

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9299 HOUSE LABOR & COMMERCE

HHC

HB178: Letter of Credit / UCC

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Poderson (Continued)		Comments on amendments & their damage to bill. Discusses standards & problems such as "unique provisions" in Rep Ryan's proposed amendments. Understands Rep of New Dept of Commerce do not support amendment in his impression
Robbery	382	Checking on participants
Ryan	390	Question amendments
Poderson	410	Problem with network. Response to what he understands is question "reasonable time" & maximum time
Ryan	431	
Robbery	444	1:51 pm - hb178 public hearing closed comments re procedure.
HB HB	142	Business Practice Regulation's HB142
Ann to Desk B		1:53 pm - Fast forward to 641 Before turning
Fast forward to	641	waiting to reconvene
Robbery	654	introduction
Rep Gary Davis	658	Sponsor comments re hb142 - debate centered around sale of new and used vehicles. First 3 pages. Rest of bill little debate & deal w/ some loose ends requested by Dept of Law consumer section.
Robbery	686	Advises Schwartz in audience status of legislation. possible spinout of separate legislation
Coody	702	want as future hearing - question he'd like closed up. Can mid-term of FM inspection & does it even do not exist? Why dealer have to take vehicles

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Cowdery (continued)		in fact make expenses to determine if needed
Rebelberg	733	
Morrison	742	Richard Morrison, Board Member, Alaska Auto Dealers Assoc, owner Euro Volkswagen. Auto portions complete. Other issues separate. F/m issues. Lots of used vehicle, states - dealers vs private individuals. Mid-term testing.
Cowdery	820	Clarification of wholesale, auction sales, rep sales
Morrison	828	Will sell to wholesaler or sell at auction when cars below standards.
Ryan	847	Discusses contact practices. Impact of telephone sales/direct impression. Consumer protection issues + buyer's due diligence
Morrison	860	Buyer right of return. People take a lot of time
Ryan	876	Buyer needs a thousand eyes, seller only one.
Morrison	883	Issue so long. No merged disclosure. Current in Alaska. Law is other states procedure [% of value or \$ amt]
Rebelberg	909	Written recommendations derived from association
Morrison	918	Difficulty of \$ amount. No possibility
Cowdery	925	#s that don't match & impact
Morrison	934	Specialty vehicles, collectors items, National title branding policy push. DMV working with dealers on "remanufactured" or sold. Current law says insurance to be noted by state.

HB142: Business Practices Regulation 20 Oct 1997

HHC

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Morrison (continued)		Wires not repaired properly. There is no reason for disclosure?
	1003	Disclose known defects. Legislation being built around one case with one dealer
Rokeberg	1006	Damaged vehicle problem not related
Morrison	1025	Should be statewide
Ryan	1028	"as is where is" requirement
Morrison	1037	Charlie Cole study - covers locally + national trends. Some contract removals from "as is where is". Morrison tells only 11 dealers. "as is where is" really doesn't exist any more.
Ryan	1069	reasonable business practice
Rokeberg	1072	reference hb222 - wrecked vehicle law
Ryan	1088	salvage item - making deep pockets
Rokeberg		} discussion
Morrison		
Estes		
Morrison	10111	FIM window sticker idea
Rokeberg	10116	FIM test
Morrison	10121	working on recommendations & will submit. Working w/ David Schwartz on addressing this. Going for all concerned. No other state in nation has used an disclosure law ~ nationwide problem.
Morrison	10148	corner sale by people who do really dealers. Not being used currently. This legislation will not correct

20 Oct 1997

442142: Business Practice

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Robelberg	10163	Member license & bond discussion
Morison	10167	
	Tape 2 Side A	Tape 2 Side A
Reyan	000	for sale lots
Robelberg		baseline comment
Reyan	008	licensed + bonded vs not
Morison	012	dealers support minimizing street corner vendors. Would like to get separate bill focusing on this item.
Robelberg	030	55 v 45 percentages
Morison	032	Natural figures - very consistent
Rep Davis	038	Classification & comments
Schwarz	068	Out of room & didn't hear intro but appears to be David Schwartz, AG's office, Consumer ^{protection} Section. FIM compliance. History of FIM & reverse FIM status. Consistent with Better Business Bureau
Robelberg	126	Interd appears to be to clarify original intent of law
Schwartz	133	Section 2 discussion
Robelberg	146	
Schwartz	149	Goal of Section 2.
Robelberg	152	Certificate of non-compliance
Schwartz	155	Letter only waiver with no signature available until FIM standards met
Courtesy	166	Consumers facing pile of paper & how can legislators "make" consumers read
Schwartz	192	Make sure FIM dissemination program public to sale. Right now doesn't have to begin under title change.

HB 142: Business Practice Regulation

He

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Coulson/Schwartz		discussion on nonfranchise.
Ryan	230	dealer due diligence
Schwartz	248	Bump, cannot always discover defects before sale.
Ryan	266	personal experience recitation.
Schwartz	284	Section 2 discussion -
		Accidents damage disclosure
		Supreme Court decision this year.
		Looked at other state laws + came up with this
		section. Present enough information re
		Material Damages.
Ryan	350	confidentiality section
Schwartz	365	discusses incidents when lose investigatory
		files.
Ryan	392	response
Schwartz	407	no requests from business re complaints
		against that business.
Ryan	419	hear from business community
Schwartz	421	seafood price fixing case litigation + states
		desire to withhold those records
G. DAUB	436	other business to take care of. Majority of comments
		without Motor Vehicle Modern. Chairman's
		choices re wording - pulled, i.e. other
		sections etc.
Rohberg	463	around meeting + subsequent decision
		show to Ryan.
"	475	News article
Schwartz	479	OK Supreme Court confirmation of Johnson
		Nesson ruling - 18 of 22 counts of civil
		found - 8 vehicles sold

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HHC

HB 142: Business Practices Promotion

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Schwartz	(continued)	Johnson Nissan matters.
		Commission understanding them (AG) re this matter.
Robbery	522	the notification system & problem.
Schwartz		
		Slide B, Tape 2
Robbery	574	continue discussion w/ Schwartz re case law, unfair practice, mislead, mislead
Ryan	599	Insurance cos cutting losses impacts costs & value of vehicle.
Likowski	615	Reasonable inspection case law
Ryan		
Cowdery	636	Question p. 3
Schwartz	650	Interest charges disallowed
Robbery		
Schwartz	664	Telemarketing impacts
Rosen	673	Concerns about telemarketing practices
Robbery	681	Next witness
Stapp	684	Michael Stapp, Stapp Brothers Lincoln Mercury, Board Alaska Auto Dealers Assoc. Retail Sales v. private sales F/M 1992 regulation v provisions in HB 142.
		Vehicle classification
Ryan	832	F/M question
Stapp	838	F/M vehicles sold to consumers.
Ryan	847	who bears cost
Stapp		
Ryan	852	proposal from industry. gyro? how to deal with
Stapp	854	

SPEAKER		TAPE #	SIGNIFICANT INFORMATION
Robbery		874	Nissan case effect
Adepp		877	pending with board brush effect
Robbery		903	Manufacturer damage to new car.
Adepp		908	Manufacturer relationship or damage
Robbery		945	disincentive damage - manufacturers
Sdepp		950	difficulty w/ DMV re. dealers etc.
			Working w/ DMV. Good job w/ respect to insurance
			Remove auto shop a deal on separate
			based new used car expansion, FM
			processes, market sample.
Robbery		973	Hensley question
Hensley		977	Janice Hensley. Discussing Motor Vehicle
			good working relationship with dealer
			Rebate program in issuing titles.
Robbery		991	Insurance industry information re wreched
			vehicles
Hensley		1000	Insurance co. to selling cars on economic
			value repair. Met & worked out problem.
			Insurance co. report to DMV + DMV
			note on title as leased/retailer vehicle
Robbery		1018	Industry regulation discussion on
Hensley		1019	regulation discussion on matter.
Cowdery		1039	new program - used dealer on the program?
Hensley		1047	next step looking at
Cowdery		1061	discussion/comments - possible step
Robe		1068	
Robe			
			Tape 3 Slide A
Manson		000	DMV/dealer relationship &
			discussion of same

Number 257

CHAIRMAN ROKEBERG called for a brief at-ease at 5:11 p.m. He called the meeting back to order at 5:13 p.m.

SSHB 142 - BUSINESS PRACTICE REGULATIONS

DRAFT

Number 267

CHAIRMAN ROKEBERG announced the next order of business would be SSHB 142, "An Act relating to the sale or transfer of new or used motor vehicles; relating to the confidentiality of certain information related to attorney general investigations of unlawful trade practices and antitrust activities; establishing additional unlawful trade practices; relating to the exemptions from telephonic solicitation regulation; regulating the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

Number 315

REPRESENTATIVE GARY DAVIS, prime sponsor of SSHB 142, came forward to explain the bill. He informed the committee members the bill was initiated, drafted and introduced quite awhile ago. He said the reason a request to hear the bill was just recently submitted to the committee was because there has been a lot of work done between him and the department to get a clean bill. He informed the committee they ran into complications with the Automobile Dealers Association. He indicated he attended the Automobile Dealers Association meeting held in Juneau. Representative Davis stated he understands a lot of the association's concerns and also agrees with a lot of their concerns as indicated in the sponsor statement. A large portion of the test in the bill relates to used car dealers and how they expose problems that may exist on a vehicle. At the Automobile Dealers Association meeting, the

association indicated that over the years there has been numerous pieces of legislation that deals with the used car dealers. Of course a lot of people will associate used car dealers reputations right along with politicians. So there is a lot of public concern with how things are dealt with.

REPRESENTATIVE DAVIS said it would be his recommendation to simplify the bill and delete Section 2, that deals with public disclosure. This section is questionable and probably needs some work. He indicated he thinks the department will agree with the change. Representative Davis said, "Section 2 of the bill that deals with problems with the vehicles that not only the used car dealers, but new car dealers and manufacturers must convey, what is felt in a reasonable fashion in the bill, to the consuming public."

Number 576

REPRESENTATIVE DAVIS pointed out Section 1 deals with the inspection/emissions certification that is required in Anchorage and Fairbanks. There have been some problems. Some people would say significant problems and others would say they are relatively minor problems. He indicated there are people to testify.

REPRESENTATIVE DAVIS said, "The other sections of the bill relate to some consumer problems that have come up in court cases and also some tweaking of recent legislation that the Consumer Affairs Section of the Department of Law, I believe is how it can be presented - I'm not exactly who - what Daveed Schwartz office is called, but they've come across some problems that I believe are just some housekeeping measures in the bill relating to catalog sales. And our telemarketing legislation that we passed, I believe last year, they found a loophole in the catalog exemption sales or it's not addressed properly. That's being addressed in here. It's just closing a loophole there. Then in some recent situations around the state with some of these business opportunity sales

people that come in and give some high power speeches in how to go into business and make a quick buck and they're the ones making the quick buck and there isn't much chance for anybody else. So that's being addressed also. So of course having being familiar with the sections, I feel there is just some technicalities being cleaned up, but of course I hope I can convince the committee of the same and other testifiers of the same."

Number 745

REPRESENTATIVE COWDERY asked if the legislation would also pertain to private transactions.

REPRESENTATIVE DAVIS said the same question came up by the Automobile Dealers Association. He noted that is not addressed in Section 2. It should be addressed if that section stays in the bill.

Number 780

CHAIRMAN ROKEBERG said he would like to take public testimony. He noted it is his intention to move the bill to a subcommittee for interim study as it is a very broad and major bill dealing with consumer protection in other areas.

CHAIRMAN ROKEBERG said, "As it relates to Section 2, as suggested by the sponsor, it is the desire of the chair right now to leave that in the bill because we want to review to see, if in all probability reviewing it, that perhaps another bill would be generated out of it to make sure that those concerns are properly covered in whatever vehicle. We'll be working with the bill sponsor on that."

