

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9196 HOUSE JUDICIARY

MEMORANDUM

SUBJECT: Sectional Summary of Bill Draft Relating to Community Property (Work Order No. _____)

TO: Representative Al Vezey

FROM:

You have requested a sectional summary of the above described bill, which would expressly allow Alaskan domiciliaries to classify all or a portion of their property as community property by executing a community property agreement and would permit a married couple domiciled within or outside Alaska to classify all or any portion of their property by executing a community property trust. This chapter has been derived from the Uniform Marital Property Act, which has been enacted by Wisconsin, except that, unlike the Uniform Marital Property Act, the Alaska chapter applies to make a married couple's property community property only to the extent provided in the community property agreement or a community property trust. The Uniform Marital Property Act (such as that enacted in Wisconsin) automatically makes all of the couple's property acquired during the marriage (subject to certain exceptions) community property (called "marital property" under that Act) except to the extent the spouses provide otherwise by agreement. In other words, under the Alaska chapter spouses must elect "into" a community property regime; under the Uniform Marital Property Act, the spouses must elect "out" of it.

It should be noted that a sectional summary of a bill should not be considered an authoritative interpretation of a bill, and the bill itself is the best summary of its content.

Section 1. It creates new chapter 16 to title 25. The new chapter is called Alaska Community Property Act.

AS 25.16.010 provides generally definitions for purposes of the chapter.

AS 25.16.020 provides that each spouse must act in good faith with respect to the other in matters involving community property and that this obligation may not be varied by a community property agreement or community property trust.

AS 25.16.030 provides that a community property agreement or community property trust may vary the effects of new chapter 16 except for certain matters, such as the duty of the spouses to act in good faith toward each other with respect to their community property.

AS 25.16.040 provides that property of the spouses or one of them is community property only to the extent provided in a community property agreement or community property trust. It also provides, among other things, that each spouse has a present undivided one-half interest in community property. It provides additional rule for the determination of community property.

AS 25.16.050 provides rules for the management and control of the property of the spouses. It provides that a spouse acting alone may managing control that spouse's property that is not community property that is not community property and a spouse alone may manage community property held in the name of both spouses "in the alternative" (for example, their names separate by the word "or").

AS 25.16.060 deals with gifts of community property and provides, in general, that one spouse may make a gift to a third party of community property only if it does not exceed \$1,000; otherwise, the nondonating spouse may recover the property within the time limit specified in the statute, which in general, is three years after the gift.

AS 25.16.070 provides how the spouses may classify their property, through a community property agreement or community-property trust, as community property. It also specifies rules for family obligations. It further provides that the chapter does not alter the

relationship between spouses and their creditors. Moreover, it provides that the new law does not affect any exemption of property of the spouses under any other law.

AS 25.16.090 provides that a bona fide purchaser of community property from one spouse having a right to manage and control that property is free of any claim of the other spouse. It further provides that this rule may not be varied by a community property agreement or community property trust.

AS 25.16.100 defines community property agreement. It must be signed by both spouses and classify some or all of their properties community property. The community property agreement may cover certain other matters such as the making of a Will to carry out the agreement. It also provides that the agreement will not be enforceable if certain condition arise such as the agreement being unconscionable when made. It provides that a community property agreement may be entered into before the man and woman marry, but the agreement will be effective only upon their marriage.

AS 25.16.110 defines community property trust. It is similar to a community property agreement except that it may be signed not only by a married couple domiciled in Alaska or also by one not domiciled in the state. However, at least one Alaska domiciliary, bank or trust company must be a trustee. The powers of that Alaska trustee must include maintaining trust records and arranging for the preparation of income tax returns of the trust.

AS 25.16.120 provides for optional forms for holding community property, including allowing community property to have survivorship feature so that the entire interest in the property will pass to the surviving spouse upon the death of one of the spouses.

AS 25.16.130 provides special rules for treating the ownership of a life insurance policy and proceeds paid on the death of the insured as a community property in circumstances where a portion but not all of the proceeds are paid from community property funds.

AS 25.16.140 provides that mixing (combining) community property with other property does not cause such other property to lose its classification as long as it can be traced. It provides other rules for treating certain properties community property if the community property agreement provides that all property acquired by either or both spouses during marriage is community property.

AS 25.16.150 provides certain remedies to the spouses such as for an accounting with respect to their community property and other matters.

AS 25.16.180 provides that if the community property agreement provides that all property acquired during marriage is community property, then at the death of a spouse domicile in this state, any property of the spouse which can be traced to property received as a recovery for a loss of earning capacity during marriage must be treated as it were community property.

AS 25.16.190 provides for this chapter to be construed to effectuate its general purpose and to make it uniform with respect to the subject covered by the chapter among states enacting it.

AS 25.16.200 provides that the chapter is to be called the "Alaska Community Property Act".

Section 2. Section 2 provides that AS 25.16.203 does not include community property as part of the augmented estate.

Section 3. Section 3 provides for the act to take effect immediately under AS01.10.070(c).

Karen 907 263 8251
Re: HB199

Bob Manley

HB 199 - 907 263 8251

When next hd
try to leave msg but no recorder

KK 789 0047

Steve Pearson
586 - 9455

Jonathan
~~Blackmeyer~~ 's #
Blattmachr
(619) 340-5668
(900) 478-7612

Jonathan

Blattmachr
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NY

re: HB199

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BOARD UNIFORM PROBATE
CODE

DICK WELLMAN

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LARRY WAGGONER

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WI

HB 196
trustee must be
domiciled

PHONE MESSAGE		DATE 4-22	TIME 6	A.M. P.M.
FOR	LISA			
M	ART PETERSON			
OF	586-4000			
PHONE ()				
<input type="checkbox"/> FAX <input type="checkbox"/> MOBILE <input type="checkbox"/> PAGER ()				
MESSAGE NAMES + #s you wanted				
Dick Wellman 706 542 5174				
Exec Dir - Int Ed Ad Uniform				
Probate Code UGA Law Sch				
Larry Waggoner (310) 763 2586 (313)				
<input checked="" type="checkbox"/> URGENT <input checked="" type="checkbox"/> PHONED <input type="checkbox"/> RETURNED YOUR CALL <input type="checkbox"/> PLEASE CALL BACK <input type="checkbox"/> WILL CALL AGAIN <input type="checkbox"/> WAS IN <input type="checkbox"/> WANTS TO SEE YOU				SIGNED
<input checked="" type="checkbox"/> AVERY Dir of Res - U Mich Law Sch Larry Waggoner A (310) 574-6025				

SHARON L. GLEASON
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MEMORANDUM

May 1, 1997

TO: Honorable Joe Green, Chair
House Judiciary Committee

FROM: Sharon L. Gleason, Esq.

RE: House Bill 199

As I indicated in my testimony before your committee last Friday, April 25, 1997, I have serious reservations about this proposed legislation. My perspective is as an attorney specializing in domestic relations. Currently I am a member of the American Academy of Matrimonial Lawyers. I am also one of the three lawyers in Alaska listed in the family law category in the publication "Best Lawyers in America." I am not an expert on community property law. Throughout my fourteen year legal career, I have practiced law exclusively in Alaska, which is not presently a community property state but instead relies on the principle of equitable distribution when dividing assets between spouses incident to divorce.

I have reviewed the memorandum dated April 30, 1997 from Joan Clover. I share the concerns she expressed in that memorandum. I have several additional comments. First, Sec. 34.75.090(b) indicates that "A community property agreement may not adversely affect the right of a child to support." By implication, it would appear that a community property agreement could adversely affect the right of a spouse to support. In fact, it would appear that the community property agreement could eliminate a spouse's obligation to provide support to the other spouse. In that event, the language of Sec. 34.75.070(b) regarding property available to satisfy a spouse's obligation of support would not even come in to play, since there would not be any obligation of support to be satisfied. In some cases, enforcement of a community property agreement that eliminated a right of spousal support and mandated a 50/50 division of community property may be grossly inequitable. And yet, as Ms. Clover notes in her memorandum, the current version of the bill does not clearly specify that a community property agreement should be unenforceable if it is unconscionable at the time either party seeks its enforcement.

I also believe that the language of Sec. 34.75.070(a) is unduly broad. This provision specifies that "An obligation incurred by a spouse during marriage, including an obligation attributable to an act or omission during marriage, is presumed to be incurred in the interest of the marriage or the family." First, this language does not even limit itself to property subject to community property agreements, but

instead appears to apply to all property. In my view, it is at odds with existing Alaskan law regarding debts acquired during the marriage. Moreover, in contrast to this all-inclusive presumption that all debts are marital, under this proposed legislation various types of assets are deemed to constitute individual property even when those assets are acquired during the marriage. See Sec. 34.75.030(g). This dichotomy could produce serious inequities between spouses.

Also, I believe it inappropriate to place much of this proposed legislation in Title 34, the real estate portion of the Alaska Statutes, when the implications of the legislation are far greater to the rights between spouses currently specified in Title 25.

As indicated above, I am not an expert in community property law and thus unable to fully assess the impact of this proposed legislation. But it is apparent from my preliminary review that many of the bill's provisions represent a substantial departure from existing Alaskan law, and that many of these provisions may prove detrimental to the more economically disadvantaged spouse in a marriage.

Overall, I believe the Legislature should proceed with caution before embarking on a path that adds a whole new level of legal complexity to Alaskan marital property law. In Alaska, I believe we already have in place a fair system for dividing marital property -- equitable distribution. Yet the legal and accounting fees under our current system can be quite expensive to parties that have accumulated any wealth during their marriage. I believe that if a community property opt-in provision were added to the Alaska statutes, these professional costs would be likely to dramatically increase. Moreover, I believe it is statistically far more probable that a couple will divorce than that a surviving spouse of an intact marriage will desire to sell marital property upon the death of the first spouse. For these reasons, I question whether this bill would benefit most Alaskans. Instead, it appears to be legislation designed primarily to help the very rich save on their taxes, including the very rich that reside outside of our state. It will also create a considerable amount of new work for Alaskan attorneys and other professionals. I believe these benefits may well be at the expense of the majority of the Alaskan citizenry.

I have enclosed a copy of a one page article from the Wisconsin Journal of Family Law explaining some of the problems that State has encountered since it passed a version of the Uniform Marital Property Act several years ago. I would urge this Legislature to consult with experts in community property law before adopting a bill that could so dramatically affect the rights of spouses in Alaskan marriages.

Thank you for considering my comments.

Post-it* Fax Note	7671	Date	5/3/97	# of pages	60
To	DOUG WOOLIVER	From	LISA KIRSCH		
Co./Dept.	COURTS	Co.	H. JUDICIARY		
Phone #	463 4750	Phone #	465 4990		
Fax #	463 3475	Fax #	" 4316		

M E M O R A N D U M

TO: House Judiciary Committee
 FROM: Maryann E. Foley
 DATE: May 2, 1997
 RE: HB 199

I am a practicing family law attorney in Anchorage, Alaska. I have practiced in this area for over sixteen years. I do not believe that House Bill 199 is in the best interests of Alaskans.

As I stated in my testimony before the Committee on April 25, 1997, this act discriminates against divorcing Alaskans. Section 6 of the Bill which amends AS 25.24.160 by adding a new subsection states that people who have entered into either a community property agreement or trust pursuant to AS 34.75 the court must distribute the property of the parties as indicated in the agreement or the trust. What this section means is as follows:

If you have two couples, the Jones and Smiths. If the Jones do not enter into a community property agreement or trust, they will be divorced under AS 25.24.160 with the court being able to take into account all the statutory factors to determine a fair and equitable distribution of the marital estate. This means the trial court can consider the ages of the parties, their health, their income earning capacity, the income producing capacity of the property to be awarded in the divorce, whether the marital home should be awarded to the party having primary custody of the minor children, etc.

If the Smiths get a divorce but they have entered into a community property agreement or trust then the court is precluded from utilizing the statutory factors to determine a fair and equitable distribution. The court is mandated by this new Subsection (d) to divide the property only as the agreement states it will be whether

or not such a division is fair and equitable. The result is different legal standards for two Alaskan couples similarly situated.

The second problem I see with this statute is that if the Smiths having entered into this community property agreement or trust decide to dissolve the marriage instead of divorce. Then the court is ordered in Section 7 of the new bill to take into consideration the statutory factors listed in AS 25.24.160(a)(2) and (4) to insure that the economic effects of dissolution are fairly allocated.

We could then see the Smiths embroiled in a legal quagmire. If the court does not think the Smith dissolution fairly allocated the economic effects, the court can reject it. If the Smiths then cannot resolve the dissolution to the court's satisfaction, they must then file for a divorce. Under HB 199, the court must accept the allocation in the community property agreement or trust whether or not it is fair and equitable. This results in the court having to approve an agreement in a divorce which they found inequitable in the dissolution.

The committee asked Ms. Gleason, in the hearing on April 25th, whether it is true that people entering into these agreements and trusts would have the expertise of counsel to assist them so they would know fully their rights and obligations. I must agree with Ms. Gleason in the negative. In my experience, I have seen prenuptial agreements that were drafted by the couple or by one

party. These agreements are typically presented on the eve of the wedding. There are times these agreements are drafted by an attorney but he or she is the attorney for only one party. The other party has little or no legal representation as to their rights.

