
- 60th
- 61st
- 62nd
- 63rd
- 64th
- 65th
- 66th
- 67th
- 68th
- 69th
- 70th
- 71st
- 72nd
- 73rd
- 74th
- 75th
- 76th
- 77th
- 78th
- 79th
- 80th
- 81st
- 82nd
- 83rd
- 84th
- 85th
- 86th
- 87th
- 88th
- 89th
- 90th
- 91st
- 92nd
- 93rd
- 94th
- 95th
- 96th
- 97th
- 98th
- 99th
- 100th

## Sponsor Statement SB 273

SB 273 relating to Native Handicrafts and Instate Products has been introduced in response to the growing problem of counterfeit Alaska Native art being sold in Alaska. With a burgeoning tourist population increasing the demand for Native arts and crafts, unscrupulous art dealers are profiting at the expense of both local artisans and the tourists. An estimate from the Department of Commerce and Economic Development indicates as much as 80 percent of the \$77.5 million spent in 1994 on gifts and souvenirs was questionable in terms of origin.

SB 273 would require sellers of Native handicrafts with a retail value of over \$100 to display a poster explaining the presence of the silver hand seal. The poster further explains each handicraft entitled to this seal and worth over \$100. must be accompanied by a certificate of origin. The certificate of origin further documents the fact the article was made by an Alaska Native in Alaska. Failure to display the poster and provide the certificate of origin are both punishable under Alaska law as Class B misdemeanors.

Alaska Native handicrafts are of extreme importance in the cultural heritage of our state, not to mention the economic benefits. The sale of these items contributes significantly to both Alaska's fiscal base and to the successful diversification of our economy. We should take all possible steps to prevent the sale of counterfeit Alaska Native handicrafts thereby protecting the value of the item as well as the financial interests of the artisan, the consumer and the state.

F

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT -

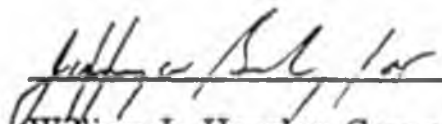
Bill Analysis

SB 273

Research and investigations conducted by various state and federal agencies have concluded that a very high percentage of the handicraft articles sold as Alaska Native art and craft are not made by Alaska Natives. It has been estimated that as much as 80 percent of the items sold as Alaska Native art priced at \$100 or more are either counterfeit, or imitations of authentic productions. While some of these items may be made in Alaska; most are mass produced in other states or foreign countries where manufacturing cost is extremely low. The ready availability and easy financing arrangements for the "knock-off art" limits the demand and reduces the market value of authentic Native arts and crafts.

The Native arts and crafts industry is a base economy for rural communities. Production of arts and crafts is the largest source of private sector income in some villages, representing economic opportunity where little else is available. Visitor industry surveys place Native arts and crafts high on the list of Alaska's cultural attractions.

The intent of SB 273 is supported by the Marketing Alaska recommendations for protecting and advancing the cultural resources sector of our economy. The Department of Commerce and Economic Development strongly supports SB 273 relating to Native Handicrafts and Interstate Products.

  
\_\_\_\_\_  
William L. Hensley, Commissioner

Date: 3-8-96



# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

3601 C STREET, SUITE 724  
ANCHORAGE, ALASKA 99503-5986  
PHONE: (907) 562-2728  
FAX: (907) 465-0048  
TDD: (907) 465-5437

March 7, 1996

Mr. Dimitri Philemonof  
401 E. Fireweed, Suite 201  
Anchorage, AK 99503-2111

Dear Mr. Philemonof:

I am forwarding a copy of Senate Bill #273, "An Act relating to Native handicrafts and other articles made in the state" for your review. Introduced by Senator Lincoln on February 9, 1996, this bill incorporates recommendations made by the Marketing Alaska Cultural Resources Sector Group as well as the Alaska Native Arts and Craft Task Force. The need for these laws is best described in the attached Anchorage Daily News article by Bruce Mezler.

As you know the demand for Alaska Native arts and crafts has grown significantly, and with the steady increase of visitors to Alaska a very lucrative market has developed. While most people involved are honest and contribute to the success of the industry, there are exceptions: profiteers seeking to profit from the industry by looking for loopholes in the law that enable them to deceive the consumer.

This legislation is designed to curb this threat to the Alaska Native artisan. I urge you to contact your legislators and ask them support Senate Bill No. 273.

Thank you.

Sincerely,

  
Commissioner William L. Hensley

Encl

## Souvenirs of the Last Frontier cross an ocean first

TAMPAK SIRING, Bali, Indonesia — Walk down the dirt lane, past a barefooted, gold-toothed farmer with a load of palm fronds on his head, step into a walled compound and you can find miniature moose carvings in u-

Roosters' crows mix with the whine of electric grinders. At his workshop in this hill village in Bali, master carver Ida Bagus Pastika is surrounded by barefoot workers hunched over motorized carving tools. Bits of bone, fossilized walrus teeth, and moose and deer antler are transformed into moose, sheep and otter carvings

bound for Alaska's trinket shops.

Pastika, in a worn sarong and camouflage shirt, oversees the work in his shop and proudly shows off a moose head carved from Indonesian deer horn.

Behind him a young carver studies photo books, looking for examples for his next piece. In "Wolves," a paperback still sporting the \$2.25 price tag from an Anchorage shop, photos of bushy wolf faces are circled while rangy doglike ones are X'd out.

Larry Lynd of Alaskan Ivory Outlet in Anchorage is one of those who supplies Pastika with designs, fossil walrus

Please see Page C-3, BALI

Ida Bagus Oka Astina shows off a Yupik-style mask made for Larry Lynd's Alaskan Ivory Outlet.