Number 865

ANGELA ARD testified via teleconference on behalf of herself as a citizen of Anchorage. She read the following statement into the record:

"On July 29, 1996, I purchased an \$11,000 GMC Sierra from a well-known Anchorage known Anchorage used auto dealer. During negotiations, I indicated that I would like to take the vehicle to a mechanic for an inspection before purchasing it. I was told by the salesman that an inspection wasn't necessary and the truck was in great shape. I proceeded to close the deal. The following morning, upon attempting to start the truck, it made a horrible grinding noise and had to be towed back to the dealership for repairs. I was informed by the dealership that the truck would not pass I/M certification and had to have part of the engine repaired because of extensive smoke damage. Had I known that this \$11,000 vehicle would not pass I/M certification, I never would have purchased it. The dealership, however, required me to sign a disclosure guaranteeing that my trade-in auto would pass I/M certification, and that if it failed, I would pay to fix it. They offered no such guarantee on the truck they were selling me.

"After the dealership made the necessary repairs to the truck, I took it to a mechanic for an inspection and learned that the truck had been in a prior wreck and had no air conditioning. I had asked a mechanic at the dealership why the air wasn't working, and he told me to, quote, let it run a little longer. In actuality, the entire air conditioning system had been removed from the vehicle because of the wreck it had suffered.

"After failing to find me a decent vehicle, I asked the dealership to unwind the deal. They refused. I finally sought legal assistance, at which time they unwound the deal.

"It was very frustrating and disappointing to be misled and taken advantage of by this auto dealership. If this bill were in effect

when I was in the market for purchasing a used vehicle, it would have saved me from purchasing this 'lemon.'"

Number 986

CHAIRMAN ROKEBERG said Ms. Ard's fact pattern is very similar to something he heard last session.

REPRESENTATIVE COWDERY asked Ms. Ard if she bought the vehicle from a dealer in Anchorage.

MS. ARD said that is correct.

REPRESENTATIVE COWDERY asked if he was right in saying the dealership wouldn't make the deal good until after she sought legal assistance.

MS. ARD responded that was correct. She noted several times they tried to give another vehicle which they keep increasing in price. She stated she had those vehicles checked out and they had several mechanical problems. She said she spoke to Mr. Schwartz and he spoke and wrote a letter to the dealership. The dealership then agreed to unwind the deal after that.

REPRESENTATIVE COWDERY questioned if the dealer is still in business.

MS. ARD indicated they are still in business.

Number 1077

CATE REMME, Consumer Advocate, Alaska Public Interest Research Group, testified via teleconference from Anchorage in support of SSHB 142. She stated he has the same feelings as Ms. Ard. She referred to Representative Davis' discussion regarding removing

Section 2 and said the whole concept of consumer protection revolves around the notion consumers should get what they paid for, be aware of the contents of the items when purchased, be guaranteed the safety of those products and be aware of any policies and practices affecting the finances of their private lives and have recourse for breaches of any of these principles. Ms. Remme said without legal recourse, these consumer issues are very often unresolved.

REPRESENTATIVE COWDERY informed the committee he owns four vehicles. He said he sells them when he starts seeing that the repair bills increase, but there isn't anything particularly wrong at the time. Representative Cowdery asked Ms. Remme if the legislature should address this kind of a scenario towards the private section.

MS. REMME said it is her understanding that there is no jurisdiction over private sale. One of the major complaints they receive is dealers, who are posing as private citizens, sell previously wrecked vehicles that have been totaled by insurance companies. They create very dangerous driving situations. She said she doesn't have answer to Representative Cowdery's question, but currently there is no jurisdiction that addresses that.

Number 1183

REPRESENTATIVE DAVIS said he would like to assure Ms. Remme if Section 2 does get deleted from the bill, the issue will still be looked at, but may not be a part of this legislation.

PEGGY MULLIGAN, Capital City Task Force of the American Association of Retired Persons, testifying from Juneau, stated she thinks her organization will probably support the legislation. Ms. Mulligan stated she would like to wait to testify until the bill comes out of the subcommittee.

Number 1225

CHRYSTAL SMITH, Legislative Liaison, Civil Division, Department of Law, came before the committee. She stated she would like to express the division's support for SSHB 142. Ms. Smith said she reviewed the bill from the view of a consumer. She stated she would like to make it clear that nothing in the bill is intended to harm honest straight forward business people. It is her belief that people who are in business in Alaska are doing it according to the rules. If there are bad actors in a profession, it harms those who are not bad actors.

MS. SMITH said the bill has five parts. One is the emissions certificate that would let a person know what the status is before a sales contract is signed. She noted that cleans up legislation which was passed in 1992.

MS. SMITH referred to Section 2 and said it deals with confidentiality of investigative records for consumer protection antitrust cases.

MS. SMITH referred to the telemarketing and said there has been problems with people saying that they were exempt from the telemarketing registration requirement because they were mail order catalog people. Ms. Smith stated there are certain requirements for being a legitimate mail order business.

MS. SMITH referred to the question of business opportunities and said, "I guess it wasn't one of you although I'm sure you have all had this experience with your constituents, we did get a call recently - somebody saying - a legislator saying 'Well what can we do about these, quote, business opportunities?' The one that I think Representative Davis said they're making more money off them than the folks we get taken in by the deals. So there is a comprehensive statute included in this bill that would require

registration of business opportunity people." Ms. Smith indicated the department would also would be willing to work on the bill over the interim.

Number 1404

REPRESENTATIVE COWDERY said when he was a legislator in the 1980s, the "lemon law" was established. He asked if SSHB 142 would impact that law.

MS. SMITH said it is her understanding that this legislation would supplement the "lemon law." She noted that as she understands, the "lemon law" is for new vehicles.

Number 1443

REPRESENTATIVE RYAN said when he was a young man, there were many jokes going around about the fellow that bought the horse. He said it seems to him it has now moved to automobiles. You have to really be careful of what you're buying because if you don't, you could get stuck with something. He asked where the responsibility comes on the person who is laying their money down.

MS. SMITH informed Representative Ryan that she just bought a used car. She went to every dealer in Juneau. She said she felt uncomfortable enough in that she went to her mechanic and asked him to help her find a used car because she believes if a person doesn't know something in a specific area, you can get taken advantage of.

Number 1586

DAVEED SCHWARTZ, Assistant Attorney General, Commercial Section, Civil Division, Department of Law, testified via teleconference from Anchorage. He said he would give technical comments on the

legislation when it comes up in the subcommittee. Mr. Schwartz said he believes Ms. Smith has articulated the philosophy behind the Department of Law's interest in supporting the legislation.

MR. SCHWARTZ explained Section 1 ensures that a person who is buying a used car, that requires an auto emissions inspection, is going to be notified up front prior to the sale of the emissions of the status of the vehicle. He said Ms. Ard's testimony illustrates the need for Section 1. Mr. Schwartz noted he personally deals with the Anchorage I/M Office frequently regarding problems and they have told him that on an average, over a year, they receive about ten complaints per month from people who buy a used car from a used car dealer. They find out after they have obligated themselves to the sale that the car will not pass I/M and they will have to invest quite a bit of additional funds to get it to pass I/M so they can register it and legally drive the vehicle.

Number 1659

MR. SCHWARTZ referred to Section 2 and said there are all kinds of situations that arise in terms of the failure to disclose damage that used car dealers may know that a vehicle has. The Office of the Office of the Attorney General prevailed in a three week jury trial against a major Anchorage auto dealer, who was found to be liable on 18 of 22 counts of civil fraud in that he failed to disclose that 8 vehicles that had been sold were previously wrecked and totalled. He noted some of the vehicles were extreme safety hazards.

MR. SCHWARTZ referred to Sections 4, 5 and 6 and said these sections clarify the existing state of affairs with regard to the confidentiality in the investigative records in the Office of the Attorney General for consumer protection antitrust investigations. It would ensure sure that businesses that have alleged to have violated the law don't have their names (indisc.) about simply

because there are allegations that may turn out to be unfounded. It also ensure that witnesses who may want to testify for or against business that have been alleged to have violated the law will not be subjected to a lot of publicity simply because they have offered testimony to the Office of the Attorney General.

MR. SCHWARTZ explained Section 7 deals with clarification of the existing exemptions, the provision that deals with the mail order catalog exemption to the telemarket or registration law. He said there was a case involving a San Diego telemarketer who had a catalog that they only distributed in San Diego, but they were telemarketing to Alaskans. They refused to register under our 1993 Telemarketing Registration Act. The Alaska supreme court agreed in January of this year that the mail order catalog exemption did not cover that particular instance. He said they are now trying to clarify the existing statute to make sure that everyone knows what it takes to qualify as a mail order catalog operation and, therefore, be exempt from telemarketing registration.

Number 1774

MR. SCHWARTZ informed the committee that Section 8 is the Comprehensive Business Opportunities Disclosure Act legislation which will get primarily at the Lower 48 business opportunity sellers who largely work with sales kits/business kits to Alaskans, particularly around permanent fund dividend time. They then use the sale of the kits, which usually range anywhere from \$500 to several thousands of dollars, as an entree to sell Alaskans even more services that range up to \$10,000 to \$15,000 per year. This would require registration, disclosure, bonding and other protections for people who have an entrepreneurial spirit, but really get caught up in the excitement and high pressure sales that occur in the large hotel ballroom where most of these sales of business opportunity (indisc.) are pitched.

CHAIRMAN ROKEBERG said, "I've got a really significant concern here because this committee is in the process of rewriting the entire real estate statute, if I can only recall the title right now, but business opportunities are something that, in part but not exclusively, have been handled by real estate brokers. And I appreciate at what you're getting at here - those folks who advertise on late night T.V. for these seminars I guess is the thrust of your thing here. I'm kind of concerned about the sweep here and what you're getting into as it relates to some of these other things and, in essence, creates some type of kinds of a defacto licensure, if you will, or something going here that might more properly be under another title or something. What you're getting at is -- are you endeavoring to prohibit these types of sales activities, regulate them or infringe on real estate brokers? What's the thrust here?"

MR. SCHWARTZ indicated he is not trying to do that at all. The bill actually has a series of exemptions and tend to be exact. He noted that they can be found on page 17, line 8 through page 18, line 11. He pointed out the tenth exemption deals with if the seller or the buyer is licensed as a real estate broker, associate real estate broker or real estate sales person under Title 8 of the Alaska statutes and the sales or offers regulated by Title 8. He said it is not their intent to create a new licensure for real estate agents, brokers or other people already regulated. Mr. Schwartz said this whole registration scheme is modeled after the existing telemarketing registration law. The two policies driving the exemptions in the telemarketing law and in this bill for business opportunity registration would be that there would be no attempt to require registration of those activities that are otherwise regulated by statute in a similar way. Also, there would be no attempt to require registration of activities that don't seem to pose a problem. He noted the last thing the Department of Law

wants to do is to duplicate existing registration and regulations.

Number 1951

CHAIRMAN ROKEBERG questioned which department they register with.

MR. SCHWARTZ referred to telemarketing and said the bill would require registration with the Office of the Attorney General.

CHAIRMAN ROKEBERG asked if it is correct to say that if you weren't a member of the Bar or if you weren't a licensed real estate broker, you would have to registered with the Office of the Attorney General to do something like selling businesses.

MR. SCHWARTZ responded that there are some exemptions, but he would have go over each and every exemption with the committee members. He said, "After you get past the exemptions, what this bill really gets at is the kind of sale where it's advertised on a late night T.V. info commercial and what they're selling are T-shirt businesses, 900 number businesses, distress merchandise businesses for anywhere from \$500 to \$3,000 or more and it's that kind of sale that this registration is aimed at rather than activities that are already regulated or don't seem to pose a problem. One exemption, for example, is the sale of a business opportunity to an ongoing business, just as an example of the many (indisc.) exemptions to narrow the scope of this registration requirement. The goal here would be to really target the problem."

Number 2019

CHAIRMAN ROKEBERG asked if it is a new Chapter 66.

MR. SCHWARTZ responded it would be a new chapter in the Consumer Protection Act.

CHAIRMAN ROKEBERG asked if the areas about down payments, escrow accounts only relates to this particular chapter.

MR. SCHWARTZ responded that was correct. He continued by saying Section 8 goes from page 6, line 31, to page 21, line 8. Mr. Schwartz said he would answer any questions the committee may have.

Number 2073

CHAIRMAN ROKEBERG said it is his intention to appoint a subcommittee to look into the legislation, SSHB 142, during the interim. He then appointed himself, Representative Ryan and Representative Brice to the subcommittee. He then closed the public hearing.