There is also the further complication that people will enter into community property agreements which cover some of their property but not all of their marital property. This would result in the court dividing some of the property pursuant to the agreement and the remaining marital property under the factors listed in the statute. Such an arrangement, I believe, will only lead to increased litigation costs for the parties into trying to sort out what is in the various marital pots. Examples of the questions that could arise include employment benefits. Are they in the property agreement or not in the property agreement? A couple may buy a house that they put under a community property agreement or trust. Several years later they may buy the adjoining lot (not in agreement) and combine both the original lot and the added lot. How will we divide those? What will happen if noncommunity and community property is mixed? Increased litigation costs and added strain upon the judicial system will result.

Another concern that I have is that parties are not going to realize that by putting their property in a community property trust that they are actually giving up their powers over this property to the trustee. Many of these people may be very

surprised to learn in the future when they go to sell an asset placed in this trust that they have to have the trustee's involvement to do it. The selling of the family home and buying of another home that has been placed in a trust is going to have a whole added component to it and an additional expenses besides the closing costs already involved in two real estate transactions.

I have recently read that the costs of setting up of the new irrevocable family trust is going to cost between \$7,500.00 and \$12,000.00. What is going to be the cost of establishing a community property trust? Is the establishing of such a trust i.e., the initial costs and ensuing costs over the years going to justify the alleged tax benefit?

I think this committee has to recognize that thousands of Alaskans get divorced or dissolved in their marriages each year. I think the committee has to look at the costs to those parties versus the number of Alaskans who might receive some tax benefit upon the death of their partner.

The committee is well aware that one of the major social, economic, and legal problems in Alaska is domestic violence. How many people are going to enter into these agreements because of the controlling nature of their spouse? A person in a controlling relationship is not going to sit with an attorney and the abusive spouse and question their obligations and rights under such an agreement with an attorney who represents both of them. These

people are not going to seek independent counsel to advise them on their rights in a community property agreement or trust. Victims of domestic violence only start considering their legal rights and obligations when they want to break the abuse cycle and get out. By allowing community property agreements and trusts, you are giving the abuser even more potential power over the victim. You would be giving the abuser even more economic control than the abuser already has over the victim in a marital relationship. By allowing one spouse to be able to manage and control the assets in the agreement, you are giving the abuser the control to sell the family home out from under the victim.

As Ms. Gleason's testimony pointed out, even though there is a provision for the court to determine an agreement unconscionable the statute is unclear as to whether the unconscionability has to occur at the execution of the agreement or whether in the context of the circumstances that exist at the time of the divorce. It will be an interesting line for the court to draw as to when the circumstances are such that an agreement is so inequitable that it becomes unconscionable. Is that at 51 percent or is that 99 percent?

I understand that there is no fiscal note attached to this bill. Last year, there was no fiscal note attached to the domestic violence legislation. Yet the economic costs upon the court system have been tremendous. This bill will result in additional economic impact and time constraints upon the court system. The backlog of

cases will increase which will result in frustrated litigants. These litigants will not be just the divorcing couples but all litigants since all cases will be delayed.

As much as I like to see my income level rise. (I have no doubt that it will in the next few years if this statute is enacted), I cannot in good conscious support this bill. It will generate more money for attorneys and for trust companies but it will bring more economic suffering to your constituents than it is worth.

LAW OFFICES
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Joan M. Clover
Jennifer L. Holland

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MEMORANDUM

TO: Honorable Joe Green, Chair
House Judicial Committee

FROM: Joan M. Clover, Esq.

DATE: April 30, 1997

RE: House Bill 199

Post-It® Fax Note	7671	Date	4-30	# of pages	3
To	Lisa Kirsch		From		
Co./Dept.			Co.		
Phone #			Phone #		
Fax #	465-4316		Fax #		

As I said in my testimony on Friday, April 25, am concerned that there has been insufficient time to study the specific language of this bill to insure that it does not have unintended and adverse consequences to spouses in intact marriages and to those individuals who find themselves in a divorce. Members of the family law section of the state bar first learned of this bill less than two months ago, when we received a copy in the mail. Dick Thwaites came to our Anchorage section meeting to discuss the bill, but unfortunately there was not much lead time for advertising the topic's importance, and therefore attendance at the meeting was poor. I would hope that there would be more comment from the family law bar and other sections of the bar if there were greater time. I will bring the bill to the attention of family law section members at our state-wide meeting in conjunction with the bar convention in May.

I, personally, am generally a proponent of nuptial agreements. I believe in an individual's right to make informed, well counseled decisions for themselves by contract. Alaska law dealing with nuptial agreements is in the formative stages. In deed, nuptial agreement law is on the cutting edge nationally. Consequently, our courts have a great deal of equitable latitude in the interpretation and enforcement of agreements that come before them. For example, our court has maintained that a nuptial agreement can be set aside if it is unconscionable at the time of divorce. HB 199 at Sections 34.75.090(f)(1) and (g)(2) appears to limit unconscionability to the time of entering the agreement. I see this as a serious mistake. For example, if an agreement specifies no spousal support and the parties, or perhaps the "managing partner," conducts community finances and spending in such a way that there remains very little community property to divide, yet one spouse has been able to sequester and watch grow their own sizable separate estate, it seems inappropriate that perhaps after a lengthy marriage (make the facts as you like) there would be no opportunity for a court to intercede, stating that some deviation from the harsh results of the nuptial contract are appropriate, in light of the time that has passed, the conduct

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of the parties during the marriage in spending all joint money, and the meagerness of what remains for one spouse after divorce. It is possible that one spouse might be left with public assistance, while the other walks away, wealthy with their protected "separate" property.

I am concerned about Section 34.75.070(a) which appears to mean that one spouse, without the knowledge or consent of the other, could incur inappropriate debt, which would be considered presumptively community debt, then, under section (c), be subject to levy from creditors against all community property, even the innocent spouse's share. Will we have creditors calling a spouse and telling him that his wages and property are subject to garnishment for debts of a spendthrift spouse, debts of which he was unaware? Currently under AS 25.15.050, no Alaskan spouse is liable for the debts of the other separately incurred. This means that, if one spouse alone signs up for a credit card and incurs debt, the other is not responsible to the credit card company. They may, however, be found responsible for a portion of the bill at the time of divorce, because the court will likely consider it a marital debt, but that is up to the judgement of the court in light of all circumstances surrounding the debt. This only applies when the marriage is dissolved. This seems a very sensible and enlightened approach. We will take a step back with the language included in HB 199.

Section 34.75.030(g)(6) seems to exclude from community property that portion of a personal injury award designed to compensate for lost wages that would have been earned during marriage but for the injury. This is contrary to several Alaska Supreme Court opinions and would be a highly inequitable and unfair result. Money compensation for lost marital earnings should be marital.

Does Section 34.75.050(d) mean that a spouse is foreclosed five or ten years after a transfer, at the time of divorce, from seeking compensation from the other spouse for community property inappropriately gifted?

I believe that the "warning" proposed by Representative Croft's amendment should be even more strongly worded "THE CONSEQUENCES OF THIS AGREEMENT MAY BE VERY EXTENSIVE, AFFECTING, FOR EXAMPLE, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH AT THE TIME OF A DIVORCE AND DURING THE COURSE OF YOUR INTACT MARRIAGE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY..."

These are the questions and comments that come to mind after only a preliminary review of HB 199. I have only spent a morning reviewing and thinking about the bill's language and effect. Although I was educated in a community property state, that was many years ago and I know much has changed. The laws in the eight (8) community property states significantly vary. Which state are we following? Have we looked at all their community property laws, in

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Page #3

practice, to pick and choose the best hybrid statutes for our Alaskan version? The Uniform Marital Property Act has only been adopted by one state and is essentially untried. Just because a uniform law exists does not mean that it is optimum. Many uniform laws exist that have not been widely adopted by the states for various reasons.

In divorce, a clear virtue of our current equitable distribution regime is that it operates within a general statutory framework, giving the courts and our constantly developing case law clear guidance, yet latitude to respond to the very particular and sometimes peculiar facts of any given case. We have case law from 41 sister states that we can look to for guidance. HB 199, as it seeks to define a new option, an Alaskan community property regime, places greater responsibility on the legislature, because it speaks with far greater specificity as to what shall occur between spouses. If that is the legislature's intent, I request that you move forward cautiously and with research as to what has happened in other community property states, so that our Alaskan version of community property can build upon their experiences and missteps. I would hope that law school community property professors would be contacted, that scholarly publications would be researched. We have a unique opportunity to offer Alaskans yet another opportunity to control their own destiny -- how they will govern their financial affairs within a marital partnership -- but let's spend some time and really research it.

Thank you for your consideration.

LAW OFFICES
GRUENBERG AND CLOVER

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To: House Judiciary Committee
From: Max Gruenberg and Jennifer Holland
Re: House Bill 199

Dear Committee Members,

We are family law attorneys having practiced almost exclusively in domestic relations law in Alaska for the past 25 and 4 years respectively.

It has come to our attention that the legislature is considering adopting a community property regime which would be available to opt into by means of a nuptial agreement. We are concerned that this legislation be studied carefully before becoming law. Tax advantage is but a small part of the ramifications this legislation will have upon intact marriages and spouses upon divorce.

4/29/97 Jennifer L. Holland
4/29/97 Max Gruenberg

Post-it [™] Fax Note	7671	Date	# of pages
To	Lisa Kirsch	From	
Co/Dept.		Co.	
Phone #		Phone #	
Fax #	465-4316	Fax #	

Law Office Of

PAMELA SCOTT BROWN

733 West Fourth Avenue, Suite 204, Anchorage, Alaska 99501, Telephone (907) 277-7788/Fax 277-7623

April 29, 1997

SENT FACSIMILE

House Judiciary Committee
Attn: Lisa Kirsch
Facsimile No. 465-4316

Re: House Bill 199/ "Alaska Community Property Act"

Dear Lisa:

I would like to express my opposition to the passage of House Bill 199. As a family law practitioner, I believe more time should be devoted to researching the many consequences of Bill 199. Please hold the Bill over until the next session and make an effort to afford as many people as possible, particularly in the legal field, to address very real concerns about the ramifications to individuals who opt into community property.

Sincerely,



Pamela D. Scott

PSB:ps

LAW OFFICE OF
JILL DEAN

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PHONE (907) 277-8118
FAX(907) 272-4474

April 28, 1997

SENT BY FAX ONLY

House Judiciary Committee

Attn: Lisa Kirsch

Re: House Bill 199, "Alaska Community Property Act"

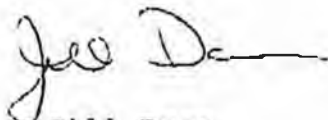
Dear Ms. Kirsch,

It has come to my attention that House Bill 199, the "Alaska Community Property Act" is under serious consideration by the legislature. While I am not extremely familiar with the bill I am concerned that its ramifications from the family law point of view have not been given adequate consideration.

My understanding is that this bill has primarily been considered for the tax and probate advantages it may provide. However, this bill may also seriously affect basic domestic relations law in Alaska. For example, Alaska law (A.S.25.24.160) now provides for an equitable distribution of property upon divorce based upon certain enumerated factors. How will a couple's decision to execute a community property agreement interact with A.S.25.24.160? There are many serious questions about HB 199 from the family law point of view.

My concern is that the impact of this bill on domestic relations law in Alaska has not been given adequate consideration. Since the bill has such great ramifications on family law, those ramifications should be thoroughly considered prior to its passage. I believe this bill should be held over until next session so further consideration of its interaction with Alaska domestic relations law can take place.

Sincerely,
LAW OFFICE OF JILL DEAN



Jill Dean

JD\jt

04/25/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

08:39:35

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70708

SCHEDULED FOR:04/25/97 08:30 TO 10:30

FOR:ANC

PUBLIC HEARING

HOUSE JUDICIARY

LOCATION:ANCHORAGE

HB 163	GEORGE	TAFT (ANS ?)	PUBLIC SAFETY LB	TESTIFY
HB 199	✓ DICK	THWAITES		TESTIFY
HB 199	✓ GEORGE	GORRIG	<i>Estate Planner Atty (supposed IRS)</i>	TESTIFY
HB 199	SHARON	GLEASON		TESTIFY
HB 234	THEDA	PITTMAN		TESTIFY

HB 199 MS. MARYANN FOLEY

TESTIFY

08:51:12

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70708

SCHEDULED FOR:04/25/97 08:30 TO 10:30

FOR:ANC

PUBLIC HEARING

HOUSE JUDICIARY

LOCATION:ANCHORAGE

HB 163	GEORGE	TAFT (ANS ?)	PUBLIC SAFETY LB	TESTIFY
HB 199	LICK	THWAITES		TESTIFY
HB 199	GEORGE	GORRIG - Estate Planner Atty		TESTIFY worked IRS
HB 199	SHARON	GLEASON - Not Est. / divorce primary		TESTIFY - by asset cases
HB 199	JOAN	CLOVER		TESTIFY
HB 234	THEDA	PITTMAN		TESTIFY
HB 234	PAULINE	UTTER		TESTIFY

HB 199 MARYANN FOLEY

FAIR BANKS

HB 199 MR RICH HOM PESCH TEST

04/25/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

08:39:35

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70708

SCHEDULED FOR:04/25/97 08:30 TO 10:30

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PUBLIC HEARING

HOUSE JUDICIARY

LOCATION:ANCHORAGE

HB 163 GEORGE TAFT (ANS ?) PUBLIC SAFETY LBTESTIFY

HB 199 DICK THWAITES ← HEARD BEFORE TESTIFY

HB 199 GEORGE GORRIG TESTIFY

HB 199 SHARON GLEASON TESTIFY

HB 234 THEDA PITTMAN TESTIFY

HB199 MARY ANN FOLEY TEST

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FAX INFORMATION COVER SHEET

DATE: May 1, 1997

TIME: 2:30 p.m.