BRUCE MCELZNER / Anchorage Daily News

## For many buyers, for many sellers, nearly Native is near enough

If you're hunting Alaska's gift shops for Native motif carvings, you might see soapstone pieces by Chupak, Eddy Lyngoc or Ronakl Komok.

Native art? Not really.

Chupak is a Cambodian. Lyngoc is a name used by Vietnamese artist Ngoc Ly. Ron Komok is a Native carver who sold the rights to his name to Ly's Seattle carving studio.

Non-Native arts and crafts from Alaska, Seattle and overseas have been and sometimes still are being sold as

Native art. Kurt Tripp, a Seattle businessman, said the Federal Trade Commission in Seattle has been investigating him and Ly about carvings produced in Ly's studio and wholesaled by Tripp.

FTC's Seattle's office has forwarded a proposed settlement to the commissioners in Washington, D.C., said Eleanor Durham, an agency lawyer.

Selling non-Native art as Native work is a deceptive trade practice, which is overseen by the FTC, Durham said. The agency can take civil action against violators.

Please see Page C-3, NEARLY NATIVE



BRUCE MCELZNER

At Ida Bagus Oka Astina's carving shop in the village of Bali, Alaska Native-style mask hangs above the book it was carved for.

## Shop carefully

When shopping for authentic Native crafts, ask lots of questions.

Is the product made in Alaska?

Is it made by a Native artist? What is his or her name and where is he or she from?

If you make a purchase, have the seller write the name and details on your receipt.

Watch out for the wiggle words. Carvings may be labeled "Alaska fossil ivory," true enough. But just because the raw material is from Alaska doesn't mean the work was done in the state.

Look for the Silver Hand label. This state-run program is intended to guarantee that the tagged handicrafts are made by an Alaskan Indian, Aleut or Eskimo artist. The Silver Hand is not widely used, and plenty of legitimate crafts do not have the Silver Hand.

Another state-sponsored label, "Made in Alaska," features a pair of bears. This is a voluntary state-sponsored program that certifies that a specific product or product line is manufactured or assembled in the state. It does not specify whether a product is Native made.

Please see Page C-3, SHOP

Continued from Page C-1

Lynd and other Alaska merchants. Then he buys the finished carvings.

"We've made him rich," said Lynd.

Pastika's home and workshop confirm that. The temple in his walled family compound is recently rebuilt; the shop is new.

Tampak Siring is the ivory and bone-carving capital of an island renowned for artists and crafts work, where many villages have a specialty, from wood carving to stone work.

In workshops tucked into family compounds, in houses overlooking vivid green rice terraces, Tampak Siring's 200 or so carvers work on Alaskan fossil walrus ivory, bone, mammoth tusks, even bone from the extinct Steller's sea cow.

Alaskans and other Americans have helped revitalize the ivory-carving industry on the Indonesian island of Bali. And that island's carvers are filling many gift-shop shelves in Anchorage and around Alaska with their work.

The tale of the ivory trade parallels a larger trend in American manufacturing, where inexpensive labor in developing countries has lured manufacturers overseas. Low-priced products — in this case ivory and wood carvings — come back into American markets once dominated by locals.

Dealers say Native artisans just don't produce enough crafts to meet the demand. But they note that Native carvers and crafts people never will be



BRUCE MELZER / Anchorage Daily News

Ida Bagus Pastika owns a carving shop in the village of Tampak Siring on Bali in Indonesia. The master carver does work for Larry Lynd of Alaska Ivory Outlet.

totally displaced, because some buyers will pay more for authentic work.

The imports can confuse consumers, who sometimes can't tell what's authentic and what's not. Often Indonesian work isn't labeled as such on Alaska store shelves.

And it's not just Bali. Native motif whalebone and soapstone carvings, some produced by non-Natives using Native-sounding names, come from Seattle or Alaska itself.

Some tourists eager to take home a memento of Alaska will buy imports or non-Native work because "the Natives have priced themselves out of some of the market," said Lynd. Initially, his wholesale cus-

tomers shied away from the Balinese crafts. But given the lower prices "they'll always come back to it," Lynd said.

Although the carvings might not be Native Alaskan, almost all of the raw material is from Alaska, mainly from St. Lawrence Island in the Bering Sea.

Hauling fossil walrus ivory for carving abroad is a growing business, with 1,368 pounds worth at least \$116,209 leaving the country so far this year, federal government figures show. Since 1990 — the year the U.S. government started tracking the fossil-ivory trade — the number of companies legally exporting fossil walrus ivory and importing carvings has

grown fivefold to 46. A half-dozen of those dealers are Alaskans, said Michael Klehn of the U.S. Fish and Wildlife Service in Anchorage.

When fossil walrus ivory leaves the country, "the vast majority, maybe 90 percent, is going to Indonesia," Klehn said.

#### BY THE NUMBERS

Victor Huberge, a dealer from North Pole, had some turtles carved in Bali "that were costing me \$3 a turtle. I have an American guy that does the same one, but he charges me 75 bucks."

Huberge can take a plastic bag of chips worth \$20 a pound and have the pieces carved in Bali for less than \$3 per chip. After paying for labor and materials, "I can still recover \$360 a pound" for finished carvings, Huberge said.

Getting ivory carved cheaply doesn't guarantee profit. Dealers also have to buy plane tickets and pay for lodging in Bali. Then there's the American paperwork and the bribe-bungry Indonesian officials. "Sometimes they get me in both directions," entering and leaving the country, Huberge said.

Most of Huberge's carving is done by the kingpin of Bali's ivory business, Dewa Nyoman Jaya of Kanaka Gallery of Art. He sports a Rolex wristwatch and totes a brass-handled coconut-wood swagger stick.