ADJOURNMENT

Number 2118

CHAIRMAN ROKEBERG adjourned the House Labor and Commerce Standing Committee meeting at 5:44 p.m.

0-LS0418\K
- Bannister
3/10/98

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 142(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES DAVIS, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the sale or transfer of used motor vehicles; relating to the
2 exemptions from telephonic solicitation regulation; regulating the sale of business
3 opportunities; and providing for an effective date."

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

5 * Section 1. AS 45.45.400(a) is amended to read:

6 (a) Except as provided in (c) of this section, a [A] person engaged in the
7 business of selling used motor vehicles may not contract to sell, transfer, or assign
8 a [THE OWNER'S TITLE OR INTEREST IN THE] used motor vehicle to a person
9 who resides in an area subject to a state-approved emission inspection program
10 established under AS 46.14.400 or 46.14.510 and who intends to use the vehicle in that
11 area [,] unless, before entering into the contract, the person engaged in the
12 business of selling used motor vehicles

13 (1) provides the prospective buyer, transferee, or assignee with a
14 valid copy of [THE VEHICLE HAS] a certificate of inspection [COMPLIANCE] or

1 noncompliance for the vehicle as required under the air pollution control requirements
2 applicable in that area; and

3 (2) obtains from the prospective buyer, transferee, assignee, or the
4 agent of the prospective buyer, transferee, or assignee, a signed, written
5 acknowledgment that the prospective buyer, transferee, or assignee, or the agent
6 of the prospective buyer, transferee, or assignee has received a copy of the
7 certificate of inspection or noncompliance as required by (1) of this subsection.

8 * Sec. 2. AS 45.45.400 is amended by adding a new subsection to read:

9 (c) The requirements of (a) of this section do not apply if, before entering into
10 the contract, the person who is engaged in the business of selling used motor vehicles
11 obtains from the prospective buyer, transferee, or assignee, or from the agent of the
12 prospective buyer, transferee, or assignee, a signed, written statement that the
13 prospective buyer, transferee, or assignee, or the agent of the prospective buyer,
14 transferee, or assignee, waives the requirements of (a) of this section.

15 * Sec. 3. AS 45.50.471(b) is amended by adding a new paragraph to read:

16 (42) violating AS 45.66 (sales of business opportunities).

17 * Sec. 4. AS 45.63.080(14) is repealed and reenacted to read:

18 (14) of property from a mail order catalog if the person making the
19 solicitation does not initiate contact with prospective customers by telephonic means,
20 if contact by telephonic means is initiated by the prospective customer in response to
21 the catalog, and if during the contact the person making the solicitation does not make
22 a further solicitation; in this paragraph,

23 (A) "further solicitation" does not include providing the
24 prospective customer with information about, or attempting to sell, another item
25 included in the same mail order catalog that prompted the prospective
26 customer's contact;

27 (B) "mail order catalog" means a publication that

28 (i) is published one or more times a year;

29 (ii) is delivered to prospective customers;

30 (iii) describes or pictures the products, equipment, or
31 supplies for sale and prominently provides the specific price of each;

- 1 (iv) includes the business name, address, and telephone
2 number of the person who owns and produces the publication;
3 (v) includes instructions to prospective buyers on how
4 to order products from the publication;
5 (vi) includes 10 or more pages of written material and
6 illustrations;
7 (vii) is distributed in this state; and
8 (viii) has an annual mail circulation of 10,000 or more
9 copies;

10 * Sec. 5. AS 45 is amended by adding a new chapter to read:

11 **Chapter 66. Sales of Business Opportunities.**

12 **Sec. 45.66.010. Registration required.** (a) A seller may not sell or offer to
13 sell a business opportunity unless the seller is registered with the department at least
14 30 days before the seller's solicitation campaign begins.

15 (b) The department shall specify by regulation the form and content of the
16 registration statement, but the registration statement must include the seller's name,
17 address, and telephone number, the type of business organization, the names, addresses,
18 telephone numbers, and social security numbers of owners, officers, directors, and
19 other persons responsible for the seller's business activities in the state, the name and
20 address of any parent or affiliated company, and the name, address, and telephone
21 number of the financial institution where accounts are recorded.

22 (c) Registration is not complete until the seller receives an acknowledgment
23 from the department that the seller has complied with state registration requirements.

24 (d) A description of a material change in registration information shall be filed
25 in writing with the department within 10 days after the change.

26 (e) A person who is subject to registration under this section may not make
27 an untrue statement of a material fact in the registration information.

28 **Sec. 45.66.030. Written contract required.** A person may not contract to sell
29 a business opportunity unless the contract is in writing and the seller gives a copy of
30 the contract to the buyer when the buyer signs the contract. The contract must include
31 the payment terms, the name, address, and telephone number of the seller or the

1 seller's agent, the form of the seller's business organization, a description of products,
2 services, equipment, or supplies that the seller is to provide to the buyer, and the
3 delivery date of the product, services, equipment, or supplies being sold or leased.

4 **Sec. 45.66.050. Seller's records and files.** (a) A seller shall maintain a
5 complete set of records of each solicitation campaign of the seller, including copies of
6 any advertising, pamphlets, brochures, or other materials used in each solicitation
7 campaign, and shall allow the department to inspect and copy them during reasonable
8 business hours.

9 (b) A seller shall keep all documents relating to a contract entered into by the
10 seller for three years after the date the contract is entered into.

11 **Sec. 45.66.060. Coordination with other laws.** If this chapter conflicts with
12 another provision of state law, the other provision of law governs to the extent of the
13 conflict.

14 **Sec. 45.66.070. Exemptions.** This chapter does not apply to a sale or offer
15 to sell

16 (1) if the total amount of the payments to be made by the buyer under
17 the contract is less than \$200, including a nonprofit sale;

18 (2) a franchise under 16 CFR 436;

19 (3) an ongoing business operated by the seller that is to be sold in its
20 entirety;

21 (4) a business opportunity to an ongoing business if the seller will
22 provide products, equipment, supplies, or services that are to be sold by the buyer in
23 connection with the buyer's ongoing business;

24 (5) by an executor, an administrator, a marshal, a receiver, a trustee in
25 bankruptcy, or a guardian or conservator, or under a judicial sale;

26 (6) a security regulated under AS 45.55 or a security that is exempted
27 by AS 45.55.900 from regulation under AS 45.55;

28 (7) if the sale or offer is by a person registered with the United States
29 Securities and Exchange Commission when acting within the scope of the person's
30 Securities and Exchange Commission license;

31 (8) a business opportunity where the buyer is

1 (A) a bank, savings and loan association, trust company,
2 insurance company, credit union, or investment company under 15 U.S.C. 80a-
3 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,
4 or other financial institution or institutional buyer; or

5 (B) a dealer registered under AS 45.55 (Alaska Securities Act
6 of 1959) if the buyer is acting for itself or in a fiduciary capacity;

7 (9) a business opportunity that involves a marketing plan made in
8 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051
9 - 1127 (Lanham Act) if the seller has a minimum net worth of \$1,000,000 as
10 determined on the basis of the seller's most recent audited financial statement prepared
11 within 13 months of the first offer to sell in this state; net worth may be determined
12 on a consolidated basis if one person owns at least 80 percent of the seller and that
13 one person expressly guarantees the obligations of the seller that arise under the sale
14 or offer claimed to be exempt under this paragraph; or

15 (10) if the seller is licensed or registered under AS 08 and acting in the
16 course of the person's license or registration, such as a person licensed under
17 AS 08.88, except that a person who is exempt under this section is subject to the
18 records and files requirements of AS 45.66.050.

19 **Sec. 45.66.080. Regulations.** The department may adopt regulations under
20 AS 44.62 to implement this chapter.

21 **Sec. 45.66.090. Definitions.** In this chapter, unless the context indicates
22 otherwise,

23 (1) "business opportunity" means an express or implied arrangement
24 under which the seller or a person recommended by the seller will provide to the buyer
25 services, products, equipment, or supplies enabling the buyer to start a business and
26 in which the seller makes representations regarding the future income of the business
27 or promises to assist the buyer with the business, including finding locations for
28 equipment, finding outlets or accounts for the buyer, purchasing the buyer's products
29 or services, the buyer's products, refunding all or part of the purchase price, or
30 providing the buyer with a marketing plan;

31 (2) "buyer" means a person who buys a business opportunity;

- 1 (3) "contract" means an agreement relating to a business opportunity;
- 2 (4) "department" means the Department of Law;
- 3 (5) "equipment" includes machines, electrical devices, video or audio
- 4 devices, computer devices, molds, display racks, vending machines, coin operated
- 5 game machines, machines that dispense products, and display units of all kinds;
- 6 (6) "product" includes a tangible chattel, including food or living
- 7 animals;
- 8 (7) "sale" means a contract to sell, lease, or otherwise dispose of a
- 9 business opportunity or an interest in a business opportunity for value;
- 10 (8) "sell" means to sell, lease, or otherwise dispose of a business
- 11 opportunity or an interest in a business opportunity for value;
- 12 (9) "seller" means a person, or the person's agent, who sells, leases,
- 13 offers to sell, offers to lease, or otherwise disposes of a business opportunity;
- 14 (10) "services" includes assistance, guidance, direction, work, labor, or
- 15 other act that may be provided by the seller in the initiation or maintenance of a
- 16 business;
- 17 (11) "supplies" includes materials used to produce, grow, breed,
- 18 fabricate, modify, develop, or make a product or other item.

19 * Sec. 6. AS 45.63.080(3) is repealed.

20 * Sec. 7. REGULATIONS. The Department of Law may proceed to adopt regulations that

21 it has authority to adopt under this Act. The regulations take effect under AS 44.62

22 (Administrative Procedure Act), but not before the effective dates of secs. 1 - 6 of this Act.

23 * Sec. 8. Sections 1 - 6 of this Act take effect July 1, 1998.

24 * Sec. 9. Section 7 of this Act takes effect immediately under AS 01.10.070(c).

0-LS0418\H
Bannister
3/9/98

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 142(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DAVIS, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the sale or transfer of used motor vehicles; relating to the
2 exemptions from telephonic solicitation regulation; regulating the sale of business
3 opportunities; and providing for an effective date."

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

5 * Section 1. AS 45.45.400(a) is amended to read:

6 (a) Except as provided in (c) of this section, a [A] person engaged in the
7 business of selling used motor vehicles may not contract to sell, transfer, or assign
8 a [THE OWNER'S TITLE OR INTEREST IN THE] used motor vehicle to a person
9 who resides in an area subject to a state-approved emission inspection program
10 established under AS 46.14.400 or 46.14.510 and who intends to use the vehicle in that
11 area [,] unless, before entering into the contract, the person engaged in the
12 business of selling used motor vehicles

13 (1) provides the prospective buyer, transferee, or assignee with a
14 valid copy of [THE VEHICLE HAS] a certificate of inspection [COMPLIANCE] or

1 noncompliance for the vehicle as required under the air pollution control requirements
2 applicable in that area; and

3 (2) obtains from the prospective buyer, transferee, assignee, or the
4 agent of the prospective buyer, transferee, or assignee, a signed, written
5 acknowledgment that the prospective buyer, transferee, or assignee, or the agent
6 of the prospective buyer, transferee, or assignee has received a copy of the
7 certificate of inspection or noncompliance as required by (1) of this subsection.

8 * Sec. 2. AS 45.45.400 is amended by adding a new subsection to read:

9 (c) The requirements of (a) of this section do not apply if, before entering into
10 the contract, the person who is engaged in the business of selling used motor vehicles
11 obtains from the prospective buyer, transferee, or assignee, or from the agent of the
12 prospective buyer, transferee, or assignee, a signed, written statement that the
13 prospective buyer, transferee, or assignee, or the agent of the prospective buyer,
14 transferee, or assignee, waives the requirements of (a) of this section.

15 * Sec. 3. AS 45.50.471(b) is amended by adding a new paragraph to read:

16 (42) violating AS 45.66 (sales of business opportunities).