FAX NO: 907-465-4316

THE FOLLOWING PAGES ARE FOR: Lisa Kirsch - House Judiciary Committee

If you do not receive all 4 pages being transmitted, including this information sheet please call Sharon Smith at the above number.

 Hard Copy to follow via U.S. Mail/personal delivery.

MEMO:

Ms. Kirsch:

 Please see that my comments are presented to the Committee.
Please call me if you have any questions. Thank you.

Sharon L. Gleason

CONFIDENTIAL

HB 196

Section 1 of HB 196 adds a new section to Chapter 6 of Title 13, Decedents' Estates, Guardianships and Trusts. Chapter 6 is the general provisions that apply to AS 13.06 - 13.36, the Uniform Probate Code. This new section, AS 13.06.068, primarily deals with which state's laws will be applicable to testamentary dispositions of both real and personal property. The primary purpose of Sections 1 through 8 of the bill appears to be to correct inconsistencies regarding choice of law throughout the Uniform Probate Code. Sections 9 - 11 deal with trust administration. In particular, Section 11 adds new sections to Article 3 which deal with the duties and liabilities of trustees. Many of the new sections provide protections to trustees and limit a trustee's personal liability. The new sections also outline certain actions which may be taken by the trustee with regard to managing trust assets and property.

In general, this bill does tie up some loose ends and inconsistencies throughout these statutes dealing with choice of law as it is applied to testamentary dispositions. The sections dealing with trusts and the duties and liabilities of trustees may also open up the area of trust management in Alaska. There does not appear to be any direct connection between HB 196, HB 199 and HB 101 except that they are all related to estate planning of one form or another. HB 196 does allow persons outside of Alaska to use Alaska as a situs for a trust and for Alaska law to govern testamentary dispositions and trust management.

HB 199

The main thrust of HB 199 is to provide a means for spouses living in Alaska to elect to have their property, both real and personal, treated as community property. The main purpose for this is estate planning. Under §1014 of the Internal Revenue Code, community property, in its entirety, will receive a stepped-up date of death basis at the death of one spouse. However, with property held as tenants in common or as tenants by the entirety, only the deceased spouse's share in the property will receive the stepped-up basis upon the death of that spouse. In some instances this could be devastating to the surviving spouse at a later date when he/she sells the property for that person will be required to pay capital gains tax on his/her share that did not get a stepped-up basis. For example, assume husband and wife have been married 50 years and at the death of the husband, who is the first to die, they owned shares in a business that have a value of two billion dollars. However, the couple's basis in the shares is only \$100,000. If the shares are considered community property, then the all of the shares receive a stepped-up basis at the death of the husband(i.e., \$2 billion). When the wife goes to sell the shares she will not have to pay any capital gains tax on her shares because they have received a stepped-up basis in value. However, if they had been held as tenants by the entirety, the wife would have had to pay a capital gains tax on her half of the shares that she did not receive due to her husband's death.

The first 8 sections of the bill deal with husbands and wives, their separate property, their rights in that property and the effect of divorce on their rights in the property. Generally, the law in Alaska remains the same unless the spouses have elected to have some or all of their property treated as community property. Should the spouses elect to have some or all of their property classified as community property, there is a general requirement that each spouse must act in good faith with respect to the other spouse as to this community property. Electing to have property treated as community property will have no effect on the augmented estate of a decedent and actually may be more beneficial to a surviving spouse for he/she would only receive a one-third interest in the augmented estate whereas he/she receives 50% of the community property. The bill also empowers the courts to set aside a community property agreement or trust if it is determined that it is unconscionable, the spouse did not sign it voluntarily or sufficient disclosures were not made by either spouse regarding their property prior to entering into the agreement. The decision to have property classified as community property is completely voluntary and must be specifically elected. It can be revoked or amended at a later date by the spouses simply entering into another agreement.

There does not appear to be any direct connection to or relationship between HB 196 except that both are a means of implementing estate planning. HB 199 may be a beneficial estate planning tool for spouses who have been married for a long time and who have substantial property that would realize substantial capital gains tax if sold as separate property or after the death of one of the spouses.

J:\LEGISREG\HB199.MEM

CONFIDENTIAL

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 199

1 Page 4, line 22:

2 Delete "34.75.090(b)"

3 Insert "34.75.090(c)"

4 Page 9, following line 31:

5 Insert a new subsection to read:

6 "(b) A community property agreement must contain the following language
7 in capital letters at the beginning of the agreement:

8 THE CONSEQUENCES OF THIS AGREEMENT MAY BE
9 VERY EXTENSIVE. ACCORDINGLY, THIS AGREEMENT
10 SHOULD ONLY BE SIGNED AFTER CAREFUL
11 CONSIDERATION. IF YOU HAVE ANY QUESTIONS
12 ABOUT THIS AGREEMENT, YOU SHOULD SEEK
13 COMPETENT ADVICE."

14 Reletter the following subsections accordingly

15 Page 10, lines 3 - 4:

16 Delete "(b) of this section"

17 Insert "(c) of this section"

18 Page 12, following line 19:

19 Insert a new subsection to read:

20 "(b) A community property trust must contain the following language in
21 capital letters at the beginning of the trust:

LAW OFFICE OF
JILL DEAN

3003 MINNESOTA DRIVE
SUITE 301
ANCHORAGE, AK 99503
PHONE (907) 277-8118
FAX(907) 272-4474

FAX TRANSMISSION

DATE: 4/28/97
TO: House Judiciary Committee
Attn: Lisa Kirsch
FAX # 465-4316
FROM: Jill Dean
RE: HB 199

Pages 2 (including this page)

Attachments/Message:

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CORRECTION

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HAVE BEEN REFILMED TO
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Central Microfilm Services
Department of Education
State of Alaska

AMENDMENT

OFFERED IN THE HOUSE

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17 Insert "(c) of this section"

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19 Insert a new subsection to read:

20 "(b) A community property trust must contain the following language in
21 capital letters at the beginning of the trust:

1 THE CONSEQUENCES OF THIS TRUST MAY BE VERY
2 EXTENSIVE. ACCORDINGLY, THIS TRUST SHOULD
3 ONLY BE SIGNED AFTER CAREFUL CONSIDERATION.
4 IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST,
5 YOU SHOULD SEEK COMPETENT ADVICE."

6 Reletter the following subsections accordingly.

7 Page 12, lines 22 - 23:

8 Delete "(b) of this section"

9 Insert "(c) of this section"

LAW OFFICE OF
JILL DEAN _____

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But not LIST
necessarily in
Family trusts!!
Keep this quiet indeed!
Let's ch up IRS on
this - the gloves are
off.

■ IN BRIEF: Keep up with high technology / C-2

■ BAD NEWS FOR GOOD NEWS: Upbeat magazines struggle / C-4

BUSINESS

SUNDAY, April 27, 1997

ANCHORAGE DAILY NEWS

SECTION C

In Alaska we trust

New state law gives protection from creditors

By DWAYNE ATWOOD
Daily News reporter

Fairbanks attorney Rich Hompesch was impressed when he toured the Cook Islands last year to get an up-close look at the financial-trust industry there.

The cluster of tiny islands some 2,000 miles northeast of New Zealand is home to fewer than 20,000 people but supports an industry that attracts millionaires.

"They are in the middle of nowhere, away from the major financial centers, and they had three major trust companies," said Hompesch, an estate-planning and probate attorney who supported recent changes to state family trust laws.

"It is the perfect industry for

Alaska," Hompesch said. "We don't have to cut any trees; we don't have to dig any holes in the ground."

Hompesch and others involved in the somewhat obscure world of trust and estate planning see vast opportunity in a state law that took effect this month.

For years, investors who wanted to stash their wealth beyond the grasp of the Internal Revenue Service or creditors have set up trusts outside the country. Although the new law does not give people a way to elude existing or anticipated debts, the "perpetual trusts" available in Alaska do provide some protection from future creditors. And that unique feature has people talking.

Nobody knows if Alaska will become an international center for an industry that has drawn billions in American assets to places like Switzerland, the Cayman Islands and other offshore jurisdictions. But the new law is gaining attention. Outside attorneys have been calling trust officers at local banks, and at least one company already has set up shop to capitalize on an anticipated surge in business.

A trust is a legal arrangement in which a trustee holds title to property for the benefit of others who are named as beneficiaries. One appeal of trusts is that they offer a way to reduce the estate taxes that cut into

Please see Page C-6, TRUST



JIM LAVRAKAS / Anchorage Daily News
Richard Thwaites is a lawyer involved in changing the state trust law.

Family trusts aren't best idea for all

By DWAYNE ATWOOD
Daily News reporter

Family trusts are not for everybody.

First of all, federal estate taxes don't kick in until assets of more than \$600,000 are passed on to children or family members other than a spouse.

But if a couple plans to leave a larger sum to their children, a trust might be a good financial tool.

A married couple can use a trust to provide up to \$1.2 million for their children, avoiding substantial taxes. If that \$1.2 million in assets were instead passed from

Please see Page C-6, FAMILY

TRUST: New state law gives protection from creditors

Continued from Page C-1

assets as they are passed from one generation to the next.

Many kinds of trusts exist. A typical trust today might be created to set aside money for your children to go to college, while giving you the control to direct the remaining assets to a spouse or other beneficiaries.

The new state law allows for the creation of irrevocable trusts — trusts that can continue for numerous generations if they are kept open by a person or organization.

A unique feature of Alaska's law allows the person creating an irrevocable trust to be eligible, but not entitled, to receive distributions from the trust. In effect, that means future creditors can't raid the trust, according to the law's supporters. If the creator of the trust is sued, the property he or she put into the trust cannot be seized or claimed.

A person can't create a trust to avoid existing or anticipated creditors, according to the law. Anyone who believes a trust was created fraudulently to avoid creditors could have four years from the time property is transferred into a trust, or one year from the time the suspected fraud is discovered, to pursue their claims.

The law's sponsor, Rep. Al Vezey, R-North Pole, said he views the new law as a vehicle for expanding the state's economy.

"Since I first came to the Legislature, I asked the question, 'What could we do to make the state's financial services industry bigger? We got all kinds of excuses, but very few suggestions,' Vezey said.

One suggestion came from people involved in the state's trust industry. Built into the law is the requirement that a trustee must be an Alaska business operated by Alaska residents, Vezey said. And Alaska may be attractive to investors because there is no statewide sales tax, no state personal income tax, and the state is a popular tourism destination.

"People who are in the trust business realized the tremendous opportunity that this would create."

Charles D. Fox IV, a trust attorney for Schiff Hardin and Waite in Chicago, said his 200-person firm is interested in Alaska's trust law. Schiff Hardin maintains a 20-employee estate and trust division and some 90 percent of its trust clients live outside Illinois, he said.

While a handful of states, including South Dakota, Wisconsin, Idaho and Delaware, have made provisions for trusts in perpetuity, Alaska's credit-protection feature is unique, he said.

"Quite honestly, that is astounding," Fox said. "It is something that I intend to look at."

But there is no patent for trust law, he noted.

"It will be interesting to see if other states try to emulate this," Fox said. "The biggest reaction I have heard is, 'Why didn't they do this in Hawaii?'"

One new business, Alaska Trust Co., has begun operation in Anchorage because its managers believe the state will become one of the most desirable places in the world to create trusts.

"We think a lot of people with \$20 million and \$30 million estates back east will come up here and use this," said Richard S. Thwaites, chairman of Alaska Trust. "We are after that Outside market."

The cost for establishing a trust likely will range from \$7,500 to \$12,500, he said.

Alaska Trust Co. was in-

within our state," said Rod Shipley, senior vice president and manager of the trust department for National Bank of Alaska. "Once word of this gets out, some of the banks come around."

Bob McKay, a senior trust officer for First National Bank of Anchorage, was among those who said it is too early to tell what the real economic benefit to Alaska will be. McKay said he is waiting to see what kinds of working documents are drafted by attorneys when the trusts are established.

"I don't really have a sense of it," he said. "It is just so new."

"The governor did have concerns that the law would be used as a loophole," said the Bob King, the governor's press secretary. "People can't use this as a way to avoid their obligations."

Vezev and others say the new law includes provisions that would stop a deadbeat dad from locking up assets that might go to spouses or children, and the governor was confident enough to approve the revised measure.

Trust managers for local banks said they were unsure what the new law might mean for the industry.

"There really is some opportunity for business from

corporated a year ago in anticipation of expanding trust markets. The majority shareholders are The Aleut Corp. and DADCO Inc.

Other shareholders are Thwaites and real estate appraiser Stephen W. Noey, each of whom holds about a 7 percent interest in the company. Douglas Blattmachr, president and chief executive of Alaska Trust Co., holds about 8 percent, and lobbyist Joe Hayes holds 4 percent.

Thwaites is co-author of the new trust law. Vezey, Thwaites and other proponents pushed for changes to the state's trust laws last year, but Gov. Tony Knowles vetoed that bill.

FAMILY: Trusts complex

Continued from Page C-1

one spouse to the next, then on to the children, the taxes could total about \$235,000, said Richard Thwaites, chairman of Alaska Trust Co.