Jaya said he is one of the few people in Indonesia licensed to work on elephant tusks. His two-story showroom highlights

intricately carved white pillars, tusks that took a year and half to carve and priced at \$50,000.

As with other Balinese ivory shops, his workers are paid by the piece. Earnings average about \$12 a day and his best carvers earn twice that, Jaya said. But Jaya has some of the highest wages around.

Most ivory carvers in town earn about \$5 a day, said Lee Downey, an American who helped pioneer the Balinese walrus ivory trade a decade ago. That's more than twice the local minimum wage.

Downey was drawn in part by the island's tradition of detailed decorative arts. Art is so woven into the fabric of Balinese life that nearly everyone carves or paints, sculpts or dances.

Foreign manufacturers like Downey have found that Balinese craftsmen are human Xerox machines. They can copy anything.

#### BEYOND IVORY

Down the road, in the wood-carving village of Mas, a Yupik-style mask bound for Anchorage hangs on the wall at Ida Bagus Oka Astina's wood-carving shop.

For years Oka has been cranking out Indian, Eskimo, even African reproductions in addition to traditional Balinese masks and his original creations.

In a country where every good artistic idea is quickly copied, Oka said he has his own code of ethics. "I ask if the man is still

alive." If the Alaska carver is dead, he feels no qualms about copying the work.

But in Alaska, some people object if the masks aren't marked "made in Indonesia" and are then passed off as Native-made.

U.S. law requires that imported goods be marked with the country of origin. For Indian and Native-style arts or crafts, that mark must be permanent, said Eleanor Durham, a Federal Trade Commission lawyer in Seattle. Consumers can get burned if unmarked work gets to store shelves. "They look Native, they are mixed with Native art and nobody said they are not Native," Durham said.

One mask imported by Lynd wound up in an Anchorage Museum of History and Art exhibit last year, an example of bogus Native art. The mask had no country of origin marked on it and was sold as Native-made by Stephan Fine Arts Gallery, museum records show.

"The only thing that I can say about it is that I was misinformed, that I was under the impression those were indeed done in Southeast Alaska," said Hildegard Johnson, the Stephan's employee who sold that mask.

At Lynd's downtown shop this month, several Bali-carved masks were all so unmarked, Lynd said all his products leave Indonesia with identifying stamps or stickers and he is careful not to misrepresent his imported goods as Alaska

Please see Page C-4. BALI

## BALI: Alaska souvenirs from island paradise

Continued from Page C-3

or Native-made.

In general, shoppers should realize they are buying a copy when the price is low, he said. Original Southeast-style masks by a Alaskan Native carver might bring as much as \$3,500, while a Balinese-carved mask might be a tenth of that, Lynd said. "It's kind of like buyer beware."

Prices should tip off people on Ivory carving, too, he said. But a shopper might find it hard to tell if a carving is Alaska made. Lynd and Butte both said that if they do some work on an imported piece — repolish it or mount it on a base — then they'll usually take off the "made in Indonesia" sticker. How then does a buyer know where a piece is from? Just ask, said Lynd.

Faking art works has gone on for years, said Walter Van Horn, curator of collections at the Anchorage Museum of History and Art. A few years ago the museum bought what it thought was an original Native Ivory totem. Van Horn was chagrined to find

that Sheldon Jackson College in Sitka has the exact same item, still in the original box with markings showing it was imported from the Orient decades ago.

Craft wholesalers like Angle Larson of Alaskan Treasures in Anchorage complain that "the market is flooded with bogus art." That's hurting Alaskan crafts-people and Native artisans, whose work is more expensive than the imports, she said. Stores find better prices and higher profits on the imports or non-Native work, she said, so "there is no room on the shelves" for the real thing.

Some Native carvers said they aren't too concerned about imported pieces unless someone is trying to copy their own work. Ivory carver Leonard Savage was angry to see a knockoff of his work. He couldn't find out who did the carving. "Why would they want to go and copy somebody else's work? I don't think that's right. I don't do it."

But when it comes to items from overseas, "as long as they go and they

say if it's from Taiwan, heck, I don't care," Savage said.

"I don't really feel threatened by the competition," said Sylvester Ayek, an Inupiaq carver from King Island whose work hangs in Anchorage's art museum.

And that's just the point, said Susan Fair, an art buyer and Native arts expert. The best fine artists, such as Ayek, who are doing truly creative work, have little to fear from imports and knockoffs, she said.

But Denty Owens, the Inupiaq owner of Alaska Native Cultural Arts Exchange Inc., said he feels the pressure from the low-cost imports. He rents shop space to Native artists and carves walrus Ivory himself. Families visiting from the Bush stroll in, carvers sit and chat, making the downtown Anchorage shop as much a community center as it is a store.

If tourists buy less-expensive imported carvings, "they have no need to come over here and buy these things," he said, nodding to the glass cases of carvings and crafts.

## SHOP:

Continued from Page C-1

Other labels saying "made in Alaska" or "Alaska made" guarantee little. Components can be carved or manufactured elsewhere, assembled here and the final product still be tagged as Alaska made, according to the state Commerce Department.

Be wary of soapstone carving. Almost all soapstone is imported; it is not a traditional material used by Alaska Natives.

"By in large, 10 percent of the soapstone carvings in the state are made by Eskimos and the rest are not," said Kurt Tripp, whose Ivory Jack Trading Co. is a major art wholesaler.

Shop around and learn about the item you want to buy. Check out art books, museums or other collections to learn about the item you want.



MICHAEL DANHEIN / FOR THE I

**Fakes on display:** Janelle Matz, assistant curator of the Anchorage Museum of History and Art, stands by some of the counterfeit "Native-made" art that is part of an exhibit designed to illustrate the problem.