17 * Sec. 4. AS 45.63.080(14) is repealed and reenacted to read:

18 (14) of property from a mail order catalog if the person making the
19 solicitation does not initiate contact with prospective customers by telephonic means,
20 if contact by telephonic means is initiated by the prospective customer in response to
21 the catalog, and if during the contact the person making the solicitation does not make
22 a further solicitation; in this paragraph,

23 (A) "further solicitation" does not include providing the
24 prospective customer with information about, or attempting to sell, another item
25 included in the same mail order catalog that prompted the prospective
26 customer's contact;

27 (B) "mail order catalog" means a publication that
28 (i) is published one or more times a year;
29 (ii) is delivered to prospective customers;
30 (iii) describes or pictures the products, equipment, or
31 supplies for sale and prominently provides the specific price of each;

- 1 (iv) includes the business name, address, and telephone
2 number of the person who owns and produces the publication;
3 (v) includes instructions to prospective buyers on how
4 to order products from the publication;
5 (vi) includes 10 or more pages of written material and
6 illustrations;
7 (vii) is distributed in this state; and
8 (viii) has an annual mail circulation of 10,000 or more
9 copies;

10 * **Sec. 5.** AS 45 is amended by adding a new chapter to read:

11 **Chapter 66. Sales of Business Opportunities.**

12 **Sec. 45.66.010. Registration required.** (a) A seller may not sell or offer to
13 sell a business opportunity unless the seller is registered with the department at least
14 30 days before the seller's solicitation campaign begins.

15 (b) The department shall specify by regulation the form and content of the
16 registration statement, but the registration statement must include the seller's name,
17 address, and telephone number, the type of business organization, the names, addresses,
18 telephone numbers, and social security numbers of owners, officers, directors, and
19 other persons responsible for the seller's business activities in the state, the name and
20 address of any parent or affiliated company, and the name, address, and telephone
21 number of the financial institution where accounts are recorded.

22 (c) Registration is not complete until the seller receives an acknowledgment
23 from the department that the seller has complied with state registration requirements.

24 (d) A description of a material change in registration information shall be filed
25 in writing with the department within 10 days after the change.

26 (e) A person who is subject to registration under this section may not make
27 an untrue statement of a material fact in the registration information.

28 **Sec. 45.66.030. Written contract required.** A person may not contract to sell
29 a business opportunity unless the contract is in writing and the seller gives a copy of
30 the contract to the buyer when the buyer signs the contract. The contract must include
31 the payment terms, the name, address, and telephone number of the seller or the

1 seller's agent, the form of the seller's business organization, a description of products,
2 services, equipment, or supplies that the seller is to provide to the buyer, and the
3 delivery date of the product, services, equipment, or supplies being sold or leased.

4 **Sec. 45.66.050. Seller's records and files.** (a) A seller shall maintain a
5 complete set of records of each solicitation campaign of the seller, including copies of
6 any advertising, pamphlets, brochures, or other materials used in each solicitation
7 campaign, and shall allow the department to inspect and copy them during reasonable
8 business hours.

9 (b) A seller shall keep all documents relating to a contract entered into by the
10 seller for three years after the date the contract is entered into.

11 **Sec. 45.66.060. Coordination with other laws.** (a) This chapter does not
12 apply to a sale or offer to sell if regulation of the sale or offer is preempted by federal
13 law.

14 (b) Except as provided in (a) of this section, if this chapter conflicts with
15 another provision of state law, the other provision of law governs to the extent of the
16 conflict.

17 **Sec. 45.66.070. Exemptions.** This chapter does not apply to a person who is
18 licensed or registered under AS 08 and who is acting in the course of the person's
19 license or registration, such as a person licensed under AS 08.88, except that a person
20 who is exempt under this section is subject to the records and files requirements of
21 AS 45.66.050.

22 **Sec. 45.66.080. Regulations.** The department may adopt regulations under
23 AS 44.62 to implement this chapter.

24 **Sec. 45.66.090. Definitions.** In this chapter, unless the context indicates
25 otherwise,

26 (1) "business opportunity" means an express or implied arrangement
27 under which the seller or a person recommended by the seller will provide to the buyer
28 services, products, equipment, or supplies enabling the buyer to start a business and
29 in which the seller makes representations regarding the future income of the business
30 or promises to assist the buyer with the business, including finding locations for
31 equipment, finding outlets or accounts for the buyer, purchasing the buyer's products

1 or services, the buyer's products, refunding all or part of the purchase price, or
2 providing the buyer with a marketing plan;

3 (2) "buyer" means a person who buys a business opportunity;

4 (3) "contract" means an agreement relating to a business opportunity;

5 (4) "department" means the Department of Law;

6 (5) "equipment" includes machines, electrical devices, video or audio
7 devices, computer devices, molds, display racks, vending machines, coin operated
8 game machines, machines that dispense products, and display units of all kinds;

9 (6) "product" includes a tangible chattel, including food or living
10 animals;

11 (7) "sale" means a contract to sell, lease, or otherwise dispose of a
12 business opportunity or an interest in a business opportunity for value;

13 (8) "sell" means to sell, lease, or otherwise dispose of a business
14 opportunity or an interest in a business opportunity for value;

15 (9) "seller" means a person, or the person's agent, who sells, leases,
16 offers to sell, offers to lease, or otherwise disposes of a business opportunity;

17 (10) "services" includes assistance, guidance, direction, work, labor, or
18 other act that may be provided by the seller in the initiation or maintenance of a
19 business;

20 (11) "supplies" includes materials used to produce, grow, breed,
21 fabricate, modify, develop, or make a product or other item.

22 * Sec. 6. AS 45.63.080(3) is repealed.

23 * Sec. 7. REGULATIONS. The Department of Law may proceed to adopt regulations that
24 it has authority to adopt under this Act. The regulations take effect under AS 44.62
25 (Administrative Procedure Act), but not before the effective dates of secs. 1 - 6 of this Act.

26 * Sec. 8. Sections 1 - 6 of this Act take effect July 1, 1998.

27 * Sec. 9. Section 7 of this Act takes effect immediately under AS 01.10.070(c).

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 142
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAVIS, Croft

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the sale or transfer of new or used motor vehicles; relating
2 to the confidentiality of certain information related to attorney general
3 investigations of unlawful trade practices and antitrust activities; establishing
4 additional unlawful trade practices; relating to the exemptions from telephonic
5 solicitation regulation; regulating the sale of business opportunities; amending
6 Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective
7 date."

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

9 * Section 1. AS 45.45.400(a) is amended to read:

10 (a) A person engaged in the business of selling used motor vehicles may not
11 contract to sell, transfer, or assign a [THE OWNER'S TITLE OR INTEREST IN
12 THE] used motor vehicle to a person who resides in an area subject to a state-
13 approved emission inspection program established under AS 46.14.400 or 46.14.510

1 and who intends to use the vehicle in that area [,] unless, before entering into the
 2 contract, the person engaged in the business of selling used motor vehicles

3 (1) provides the prospective buyer, transferee, or assignee with a
 4 valid copy of [THE VEHICLE HAS] a certificate of inspection [COMPLIANCE] or
 5 noncompliance for the vehicle as required under the air pollution control requirements
 6 applicable in that area; and

7 (2) obtains from the prospective buyer, transferee, assignee, or the
 8 agent of the prospective buyer, transferee, or assignee, a signed, written
 9 acknowledgment that the prospective buyer, transferee, or assignee, or the agent
 10 of the prospective buyer, transferee, or assignee has received a copy of the
 11 certificate of inspection or noncompliance as required by (1) of this subsection.

12 * Sec. 2. AS 45.45 is amended by adding new sections to read:

13 **Article 7A. Disclosures in Motor Vehicle Sales and Transfers.**

14 **Sec. 45.45.450. Disclosure required.** (a) Before the delivery of the vehicle
 15 to the motor vehicle dealer, a person who manufactures, imports, or distributes new
 16 motor vehicles and who sells or transfers, in the person's capacity as a manufacturer,
 17 importer, or distributor of new motor vehicles, a motor vehicle to a motor vehicle
 18 dealer in this state shall notify the dealer of any material problems with a vehicle that
 19 are known to, or that can with reasonable diligence be discovered by, the manufacturer,
 20 importer, or distributor. This section does not apply unless the problem arose after the
 21 manufacturing process was completed and before delivery of the vehicle to the dealer.

22 (b) Before a contract for the sale of a new or used motor vehicle is entered
 23 into by the dealer in the dealer's capacity as a motor vehicle dealer, a motor vehicle
 24 dealer shall disclose to a potential buyer any material problems with the vehicle that
 25 are known to, or that can with reasonable diligence be discovered by, the dealer.

26 (c) The disclosures required by (a) and (b) of this section must be in writing.

27 **Sec. 45.45.455. Buyer's right to cancel after notice.** If a motor vehicle
 28 dealer provides the notice required by AS 45.45.450(b) before entering into a contract
 29 for the sale of a new motor vehicle, the buyer may cancel the purchase order or other
 30 documentation of intent to enter into a contract to purchase the motor vehicle. If the
 31 buyer cancels, the motor vehicle dealer shall refund to the buyer the full amount of

1 any deposit or other money paid by the buyer to purchase the motor vehicle.

2 **Sec. 45.45.460. Failure to give notice.** (a) If a motor vehicle dealer fails to
3 provide the notice required under AS 45.45.450(b) before entering into a contract for
4 the sale of a new or used motor vehicle, the buyer may obtain from the dealer a refund
5 of the full amount paid by the buyer toward the purchase price of the vehicle, the
6 amount allowed by the dealer for any trade-in, and the charges that are related to the
7 transaction and incurred by the buyer, less the allowances allowed under (b) of this
8 section and as adjusted by (c) of this section. In this subsection, "charges" includes
9 license fees, registration fees, and similar governmental charges.

10 (b) The refund allowed under (a) of this section shall be reduced by

11 (1) an allowance for the buyer's use of the vehicle that exceeds 1,000
12 miles for each month or part of a month that expires after the delivery of the vehicle
13 to the buyer and before the buyer surrenders the vehicle to the seller to receive the
14 refund; the allowance under this paragraph shall be calculated by dividing the excess
15 mileage by 100,000 and multiplying the result by the purchase price; and

16 (2) a reasonable allowance for any damage that is sustained by the
17 vehicle after the delivery of the vehicle to the buyer and before the buyer surrenders
18 the vehicle to the seller to receive the refund and that is not attributable to normal
19 wear on and use of the vehicle.

20 (c) If the buyer modifies the vehicle after delivery of the vehicle to the buyer,
21 the refund allowed under (a) of this section must be

22 (1) reduced by the value of the modifications that decrease the market
23 value of the vehicle; and

24 (2) increased by the value of the modifications that increase the market
25 value of the vehicle.

26 **Sec. 45.45.470. Indemnification and hold harmless requirements.** (a) A
27 person who manufactures, imports, or distributes new motor vehicles shall indemnify
28 and hold harmless a motor vehicle dealer that obtains a motor vehicle from the
29 manufacturer, importer, or distributor from and against any liability, including
30 reasonable attorney fees, that

31 (1) the motor vehicle dealer has to the person who buys the motor

1 vehicle from the dealer;

2 (2) results from a material problem with the vehicle that the
3 manufacturer, importer, or distributor knows of or can with reasonable diligence
4 discover and that arose after the manufacturing process was completed and before
5 delivery of the vehicle to the dealer; and

6 (3) was not disclosed to the dealer under AS 45.45.450 before delivery
7 of the vehicle.

8 (b) Notwithstanding AS 45.45.490, in (a) of this section, "material problem"
9 means a defect or condition that makes the vehicle unsafe to operate or any damage
10 suffered by the vehicle.

11 **Sec. 45.45.480. Effect of provisions.** (a) Nothing in AS 45.45.450 -
12 45.45.490 permits a motor vehicle dealer to respond to the inquiry of a buyer in an
13 untrue or misleading manner.

14 (b) Nothing in AS 45.45.455 or 45.45.460 limits any other right or remedy
15 available at common law or under other state statutes.