But in all likelihood, people who are looking to take advantage of the new "perpetual trusts" now offered in Alaska will be of greater wealth, Thwaites said.

"My guess is you are looking at somebody with a \$2.5 million estate or more," he said, pointing out that investors generally don't put

more than 25 percent of their net worth into a trust.

And there is some expense. The cost of establishing the kind of irrevocable trust created by the new law could run about \$12,500, say attorneys in the field.

"This is probably one of the most complex trusts that an attorney can draft, and it involves a lot of money," said Rich Hompesch, a Fairbanks estate planning and probate attorney who supported the new trust law. "It is very specialized work."

HB

203

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 203

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to unlawful trade practices." BRU: Civil Division
 Component: General Legal Services
 Sponsor: Representative Dyson
 Requester: House Labor and Commerce Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 203 amends Alaska's Unfair Trade Practices and Consumer Protection Act to enhance a private litigant's right, under AS 45.50.531, to bring an action in Alaska Superior Court.

Passage of this legislation would cause no new costs for the Department of Law. Section 5 may have the effect of increasing revenues, however, as it would require a court to award full attorney's fees and all allowable costs to a prevailing plaintiff (whether the state or a private plaintiff). Under current law, the prevailing plaintiff can only receive Rule 82 attorney's fees, set at approximately 20 percent. The amount of revenue that might accrue to the state is very speculative, depending on the level of effort expended by the state in pursuing actions brought under the Unfair Trade Practices and Consumer Protection Act.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho*
 Agency: Department of Law

Phone: 465-5370
 Date: 4/1/97
 Date: 4/1/97

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FISCAL NOTE

Bill Version: CSHB 203(LS)

(H) Publish Date: 5/6/97

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

Effective Date: _____ Dept. Affected: Department of Law
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 Component: General Legal Services
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TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	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 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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Prepared by: Jean M. Kasson *Jean M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 4/1/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/1/97
 Agency: Department of Law

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April 23, 1997

House Labor and Commerce Committee

Public hearing on HB 203. "An Act relating to actions for unlawful trade practices."
by Representatives Dyson and Croft Introduced 3/18/97

I am Peggy Mulligan of the Capital City Task Force, AARP.

Under AARP's Strategic Activities in 1997, Telemarketing Fraud ranks No. 7 in the Nation, but consumer and telemarketing fraud ranks No. 1 in Alaska. "Personal fraud and abuse" is one of 5 objectives to be studied under the Alaska State Legislative Committee 97-99 Long Range Plan.

House Bill 203 is supported by AARP. Since the Department of Law's Consumer Protection Section was eliminated in the late 1980's, Alaskan consumers have grown increasingly vulnerable costing an estimated \$10 million dollars a year. This bill empowers Alaskans to fight back fraud. We also support SSHB 49 (consumer protection section in the Department of Law; increasing penalties for violation relating to consumer protection; special accounting for money; efd). We appreciate this hearing during the final days of the legislature and look forward to hearings in Judiciary during the summer, or perhaps sooner.

In Alaska telemarketing fraud is addressed within the Trade and Commerce Section of the Alaska Code. The "Telephonic Solicitations" section regulates "telephone sellers". Registration is required; however there is a long list of businesses exempted from the law. Nor is a bond required. The law imposes a Class C felony for any violation. Prohibited: representing they are complying with State law; representing compliance with State law is endorsement from the state; representing they have a license or permission by the state; requesting or obtaining a waiver of "Buyer rights".

There are no civil penalties under Alaska law.

Grants have become available from AARP ^{national} federal and western region sources for use to educate Seniors and other Alaskans of current fraud practices in the state; to collect evidence of fraud attempts in the state; to encourage various groups to help Alaskans become aware of telemarketing and consumer fraud and such other activities as may seem appropriate. This is our priority activity for the summer.

I have a copy of a six page AARP model legislation which I will hand in to the committee.

I appreciate your listening to my comments..

Thank you.



Peggy Mulligan
Capital City Task Force Member

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American Association of Retired Persons



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SECTION 1: Purpose of Act

An Act requiring telemarketers to Register and establishes standards of conduct for those telemarketers. The Act provides penalties for violations of the Act.

SECTION 2: Short Title

This Act shall be known and is to be cited as "The Telemarketing Registration and Fraud Prevention Act."

SECTION 3; Definitions:

As used in this act, the following terms shall mean:

- (1) "Consumer and/or Purchaser" means a person who is, or may be required to pay for goods or services offered by a telemarketer through telemarketing.
- (2) "Goods or Services" means any real property or any tangible or intangible personal property or services of any kind provided or offered to a person.
- (3) "Investment Opportunity" means anything tangible or intangible, that is 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.
- (4) "Material Aspect or Element" means any factor likely to affect a person's choice of, or conduct regarding, goods or services, and includes currency values and comparative expressions of value including, but not limited to, percentages or multiples.
- (5) "Prize" means anything offered or purportedly offered and given or purportedly given to a person by chance.
- (6) "Prize Promotion" means a sweepstakes or other game of chance or an oral or written, express or implied representation that a person has won, has been selected to receive or is eligible to receive a prize or purported prize.
- (7) "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.
- (8) "Solicitation" - means a written or oral notification or advertisement that meets any one of the following terms:

1 (a) the notification or advertisement is transmitted by or on behalf of the
2 seller and by any printed, audio, video, cinematic, telephonic or electronic
3 means.

4 (b) In the case of a notification or advertisement other than by telephone,
5 either of the following conditions is met:

6 (i) the notification or advertisement is followed by a telephone call from a
7 telemarketer or seller.

8 (ii) the notification or advertisement invites a response by telephone, and
9 through that response, a telemarketer attempts to make a sale of goods or
10 services.

11 (9) "Telemarketing" means a plan, program or campaign which is conducted
12 to induce the purchase of goods or services by use of one or more telephones
13 and which involves more than one telephone call.

14 (10) "Telemarketer" means any person who in connection with telemarketing,
15 initiates or receives telephone calls to or from a consumer in this State, or
16 when the person acting in connection with telemarketing is located within this
17 State when such calls are initiated or received. A telemarketer includes, but
18 is not limited to any such person that is an owner, operator, officer, director
19 or partner to the management activities of a business.
20

21 *SECTION 4: Registration of Telemarketers*

22

23 (1) General Rule: No person shall act as a seller or telemarketer without first
24 having registered with the {Attorney General or Department of Commerce}.

25 (a) The initial application for registration shall be made at least {60 days}
26 prior to offering consumer goods or services, and or offering for sale
27 consumer goods or services through any medium, and an application for
28 renewal shall be made on an {annual} basis thereafter.

29 (b) The Application for a Certificate of Registration or Renewal shall
30 include, but not be limited to, the following information:

31 (i) The true name, current address, telephone number and location of
32 the seller, including each name under which the seller intends to engage in
33 telemarketing;

34 (ii) Each occupation or business that the seller's principal owner has
35 engaged in for two years immediately preceding the date of the application;

36 (iii) Whether any principal or manager has been convicted or plead
37 guilty to or is being prosecuted by indictment for racketeering, violations of
38 state or federal securities laws, or a theft offense;

- 1 (iv) Whether there has been entered against any principal or manager
2 an injunction, temporary restraining order or a final judgment in any civil or
3 administrative action, involving fraud, theft, racketeering, embezzlement,
4 fraudulent conversion or misappropriation of property, including any pending
5 litigation against the applicant;
- 6 (v) Whether the seller, at any time during the previous seven years, has
7 filed for bankruptcy, been adjudged bankrupt or been re-organized because of
8 insolvency;
- 9 (vi) The true name, current home address, date of birth, social security
10 number and all other names of the following:
- 11 (a) Each telemarketer or other person to be employed by the seller;
12 (b) Each person participating in or responsible for the management
13 of the seller's business;
- 14 (c) Each person, (office manager, supervisor) principally
15 responsible for the management of the seller's business;
- 16 (vii) The name, address and account number of every institution where
17 banking or any other monetary transactions are done by the seller; and
18 (viii) A copy of all scripts, outlines or presentation material the seller
19 will require the telemarketer to use when soliciting as well as all sales
20 information to be provided by the seller to a purchaser in connection with any
21 solicitation.
- 22 (2) Security Requirement: The application for registration or renewal shall be
23 accompanied by a surety bond in the amount of {\$100,000}. The bond shall
24 provide for the indemnification of any person suffering a loss as the result of
25 violation of this Act. The surety for any cause may cancel the bond upon
26 giving a 60-day written notice by certified mail to the principal and to the
27 {Office of the Attorney General}. Unless the bond is replaced by that of
28 another surety before the expiration of the 60- days notice of cancellation, the
29 Registration of the principal of this Act shall be treated as lapsed.
- 30 (a) The surety bond shall remain in effect for three (3) years from the
31 period the telemarketing business ceases to operate in this State.
- 32 (b) Any business required under this Act to file a Bond with a Registration
33 Application, may file, in lieu thereof, a certificate of deposit, cash, or
34 government bond in the amount of {\$100,000}.
- 35 (c) {The Office of the Attorney General} shall hold such cash, certificate
36 of deposit or government bond for three (3) years from the period the
37 telemarketing business ceases to operate (or registration lapses) in order to
38 pay claims made against the telemarketing business during it's period of
39 operation.

1 (d) The Registration of the telemarketing business will be treated as lapsed
2 if at any time, the amount of the bond, cash, certificate of deposit or
3 government bond falls below the amount required by this subsection.

4 (e) The aggregate liability of the surety company to all persons injured by
5 a telemarketer's violations shall not exceed the amount of the bond.

6 (3) The following shall constitute a violation of this Act and shall be a felony:

7 (a) failure to register;

8 (b) failure to meet the above security requirement;

9 (c) failure to maintain a certificate of registration;

10 (d) including any false or misleading information on a registration
11 application; and

12 (e) misrepresenting that a seller is registered.
13

14 *SECTION 5; Record Keeping Requirements* 15

16 (1) Any telemarketer shall keep for a period of 24 months from the date the
17 record is produced, records of all financial transactions, written notices,
18 disclosures and acknowledgments, in the form, manner, format or place as
19 they keep such records in the ordinary course of business, including but not
20 limited to:

21 (a) All substantially different advertising, brochures, telemarketing scripts
22 and promotional materials;

23 (b) The name and last known address of each prize recipient and the prize
24 awarded;

25 (c) The name and last known address of each customer, the goods or
26 services purchased, the date such goods or services were shipped or provided
27 and the amount provided, and the amount paid by the customer for the goods
28 or services;

29 (d) The name, any fictitious name used, the last known home address and
30 telephone number, and the job title for all current and former employees
31 directly involved in telephone sales; provided, however, that if the seller
32 permits fictitious names to be used by employees, each fictitious name must
33 be traceable to only one specific employee; and,

34 (e) all written authorizations required to be provided or received under this
35 Act.

36 (2) In the event of any dissolution or termination of the telemarketer's
37 business, the principal of that telemarketer shall maintain all records as
38 required under this section. In the event of any sale, assignment or other

1 change in ownership of the seller's business, the successor shall maintain all
2 records required under this section.

3
4 **SECTION 6; Acts and Practices Not Covered Under This Act:**

5
6 (1) Telephone calls in which the sale of goods or services is not completed,
7 and payment or authorization of payment is not required, until after a face-to-
8 face sales presentation by the telemarketer; and

9 (2) Telephone calls initiated by a customer that are not the result of any
10 solicitation by a seller or telemarketer.

11

12 **SECTION 7; Disclosures and Contract Requirements:**

13

14 (1) The telemarketer shall provide all of the following when contacting a
15 consumer:

16 (a) Within the first minute of the call and prior to any sales pitch:

17 (i) that the true purpose of the telephone call is to make a sale;

18 (ii) the telemarketer's true name and the company on whose behalf the
19 solicitation is being made; and

20 (iii) the identity the goods or services being sold.

21 (b) the total cost of the goods or services that are the subject of the
22 telemarketing sales call;

23 (c) any restrictions, limitations, or conditions to purchase the goods or
24 services that are the subject of a telemarketing sales call;

25 (d) any material aspect of the performance, quality, efficacy, nature or basic
26 characteristics of goods or services that are the subject of a telemarketing
27 sales call;

28 (e) any material aspect of the nature or terms of the refund, cancellation,
29 exchange or repurchase policies;

30 (f) any material aspect of an investment opportunity being offered, including
31 benefits, the price of the land or other investment, the location of the
32 investment, and the reasonable likelihood of success of the investment
33 opportunity;

34 (g) any material elements of a prize promotion, including:

35 (i) a description of the prize;

36 (ii) its market value;

37 (iii) all material conditions to receive or redeem the prize; '

38 (iv) the actual number of each prize to be awarded;

1 (v) the odds of being able to receive the prize and, if the odds are not
2 calculable in advance, the factors and methods used in calculating the odds;

3 (vi) that no purchase or payment of any kind is required to win a
4 prize or to participate in a prize promotion; and

5 (vii) the no-purchase or no-payment method of participating in the
6 prize promotion, with either instructions on how to participate or an address
7 or local or toll-free telephone number to which customers may write or call
8 for information on how to participate.

9 (2) (a) The telemarketer's sales transaction shall only be considered final
10 after the customer has received a notice as required by subsection 2 (b) of this
11 Section.