# 'Genuine' Native art often fake

By JAMES MacPHERSON

THE JUNEAU NEWS

11/23/94

**T**he Anchorage Museum of History and Art has a new exhibit this year featuring counterfeits of Alaska Native art made in Seattle and as far away as Africa and Southeast Asia.

Among the items are a Yup'ik-style mask made in Bali and a Siberian Yup'ik-style grass basket made in Uganda. There is also a soapstone carving made by a Seattle-based Vietnamese artist, bearing the name of an Alaska Native allegedly paid to put his name on the artwork.

**'Tourists are getting fooled.'**

— Jim Forbes

**Assistant attorney general**

All of the items on display were sold by Anchorage gift shops as genuine Alaska Native-made, said Janelle Matz, the museum's assistant curator.

"We added the exhibit to show there are problems in the industry," Matz said. "These

are just the tip of the iceberg."

"It's an ancient problem," said Steve Erikson, curator of collections at the Alaska State Museum in Juneau. "Non-Natives have been producing Native-style art back to the turn of the century with the first canoes."

Street vendors sold crude copies of Native canoes, totem poles and masks, Erikson said. "There was a demand for them. I suspect at least some of it was misrepresented as Native art."

"It's been a long, steady problem, and lately one that has grated on the nerves."

**Please turn to Fakes. Page .**

Continued from Page A-1

many people," he said.

The Alaska attorney general's office and Federal Trade Commission are investigating the problem of misrepresented artwork. State officials and Native artists say authentic Native art is being copied without permission and sold in retail stores throughout the state, including Juneau.

In some cases, the phony Native art and handicrafts bear fictitious Native-sounding names, or are labeled as made in "the village of Chugiak," for example.

Chugiak is part of the municipality of Anchorage, Alaska's largest city.

"Tourists are getting fooled," said assistant attorney general Jim Forbes.

Most of the Native-style art sold in Alaska gift shops does not come with any information identifying its origin, said Forbes, who works in the state's Fair Business Practices Office in Anchorage.

"I would say the vast majority of it is not made in Alaska," Forbes said. "And the vast majority of that is sold with strong implications that it is made in Alaska."

Under federal law, misrepresenting non-Native artwork is punishable by penalties of up to \$250,000 and five years in prison. Federal Trade Commission officials would not comment on their investigation.

Tom Lawson of the state Department of Commerce and Economic Development in Juneau said summer tourists in Alaska spent \$77.5 million last year on artwork and handicrafts.

"Up to 80 percent of it is questionable in terms of its origin," Lawson said. "We know it's a problem."

In an effort to help identify legitimate items, the state distributes its Silver Hand and Made in Alaska tags. The Silver Hand seal, a silver hand in a black oval, denotes authentic Alaska Native handicraft, made by a person with at least one-quarter Native ancestry.

"Native art should be clearly identified as Native art," he said. "There should not be any conflicts if that were the case."

Meanwhile, there are conflicts and Native artists and would-be Native artists are being driven out of the market, said well-known Native carver Mick Beasley of Juneau.

"There are more non-Natives than Natives making a living off of Native-style art," Beasley said. "It's the raping and pillaging of our art form. We don't want other people capitalizing on our art."

made artwork were probably left with a false impression that the items were made Alaska Natives. However, he said, it is probably not illegal because Chugiak qualifies under the dictionary definition of "village."

Dupps said he has since stopped the practice of importing workers and labeling merchandise as being made "in the village Chugiak." He said he now deals only in authentic Alaska-made artwork, said the problem of mass-produced Native art knockoffs not new.

---

In some cases, the phony Native art and handicrafts bear fictitious Native-sounding names, or are labeled as made in "the village of Chugiak," for example.

---

"When a Native enters the marketplace, they are competing with non-Natives from out-of-state or out of the country, and Third-World wages," Beasley said. "Flooding the market with non-Native art hasn't encouraged the manufacturing of art by Native people."

He said art dealers often tell Native artists what to produce and what the price will be.

"They are telling Natives what the standards are for Native art," Beasley said. "It's not right."

Nguc Ly (pronounced Nuk Lee) is a Vietnamese artist living in Seattle who specializes in carving soapstone and fossilized walrus and mammoth ivory. Ly, who owns Northwest Tribal Art in Seattle, works under the name Eddie Lynd and Lyngoc, Forbes said. He also markets carvings from Native artist Ronald Komok and carvings under Komok's Eskimo name, Pannimlak.

A soapstone carving with Komok's name on it is on display at the Anchorage Museum. Matz said it was not done by Komok.

"I know for a fact that the majority of Native art sold since the 1940s has been done elsewhere," Dupps said.

One reason, he said, is because the demand for Native artwork is greater than production capabilities.

"I don't think the Native market could produce enough to satisfy the tourist industry," Dupps said. "There is a void in the market that is being filled by capable, qualified artists."

Jack Tripp, owner of Mt. Juneau Trade Post and Northwest Tribal Arts in Juneau, said nearly all of his merchandise is made in state, and by Alaska Natives.

He said the problem of retailers misrepresenting Native art probably is exaggerated.

He said the state's Silver Hand program is ineffective because it does not take into account other Native-made items, such as those made in Canada.

He said he routinely buys artwork from Tlingit Indians on both sides of the border, but only Alaska Tlingit artwork qualifies for the

another polar bear and cub, is used to identify a product or handicraft produced in the state.

The Silver Hand program began in the 1970s, while the Made in Alaska program started in 1986, Lawson said.

By all accounts, the state-sponsored effort isn't working as well as its supporters want.

"It's not necessarily that they are misusing (the Silver Hand and Made in Alaska emblems)," Lawson said. "They're not using it."

Some shops don't use the tags because it brings attention to other items in the store without the labels, he said.