16 **Sec. 45.45.490. Definitions.** In AS 45.45.450 - 45.45.490,

17 (1) "material problem" means a defect or condition that makes the
18 vehicle unsafe to operate or material damage sustained by the motor vehicle; in this
19 paragraph, "material damage" means damage

20 (A) that is not repaired, except for normal wear and tear if the
21 motor vehicle sold or transferred is a used motor vehicle;

22 (B) that is repaired by or on behalf of a person who
23 manufactures, imports, or distributes new motor vehicles, or by or on behalf of
24 a motor vehicle dealer, if the repair cost, including parts and labor calculated
25 at the repairer's retail charge, exceeds \$300, or \$100 when the repair is touch-
26 up paint applied to correct exterior paint damage; damage to tires, glass,
27 bumpers, and audio equipment in the dashboard are not included when
28 determining the cost of the repair if the tires, glass, bumpers, and audio
29 equipment are replaced by identical manufacturer's original equipment;

30 (C) to a motor vehicle's frame, drive train, or suspension,
31 regardless of the value of the damage and notwithstanding (A) and (B)

1 of this paragraph;

2 (2) "motor vehicle dealer" means a person who engages in the business
3 of selling new or used motor vehicles, but does not include a person who
4 manufactures, imports, or distributes new motor vehicles;

5 (3) "person who manufactures, imports, or distributes new motor
6 vehicles" means a person who engages in the business of selling or transferring new
7 motor vehicles to a motor vehicle dealer for resale.

8 * Sec. 3. AS 45.50.471(b) is amended by adding new paragraphs to read:

9 (42) violating AS 45.45.450 - 45.45.490 (motor vehicle sales
10 disclosures);

11 (43) violating AS 45.66 (sales of business opportunities).

12 * Sec. 4. AS 45.50.521(b) is amended to read:

13 (b) Subject to the provisions of AS 45.50.501(a), the attorney general may not
14 make public the name of a person alleged to have committed an act or practice
15 declared unlawful by AS 45.50.471 - 45.50.561 [IN AS 45.50.471] during and after
16 an investigation conducted by the attorney general under AS 45.50.471 - 45.50.561,
17 nor are the records of investigation or intelligence information of the attorney general
18 obtained or created in the course of the investigation under AS 45.50.471 -
19 45.50.561 considered public records available for inspection or copying under
20 AS 09.25.110 - 09.25.220 by the general public at any time during or after the
21 investigation. However, the attorney general is not prevented from issuing public
22 statements describing or warning of a course of conduct or a conspiracy that
23 constitutes or will constitute an unlawful act or practice, whether on a local, state,
24 regional, or national basis.

25 * Sec. 5. AS 45.50.594 is amended by adding a new subsection to read:

26 (e) Testimony given under a demand, or a copy of the testimony, is subject to
27 the same restrictions and prohibition against disclosure as is documentary material
28 under AS 45.50.592(e).

29 * Sec. 6. AS 45.50 is amended by adding a new section to read:

30 **Sec. 45.50.595. Confidentiality of investigatory records.** Investigation
31 records obtained or created by the attorney general in the course of an investigation

1 under AS 45.50.562 - 45.50.596 are not considered public records available for
2 inspection or copying under AS 09.25.110 - 09.25.220 by the public at any time during
3 or after the investigation. However, the attorney general may issue public statements
4 describing or warning of a course of conduct or a conspiracy that constitutes or will
5 constitute a violation of AS 45.50.562 - 45.50.596, whether on a local, state, regional,
6 or national basis.

7 * Sec. 7. AS 45.63.080(14) is repealed and reenacted to read:

8 (14) of property from a mail order catalog, if the person making the
9 solicitation does not initiate contact with prospective customers by telephonic means,
10 if contact by telephonic means is initiated by the prospective customer in response to
11 the catalog, and if during the contact the person making the solicitation does not make
12 a further solicitation; in this paragraph,

13 (A) "further solicitation" does not include providing the
14 prospective customer with information about, or attempting to sell, another item
15 included in the same mail order catalog that prompted the prospective
16 customer's contact;

17 (B) "mail order catalog" means a publication that
18 (i) is published one or more times a year;
19 (ii) is delivered to prospective customers;
20 (iii) describes or pictures the products, equipment, or
21 supplies for sale and prominently provides the specific price of each;
22 (iv) includes the business name, address, and telephone
23 number of the person who owns and produces the publication;
24 (v) includes instructions to prospective buyers on how
25 to order products from the publication;
26 (vi) includes 10 or more pages of written material and
27 illustrations;
28 (vii) is distributed in this state; and
29 (viii) has an annual mail circulation of 10,000 or more
30 copies.

31 * Sec. 8. AS 45 is amended by adding a new chapter to read:

1 **Chapter 66. Sales of Business Opportunities.**

2 **Sec. 45.66.010. Registration required.** A seller may not sell or offer to sell
3 a business opportunity unless the seller is registered with the department at least 30
4 days before the seller's solicitation campaign begins.

5 **Sec. 45.66.020. Registration procedure.** (a) To register under AS 45.66.010,
6 a seller shall file with the department

7 (1) the disclosure statement required by AS 45.66.070 and any
8 advertising, pamphlets, brochures, or other materials to be used in the solicitation
9 campaign;

10 (2) the bond required by AS 45.66.050;

11 (3) an irrevocable consent appointing the department as the seller's
12 agent for the receipt of service of process in a court action or other proceeding against
13 the seller, or the successor in interest of the seller, for a violation of AS 45.66.010 -
14 45.66.400;

15 (4) a completed application form that satisfies (b) of this section;

16 (5) a signed statement that the seller has read and will comply with
17 AS 45.66.010 - 45.66.400 and the regulations adopted under it; and

18 (6) other information requested by the department to evaluate whether
19 the applicant meets the requirements of AS 45.66.010 - 45.66.400.

20 (b) The application form shall be established by the department by regulation
21 and must contain information including

22 (1) the nature of the solicitation campaign;

23 (2) the identity and business practices of the seller, including
24 information on the owners, employees, agents, officers, and other persons affiliated
25 with the seller; and

26 (3) disclosures of criminal convictions, civil judgments, orders, consent
27 decrees, or administrative determinations involving allegations of fraud, theft,
28 embezzlement, fraudulent conversion, misappropriation of property, the use of untrue
29 or misleading representations in an attempt to sell or dispose of real or personal
30 property, violations of AS 45.66.010 - 45.66.400, violations of AS 45.63 (telephonic
31 solicitations), violations of AS 45.68 (charitable solicitations), or unfair or deceptive

1 business practices under AS 45.50.471 - 45.50.561, by the seller, including the
2 owners, employees, agents, officers, and other persons affiliated with the seller.

3 (c) Registration under AS 45.66.010 or renewal under AS 45.66.030 is not
4 complete until the seller receives an acknowledgment from the department that the
5 seller has complied with (a) of this section or 45.66.030.

6 **Sec. 45.66.030. Renewal of registration.** If a solicitation campaign continues
7 for more than one year from the date of department's acknowledgment of the initial
8 registration under AS 45.66.010 - 45.66.400, a seller shall renew the registration each
9 year that the solicitation campaign continues by filing before or on the anniversary date
10 of the department's acknowledgment under AS 45.66.020(c) a renewal application on
11 a form established by the department by regulation requesting information that is
12 similar to the information required under AS 45.66.020.

13 **Sec. 45.66.040. Material changes in registration information.** If there is a
14 material change in the information provided under AS 45.66.020 or 45.66.030, the
15 seller shall, within 10 days of the change, file with the department a statement
16 describing the change on a form established by the department by regulation.

17 **Sec. 45.66.050. Surety bond required.** (a) A seller shall obtain a surety
18 bond in the amount of \$75,000 issued by a surety company authorized to do business
19 in the state. The bond must be in favor of the state for the benefit of a buyer and
20 must satisfy the conditions established by the department by regulation.

21 (b) If the department finds that the amount of the bond set by (a) of this
22 section is insufficient to protect the public interest, the department may by regulation
23 increase the amount of the bond.

24 **Sec. 45.66.060. Location of offer and sale.** AS 45.66.010 - 45.66.400 apply
25 to a sale of or offer to sell a business opportunity if

26 (1) the offer, regardless of whether either party is then present in this
27 state, originates in this state, or is directed by the offeror to this state and received at
28 the place to which the offer is directed, including a post office box; this paragraph
29 does not include an offer that

30 (A) appears in a bona fide newspaper or other publication of
31 general circulation that is not published in this state or that is published in this

1 state but more than two-thirds of its circulation was outside this state during
2 the 12 months preceding the offer; or

3 (B) is made on a radio or television program that originates
4 outside this state and is received in this state;

5 (2) the acceptance

6 (A) has not been previously communicated, orally or in writing,
7 to the offeror outside this state;

8 (B) is communicated to the offeror in this state, regardless of
9 whether the seller or buyer is then present in this state, and the offeree
10 reasonably believes that the offeror is located in this state; and

11 (C) is received at the place to which it was directed, including
12 a post office box; or

13 (3) the buyer is domiciled in this state and the business opportunity is
14 or will be operated in this state.

15 **Sec. 45.66.070. Disclosure requirements.** (a) At least 10 days before the
16 buyer signs the contract, or at least 10 days before receipt of any consideration by the
17 seller, whichever event occurs first, the seller shall give the buyer the written
18 disclosure statement described in (b) of this section, require the buyer to sign a receipt
19 containing the buyer's name and the date when the buyer received the disclosure
20 statement, and give the buyer the original receipt with the buyer's original signature.
21 The seller shall retain a copy of the receipt.

22 (b) The department shall specify by regulation the form and content of the
23 disclosure statement required by (a) of this section, including

24 (1) the seller's name, type of business organization, address, and name
25 of any parent or affiliated company related to the transaction;

26 (2) the names, addresses, and other relevant information regarding the
27 owners, officers, directors, and other persons responsible for the seller's business
28 activities related to the contract;

29 (3) the business history of the seller and the seller's representatives and
30 the background of the seller and the seller's representatives that relates to business
31 opportunities;

1 (4) the total contract amount to be paid by the buyer and the schedule
2 of payments;

3 (5) the financial condition of the seller, including audits and recent
4 income statements;

5 (6) a complete description of the services that the seller will perform
6 for the buyer, including training;

7 (7) the history of the seller's registration or attempted registration in
8 this or another state as a seller of business opportunities;

9 (8) a history of civil actions, criminal actions, and consumer protection
10 complaints brought against the seller or its representatives related to the sale of
11 business opportunities and the resolution of the actions and complaints;

12 (9) identification of any bankruptcy actions filed in court by the seller
13 and the resolution of the actions;

14 (10) a statement adopted by the department by regulation to alert the
15 public about the legal requirements for a sale of business opportunities if the
16 department determines the statement is reasonable and necessary;

17 (11) if the seller makes a statement about potential earnings that can
18 be made through a business opportunity, the basis for the statement and the economic
19 risks associated with the business opportunity;

20 (12) the rights and obligations of the seller and buyer regarding
21 termination of the contract, including the rights arising out of the bond required by
22 AS 45.66.050; and

23 (13) any additional information that the department determines by
24 regulation is reasonable and in the public interest for the seller to provide in order to
25 make a complete disclosure concerning the contract.

26 **Sec. 45.66.080. Written contract required.** (a) In addition to the other
27 requirements of AS 45.66.010 - 45.66.400, a person may not contract to sell a business
28 opportunity unless the contract is in writing and the seller gives a copy of the contract
29 to the buyer when the buyer signs the contract.

30 (b) The department shall establish by regulation the content and format of the
31 information that must be contained in the contract, including

1 (1) the payment terms, including any escrow account required under
2 AS 45.66.090;

3 (2) the name, address, and telephone number of the seller, the seller's
4 agent, and each supplier of products, equipment, or supplies that the seller is to deliver
5 to the buyer;

6 (3) the form of the seller's business organization;

7 (4) a description of services, including any training services, that the
8 seller is to provide to the buyer;

9 (5) the delivery date of the product, equipment, or supplies being sold
10 or leased;

11 (6) a complete description of any representation made by the seller that
12 implies in any manner that the buyer's initial payment is protected from loss, including
13 a representation that the seller

14 (A) may repurchase either all or a part of what the seller is
15 selling to the buyer;

16 (B) may at some future time pay the buyer the difference
17 between the initial payment and the amount that has been earned under the
18 business opportunity;

19 (C) may in the ordinary course of business buy from the buyer
20 items made, produced, fabricated, grown, bred, modified, or developed by the
21 buyer using all or part of the products, equipment, supplies, or services that
22 were initially sold or leased to the buyer by the seller; or

23 (D) or a person to whom the seller will refer the buyer, may in
24 the ordinary course of business sell, lease, or distribute the items the buyer has
25 for sale or lease.