12 (b) The telemarketer shall furnish the purchaser, in the same language
13 as that principally used in the sales presentation, a written notice, which shall
14 contain in not less than ten-point boldface type, a statement in substantially
15 the following form:

16 "You, the purchaser, may cancel this transaction without any
17 penalty or obligation at any time prior to midnight of the third business
18 day after receipt of this notice. If you cancel, any payments made by you
19 under the sale will be returned within ten business days following receipt
20 by the seller of your written notice of cancellation and any security
21 interest arising out of the transaction will be canceled.

22 If you cancel, you must make available to the seller at your
23 residence, in substantially as good condition as when received, any goods
24 delivered to you under this contract of sale; or you may, if you wish,
25 comply with the instruction of the seller regarding the return shipment
26 of the goods at the seller's expense and risk.

27 If you do make the goods available to the seller and the seller does
28 not pick them up within twenty days of the date of your notice of
29 cancellation, or agree to pay the expense for their return, you may retain
30 or dispose of the goods without any further obligation. If you fail to
31 make the goods available to the seller, or if you agree to return the goods
32 to the seller and fail to do so, then you remain liable for performance of
33 all obligations under the contract.

34 To cancel this transaction, mail or deliver a written notice of
35 cancellation or send a telegram to (name of seller) at the following
36 address (address of seller)."

37 (c) Pursuant to subsection 2(b) of this Section, the seller is required to
38 furnish the purchaser with the seller's name, and the name of the person to
39 whom any notice of cancellation is to be given if different from the seller's

- 1 name, the legal name of the company for whom the seller is soliciting, the
2 seller's street address and the seller's phone number. The seller is
3 additionally required to furnish the purchaser with the date of the telephone
4 solicitation and a description of the telephone solicitation.
5 (3) It is an unfair and deceptive act or practice to fail to or misrepresent the
6 requirements of this section.
7 (4) It is a violation of this Act for any seller or telemarketer to engage in any
8 other unfair or deceptive conduct which will create a likelihood of confusion
9 or misunderstanding to any reasonable consumer.
10 (5) Failure to comply with the provisions of this section is a {Class 1
11 misdemeanor}.

12

13 *SECTION 8: Prohibited Acts and Practices:*

14

- 15 (1) It is a prohibited telemarketing act or practice and a violation of this Act
16 for any seller or telemarketer to engage in the following conduct:
17 (a) Advertise or represent that registration as a telemarketer equals an
18 endorsement or approval by any government or governmental agency of the
19 state;
20 (b) Assist, support, or provide substantial assistance to any telemarketer
21 when the seller knew or should have known that the telemarketer was
22 engaged in any act or practice under this section or Section 7;
23 (c) Request a fee in advance to remove derogatory information from or
24 improve a person's credit history or credit record;
25 (d) Request or receive payment in advance from a person, to recover or
26 otherwise aid in the return of money or any other item lost by the consumer in
27 a prior telemarketing transaction;
28 (e) Obtain or submit for payment a check, draft or other form of negotiable
29 paper drawn on a person's checking, savings or bankcard account without the
30 consumer's express written authorization; or
31 (f) Procure the services of any professional delivery, courier or other pick-
32 up service to obtain immediate receipt and/or possession of a consumer's
33 payment, unless the goods are delivered with the opportunity to inspect
34 before any payment is collected.
35 (2) A violation of the provisions of subsection 3 shall constitute a {class 1
36 misdemeanor.}

37

38

39

1 **SECTION 9: Abusive Acts or Practices**

2

3 (1) It is an abusive telemarketing act or practice and a violation of this Act for
4 any seller or telemarketer to engage in the following conduct:

5 (a) Threaten, intimidate or use profane or obscene language;

6 (b) Cause the telephone to ring more than five times in an intended
7 telemarketing call;

8 (c) Engage any person repeatedly or continuously with behavior a
9 reasonable person would deem to be annoying, abusive or harassing;

10 (d) Initiate a telemarketing call to a person, when that person has stated
11 previously that he or she does not wish to receive solicitation calls from that
12 seller;

13 (e) Engage in telemarketing to a person's residence at any time other than
14 between 8:00 a.m. and 9:00 p.m. local time, at the called person's location; or

15 (f) Engage in any other conduct which would be considered abusive to any
16 reasonable consumer.

17 (2) The State may seek injunctive or declaratory relief for any violations of
18 this section.

19

20 **SECTION 10: Civil Remedies;**

21

22 (1) The sale of any goods or services by an unregistered telemarketer or
23 seller shall be void.

24 (2) Any consumer that suffers a loss or harm as a result of an unfair and
25 deceptive act or practice shall recover actual and punitive damages,
26 attorney's fees, court costs, and any other remedies provided by law.

27 (3) Any consumer that suffers a loss or harm as a result of a prohibited act or
28 practice shall recover actual and punitive damages, attorney's fees, and court
29 costs.

30 (4) Any consumer that suffers harm as a result of an abusive act or practice
31 shall receive injunctive or declaratory relief.

32 (5) The state, on behalf of its residents who have suffered a loss or harm as a
33 result of a violation of this Act, may seek actual and punitive damages.

34

35

36

37

38

39

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE MEMBERS:

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SESSION:
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Labor and Commerce Committee

MEMORANDUM

TO: Representative John Cowdery
Representative Bill Hudson
Representative Joe Ryan
Representative Jerry Sanders
Representative Tom Brice
Representative Gene Kubina

FROM: Representative Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: April 23, 1997

**Additional Materials Provided
To Committee After Bill Packets
Delivered To Committee Members**

HB 203

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

May 7, 1997

SUBJECT: Sectional Summary of CSHB 203(L&C) (Work Order No. 20-LS0553\P)

TO: Representative Fred Dyson
Attn: Pat Harman
JB

FROM: Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

Section 1. Amends AS 45.50.473(c). This subsection provides a remedy for violating AS 45.50.473, which requires that certain disclosures be made for the costs of certain telephone services. The amendment shows how the subsection relates to AS 45.50.531(a) and its changes.

Section 2. Amends AS 45.50.531(a). AS 45.50.531 relates to private and class actions for unlawful acts and practices identified under AS 45.50.471. Allows a person who has lost money or property because of an unlawful act or practice to bring an action to recover damages. Allows the person to recover for each unlawful act or practice the greater of three times the actual damages or \$500. Removes the requirement that the violation be willful in order to receive triple damages. Allows a court to award other necessary and proper relief. States that the section does not prevent a person from pursuing other available remedies as well as bringing an action under this section.

Section 3. Adds two new sections to the article on unfair trade practices and consumer protection.

AS 45.50.535. Allows any person to bring an action in court to stop a seller or lessor from continuing to engage in an act or practice unlawful under AS 45.50.471. States that an

Representative Fred Dyson

May 7, 1997

Page 2

action under this section is in addition to any other right to bring an action under other law.

Establishes conditions for bringing the action. First, the person must give the seller or lessor written notice that the person will bring the action unless the seller or lessor promptly stops the unlawful act or practice. Second, the seller or lessor must fail to promptly stop the unlawful act or practice after the notice.

States that a person does not have to suffer damages or otherwise be injured in order to bring the action under this section.

AS 45.50.537. Establishes the rules for awarding attorney fees and costs in an action brought under AS 45.50.471 - 45.50.561. Unless another part of the section provides differently, directs a court to award a prevailing plaintiff (the person who brings the action and wins) costs as allowed by court rule and full reasonable attorney fees at the prevailing reasonable rate. Unless another part of the section provides differently, prohibits a court from requiring a private plaintiff who loses to pay attorney fees or costs to the defendant unless the action was frivolous.

If the action is frivolous, directs the court to award the defendant costs as allowed by court rule and full reasonable attorney fees at the prevailing reasonable rate.

If the plaintiff loses a case that was brought to obtain a competitive business advantage, directs the court to award the defendant costs as allowed by court rule, full reasonable attorney fees at the prevailing reasonable rate, and damages.

Section 4. Repeals AS 45.50.531(g). This is the current subsection on attorney fees and costs for private actions under AS 45.50.531.

If I may be of further assistance, please advise.

TLB:jdr:glc

97-306.glc

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU ALASKA 99811-0300
PHONE (907) 465-3600
FAX (907) 465-2075

April 13, 1997

The Honorable Eric Croft
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Re: Consumer Protection

Dear Representative Croft:

Thank you for your interest in the Department of Law's consumer protection function, staffing levels, and enforcement efforts. This letter will summarize the current situation with regard to these issues.

Consumer Protection Staffing and Budget Constraints

As you know, because of declining budgets over the past ten years, Alaska's consumer protection staffing has shrunk dramatically. For the last six or seven years, the Attorney General's Office has, regrettably, not had the resources necessary to handle the many thousands of individual consumer complaints each year from Alaskans. In this last year we have shifted assignments to add one additional attorney position for antitrust and consumer protection litigation, which brings us to a total of two assistant attorneys general and a part-time paralegal focusing on this work. However, this compares unfavorably with 5 attorneys and 8 paralegals that were dedicated to consumer protection and antitrust litigation in the early to mid-1980s.

The Department of Law has experienced a substantial reduction in general fund funding in recent years, and this has negatively affected our ability to do consumer protection work. For FY 97, only 32 percent of the Civil Division's funding is unrestricted general fund. The majority of the work of assistant attorneys general is funded through reimbursable services agreements (RSAs) with client agencies. RSA funds

from these agencies may only be expended for legal services for those agencies. Aside from the consumer protection/antitrust staff, virtually all of the attorney positions in the Fair Business Practices and Commercial sections are RSA-funded positions. Since no one agency is responsible for consumer protection and antitrust investigation and enforcement, there is no source other than the general fund to support this type of work directly. I would point out, however, that a number of the functions of the agencies that have RSAs for legal services provided by the Fair Business Practices and Commercial sections do, in fact, involve consumer protection matters. These include occupational licensing cases, rate proceedings before the Alaska Public Utilities Commission, enforcement actions against insurance companies, proceedings against licensees before the Alcoholic Beverage Control Board, and charitable gaming licensing issues. This is in addition to our direct consumer protection enforcement efforts, which, as noted above, are supported by the general fund.

The Fair Business Practices and Commercial sections provide legal services for the following client agencies:

1. Department of Commerce & Economic Development
 - a. Division of Occupational Licensing
 - b. Alaska Public Utilities Commission (APUC)
 - c. Division of Insurance
 - d. Division of Investments
 - e. Division of Banking, Securities & Corporations
 - f. Division of Measurement Standards
 - g. Other agencies within the Department of Commerce & Economic Development.

2. Department of Education
 - a. Professional Teaching Practices Commission
 - b. Commission on Postsecondary Education

3. Department of Labor
 - a. Employment Security Division

4. Department of Natural Resources
 - a. Division of Agriculture / Agricultural Revolving Loan Fund (ARLF)

5. Department of Revenue
 - a. Alaska Housing Finance Corporation (AHFC)
 - b. Alcoholic Beverage Control Board (ABC)

- c. Income and Excise Audit Division (I&E)
 - d. Permanent Fund Dividend Division
 - e. Charitable Gaming Division
6. Department of Law
 - a. Antitrust
 - b. Consumer Protection
 7. Executive Branch Ethics Act for all departments

How We Stretch Our Enforcement Dollars

Although our consumer protection/antitrust staffing is limited, through creative use of resources the department has been able to stretch its enforcement dollar significantly beyond current staffing levels. One prime example of our efforts in this regard is the close cooperative relationship between the Department of Law and the Better Business Bureau of Alaska. The State has an excellent working relationship with the Better Business Bureau and relies heavily on it for investigative leads on a whole host of consumer protection violations.

The Attorney General's Office began referring consumers to the Better Business Bureau in 1989, shortly after the virtual elimination of the department's individual complaint mediation function, which had been handled by paralegals. While it is extremely effective in resolving many consumer matters on an informal basis, the BBB has no enforcement powers and is, therefore, powerless to deal with fraudulent businesses bent on bilking consumers unless and until ordered by a court to cease operating illegally. In recognition of this fact, the Legislature restored a modest amount of consumer protection funding in FY 1991. With this new funding, the Attorney General's Office was able to hire one attorney and one investigator devoted to pursuing a few of the most serious fraud cases where a pattern of consumer fraud was identified. And, as noted above, during FY 97 we have been able to devote an additional attorney position for consumer protection. However, our resources still do not allow us to handle the complaints of individual consumers.

In order to make the most of the department's modest consumer protection resources, the Attorney General's Office entered into a complaint referral and information sharing agreement with the BBB in September 1991. The BBB receives and processes thousands of consumer complaints from Alaskans each year. Under the agreement between the department and the BBB, the Attorney General's Office refers consumer

complaints from individuals to the BBB for informal resolution. The BBB, from its complaint files, identifies serious patterns of consumer fraud and refers these matters to this department for enforcement. The department files enforcement actions in Superior Court in appropriate cases:

- that affect large numbers of consumers;
- where the victims are without adequate means to solve the problem on their own;
- where the magnitude of actual or potential financial loss to the consumers supports the expenditure of scarce state enforcement resources;
- where enforcement action is likely to do some good; (e.g., where obtaining injunctive relief is a distinct possibility, and/or where the defendant is financially solvent); and
- where the victims are not also violators.