"That's not to argue the quality is bad, because it isn't," Lawson said. "It's the misrepresentation that is disturbing."

Lawson said a task force comprised of lawmakers, state officials, artists, industry representatives and Native leaders is being assembled and will meet Wednesday in Anchorage to address the problem of cleaning up the industry.

The Legislature in 1992 made it illegal to sell a reproduction of Alaska art unless it is clearly labeled as a copy. Forbes said the problem with the law is that knockoffs often copy a style, but not a specific object, making enforcement difficult.

Rep. Mark Hanley, R-Anchorage, sponsored the legislation.

"Does the law not work or is it the enforcement?" Hanley said. "I think it comes down to enforcement."

He said the Legislature probably will have to look at the law again to close loopholes and impose stiffer penalties for misrepresenting and copying Native art.

Abusing the Silver Hand program or misrepresenting non-Native art is a misdemeanor. "The word would go out in a hurry if some undercover guy was nailing people with \$10,000 fines," Hanley said.

Lawson and Forbes said tourists could be educated about Native art by requiring shop owners to display posters describing the Silver Hand and Made in Alaska programs.

The Legislature also could require a certificate of origin on every item over a certain dollar amount to prove that products are genuine, Forbes said.

sold his name and design," she said.

Forbes said he has received complaints from tourists, Native artists and some retailers about Komok carvings, which sell for hundreds of dollars.

"There have been allegations made that work attributed to him is not being done by him," Forbes said.

Ly would not return repeated phone calls from the Empire over the past month. Komok, who is originally from Nome but is now a "Seattle street person," Forbes said, also could not be reached for comment.

One of Komok's soapstone carvings appeared in "Aurora: Expressions of Alaska," a catalog funded by the federal government through the Rural Alaska Community Action Program, an Anchorage-based program that receives some of its funding from the state Department of Community and Regional Affairs.

This year, the same soapstone carving appears under the name of Chuck Carnahan of Chugiak in the arts and crafts mail-order catalog.

Jeanine Kennedy of Rural CAP said she is aware of the problems surrounding Komok carvings. She did not know who Chuck Carnahan was or whether he was Native or non-Native.

Forbes said the Carnahan carvings appear to be the work of Ly and his associates. The state is looking into the matter, he said.

"There was no intention on our part to mislead anybody," Kennedy said. "We are going to be more careful in the future."

Although the catalog is designed to promote Alaska Native artwork, less than half of its items are Native-made, Kennedy said.

"Our goal is 100 percent," she said.

Mike Dupps, owner of Chugiak Alaska Arts Alliance, an art wholesale business, said he has in the past brought Ly and some of his associates to Chugiak from Seattle to make artwork.

The items were labeled as being made "in the village of Chugiak," and spawned numerous complaints to the attorney general's office.

Forbes said many buyers of the Chugiak-

"They're the same Indian, the same person between totally artificial Anglo boundaries," said Tripp, who claims one-quarter American Indian ancestry.

"To my way of thinking, stickers are important, they are a pain in the butt to Tripp said.

If a customer wants a Silver Hand or Made in Alaska emblem, and the piece qualifies as being made in the state or by an Alaska Native, Tripp said he will put it on the item.

Native-style artwork done by non-Native artists does have its place, he said.

"I don't find it objectionable as far as art form," Tripp said. "If it's carved or carved correctly, it still makes people aware of the culture and value it.

"Is every French Impressionism painting French? Is every cubism painting from the school of Dali?" he said. "Most tourists care who made it, they buy it for aesthetics - they're just interested in the piece. The Native-art concept is easier, most of them."

Cha Rnacircle, a non-Native Juneau artist who specializes in ivory carvings and jewelry, said Alaska art is unique and would be hard to categorize much of what is being produced, either by Natives or non-Natives.

"There are Eskimos doing Indian art and Indians doing Eskimo art," Rnacircle said. "Where do we draw the line?"

Rnacircle said she - like many Alaska artists - have copied an existing style of art.

"I wasn't proud of it, but it's how I started in the business," she said. "It is much easier to copy than to originate. There may be 1 percent creative out there, the rest is just copy."

Rnacircle now prides herself on her carving of gold and ivory. But when she comes around, she said.

"Now people are copying my art."

Monday's Empire will include a reproduction of an Alaska State Museum totem pole being advertised in a new-based Alaska gifts catalog.

# Totem tale is one of dissension

Replicas of Haida  
design carved in Bali

By JAMES MacPHERSON

THE JUNEAU EMPIRE

It's a totem pole that stands just under 5 feet tall and was carved by an unknown Haida artist in the late 1800s.

Depicted on the pole are a bear, a sea wolf and a three-figured watchman, a supernatural-being said to protect the house it guards or the person who owns the pole.

In this case, the watchman may be protecting the pole he sits atop and the centuries-old tradition of totem carving by Natives.

Recent reproductions of the pole - imported from the Indonesian island of Bali by a Seattle-based company - sparked dissension among participants in the money-making project.

A lawsuit was threatened when the state museum bailed out of the project, leaving the Seattle gift dealer to go it alone.

"Sometimes, there are some strange, unexplainable things that happen around objects of this sort," said Steve Henrikson, curator of collections at the Alaska State Museum in Juneau. "However, the misfortunes surrounding this pole, I think, are humanly caused."

The Haida pole is part of the state museum collection. Over the years the story the pole tells has been lost, although museum officials believe it was created specifically for the tourist market near the turn of the century.

The pole's more recent history is better known.

In 1993, the state museum and its nonprofit support group, Friends of the Alaska State Museum, began discussing a joint marketing enterprise with Ivory Jack's Trading Co. of Seattle to reproduce the Haida pole for sale.