26 (7) a statement of buyer's right to cancel, the circumstances when
27 cancellation is authorized, and the procedure for cancellation and refunds; and

28 (8) any other terms that the department determines are necessary to
29 protect the public interest.

30 **Sec. 45.66.090. Restrictions on down payments.** (a) A seller may not
31 require a buyer to pay as a down payment more than 20 percent of the initial payment

1 unless the excess above the 20 percent is placed in an escrow account that meets the
2 requirements of AS 45.66.100.

3 (b) In this section, "down payment" means that portion of the initial payment
4 that the buyer is obligated to pay to the seller before or at the time the products,
5 equipment, supplies, or services are delivered, but does not include any amount that
6 is financed by or for which financing is to be obtained by the seller or that results
7 from financing that the seller assists the buyer to obtain.

8 **Sec. 45.66.100. Escrow account requirements.** (a) The holder of an escrow
9 account required by AS 45.66.090 must be a person who is independent from the
10 seller, and the seller may not make direct disbursements from the escrow account
11 except as provided in (c) of this section.

12 (b) A seller who establishes an escrow account required by AS 45.66.090 shall
13 promptly report to the department the following information:

- 14 (1) the name and address of the escrow account holder;
15 (2) the name and address of the financial institution, including the
16 branch, where the escrow account is located; and
17 (3) the escrow account number.

18 (c) Except as provided under AS 45.66.110, money placed in an escrow
19 account required by AS 45.66.090 may not be released until the buyer notifies the
20 escrow holder in writing that the products, equipment, supplies, or services required
21 by the contract have been delivered within the time set in the contract between the
22 buyer and seller. The buyer shall timely notify the escrow holder of deliveries in a
23 timely manner and may not unreasonably withhold the notification.

24 **Sec. 45.66.110. Actions for claims against escrow account.** (a) A buyer
25 who has a claim against an escrow account required by AS 45.66.090 may bring a
26 civil action against the seller or escrow account holder to recover money from the
27 escrow account.

28 (b) Upon the filing of an action brought under this section, the clerk of the
29 court shall mail a copy of the complaint to the attorney general and, upon entry of an
30 order or judgment in the action, shall mail a copy of the order or judgment to the
31 attorney general.

1 (c) A person may not begin an action under this section more than two years
2 after the person discovers or reasonably should have discovered the basis for the claim.

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

5 (e) The escrow holder is not liable for the amount by which claims or damages
6 caused by the seller exceed the amount of the escrow account.

7 **Sec. 45.66.120. Cancellation of contract.** (a) A buyer may cancel a contract
8 for any reason if the buyer gives notice of the cancellation to the seller within 30 days
9 after signing the contract.

10 (b) In addition to the right to cancel under (a) of this section, a buyer may
11 cancel the contract at any time if the seller

12 (1) fails to comply with AS 45.66.070 or 45.66.080;

13 (2) uses untrue, misleading, incomplete, or deceptive statements in the
14 solicitation campaign;

15 (3) fails, within 30 days of the delivery date specified in the contract,
16 to deliver the products, equipment, supplies, or services required under the contract to
17 begin substantial operation of the business to be started under the contract; or

18 (4) fails, contrary to the contract, to provide a location for the business
19 to be started under the contract.

20 (c) If provided by mail, the notice of cancellation is effective when it is
21 deposited in the mail properly addressed to the seller with postage prepaid.

22 (d) The notice of cancellation is not required to have a particular form. The
23 notice is sufficient if it indicates in writing the intention of the buyer not to be bound
24 by the contract.

25 (e) Within 15 days after the date the buyer gives a notice of cancellation under
26 this section, the seller must tender to the buyer any payments, including payments for
27 shipping costs, made by the buyer and terminate all financial obligations of the buyer
28 under the contract. Within five days of refund, the buyer shall make available to the
29 seller, at a reasonable time and place, any products, equipment, or supplies delivered
30 by the seller.

31 **Sec. 45.66.130. Prohibited representations.** (a) The seller may not state that

1 the seller is registered under AS 45.66.010 - 45.66.400 unless the seller has complied
2 with the registration requirements of AS 45.66.010 - 45.66.400.

3 (b) Unless the seller is asked for the information by the buyer, a seller may
4 not state or imply that the seller has a license, consent, or other form of permission
5 from the state to sell business opportunities in this state.

6 (c) A seller may not make, or cause to be made, a representation that is
7 inconsistent with AS 45.66.150.

8 (d) A seller may not state or imply that the seller's compliance with the laws
9 of this state or a municipality constitutes approval or endorsement of the seller by the
10 state or municipality.

11 **Sec. 45.66.140. Untrue statements or omissions.** A person may not, in
12 connection with a sale of or offer to sell a business opportunity subject to registration
13 under AS 45.66.010 - 45.66.400, directly or indirectly make an untrue statement of
14 material fact in the registration information required under AS 45.66.020 - 45.66.040
15 or in other written or oral communications, including the disclosure required under
16 AS 45.66.070 and advertising, related to the sale or offer, or omit to state a material
17 fact necessary, in light of the circumstances under which it is made, to avoid a
18 statement being misleading.

19 **Sec. 45.66.150. Unwarranted conclusions.** (a) Acknowledgment of
20 registration by the department under AS 45.66.030 does not constitute a finding by
21 the department that a document filed with the department under AS 45.66.010 -
22 45.66.400 is true, complete, or not misleading.

23 (b) Acknowledgment of registration by the department under AS 45.66.030
24 does not mean that the department has passed in any way on the merits or
25 qualifications of the seller or business opportunity, or that the department recommends
26 or approves a seller.

27 (c) Availability of an exemption under AS 45.66.210 for a seller does not
28 mean that the state recommends or approves the seller.

29 **Sec. 45.66.160. Waiver prohibited and void.** A seller may not request or
30 obtain from a buyer a waiver of the rights or defenses of the buyer under
31 AS 45.66.010 - 45.66.400. A waiver of the rights or defenses of the buyer under

1 AS 45.66.010 - 45.66.400 is void.

2 **Sec. 45.66.170. Seller's records and files.** (a) A seller shall maintain a
3 complete set of records of the solicitation campaigns of the seller and allow the
4 department to inspect and copy them during reasonable business hours.

5 (b) A seller shall keep all documents relating to a contract entered into by the
6 seller for four years after the date the contract is entered into.

7 **Sec. 45.66.180. Public records.** Except for testimony and records related to
8 an investigation by the department under AS 45.66.010 - 45.66.400, the registration
9 application form, registration renewal form, disclosure statement, bond, contract, and
10 other documents required to be prepared or filed with the department under
11 AS 45.66.010 - 45.66.400, including a document created or obtained by the department
12 under AS 45.66.190, are public records available for public inspection and copying
13 under AS 09.25.110 - 09.25.220.

14 **Sec. 45.66.190. Denial, suspension, or revocation of registration.** (a)
15 Subject to the other requirements of this section and after reviewing a response
16 submitted by the person under (b) of this section, the department may issue an order
17 denying, suspending, or revoking a registration made by a person under AS 45.66.010
18 - 45.66.030, or prohibiting a person from selling or offering to sell business
19 opportunities if the department finds that

20 (1) the person failed to comply with AS 45.66.010 - 45.66.400 or the
21 regulations adopted under AS 45.66.010 - 45.66.400;

22 (2) the sale of or offer to sell would constitute, or has constituted, a
23 misrepresentation of, deceit of, or fraud on the buyer;

24 (3) the nature of the person's business enterprise or method of business,
25 or the nature or methods of the business opportunity includes activities that are illegal
26 where performed;

27 (4) the person failed to file a document or information required by
28 AS 45.66.020 - 45.66.040;

29 (5) the literature or advertising of the person, or of another person
30 recommended by the person, is misleading, incorrect, materially incomplete, or
31 deceptive;

1 (6) a person identified in the registration represents an unreasonable
2 risk to the public interest and

3 (A) has been convicted of

4 (i) a felony or misdemeanor involving fraud, theft,
5 embezzlement, fraudulent conversion, misappropriation of property, or
6 the use of untrue or misleading representations in the sale of or offer to
7 sell or otherwise dispose of real or personal property; or

8 (ii) violations under AS 45.66.010 - 45.66.400,
9 violations of AS 45.63 (telephonic solicitations), violations of AS 45.68
10 (charitable solicitations), or an unfair trade practice prohibited by
11 AS 45.50.471 - 45.50.561;

12 (B) is subject to a final order or judgment against the person in
13 a civil or administrative action, including a stipulated order or judgment, if the
14 complaint or petition in the action alleged acts constituting

15 (i) a violation of AS 45.66.010 - 45.66.400;

16 (ii) fraud, theft, embezzlement, fraudulent conversion,
17 or misappropriation of real or personal property;

18 (iii) the use of untrue or misleading representations in
19 an offer to sell or dispose of real or personal property;

20 (iv) the use of unfair trade practices under AS 45.50.471
21 - 45.50.561; or

22 (v) a violation of AS 45.63 or AS 45.68; or

23 (C) is subject to an injunction relating to business activity if the
24 injunction resulted from an action brought by a federal, state, or local public
25 agency, including an action related to an occupational license under AS 08.

26 (b) Before issuing an order to a person under (a) of this section, the
27 department shall send by certified mail to the address set out in the person's
28 registration a notice of intent to issue the order. In the notice, the department shall
29 provide the facts supporting the denial, suspension, or revocation of the registration.
30 The person may respond to the notice by submitting a statement signed under penalty
31 of perjury by an owner or officer of the person.

1 **Sec. 45.66.200. Criminal penalties.** (a) A seller who recklessly violates
 2 AS 45.66.010 - 45.66.050, 45.66.070 - 45.66.100, or 45.66.140 is guilty of a class C
 3 felony.

4 (b) A seller who recklessly violates AS 45.66.120(e), 45.66.130, or 45.66.160
 5 is guilty of a class A misdemeanor.

6 (c) Each violation is a separate offense and a prosecution or conviction for one
 7 of the offenses does not bar prosecution or conviction of another offense.

8 **Sec. 45.66.210. Exemptions.** AS 45.66.010 - 45.66.400 do not apply to a sale
 9 or offer to sell

10 (1) if the total amount of the payments to be made by the buyer under
 11 the contract is less than \$200, including a nonprofit sale;

12 (2) a franchise under 16 CFR 436, as amended from time to time;

13 (3) an ongoing business operated by the seller that is to be sold in its
 14 entirety;

15 (4) a business opportunity to an ongoing business if the seller will
 16 provide products, equipment, supplies, or services that are to be sold by the buyer in
 17 connection with the buyer's ongoing business;

18 (5) by an executor, an administrator, a marshal, a receiver, a trustee in
 19 bankruptcy, or a guardian or conservator, or under a judicial sale;

20 (6) a security regulated under AS 45.55 or a security that is exempted
 21 by AS 45.55.900 from regulation under AS 45.55;

22 (7) if the sale or offer is by a person registered with the United States
 23 Securities and Exchange Commission when acting within the scope of the person's
 24 Securities and Exchange Commission license;

25 (8) a business opportunity where the buyer is

26 (A) a bank, savings and loan association, trust company,
 27 insurance company, credit union, or investment company under 15 U.S.C. 80a-
 28 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,
 29 or other financial institution or institutional buyer; or

30 (B) a dealer registered under AS 45.55 (Alaska Securities Act
 31 of 1959) if the buyer is acting for itself or in a fiduciary capacity;

1 (9) a business opportunity that involves a marketing plan made in
2 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051
3 - 1127 (Lanham Act) if the seller has a minimum net worth of \$1,000,000 as
4 determined on the basis of the seller's most recent audited financial statement prepared
5 within 13 months of the first offer to sell in this state; net worth may be determined
6 on a consolidated basis if one person owns at least 80 percent of the seller and that
7 one person expressly guarantees the obligations of the seller that arise under the sale
8 or offer claimed to be exempt under this paragraph; or

9 (10) in which either the seller or the buyer is licensed as a real estate
10 broker, associate real estate broker, or real estate sales person under AS 08.88 and the
11 sale or offer is regulated by AS 08.88.