The agreement with the BBB has been renewed annually, and it is in effect today because our resources remain insufficient to handle the complaints of individual consumers. Given recent reductions in funding for state agencies, and particularly in the department's general fund funding, the Attorney General's Office would not be able to handle the thousands of telephone calls from the public concerning consumer fraud and deception and have personnel resources available to enforce the law in larger cases where a widespread pattern of serious violations has occurred. This arrangement is, therefore, a way of providing the most critical consumer protection service -- law enforcement, through prosecution of lawsuits by an attorney -- while keeping costs down by privatizing other consumer protection services, such as the complaint processing function formerly handled by paralegals.

Since 1991 when we privatized the individual complaint mediation function, the department has used its paralegals in the consumer protection area only to assist the attorney responsible for litigating consumer protection lawsuits. Since we no longer handle individual consumer complaints, we refer individual complainants to the BBB as a matter of routine practice. Many consumers are quite surprised and disappointed to learn that Alaska -- unlike virtually every other state -- does not handle individual consumer complaints. These consumers often demand to know what they can do to restore the department's capability to handle consumer complaints.

In addition to referral to the BBB, we advise consumers (where appropriate) that they have a private right of action under Alaska law and can receive their actual damages trebled in cases of willful violations. Alaska Statute 45.50.531(a). Consumers may even be able to bring an action in small claims court if their potential damages are valued at \$5,000 or less. Persons need not hire an attorney in small claims cases in Alaska.

Recent Successful Enforcement Actions

Although the State is forced to turn away many cases of consumer fraud because of the small size of our consumer protection staff, we have, nevertheless, been able to recover substantial amounts of money for consumers, and we have obtained a number of injunctions against deceptive and unfair practices. Working hand-in-hand with the BBB, we have had some recent successes in the areas of telemarketing fraud, used car sales, "bait and switch" bulk retail meat sales, deceptive home business opportunity seminars, and other areas. I have summarized some of these cases for you below; information on these and other cases is included regularly in the department's Monthly Report, which is distributed to all legislators.

Telemarketing Fraud. The Federal Trade Commission estimates that, nationwide, consumers and others lose approximately \$40 billion a year in telemarketing fraud. We have made illegal telemarketing a priority since September 1993, when the Legislature passed laws requiring telemarketer and charitable solicitors to register annually with the Attorney General's Office as a condition of operating in Alaska. In 1995 alone, the Department of Law recovered approximately \$30,000 in restitution to consumers who had fallen victim to illegal telemarketing operations. We have issued over 100 "Cease and Desist" letters to "Lower 48" based illegal telemarketing operations and have put them out of business in Alaska. We also obtained a permanent injunction, in March 1995, against a San Diego, California, telemarketer called Distributel, which illegally telemarketed advertising specialty promotional items to Alaska without registering as a telemarketer with the State. We recovered \$10,000 in attorney's fees and costs in that case and prevailed on appeal to the Alaska Supreme Court.

Anchorage Nissan Consumer Protection Case. In early 1995 the department won a three-week jury trial against Anchorage Nissan for engaging in unfair and deceptive practices arising from the sale of eight used cars. Anchorage Nissan was found to have accepted in trade several used cars that had been in major accidents causing structural damage. After making repairs that were mostly cosmetic, Anchorage Nissan sold the cars to consumers without notifying them that the cars had been in major accidents. Some of

the cars were unsafe to drive but sold anyway. The jury found that Anchorage Nissan had violated its duty to disclose to the purchasers the fact that the cars had previously been in accidents. On April 14, 1995, the court issued a permanent injunction against the illegal conduct, assessed Anchorage Nissan civil penalties of \$64,000, ordered that restitution be paid to the injured consumers, and awarded the state over \$70,000 in attorney's fees and costs. That case is also on appeal in the Alaska Supreme Court.

Additionally, my department settled a claim in February 1996 that Johnson/Nissan/Jeep/Eagle violated the terms of the court's April 1995 injunction. Johnson Nissan admitted that it had not complied with the injunction to the extent that it had continued to induce customers to sign an "As Is" disclaimer on the purchase order in those cases where a customer had purchased a used vehicle and paid for a service contract for that vehicle. Under the recent settlement, Johnson Nissan sent a letter on February 20, 1996, to the approximately 500 customers who had purchased a used car with a service contract since the April 1995 injunction. Each customer was advised that if the car they purchased had a material defect at the time of sale, the dealership would repair the defect free of charge. Customers were also advised that the "As Is" disclaimer on the sale is ineffective and that the customers have warranty coverage on the cars. Johnson Nissan also paid the State of Alaska \$2,000 to cover its attorney's fees in connection with the State's investigation and settlement of the injunction violation.

Thirty-three purchasers of used vehicles contacted Anchorage Nissan in response to the warranty coverage notices the company sent pursuant to the settlement. Anchorage Nissan submitted documentation indicating it provided to these consumers diagnostic checks, repairs, and rental car transportation totaling in excess of \$20,000.

Block & Cleaver Meats; Robert Brueggemeyer. In October 1995, with the help of the BBB, we scored a victory against a Texas-based nationally notorious "bait and switch" meat seller, Bob Brueggemeyer, doing business in Anchorage as Block & Cleaver Meats. Brueggemeyer -- who was profiled nationally on ABC Television's 20/20 program in 1983 by ABC consumer correspondent John Stossel -- had operated a similar "bait and switch" operation in Alaska from 1987 through 1989. This time around, with the help of the BBB, Assistant Attorney General Daveed Schwartz obtained a preliminary injunction against Brueggemeyer and his company, essentially running them out of Alaska in just two months after they opened. The State won most of this case on summary judgment in February, and a short trial on the remaining issues is scheduled for May.

Home Business Opportunity Seminar Companies. With BBB help, the department enforced Alaska's five-business-day cooling off period in obtaining a court-approved Assurance of Voluntary Compliance with Financial Freedom Report, a Utah-based home

business opportunity seminar company that visits Alaska twice a year. We also obtained over \$20,000 in consumer refunds last Fall for 44 Alaskans who purchased products from a California-based home business opportunities seminar company that violated the same five-business-day cooling off law.

Discount Airline Ticket Operations. The Anchorage Police Department recently concluded an investigation of Ronald Downey's and Lucretia Dilena's involvement in an alleged airline discount ticket brokering scam. The Civil Division worked closely with the Office of Special Prosecutions and Appeals ("OSPA") on this issue, with the result being that OSPA filed criminal contempt of court charges against Downey and Dilena for their alleged violations of a 1993 superior court injunction against unfair and deceptive practices.

Pyramid Schemes. The Civil Division worked hand-in-hand with OSPA during a November 1994 criminal prosecution of persons involved in an illegal "gifting" chain distributor and pyramid scheme. In particular, the consumer protection attorneys made public announcements in the news media warning consumers that the "gifting" scheme was illegal and could result in criminal penalties. These announcements were actually heard by the defendants in the criminal cases and provided strong circumstantial evidence of the defendants' criminal intent, which is often difficult to prove in these types of cases.

Stereo Speakers Sold by Van Drivers. On August 14, 1996, the department and the BBB issued an alert warning consumers in Anchorage and the Mat-Su Valley about a Fresno, California, based company called United Audio Imaging ("UAI") that sells so-called high-quality stereo speakers supposedly at bargain prices from vans. These sales, occurring in Anchorage and Wasilla, were apparently been made in violation of Alaska's consumer protection laws requiring companies selling merchandise at a place other than their regular place of business to provide purchasers, at the time of sale, with a written notice of their right to revoke the purchase agreement within five (5) business days of the date of purchase. The van drivers misrepresenting the speakers as being valued at \$1,500 a pair when in fact the speakers appear, at best, to be worth \$150 a pair. The state filed a consumer protection suit against the company in October and obtained a \$75,000 default judgment and injunction in February.

Conclusion

We have worked hard to maximize the impact of the limited resources we have for consumer protection by working closely with the BBB, as well as with the Federal

The Honorable Eric Croft
Re: Consumer Protection

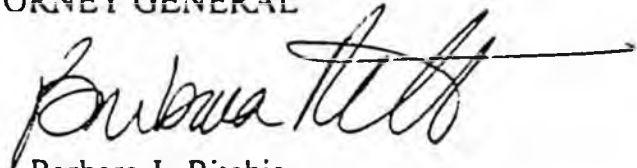
April 13, 1997
Page 8

Trade Commission, state and federal criminal enforcement agencies, and consumer protection enforcement programs in other states.

Thank you again for expressing your concerns on consumer protection staffing and enforcement issues.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL



BY: Barbara J. Ritchie
Deputy Attorney General

BJR:css

cc: Daveed Schwartz
Pat Pourchot
Chrystal Smith
Deb Behr

Legislative Research Services

APR 23 1997

Alaska State Legislature
Legislative Affairs Agency
Division of Legal & Research Services



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April 22, 1997

MEMORANDUM

TO: Representative Eric Croft

FROM: Gina Sparte 
Legislative Analyst

RE **The Number of Better Business Bureaus in Alaska and State Funding for Consumer Protection Services (FY86-FY97)**
Research Request 97.085

You wanted to know how many Better Business Bureaus are currently operating in Alaska. You also asked for a breakdown of funding for consumer protection services within the state Department of Law from FY86 through FY97. The following is a brief description of state Better Business Bureaus. In addition we provide background on state funding for consumer protection services along with a table and chart illustrating this funding history.

Better Business Bureaus in Alaska

The National Better Business Bureau is a private nonprofit organization began over 80 years ago. Business leaders join the organization by paying a membership fee and agreeing to respond to any complaints filed by consumers against their businesses. The Bureau does not enforce laws but rather mediates disputes between consumers and businesses. Consumers may file complaints against any business through the BBB. But nonmembers are not obligated to respond to these complaints. All complaints are kept on file and are open to the public, making the local chapters of the Bureau an excellent resource for consumers.

According to Blair Schaad, a representative of the Fairbanks Better Business Bureau, Alaska has four BBB offices, located in Anchorage, Kenai, Fairbanks, and the Matanuska-Susitna Valley (Wasilla). Currently only the Fairbanks and Kenai offices have a director. The former director of the Anchorage BBB, Rick Gilmore, is no longer working for the organization. That office is currently going through an internal reorganization but is still taking complaints from consumers. In addition, the Matanuska-Susitna office is working closely with the Anchorage office staff to assist consumers and is also concentrating on building its own membership in the Mat-Su Valley. Ms.

Table 1
Authorized Appropriations for Consumer Protection,
Alaska Department of Law (FY86-FY97)
 (dollars in thousands)

Year	Consumer Protection Division	Antitrust Division	Fair Business Practices Division	Fair Business Practices Budget within General Legal Services	Total
FY86	873.9				873.9
FY87	623.9	168.3			792.2
FY88	316.2	252.8			569.0
FY89	321.5	463.6			785.1
FY90	304.9	485.6			790.5
FY91	0	497.5			497.5
FY92	171.6	511.5			683.1
FY93			571.4		571.4
FY94			571.4		571.4
FY95			575.6		575.6
FY96			415.6		415.6
FY97				349.5	349.5

Sources: Legislative Finance Division, *Operating Budget for Department of Law*, for FY86-FY96. Funding for FY97 provided by Division of Administrative Services, Department of Law.

Note: For the years FY86-FY92, Department of Law's (DOL) Consumer Protection Services funding and functions were shared with Antitrust Division. In FY93, the two divisions were combined into the Fair Business Practices Division. In FY97, the budget for Fair Business Practices was combined with the budget for DOL's General Legal Services. The \$349.5 figure for FY97 is an *estimated budget projection* for Fair Business Practices within the budget for General Legal Services.

APR 22 1997
12:10p.m.

FAX COVER SHEET

2 Pages (includes cover sheet)

TO: Legislative Information Office, Kenai, Alaska
FAX: (907) 283-3075

RE: HB 203 - House Labor & Commerce Committee Hearing 4/23/97
Please forward our written testimony to the committee - Thanks!

FROM: Thomas and Patricia Vincent
P.O. Box 1485
Kenai, Alaska 99611

PHONE: (907) 283-3378 home
FAX: (907) 283-8072

DATE: April 23, 1997

WRITTEN TESTIMONY HB 203

APR 22 1997
12:10pm

TO: The House Labor & Commerce Committee
FROM: Thomas and Patricia Vincent
P.O. Box 1485
Kenai, Alaska 99611
(907) 283-3378
DATE: April 22, 1997

We are writing to urge your support of House Bill No. 203, "An Act relating to actions for unlawful trade practices". We have been unpleasantly introduced to the legal system and to the realization there is no protection available to consumers in this state. As consumers who have had to become involved in an expensive and still on-going litigation, we realize that there is no protection for the majority of the citizens in Alaska who are unfortunate enough to do business in good faith with someone who misrepresents themselves or their business or product. The laws stated in Article 03, UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION, Section 45.50.471, UNLAWFUL ACTS AND PRACTICES appear to be unenforceable without involving an attorney.

We sincerely feel that the State of Alaska has a duty to protect the consumers from many unlawful acts and practices in consumer-related issues. In our area, the local Better Business Bureau (BBB) is uncertain of their future in the community. At this time it is the only source our state offers for "consumer protection". If the BBB closes, everyone with small consumer complaints will be left completely out of the picture.