Profits from the sale of the reproductions was to be given to Native groups, and to help fund additional

Please see Totem, back page

*'The Voice of Alaska's Capital City'*

# JUNEAU EMPIRE

MONDAY  
October 24, 1993

## Totem...

Continued from Page 1

exhibits at the museum, according to Eleanor Davenport, former executive director of Friends of the Museum.

Native master carver Mick Beasley of Juneau was commissioned by the Friends of the Museum and Ivory Jack's to carve a prototype of the totem, which was then to be reproduced in Alaska, preferably by Native carvers, Davenport said. But reproducing the totem in-state was too costly, and no Native carvers could be found to do the work, Davenport said.

She and Kurt Tripp, president of Ivory Jack's, turned to Bobbo Inc., a Massachusetts company that specializes in wood reproduction done by Balinese carvers.

The plan was to ship Alaska yellow cedar to Bali, where carvers would make copies of Beasley's pole. The totems then would be shipped to a Palmer company to be hand-painted.

But museum officials later changed their mind and objected to the use of Balinese carvers and the proposed use of the Made in Alaska logo, as well as the museum's endorsement on the carvings, Henrikson said.

Museum officials asked Native leaders and artists to comment on the proposal, Henrikson said.

The state paid Tripp \$3,000 to settle the dispute. The Seattle businessman retained rights to Beasley's carving and continued with the project alone.

Neither Tripp nor his attorney would comment on the settlement or the totem reproductions.

After the settlement, Davenport quit her position with the Friends of the Museum. She is now self-employed and helps market the poles.

"I still believe in it," she said of the totem.

Tripp's totem pole recently surfaced in the fall issue of the Juneau-based "Great Alaska Catalog: Extraordinary Gifts From the Great Land." The poles come in three sizes: 18 inch, 24 inch and 54 inch. They are priced at \$395, \$495 and \$2,400, respectively.

The totems take up the entire back cover of the catalog, but nowhere in the copy does it say where they were made. It does state the totems are reproductions of the original at the Alaska State Museum.

The catalog's sales pitch has prompted complaints to the state attorney general's office, said Jim Forbes, who works in the Fair Business Practice Office in Anchorage.

Forbes said he thinks the copy is misleading and is looking into the matter.

"It sure gives me the impression it was carved in Alaska," Forbes said. "It's important to look at the context and what is not said. The average consumer would conclude they are not imported."

"No one liked the idea so we pulled the plug on the project," he said. "It was clearly something we do not want to be involved with."

The Friends of the Museum board also voted to end its involvement in the project.

Beasley said he was not pleased that Balinese carvers would reproduce the totem poles, while also carrying the endorsement of the museum and the Made in Alaska logo.

"Legally, it's probably OK," Beasley said. "Ethically, it's wrong."

Beasley was paid \$2,500 by Tripp for his carving. When the museum and the Friends killed the project, Tripp threatened to sue.

In a letter to the museum, Tripp, through his attorney, David Copley of Seattle, urged chief curator Bruce Kato to reconsider the project, or face legal action.

"It would be a pity if the museum killed this win/win/win proposition because performance of the agreement would have numerous substantial benefits," Copley wrote in a five-page letter. "Most importantly, it would add to the prestige and recognition of the museum ... a lawsuit would be highly distasteful for all concerned. Frankly, it would be a disservice to the people of Alaska, a waste of taxpayers' money and a political embarrassment reflecting very poorly on your administration of the museum."

Forbes said some people may also think they were carved by Alaska Natives, based on what is and what isn't mentioned in the catalog.

"We are not misleading people," said Jackie Stewart, president of the Great Alaska Catalog Co. "I don't see how anybody in their right mind could say it was Native carved ... that's an inappropriate assumption."

Stewart points out that the totems are called "reproductions" in the catalog, and that people realize they are not done by Natives or even in-state.

"If it was being carved by a Native, we would state that it was being carved by a Native," said Stewart, a board member of the state-sponsored Made in Alaska committee.

Stewart said it's possible the totems could qualify for the Made in Alaska logo, since the wood is from Klawock and because they are painted in Palmer. "My guess is that they wouldn't be, though."

"The Made in Alaska designation only applies if the majority of the value-added work was done in Alaska," Forbes said. "The fact that the tree grew in Alaska and that it was painted here is irrelevant."

Davenport and Stewart said they do not know where else Tripp is selling the totems or how many have been made.

Stewart's inventory of totems, which are warehoused in Missouri, have not been hot sellers, she said. "We've only sold a couple of them."

# State investigates phony 'made in Alaska' artwork

The Associated Press

FAIRBANKS — The Alaska Attorney General's office is investigating whether some art objects being sold as "made in Alaska" are actually manufactured Outside or overseas.

"It has more to do with the so-called one-of-a-kind art objects than mass-produced objects, although we have indications that there could be problems at all levels," said Assistant Attorney General Jim Forbes.

"On many different levels of the market, retailers are being duped by the wholesaler and the wholesaler by the manufacturer," he said. "It's the industry we're looking at."

Forbes, who works in the Fair Business Practice Office in Anchorage, says he has received complaints of art objects sold in Alaska and wrongly labeled as made by Alaska Natives. He would not say which busi-



nesses were being investigated.

A fair portion of Alaska-made art objects and handicrafts sold in gift shops are labeled with one of two stickers.

A "silver hand" sticker indicates the object was made by an Alaska Native, in Alaska, with natural materials. A "white bear" sticker can be affixed to anything made in the state.

Judy Robertson, owner of Arctic Travelers Gift Shop in Fairbanks, says she carefully screens Alaska-made merchandise purchased for her store. She keeps a file listing her suppliers and a record of every tag used.