12 **Sec. 45.66.220. Coordination with other laws.** (a) The rights and remedies
13 in AS 45.66.010 - 45.66.400 are in addition to other legal rights and remedies available
14 to a buyer or the department.

15 (b) To the extent of the conflict, the provisions of AS 45.66.010 - 45.66.400
16 govern if a sale or offer to sell a business opportunity is regulated by AS 45.66.010 -
17 45.66.400 and by AS 45.63 (telephonic solicitations), by AS 45.01 - AS 45.09,
18 AS 45.12 and AS 45.14 (Uniform Commercial Code), or by another law, and it is not
19 possible to comply with or to apply both AS 45.66.010 - 45.66.400 and the other law.

20 **Sec. 45.66.230. Regulations.** The department may adopt regulations under
21 AS 44.62 (Administrative Procedure Act) to implement or interpret AS 45.66.010 -
22 45.66.400.

23 **Sec. 45.66.400. Definitions.** In AS 45.66.010 - 45.66.400, unless the context
24 indicates otherwise,

25 (1) "advertising" means a circular, prospectus, advertisement, or other
26 material or a communication by radio, television, pictures, telephone, facsimile
27 machine, electronic communication between electronic computing devices, or similar
28 means used in connection with a sale of or offer to sell a business opportunity;

29 (2) "business opportunity" means an express or implied arrangement
30 under which the seller or a person recommended by the seller will provide to the buyer
31 products, equipment, supplies, or services enabling the buyer to start a business and

1 in which the seller

2 (A) or a person recommended by the seller, will provide or
3 assist the buyer in finding locations for the use or operation of vending
4 machines, racks, display cases, or other similar devices on premises that are not
5 owned or leased by the buyer or seller;

6 (B) or a person recommended by the seller, will provide or
7 assist the buyer in finding outlets or accounts for the buyer's products or
8 services;

9 (C) or a person specified by the seller, will purchase any or all
10 products made, produced, fabricated, grown, bred, or modified by the buyer;

11 (D) or a person specified by the seller, will buy back or is likely
12 to buy back any products made, produced, fabricated, grown, bred, or modified
13 by the buyer using, in whole or in part, the product, supplies, equipment, or
14 services that were initially sold or offered for sale to the buyer by the seller;

15 (E) makes an oral or a written representation that the buyer will
16 derive income from the business that will exceed the price paid to the seller
17 and the representation would cause a reasonable person in the buyer's position
18 to believe the income is assured;

19 (F) will refund all or part of the price paid to the seller, or
20 repurchase some or all of the products, equipment, or supplies provided by the
21 seller or a person recommended by the seller, if the buyer is dissatisfied with
22 the business; or

23 (G) will provide the buyer with a marketing plan;

24 (3) "buyer" means a person who is solicited to become obligated or
25 does become obligated on a contract;

26 (4) "contract" means an agreement relating to a business opportunity;

27 (5) "department" means the Department of Law;

28 (6) "equipment" includes machines, electrical devices, video or audio
29 devices, computer devices, molds, display racks, vending machines, coin operated
30 game machines, machines that dispense products, and display units of all kinds;

31 (7) "initial payment" means the total amount a buyer is obligated to pay

1 under the terms of the contract before or at the time the equipment, supplies, products,
2 or services are delivered or within six months of the buyer commencing operation of
3 the business opportunity, except that, if the contract sets out a specific total sale price
4 for the purchase of the business opportunity and the total price is to be paid partially
5 as a down payment and then in specific monthly payments or a subsequent lump sum
6 payment, "initial payment" means the entire total sale price; "initial payment" does not
7 include the amount paid for a nonprofit sale;

8 (8) "marketing plan" means advice or training provided to the buyer by
9 the seller or a person recommended by the seller pertaining to the sale of products,
10 equipment, supplies, or services;

11 (9) "nonprofit sale" means a sale of items that are sales demonstration
12 equipment, materials, or samples to be used for making sales and not for resale if the
13 total price for the items is less than \$200 and the seller does not make a profit on the
14 sale;

15 (10) "offer" or "offer to sell" means an attempt to sell or otherwise
16 dispose of a business opportunity for value;

17 (11) "product" includes a tangible chattel, including food or living
18 animals, that the buyer intends to

19 (A) sell or lease;

20 (B) use to perform a service;

21 (C) resell or offer to resell to the seller; or

22 (D) provide or offer to provide to the seller, or to another person
23 whom the seller suggests the buyer contact, so that the seller or the other
24 person may assist either directly or indirectly the buyer to distribute, sell, lease,
25 or otherwise dispose of a product;

26 (12) "recklessly" has the meaning given in AS 11.81.900;

27 (13) "sale" means a contract to sell, lease, or otherwise dispose of a
28 business opportunity or an interest in a business opportunity for value;

29 (14) "sell" means to sell, lease, or otherwise dispose of a business
30 opportunity or an interest in a business opportunity for value;

31 (15) "seller" means a person, or the person's agent, who sells, leases,

1 offers to sell, offers to lease, or otherwise disposes of a business opportunity;

2 (16) "services" includes assistance, guidance, direction, work, labor, or
3 other act that may be provided by the seller in the initiation or maintenance of a
4 business;

5 (17) "solicitation campaign" means the sale of, or the offer to sell, a
6 business opportunity;

7 (18) "supplies" includes materials used to produce, grow, breed,
8 fabricate, modify, develop, or make a product or other item.

9 * Sec. 9. AS 45.63.080(3) is repealed.

10 * Sec. 10. COURT RULES. AS 45.66.110(b), enacted by sec. 8 of this Act, changes

11 (1) Rule 4, Alaska Rules of Civil Procedure, by requiring the clerk of
12 the court to mail a copy of the complaint to the attorney general when an action is
13 filed under AS 45.66.110;

14 (2) Rule 73, Alaska Rules of Civil Procedure, by requiring the clerk of
15 the court to mail a copy of an order or judgment in an action under AS 45.66.110 to
16 the attorney general.

17 * Sec. 11. REGULATIONS. The Department of Law may proceed to adopt regulations
18 that it has authority to adopt for or under secs. 1 - 8 of this Act. The regulations take effect
19 under AS 44.62 (Administrative Procedure Act), but not before the effective dates of secs. 1 -
20 8 of this Act.

21 * Sec. 12. AS 45.66.110(b), enacted by sec. 8 of this Act, takes effect only if sec. 10 of
22 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
23 Constitution of the State of Alaska.

24 * Sec. 13. Sections 1 - 10 of this Act take effect July 1, 1997.

25 * Sec. 14. Section 11 of this Act takes effect immediately under AS 01.10.070(c).

HB

159

FISCAL NOTE

NO. 4
 Bill Version: CS SSHB 159(L&C)
 (H) Publish Date: 4/17/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: _____

Revision Date: 03/15/97 Dept. Affected: Public Safety
 Title: Minor Possession of Tobacco BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Rep. Kott
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	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-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill may increase the number of persons with revoked licenses, however, it is not expected to have any significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650
 Division: Alaska State Troopers Date: 03/15/97
 Approved by Commissioner: Ronald L. Otte *[Signature]* Date: 3/19/97
 Agency: Department of Public Safety

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FISCAL NOTE

No. 5
 Bill Version: CS SSHB 159(L&C)
 (H) Publish Date: 4/17/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act relating to sale, possession, and purchase BRU: Occupational Licensing
of tobacco and tobacco products;.... Component: Operations
 Sponsor: Reps. Kott, Mulder, Kohring, Sanders, Ryan
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 1844

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						
CHANGE IN REVENUES	66.3	49.2	66.3	49.2	66.3	49.2

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SSHB 159 establishes penalties for individuals and businesses who sell or give tobacco or tobacco related products to minors. The statutory amendments made to the tobacco endorsement attached to a business license will not require new funding to implement. However, the increase of the tobacco endorsement fee from \$25 to \$100 will generate additional revenue. There are currently 884 business licenses with tobacco endorsements due for renewal in FY 98 that will be expected to pay the new fee at the 12/31/97 renewal. There are currently 656 business licenses with tobacco endorsements that will renew in FY 99 at the 12/31/98 renewal. Assuming licensing activity remains relatively constant, the revenue can be expected to repeat in subsequent years. The amount shown above represents "new" revenue resulting from the increase of \$25 to \$100.

Prepared by: Jennifer Strickler, Administrative Manager
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 4/4/97
 Date: 4-17-97

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FISCAL NOTE

NO. 0
 Bill Version: CS SSHB 159(L&C
 (H) Publish Date: 4/17/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Alaska Court System
Sale and possession of tobacco BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Kott
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	7.9	7.9	7.9	7.9	7.9	7.9
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	7.9	7.9	7.9	7.9	7.9	7.9

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

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

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	7.9	7.9	7.9	7.9	7.9	7.9
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other						
TOTAL	7.9	7.9	7.9	7.9	7.9	7.9

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Doug Wooliver, Administrative Attorney
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Acting Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 04/08/97
 Date: 04/08/97

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Alaska Court System

Fiscal Analysis

SSHB 159

Personal Services

Position

Salary

Benefits

Total

Court Clerk II, 10A, Anchorage, permanent part-time position, 3 months

\$6,315

\$1,627

\$7,942

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

FISCAL NOTE

NO. b
 Bill Version: CS SSHB 159(L&C)
 (H) Publish Date: 4/17/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Alaska Court System
Sale and possession of tobacco BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Kott
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	7.9	7.9	7.9	7.9	7.9	7.9
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	7.9	7.9	7.9	7.9	7.9	7.9
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	7.9	7.9	7.9	7.9	7.9	7.9
5 GF/Program Receipts						
7 GF/Mental Health						
Other						
TOTAL	7.9	7.9	7.9	7.9	7.9	7.9

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Doug Wooliver, Administrative Attorney
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Acting Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 04/08/97
 Date: 04/08/97

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Alaska Court System
Fiscal Analysis
SSHB 159

Section 5 of SSHB 159 requires the court system to separately account for the fines collected for violations of various tobacco related offenses. Because the court system computer software cannot be adapted for such a function, the separate accounting will have to be done by hand. This note represents the clerical cost to manually search through each days receipts to find, tally, and record any fines collected from tobacco related violations.

The estimated cost is based on the conservative estimate that there were 1,000 citations written by local police agencies around the state in FY 96. It should be noted that this figure only represents citations writ'en for minors in possession of tobacco and does not include other tobacco related offenses.

Further, this note does not account for the likely increase in citations which may result from the enforcement incentive created under section 5, which provides that the fines collected may be appropriated by the legislature back to municipal law enforcement agencies.

Alaska Court System
Fiscal Analysis
SSHB 159

Personal Services
Position

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, 10A, Anchorage, permanent part-time position, 3 months	\$6,315	\$1,627	<u>\$7,942</u>

FISCAL NOTE

No. 1
 Bill Version: CS SSHB 159 (L&C)
 (H) Publish Date: 4/17/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to sale, gift, exchange, possession and purchase of tobacco and tobacco products..."
 Sponsor: Representative Kott
 Requestor: (H) L & C

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

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	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This sponsor substitute to the original bill removes the penalty of administrative revocation of a driver's license for the violation of under-age purchase or possession of tobacco products by a minor. It makes the sale, exchange or giving of tobacco products to a minor, the presentation of false proof of age to obtain tobacco products by a minor, and the failure to demand proof of age by the vendor, violations. There is no fiscal impact on the Public Defender Agency.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 4/8/97

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FISCAL NOTE

No. 2

Bill Version: CS SSB 159(L&C)

(H) Publish Date: 4/17/97

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>"An Act relating to the sale, gift, exchange,</u>	BRU: <u>Criminal Division/Civil Division</u>
<u>possession, and purchase of tobacco and tobacco products; . . .</u>	Component: <u>Criminal Division</u>
Sponsor: <u>Representative Kott</u>	<u>General Legal Services</u>
Requester: <u>House Labor and Commerce Committee</u>	COMPONENT SERIAL NO. <u>2085/2087</u>

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						
----------------------	--	--	--	--	--	--

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

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SSHB 159 proposes additional restrictions and penalties for the sale, gift, exchange, possession, and purchase of tobacco and tobacco products. The proposed additional restrictions on the placement of vending machines and other amendments concerning the sale of tobacco products to minors will have no impact on the Department of Law. The sponsor substitute removes the requirements for administrative revocation of drivers' licenses as a penalty for violation of the proposed statute, and the Department of Law no longer anticipates any fiscal impact from this bill.