Our particular situation has left us with no recourse but to hire an attorney to represent our interests. There has been absolutely no other avenue available to us. We are now well into the second year of paying attorney fees, and are still awaiting a superior court date. It is our understanding that only 30% of our attorney fees can be awarded to us when and if we do win the law suit. Perhaps the most distressing thing to us is that the business/person named in our suit is continuing his trade with other unsuspecting consumers due to length of time it is taking to litigate the problem. While we certainly understand that a person is considered innocent until proven guilty, a great deal of damage can occur in the time it takes for the legal system to act. A consumer protection agency with the authority to deal with specific problems and to act on correcting them in a timely manner is needed immediately.

Please do your part to protect your constituents. We urge your support of this much needed legislation!

Patricia A. Vincent
4/23/97



AKPIRG

ALASKA PUBLIC INTEREST RESEARCH GROUP

Post Office Box 101093 / Anchorage, Alaska 99510-1093

(907) 278-3661 FAX (907) 278-9300

Support HB 203

To members of House Labor and Commerce Committee

From: Steve Conn, AkPIRG 507 E. St. Suite 202

Anchorage, Alaska 99501

APR 22 1997

Representative Dyson offers a realistic solution to consumer protection by allowing victims to stop future acts of fraud and by assuring that victims have their legal expenses paid. The statute was written when the state was its chief enforcer. Now private parties do the job themselves. The changes recommended are needed.

APR 18 1997

Alaska State Legislature



Committees
Labor & Commerce
Legislative Council
World Trade
Trade & Tourism
Special Committee
on Fisheries

Representative Eugene Kubina
House Minority Leader

During Session:
Alaska State Capitol
Juneau, Alaska 99801-1182

During Interim:
P.O. Box 2463
Valdez, Alaska 99686

MEMORANDUM

TO: Representative Norm Rokeberg, Chair
Labor and Commerce Committee

FR: Representative Gene Kubina *Gene*

RE: HB 49/HB 203

DATE: April 8, 1997

Please consider this a request to hear HB 49 and HB 203. As explained in the attached memo, the Alaska Commission on Aging is very interested in House Bill 49 and House Bill 203. Alaskans lose millions each year to fraudulent companies and seniors represent a group often targeted. Thank you for considering my request.

INTERNET ADDRESS:
acoa@admin.state.ak.us



P.O. BOX 110209
JUNEAU, AK 99811-0209
(907) 465-3250
FAX: 465-4716

Alaska Commission on Aging

April 4, 1997

The Honorable Gene Kubina
Alaska State Representative
Alaska State Legislature
State Capitol, Room 404
Juneau, AK 99801-1182

Dear Representative Kubina:

On March 10, 1996 the Alaska Commission on Aging transmitted Resolution 97-5 (copy attached) to the House Labor and Commerce committee. The resolution requested a committee hearing in support of the need to establish a Consumer Protection Division as stated in SB 6 and HB 49. Since then, HB 203 has been introduced by Representatives Croft and Dyson. The Commission again recently stated its interest in a committee hearing. Consumer protection is of increasing interest to seniors of the State of Alaska in that citizens of this state lose an average of \$10 million per year to telemarketing fraud alone and a great proportion of these victims are Alaska's elderly. The Commission feels that creation of a Consumer Protection Division would save the State money by making it more difficult for fraudulent solicitors to do business in the State of Alaska.

Please consider again the urgency in holding a hearing concerning HB 49. Thank you for your attention to this.

Sincerely,

A handwritten signature in black ink that reads "Donald M. Hoover". The signature is written in a cursive style.

Don Hoover
Chair

DH/nl
Attachment



Alaska Commission on Aging

RESOLUTION 97-5

*In support of holding a hearing concerning the need for a consumer protection division
within the Department of Law*

WHEREAS, consumer protection is of particular importance to seniors; and

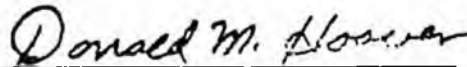
WHEREAS, fraudulent acts victimizing seniors and people of all ages in Alaska is occurring with increasing frequency; and

WHEREAS, there is a need to hear from the public on issues concerning fraudulent solicitations; and

WHEREAS, citizens of the State of Alaska would benefit from a consumer protection division;

THEREFORE, BE IT RESOLVED that the Alaska Commission on Aging requests the Labor and Commerce Committee hold hearings on this subject.

Adopted this 4th day of March, 1997.



Donald Hoover, Chair



Alaska State Legislature

- Interim (May-Dec.) -
10928 Eagle River Rd., Suite 140
Eagle River, Alaska 99577
☎ (907) 694-6683
FAX (907) 694-1015

- Session (Jan.-May) -
Alaska State Capitol
Juneau, Alaska 99801-1182
☎ (907) 465-2199
FAX (907) 465-4587

Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

HB 203

Sponsor Statement

Consumer Protection from Unlawful Trade Practices

"An Act relating to actions for unlawful trade practices."

Alaskan consumers have grown increasingly vulnerable to fraud since the Dept. of Law's Consumer Protection Section was eliminated in the late 1980s.

Knowing that our state's enforcement efforts are weak, swindlers prey heavily on our citizens, giving us a dubious reputation as easy targets, and costing us an estimated \$10 million a year in telemarketing fraud alone. We continue to lag far behind other states in providing protection to our consumers--especially elderly Alaskans, who are particularly vulnerable.

Though Alaska's state government consumer protection apparatus is inadequate to protect our citizens, we can empower ordinary Alaskans to fight back against consumer fraud. HB203 gives Alaskans their own "teeth."

Typically, cheated citizens are daunted from pursuing claims against swindlers in civil court, because the scam artists can afford to hire lawyers to outgun the citizens. HB203 empowers citizens to attract attorneys to take their cases, because it awards prevailing plaintiffs full reasonable attorney fees at the prevailing rate.

HB203 also raises the ceiling for statutory damages--set in 1978 when first enacted--from \$200 to \$500, and provides for automatic triple damages. Private plaintiffs who lose a case against a shyster would not have to pay attorney fees unless their claim was frivolous.

The bill allows a person to pursue a claim on behalf of another person, so elderly or disabled people who have been cheated would not have to mount their own court cases.

No one could begin a lawsuit more than two years after an alleged violation of Alaska's consumer protection laws, and anyone bringing a lawsuit would have to first notify in writing the person they intended to sue.

HB203 would help to level the playing field again, giving the common Alaskan citizen some small advantage in protecting himself or herself from swindlers.

- E-mail -
representative_Fred_Dyson
@Legis.state.ak.us

- Internet -
<http://www.akrepublicans.org>

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 25, 1997

SUBJECT: Sectional Summary of HB 203 (Work Order No. 20-LS0553\K)

TO: Representative Fred Dyson
Attn: Pat Harman

FROM: *TB*
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

Section 1. Amends AS 45.50.473(c). This subsection provides a remedy for violating AS 45.50.473, which requires that certain disclosures be made for the costs of certain telephone services. The amendment shows how the subsection relates to AS 45.50.531(a) and its changes.

Section 2. Amends AS 45.50.531(a). AS 45.50.531 relates to private actions for unlawful acts and practices identified under AS 45.50.471. Expands who can bring an action under the section to include persons who are aggrieved (as a result of the unlawful act or practice). Allows a person to recover for each unlawful act or practice the greater of three times the actual damages or \$500. Removes the requirement that the violation be willful in order to receive triple damages. Allows a court to award other necessary and proper relief. States that the section does not prevent a person from pursuing other available remedies as well as bringing an action under this section.

Section 3. Amends AS 45.50.531(f). This subsection establishes how long a person has to bring an action under the section. The amendment states that the period of time allowed to bring the action starts when the person discovers or reasonably should have discovered that the basis for the action arose from an act or practice declared unlawful under AS 45.50.471. The person has two years to bring the action.

Representative Fred Dyson

March 25, 1997

Page 2

Section 4. Adds two new sections to the article on unfair trade practices and consumer protection.

AS 45.50.535. Allows any person to bring an action in court to stop a seller or lessor from continuing to engage in an unlawful act or practice. States that an action under this section is in addition to any other right to bring an action under other law.

Establishes conditions for bringing the action. First, the person must give the seller or lessor written notice that the person will bring the action unless the seller or lessor promptly stops the unlawful act or practice. Second, the seller or lessor must fail to promptly stop the unlawful act or practice after the notice.

States that a person does not have to suffer damages or otherwise be injured in order to bring the action under this section.

AS 45.50.537. Establishes the rules for awarding attorney fees and costs in an action brought under AS 45.50.471 - 45.50.561. Directs a court to award a prevailing plaintiff (the person who brings the action and wins) costs as allowed by court rule and full reasonable attorney fees at the prevailing price. Prohibits a court from requiring a private plaintiff who loses to pay attorney fees or costs to the defendant unless the action was frivolous.

Section 3. Repeals AS 45.50.531(g). This is the current subsection on attorney fees and costs for private actions under AS 45.50.531.

If I may be of further assistance, please advise.

TLB:jdr

97-219.jdr

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION
DIVISION OF SENIOR SERVICES

Adult Protective Services
Information & Referral
Assisted Living Licensing
CHOICE for the Elderly Home Care

Alaska Commission on Aging
Long Term Care Ombudsman

Tony Knowles, Governor

Alaska Commission on Aging
PO Box 110209
Juneau, AK 99811-0209
Phone (907) 465-3250
FAX (907) 465-4716

March 10, 1997

The Honorable Norman Rokeburg
Alaska State Representative
Alaska State Legislature
State Capitol, Room 24
Juneau, AK 99801-1182

Dear Representative Rokeburg:

Attached please find Resolution 97-5 which was approved by the Alaska Commission on Aging March 4, 1997. This resolution is in support of holding a hearing concerning the need for a consumer protection division as stated in HB 49.

Sincerely,



Jane Pollard Demmert
Executive Director

JD/nl
Attachment



Alaska State Legislature

- Interim (May-Dec) -
10928 Eagle River Rd., Suite 140
Eagle River, Alaska 99577
☎ (907) 694-6683
FAX (907) 694-1015

- Session (Jan-May) -
Alaska State Capitol
Juneau, Alaska 99801-1182
☎ (907) 465-2199
FAX (907) 465-4587

Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

MEMORANDUM

To: Representative Norm Rokeberg, Chairman
House Labor & Commerce Committee
From: Representative Fred Dyson *FJD*
Date: April 9, 1997
Re: HB203 *FJD*
Committee *FJD*

I am respectfully requesting a hearing for HB203 at your earliest convenience.

It could be to the benefit of the Labor & Commerce Committee to hear SSHB49 and HB203 during the same meeting. Both SSHB49 and HB203 address the same issues and have similar witnesses testifying.

We would like the committee to hear teleconferenced testimony from potential witnesses including: The Department of Law; The Better Business Bureau; and consumers who have been defrauded.

Please find attached:

- Sponsor Statement
- Sectional Analysis
- Fiscal Note

Before the hearing, I will submit the Attorney General's description of the current consumer protection program.

If you have any questions please contact Pat Harman in my office at x2195

- E-mail -
Representative_Fred_Dyson
@Legis.state.ak.us

- Internet -
<http://www.akrepublicans.org>



Alaska State Legislature

- Interim (May-Dec) -
128 Eagle River Rd Suite 140
Eagle River, Alaska 99577
☎ (907) 694-6083
FAX (907) 694-1015

- Session (Jan-May) -
Alaska State Capitol
Juneau, Alaska 99801-1182
☎ (907) 465-2199
FAX (907) 465-4587

Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

MEMORANDUM

April 18, 1998

To: Majority Members of House Labor & Commerce Committee
and House Judiciary Committee

From: Representative Fred Dyson *Frd*

Subject: CSHB 203(JUD)
"An Act relating to actions for unlawful trade practices."

I am circulating Co-Sponsor slips to the majority members of the two committees that had hearings on this bill prior to it being sent to the floor for a vote. The Bill is supported by numerous seniors groups, and the State Chamber of Commerce has no objection to the Bill.

I would encourage you to consider co-sponsoring this Bill.

- E-mail -
Representative_Fred_Dyson
@Legis.state.ak.us

- Internet -
<http://www.akrepublicans.org>

CS FOR HOUSE BILL NO. 203(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE DYSON

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to actions for unlawful trade practices."

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

3 * Section 1. AS 09.60.015 is amended by adding a new subsection to read:

4 (c) This section is subject to AS 45.50.537.

5 * Sec. 2. AS 45.50.473(c) is amended to read:

6 (c) A violation of this section constitutes an unfair or deceptive act or practice
7 under AS 45.50.471. It [NOTWITHSTANDING AS 45.50.531(a), IT] is presumed
8 that actual damages to the consumer under AS 45.50.531(a) are equal to the cost of
9 the service provided plus \$200. Additional damages must be proved.

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

11 (a) A person who suffers an ascertainable loss of money or property as a result
12 of another person's act or practice declared unlawful by AS 45.50.471 may bring a
13 civil action to recover for each unlawful act or practice three times the actual
14 damages or \$500 [\$200], whichever is greater. [THE COURT MAY, IN CASES OF
15 WILFUL VIOLATION, AWARD UP TO THREE TIMES THE ACTUAL DAMAGES

1 SUSTAINED.] The court may provide other relief it considers necessary and proper.
2 Nothing in this subsection prevents a person who brings an action under this
3 subsection from pursuing other remedies available under other law, including
4 common law.

5 * Sec. 4. AS 45.50.531 is amended by adding new subsections to read:

6 (i) If a person receives an award of punitive damages under (a) of this section,
7 the court shall require that 50 percent of the award be deposited into the general fund
8 of the state under AS 09.17.020(j). This subsection does not grant the state the right
9 to file or join a civil action to recover punitive damages.