Allegations about misuse

## Jail escap back in st

The Associated Press

A man who has been caught after escaping from a Palmer jail more than a year ago has been caught again and returned to Alaska, Alaska Troopers said Saturday.

Shawn Barry was serving a sentence for a crime when he escaped from the Correctional Facility in April 1993. On Monday Barry was extradited from Seattle on charges. It was how troopers caught him. Late Saturday he was being held in Mat-Su Pre-Trial Jail on \$50,000 bail.

of the stickers and other claims of Alaska origin prompted Robertson to display her state permit for the tags in her store window.

Steven Rouse, executive director of Make it Alaskan Inc., which administers the Made in Alaska program, says that complaints often come from certified Made in Alaska permit holders. Those people know a particular product line and can easily spot a fake or misrepresentation.

"We encourage permit holders to help us be the eyes and ears to protect the rights of Alaska entrepreneurs," he said.

**ALASKA SALES & SERVICE**

**GM CUSTOM MOLDED BEDLINER SALE!**

Protect Your Truck Bed!

Designed specially for GM light-duty trucks, high-density polyurethane resists gasoline, acids, oil, and chemicals. Unique cushion pattern helps keep load from "creeping". Custom-molded to exact GM specifications.

AS LOW AS **\$194<sup>99</sup>**

Expires 7/31/94

*Mr. Goodwrench*

Parts Department  
**265-7511**  
(Mon-Fri: 8:00-5:30)

Alaska Sales and Service


Anchorage



4/23/96

**Anchorage Daily News**

**Fuller A. Cowell**  
Publisher



**Kent Pollock**  
Editor

**Michael Carry, Editorial Page Editor**  
**Patrick Dougherty, Managing Editor**

---

Gerald E. Gilly, Publisher, 1984-1993  
 Katherine Fenning, Editor and Publisher, 1971-1983  
 Lawrence Fenning, Editor and Publisher, 1957-1971  
 Founded in 1946 by Norman C. Brown

# Counterfeit art

## *Unsuspecting tourists get taken*

Alaska can ill afford to gain a reputation as a place that rips off tourists in its booming gifts and souvenir industry. But arts and crafts falsely sold as Native-made and "Made in Alaska" crowd the market.

And the market is no small potatoes. Summer visitors in 1993 spent over \$77 million on gift and souvenir items, according to the state. A 1994 state investigation estimated that 75 to 80 percent of artwork and crafts sold in Anchorage and Southeast as Native-made were phony.

In addition to damaging the industry's reputation, counterfeit products displace legitimate commerce.

State government hasn't aggressively put a damper on these shady practices. In fact, the state spends millions to attract tourists but employs only a few people to protect them from con artists. Legitimate artists also find very little help in the state system when their original work is illegally copied and mass-produced.

But recently, a small dent was made in the lucrative counterfeit arts and crafts market. Two Seattle-area businessmen — Kurt Tripp and Ngoc Ly — have agreed in a proposed settlement with the Federal Trade Commission to end practices the FTC calls deceptive and to each pay a \$20,000 fine.

Although they don't admit to violating the law, Mr. Tripp — the self-proclaimed king of the state's wholesale gifts industry — and Ngoc Ly say they won't sell arts and crafts as Native- or Alaska-made when made by non-Natives or outside Alaska.

Now, more needs to be done. This legislative session, Sen. Georgianna Lincoln has introduced Senate Bill 273. It requires shops to display posters that tell buyers how to recognize Native art and to provide certificates of origin for Native artwork and handicrafts selling for \$100 or more. The bill is set for a Thursday Senate hearing.

There is some discussion in Juneau about changing the criminal penalty provisions in SB 273 to civil ones subject to the state's consumer protection act. That sends the wrong message. The state should preserve the criminal sanctions, prosecute counterfeiters and shady wholesalers and retailers, and change the law to include civil penalties.

The federal government allows for both criminal or civil penalties for violations of the Indian Arts and Crafts Act of 1990. The act's regulations are now in draft form and may be finalized later this year. The state would do well to follow the federal lead and include both types of penalties.

Tourism is a growth industry for this state — and most everyone wants to keep it that way. But with that growth has come a burgeoning counterfeit art problem that Alaskans would be wise to tackle before the state's name is further muddled.

April 14, 1995

Senator Gerianna Lincoln  
Room 510  
State Capital  
Juneau, AK 99801-1182

Dear Senator Lincoln:

We the undersigned Alaska Native artists and arts and crafts merchants ask for your help.

Native arts and crafts fulfill a vital role in preserving the spiritual and cultural heritage of the Alaska Native people. The value is enhanced by increased recognition and acceptance of Native arts and crafts, both in Alaska and on the world market. The economic opportunities of this emerging arts and crafts industry are important for the individual artist and his or her village. Increasing the value of the products, improving the market and protecting the future of the native arts and crafts industry is an issue important to every Alaskan.

The demand for Native arts and crafts has grown significantly with the steady increase of visitors to Alaska. Over a million visitors are expected to come to Alaska this year, and each is a potential customer for Native arts and crafts. Most visitors take souvenirs and gifts home and many want to buy art or handicrafts made by Alaska Natives.

Because the Native arts and crafts market is lucrative, non-Natives are producing and selling fraudulent and counterfeit products. While most people dealing in Alaska Native arts and crafts are honest and contribute to the success of the arts and crafts industry, there are exceptions: profiteers or those seeking to profit from the industry by looking for loopholes in the law that enable them to deceive the consumer. This is consumer fraud.

Your efforts can help us preserve, promote and protect the market for Alaska Native arts and crafts and significantly strengthen the fight against fraudulent productions. Included, you will find documents identifying recommendations for action. They were developed by an Alaska Native Arts and Crafts Task Force appointed during Governor Hickel's administration. Action has not yet been taken on these recommendations. Of these, we feel that it is critical that the following action be taken immediately before the tourist season.

1. **Mandatory Poster:** Request that the State Legislature pass a law requiring all retail outlets selling art or handicraft items display a poster in a prominent place. An example is attached that was developed by the Task Force. The posters should be posted at weekend bazaars and trade shows as well. These posters could be made available for purchase at cost.

2. **Certificate of Origin:** Request that the State Legislature pass a law requiring all art and handicraft items sold retail for \$100.00 or more in Alaska or by mail order outside of Alaska be required to have a "Certificate of Origin". We have attached a sample of such a certificate identifying the information that we consider necessary. The option to display the certificate with the other information about the artist, the art form, the origin of the item, or of the seller should be allowed. Wholesale distributors should provide the required information on or attached to their invoice at the time of sale to the retailer. Failure of the merchant to provide the certificate at sale should be a violation of the Consumer Protection Act. Direct sale by the artist should be exempt. Retailers should be given the option of using a simple document form or elaborate design, either being acceptable as long as the information is complete and legible.

3. **Protect the Art and the Artist:** Request that the State Legislature pass a law making it a punishable offense for a wholesale or retail merchant to:

a) remove a Silver Hand logo from an article once it has been attached by the artist or a Silver Hand Agent; or

b) add to, subtract from or otherwise alter the work of an Alaska Native artisan to enhance it's value once the item has been signed or had the Silver Hand Logo attached.

If you have any questions please call Angie Larson at 248-2323 or send her a fax at 248-2328. Thank you for your assistance.

Sincerely,

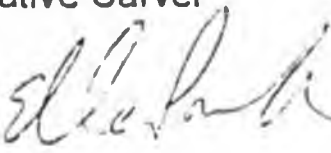


Bryon Amos  
Native Carver

*Angie Larson*  
Angie Larson  
Wholesaler

*Teddy Mayac*  
Teddy Mayac  
Native Carver

*Denty Owens*  
Denty Owens  
Native Carver/Retail Store Owner



Ellen Paneok  
Native Scrimshander

Supplement to last sheet regarding; mandatory poster, certificate of origin and protect the art and the artist. The following are additional signatures of Alaskan Native artists and concerned citizens:

Elaine Etukiak	Native Artist	279-770
Helen McNeil	Native Artist	344-3678
Mabel W. Pike	Native (Inupiat) Artist	279-500
Sylvester Ayek SYLVESTER AYEK	NATIVE (INUPIAT) ARTIST	2486878



Port Graham  
48 minutes

## Chugachmiut

March 18, 1996

Honorable Sen. Georgianna Lincoln  
Alaska State Legislature  
Room 510 State Capitol  
Juneau, Alaska 99801-1182  
Fax: (907) 465-2652

Dear Sen. Lincoln:

This letter is in support of Senate Bill No. 273 entitled "An act relating to Native handicrafts and other articles made in the State," introduced by Sen. Lincoln. We support all efforts to curb legal loopholes in State law that enable artwork produced outside Alaska to be falsely marketed as Alaska Native craftwork. Therefore, we strongly declare our support for the State Legislature to enact laws that promote and protect the market for authentic Alaska Native arts and crafts.

It is common knowledge that a problem persists in Alaska in regards to the production and marketing of authentic Alaska Native arts and crafts, with outside producers creating and marketing works of art that are deceptively sold as such works. Such practices have profound effects on the Alaska Native art and craft producers who, by large, are marginal producers and generally market their work to supplement the subsistence lifestyle in the rural areas of Alaska. In a recent newspaper article in Anchorage it described how such art created in the South Pacific and Lower 48's find their way into Alaskan shops and are intentionally sold as Alaska Native art. This unscrupulous activity and marketing ploy often aided and perpetuated by legitimate Alaskan businesses and shops reduces the potential economic effects that could be available throughout Alaska.

In general, in many of the rural communities, each dollar generated through legitimate sales of Native arts and crafts has an approximate multiplier effect to the local economy of \$5-8 dollars. For the thousands of producers throughout Alaska the potential effects can be enormous for the legitimate markets if legislation is enacted that curbs the sale of counterfeit production. The Alaska Legislature has the ability to effect changes that can benefit the Alaskan economy. This is a change needed that would have such an impact. Please support the passage of Senate Bill 273. Thank you.

Respectively

Derenty Tabias  
Executive Director





Alaskan  
Treasures

## Alaskan Treasures

*"We Only Represent Authentic Alaskan Art"*

205 E. Dimond, Suite 514  
Anchorage, Alaska 99515  
(907) 248-2323 FAX 248-2328

March 20, 1996

Senator Drue Pearce  
Room 508, State Capitol  
Juneau, AK 99801-1182

Dear Senator Pearce:

I have been a Native art and craft wholesaler for 17 years. My concern is that the multi-million dollar fraud in my industry is driving genuine Alaskan Native art and crafts to extinction. There are so many mass produced Native style products that the consumer cannot always tell the difference.

My customers (legitimate retailers) are small businesses like me. They enjoy what they sell and want to continue their business. But it is hard to compete with mass produced that sell at half the price.

The Juneau Empire (Oct. 24, 1994) pointed this out very well in their article about Ron Kemck as his name appeared on many types of mass produced works. His name was used on approximately 4,000 pieces of soapstone as well as many pieces of ivory and whalebone carvings and many pieces of scrimshaw.

As one of your constituents, I ask that you support Senate Bill 273, not only for the artists but for the businesses that contribute to this market. This is not a Native problem, it is an Alaskan problem.

Sincerely,

Angie Larson  
Alaskan Treasures

cc: Senator Georgianna Lincoln