10 (j) The commissioner of administration shall separately account for money
11 received under (i) of this section that is deposited in the general fund. The annual
12 estimated balance in the account may be appropriated by the legislature for the
13 expenses of the fair business practices section of the Department of Law.

14 * Sec. 5. AS 45.50 is amended by adding new sections to read:

15 Sec. 45.50.535. Private injunctive relief. (a) Subject to (b) of this section
16 and in addition to any right to bring an action under AS 45.50.531 or other law, any
17 person who was the victim of the unlawful act, whether or not the person suffered
18 actual damages, may bring an action to obtain an injunction prohibiting a seller or
19 lessor from continuing to engage in an act or practice declared unlawful under
20 AS 45.50.471.

21 (b) A person may not bring an action under (a) of this section unless

22 (1) the person first provides written notice to the seller or lessor who
23 engaged in the unlawful act or practice that the person will seek an injunction against
24 the seller or lessor if the seller or ~~lessor~~ fails to promptly stop the unlawful act or
25 practice; and

26 (2) the seller or lessor fails to promptly stop the unlawful act or
27 practice after receiving the notice.

28 Sec. 45.50.536. Mediation. Notwithstanding the other provisions of
29 AS 45.50.471 - 45.50.561, a civil action under AS 45.50.531 or 45.50.535 may be
30 submitted to mediation under the Alaska Rules of Civil Procedure. The mediation
31 must begin within 30 days after the court's order for mediation. During mediation, the

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court may, if it is determined appropriate by the court, enjoin the defendant from engaging in the act or practice that is the subject of the civil action.

Sec. 45.50.537. Attorney fees, costs, and damages. (a) In an action brought by a private person under AS 45.50.471 - 45.50.561, a prevailing plaintiff shall be awarded costs as provided by court rule and full reasonable attorney fees at the prevailing reasonable rate.

(b) Unless the action is found to be frivolous, in an action brought by a private person under AS 45.50.471 - 45.50.561, a prevailing defendant shall be awarded attorney fees and costs as provided by court rule. If the action is found to be frivolous, the attorney fees to be awarded to the defendant shall be full reasonable attorney fees at the prevailing reasonable rate.

(c) Notwithstanding the other provisions of this section, in an action brought by a private person under AS 45.50.471 - 45.50.561, if the plaintiff is not the prevailing party and if the court finds that the action was brought by the plaintiff to obtain a competitive business advantage, the court shall award a prevailing defendant costs as provided by court rule, full reasonable attorney fees at the prevailing reasonable rate, and any damages suffered by the prevailing defendant as a result of the plaintiff's allegations.

(d) In this section, "frivolous" means

(1) not reasonably based on evidence or on existing law or a reasonable extension, modification, or reversal of existing law; or

(2) brought to harass the defendant or to cause unnecessary delay or needless expense.

* **Sec. 6.** AS 45.50.531(g) is repealed.

* **Sec. 7.** AS 45.50.536, enacted by sec. 5 of this Act, only applies to causes of action that accrue on or after the effective date of this Act.



*one of 4 State of
Alaska positions
for '98*

ALASKA STATE LEGISLATIVE COMMITTEE

TELEMARKETING FRAUD
POSITION PAPER
1998

AARP POSITION:

Promote adequate funding for the enforcement of consumer protection laws against telemarketing fraud.

DISCUSSION:

Although Alaska law does impose criminal penalties for telemarketing fraud, it is not adequately enforced for lack of funding. Alaska has a responsibility to protect its citizens from fraudulent activity. Additional staffing in the Attorney General's office is needed to receive and act on complaints from the public. Also, Alaskans need to be regularly warned of fraudulent activity taking place in the state.

Current statistics indicate that telemarketing fraud costs the people of Alaska approximately ten million dollars a year, and appears to be increasing.

The law should be amended to:

1. Require that telemarketers file a bond to compensate consumers who may be defrauded by the seller's acts;
2. Ban all courier pick-ups associated with telemarketing sales, unless the consumer has the opportunity to inspect the goods before any payment is collected;
3. Prohibit telemarketers from directly accessing any consumer's bank, savings, trust, stock, or bond account as a method of collecting payment for goods and services; and
4. Include a more substantial list of deceptive practices.

(Over, please)



NARFE

National Association of Retired Federal Employees

CHAPTER ~~1779, 2067, 2076~~
and 2088
(The Alaska Federation)

May 5, 1997

Rep. Gail Phillips
House Speaker
Alaska Legislature
Juneau, Alaska

Sen. Mike Miller
Senate President
Alaska Legislature
Juneau, Alaska

Dear Rep. Phillips:
and Senator Miller:

The attached resolutions were approved at the recent National Association of Retired Federal Employees Alaska Federation convention held in Wasilla May 3-4, 1997.

The 1200 chapter members in Alaska represent approximately 5500 civilian federal annuitants in our state, and the items addressed in these resolutions are of critical importance to our retirees and their families.

We therefore hope you will give serious consideration to our recommendations.

Should you wish to discuss these topics further, I can be reached at the address and phone below, or you may contact our Federation President, Donald Peacock in Anchorage at 6623 Fairweather Drive, Anchorage, AK 99518 Phone 349-1714.

Sincerely,

Marie Darlin

Marie Darlin, Legislative Chair
NARFE Alaska Federation
415 Willoughby #506
Juneau, Alaska 99801
Phone 586-3637
FAX 463-3580

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska



*one of 4 State of
Alaska positions
for '98*

ALASKA STATE LEGISLATIVE COMMITTEE

TELEMARKETING FRAUD
POSITION PAPER
1998

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3. Prohibit telemarketers from directly accessing any consumer's bank, savings, trust, stock, or bond account as a method of collecting payment for goods and services; and
4. Include a more substantial list of deceptive practices.

(Over, please)

For further information, please contact:

Dan Keck, Chair

State Legislative Committee

PO Box 938

Sitka, AK 99835-0938

(907) 747-3908

(907) 747-3908 Fax

Peggy Mulligan

CCTF Coordinator

PO Box 240335

Douglas, AK 99824-0335

(907) 364-3144

Ed Shellinger, Chair

Telemarketing Fraud Subcommittee

904 Galena Street

Fairbanks, AK 99709-4826

(907) 474-0674

West Region Office

9750 Third Avenue NE

Seattle, WA 98115

(206) 526-7918

(206) 513-8138 Fax

Adopted: 10/31/97



NARFE

National Association of Retired Federal Employees

CHAPTER ~~1779, 2067, 2076~~
and 2088
(The Alaska Federation)

May 5, 1997

Rep. Gail Phillips
House Speaker
Alaska Legislature
Juneau, Alaska

Sen. Mike Miller
Senate President
Alaska Legislature
Juneau, Alaska

Dear Rep. Phillips:
and Senator Miller:

The attached resolutions were approved at the recent National Association of Retired Federal Employees Alaska Federation convention held in Wasilla May 3-4, 1997.

The 1200 chapter members in Alaska represent approximately 5500 civilian federal annuitants in our state, and the items addressed in these resolutions are of critical importance to our retirees and their families.

We therefore hope you will give serious consideration to our recommendations.

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Sincerely,

Marie Darlin

Marie Darlin, Legislative Chair
NARFE Alaska Federation
415 Willoughby #506
Juneau, Alaska 99801
Phone 586-3637
FAX 463-3580

Re-establish a Consumer Protection Office in the Department of Law.

WHEREAS:

Alaska is the only state with no functional Consumer Protection Office and Alaskans lose ten million per year to fraud, and retirees and seniors are most vulnerable to this type of fraud and in dire need of a fully staffed Consumer Protection office, therefore

BE IT RESOLVED:

The NARFE Alaska Federation request that the Legislature hold public hearings on bills related to this issue during the iterim, and

That the Governor and Legislature reconsider their budget actions on the Consumer Protection funding, and instead consider their responsibility to the citizens of Alaska.

Create a Long Term Care Task Force (SCR No. 11)

WHEREAS:

The Governor has received the report on Long Term Care from the Legislative Working Group, and SCR 11 has been introduced to create a Task Force, and

WHEREAS:

The Narfe Alaska Federation feels the issue of Long Term Care is critical to health care in Alaska, therefore

BE IT RESOLVED:

That the Alaska Federation of NARFE urges the Twentieth Legislature to pass SCR 11 this session, appoint the Task Force, and instruct them to hold public hearings before the second session. We also recommend the Governor ask for nominations before making his three appointments from the consumer public.

FIGHT CONSUMER FRAUD

October 25, 1997

Juneau Municipal Assembly Chambers

9:00 am **WELCOME** **Beverly Rodewald**

 Juneau Commission on Aging
 Judy Parrish, Chair Beverly Rodewald, Member
 Marianne Mills, Vice Chair Vera Gazaway, Member
 Mary Jefferson, Recorder Bea Shepard, Member

PRESENT STATUS: **Peggy Mulligan**

 Alaska Statutes Pending legislation

RESOURCE PANEL: **Peggy Mulligan**

 Mark Regan Alaska Legal Services
 Robert Tonkin Merrill Lynch Investors
 Larry Carroll State Department of Commerce, Retired

VICTIMS OF FRAUD/AUDIENCE PARTICIPATION: **Marie Darlin**

 Personal stories of scams or fraud

BREAK **10:15 - 10:30**

LEGISLATIVE PANEL: **Vera Gazaway**

 Representative Kim Elton
 Representative Bill Hudson

PLAN OF ACTION: **Mary Lou Meiners**

 Presented by Elizabeth Lucas. AARP

EVALUATION AND WRAP UP: **Marie Darlin**

*Sponsored by Juneau Commission on Aging, AARP Community Council,
and Juneau Borough Assembly*

Muriel H. Baker
P.O. Box 210052
Auke Bay, AK 99821
January 18, 1998

Phone: 907-789-7631

To Whom it May Concern:

Last Monday morning, January 12, 1998, I received a telephone call from a very distinguished sounding woman with an unidentifiable accent, saying she represented Consumer Action Center. She explained that they were working to "secure" our credit cards for us to protect us from the "criminals who are getting into the computers and other electronics" and stealing from us and running our cards up to the max.

She had a few questions to ask me but first she would wait on the line while I got a paper and pencil to write down their toll-free number which she was going to give me. I did this and wrote down the number: 1-800-472-6640.

At this point I stopped her and asked her to tell me again, who she represented. She repeated the name and I asked her where she was located. She gave me the address of 688 Wacker Place, Chicago, 60601.

She spoke *very* rapidly and repeated her "line" a couple times again. She told me that in order for them to be sure of security we would have to set up a password and they usually used the last four digits of a phone number and repeated ours - 7631 - which is correct.

By this time I had the feeling she already had too much information about me but when she said she would need the expiration of my credit card I didn't have it in front of me and said I thought it was 11/99. It turned out to not be correct but by this time I was just answering to try and get a word in edgewise.

Her next paragraph began by telling me they needed to know what kind of card I had - Visa, Mastercard, Discovery, etc. and that the first four numbers would tell that. I told her I had a Visa card but I did not know the first four numbers and I would not give them out to *anyone* over the phone.

She began her "spiel" again, reiterating her argument about the "criminals that are out there." I interrupted her again saying that I did not give my number out over the telephone. She became quite persistent and I perhaps was a little rude as I said I was sorry, but I would not under any circumstances and abruptly hung up.

Muriel H. Baker
1-18-98

MEMORANDUM

Date: 2/9/98
To: Joe Green
From: Kevin Jardell
Re: HB 203

What is does –

Presumes damages to the consumer of: (cost of service) + \$200.00.

Person who suffers an ascertainable loss of money or property as a result of consumer fraud (statutorily defined) may bring action to recover for each unlawful act or practice 3 times the actual damages or \$500.00 whichever is greater.

Private party may bring an action to to enjoin a sellor or lessor from engaging in an act of consumer fraud.

1. To enjoin a person must first provide written notice that the person will seek an injunction unless the actions are not stopped.
- 2) The sellor or leasor must fail to stop.

It is not necessary that a person suffer damages or otherwise be injured to bring an action to enjoin.

A prevailing plaintiff shall receive full reasonable attorney's fees. A private plaintiff who is not the prevailing party shall not be required to pay R. 82 costs and Atty's fees unless the action is frivolous.

If action is brought to obtain a competitive business advantage costs, full atty's fees and any damages suffered shall be awarded to defendant.

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. HB 203 | _____

Revision Date (Note if correction) _____ Dept. Affected Law
 Title "An Act relating to unlawful trade practices" BRU Civil Division
 Component Commercial
 Sponsor Representative Dyson
 Requester House Judiciary Committee Component Serial No. 2211

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 203 amends Alaska's Unfair Trade Practices and Consumer Protection Act to enhance a private litigant's right, under AS 45.50.531, to bring an action in Alaska Superior Court.

Passage of this legislation would cause no new costs for the Department of Law. Section 5 may have the effect of increasing revenues, however, as it would require a court to award full attorney's fees and all allowable costs to a prevailing plaintiff (whether the state or a private plaintiff). Under current law, the prevailing plaintiff can only receive Rule 82 attorney's fees, set at approximately 20 percent. The amount of revenue that might accrue to the state is very speculative, depending on the level of effort expended by the state in pursuing actions brought under the Unfair Trade Practices and Consumer Protection Act.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date 1/28/98
 Date 1/28/98

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