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: 4/7/97
 Date: 4/7/97

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FISCAL NOTE

APR 09 1997
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STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: SSHB 159

Revision Date: 04/09/97
Title: Minor Possession of Tobacco

Dept. Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

Sponsor: Rep. Kott
Requestor: House L&C

COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	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-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill is not expected to have any significant fiscal impact on AST.

Prepared By: F/Sgt. Robert Gorder Phone: 269-5650
 Division: Alaska State Troopers Date: 04/09/97
 Approved by Commissioner: Ronald L. Otte *Ronald L. Otte* Date: 4/9/97
 Agency: Department of Public Safety

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Revision Date: _____ Dept. Affected: Revenue
 Title: Tobacco Purchase, Possession, Sale, etc. BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Representative Kott
 Requestor: (H) L&C COMPONENT SERIAL NO. 113

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						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
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						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Section 6 of the proposed legislation amends the licensing provisions for manufacturers, distributors and vending machine operators (required to file tax returns). The amendments allow the department to suspend or revoke tobacco licenses, for up to one year, for criminally negligent violations of AS 11.76.107. Licensees would be able to appeal this action. There are approximately 45 businesses who would be subject to the new provisions. DOR can administer the revocations and potential appeal actions with current resources.

Prepared by: Robert Bartholomew Phone: 465-4773
 Division: Income and Excise Audit Date: April 9, 1997
 Approved by Commissioner: Wilson L. Condon *Herkins for* Date: April 9, 1997
 Agency: Revenue

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APR 09 1997

Revision Date: _____ Dept. Affected: Revenue
 Title: Tobacco Purchase, Possession, Sale, etc. BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Representative Kolt
 Requestor: (H) L&C COMPONENT SERIAL NO. 113

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						
CHANGE IN REVENUES ()						

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
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						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Section 6 of the proposed legislation amends the licensing provisions for manufacturers, distributors and vending machine operators (required to file tax returns). The amendments allow the department to suspend or revoke tobacco licenses, for up to one year, for criminally negligent violations of AS 11.76.107. Licensees would be able to appeal this action. There are approximately 45 businesses who would be subject to the new provisions. DOR can administer the revocations and potential appeal actions with current resources.

Prepared by: Robert Bartholomew
 Division: Income and Excise Audit
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-4773
 Date: April 9, 1997
 Date: April 9, 1997

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FISCAL NOTE

rec 4/19/97
 BILL NO. SSHB 159 *S.W. pu*

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to sale, gift, exchange, possession and purchase of tobacco and tobacco products..."
 Sponsor: Representative Kott
 Requestor: (H) L & C

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

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	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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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						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This sponsor substitute to the original bill removes the penalty of administrative revocation of a driver's license for the violation of under-age purchase or possession of tobacco products by a minor. It makes the sale, exchange or giving of tobacco products to a minor, the presentation of false proof of age to obtain tobacco products by a minor, and the failure to demand proof of age by the vendor, violations. There is no fiscal impact on the Public Defender Agency.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 4/8/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: HB 159

Revision Date: _____ Dept. Affected: Administration
 Title: An Act relating to sale, possession, and BRU: Motor Vehicles
purchase of tobacco products.... Component: Driver Services
 Sponsor: Representative Kott Field Services
 Requestor: (H) L&C COMPONENT SERIAL NO. 0500, 0502

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	252.0	252.0	252.0	252.0	252.0	252.0
TRAVEL	1.5	1.5	1.5	1.5	1.5	1.5
CONTRACTUAL	161.1	161.1	161.1	161.1	161.1	161.1
SUPPLIES	10.0	10.0	10.0	10.0	10.0	10.0
EQUIPMENT	60.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	484.6	424.9	424.9	424.9	424.9	424.9

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES (1005) Revenue Code	1170.0	1170.0	1170.0	1170.0	1170.0	1170.0
---	--------	--------	--------	--------	--------	--------

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	484.6	424.9	424.9	424.9	424.9	424.9
1006 GF/MHTIA						
Other						
TOTAL	484.6	424.9	424.9	424.9	424.9	424.9

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

FULL-TIME	6	6	6	6	6	6
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 3/21/97
 Approved by Commissioner: Mark Boyer, Commissioner Date: 3/21/97
 Agency: Administration

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ANALYSIS CONTINUED:

This bill will require the Division of Motor Vehicles to administratively revoke the driver's license of any person under the age of 19 who attempted to purchase, possess, or present false identification for the purpose of purchasing a tobacco product. The Department of Education reports there are 43,813 students between the grades 8 through 12. The Association of Alaska School Boards issued a survey report in 1995 regarding the youth risk behavior. In that report they indicate that there are 18.9 percent of all students in grades 9 through 12 are frequent users of tobacco products. For the purpose of preparing the fiscal impact the following formula was used:

Alaska Youth -

Grade 8	9,579	
Grade 9	10,278	
Grade 10	9,061	
Grade 11	7,776	
Grade 12	7,119	
18-19 year olds out of school(estimated)	4,400	
Total	48,213	
		x18.9%
Smoking Total		9,112
Repeat Offenders		54%
Based on administrative action for minor consuming stats)		4,921
Grand Total		14,033

It is anticipated that not all 9,112 students will be cited for possession of tobacco products. It is estimated that the passage of this bill will result in an additional 10,000 license revocations a year. This estimation is based on the number of students who are frequent users of tobacco products and those who will receive repeated offenses.

In order to handle the additional 10,000 license revocations a year, and provide due process for the minor, two full time Driver Improvement Specialist/Hearing Officers; one full time Motor Vehicle Representative III, and three full time Motor Vehicle Representative II's would be required. The cost for personal services for two Driver Improvement Specialist/Hearing Officers \$106.2 ; the cost for one full time Motor Vehicle Representative III is \$37.8 ; the cost of three full time Motor Vehicle Representative II's is \$108.0. The Motor Vehicle Representative III and one Motor Vehicle Representative II will be located in the Juneau Driver Services office and will handle the processing associated with administrative action for the revocation of a driver's license. The Driver Improvement Specialist/Hearing Officers will be located in the Anchorage Driver Improvement office of Driver Services Section, and two Motor Vehicle Representative II's will be located in Anchorage Field Services Section.

To revoke 10,000 additional driver's licenses a year takes over 30 processing steps per revoked license. It takes approximately 20 minutes to one hour to conduct an administrative hearing. Each processing step varies in the time it takes to complete. Complete accuracy is essential, as an error of entry onto a driving record could result in civil liability to the State. It takes approximately 20 minutes per applicant time to reinstate a revoked driver's license; this time is exclusive of the new application for the driver's license or permit, take all of the required tests, and if the person is under the age of 18 a parent or legal guardian must give consent for the driver's license or permit, and pay a reinstatement fee. Travel and per diem requested is to send the hearing officer to the National Judicial College for professional administrative law training in the fair hearing process.

Under existing law, each person whose license has been revoked must pay a reinstatement fee of \$100 if the license has not been previously suspended or revoked. A reinstatement fee of \$250 if the person's license has been previously suspended or revoked. It is estimated that 8,000 revocations will be first offenders and 2,000 for repeat offenders. Assuming 90 percent of the minors who are eligible for reinstatement will comply with the reinstatement requirements, approximately 1170.0 will be generated annually as program receipts/general fund revenue.

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

BILL NO: HB 159

	FY98	FY99
PERSONAL SERVICES	\$252.0	
2 Driver Improvement Specialist/Hearing Officers, Anchorage DS		
1 Motor Vehicle Representative III, Juneau DS		
3 Motor Vehicle Representative II's, 1 Juneau DS, 2 Anchorage FS		
TRAVEL	\$ 1.5	
Airfare for Hearing Officer's to attend the National Judicial College		
CONTRACTUAL	\$161.1	
Telephone tolls, Computer line connections, Lan/Wan Connection		
Conference call charges (conduct administrative hearings)		
Postage		
Lease office space		
Tuition for National Judicial College		
Contract Programming for Computer enhancements and reprogramming		
SUPPLIES	\$ 10.0	
Routine office supplies, pens, pencils, copier paper, etc.		
EQUIPMENT (ONE TIME EXPENSE)	\$ 60.0	
Ergonomic Workstation		
Desk, Chair, filing cabinet		
Computer and office software		
	FY98	FY99
TOTAL	\$484.6	\$424.9

GENERAL FUND PROGRAM RECEIPT REVENUE 1170.0 MILLION

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 159

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to the sale, possession, and purchase of tobacco . . . amending Rules 603 and 611(d) . . ." BRU: Criminal Division/Civil Division
 Sponsor: Representative Kott Component: Criminal Division
 Requester: House Labor and Commerce Committee COMPONENT SERIAL NO. 2085/2087

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	73.5	73.5	73.5	73.5	73.5	73.5
TRAVEL	3.0	3.0	3.0	3.0	3.0	3.0
CONTRACTUAL	8.6	8.6	8.6	8.6	8.6	8.6
SUPPLIES	3.3	3.3	3.3	3.3	3.3	3.3
EQUIPMENT	6.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	94.9	88.4	88.4	88.4	88.4	88.4

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

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	94.9	88.4	88.4	88.4	88.4	88.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL.	94.9	88.4	88.4	88.4	88.4	88.4

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

POSITIONS

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 159 proposes additional restrictions and penalties for the sale, possession, and purchase of tobacco and tobacco products. The proposed additional restrictions on the placement of vending machines and other amendments concerning the sale of tobacco products to minors will have no impact on the Department of Law. Provisions in the bill increasing penalties relating to possession and purchase of tobacco products by persons under 19 years of age are anticipated to increase the department's workload.

Administrative revocation of a minor's license to drive would be permitted under this bill, if a peace officer has probable cause to believe a person who is less than 19 years of age has possessed or attempted to purchase a tobacco product or presented false proof of age for the purchase of a tobacco product. In addition, purchasing tobacco or using false proof of age for the purpose of purchasing tobacco by a person under 19 would be added to those statutes for which a minor is charged, prosecuted, and sentenced in district court as an adult.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 3/13/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce Botelho for* Date: 3/13/97
 Agency: Department of Law

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ANALYSIS CONTINUATION:

While the driver's license revocation is an administrative procedure that will not involve the Department of Law, the Department of Public Safety is estimating that many hundreds, perhaps thousands, of tobacco related revocations will occur each year. The Department of Law anticipates that approximately ten to fifteen of these will be appealed to the superior court each year, which must be responded to by the Criminal Division. In addition, with this magnitude of revocations, the department anticipates an increase in the number of charges for driving without a license. We anticipate that a full-time Attorney III position in Anchorage would be necessary to handle the increased workload.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 159

Revision Date: _____
 Title: "An Act relating to sale, possession, and purchase of tobacco and tobacco products...."
 Sponsor: Rep. Kott
 Requestor: (H) L&C

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

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						
----------------------	--	--	--	--	--	--

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Department of Administration.

Prepared by: Brant McGee, Director
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/10/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 159

Revision Date: _____
 Title: "An act relating to sale, possession, and purchase of tobacco and tobacco products...."
 Sponsor: Representative Knott
 Requestor: (H) L&C

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

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	***	***	***	***	***	***

CAPITAL EXPENDITURES	***	***	***	***	***	***
----------------------	-----	-----	-----	-----	-----	-----

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY 97) cost: \$ -0-

POSITIONS:

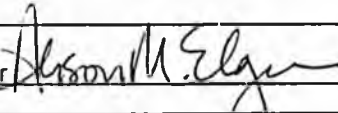
FULL-TIME	***	***	***	***	***	***
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Bover 
 Agency: Department of Administration

Date: 3/11/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 159

The bill re-words sections prohibiting the negligent sale, exchange or giving of tobacco products to a person under 19 and the knowing possession of tobacco products by a person under 19. It also creates the new violation of presenting false proof of age to obtain tobacco products. The fine provisions are not likely to trigger the right to counsel although they may trigger the right to jury trial. However the additional penalty of administrative revocation of a driver's license may trigger the right to counsel (see Quinn v. State, No. 3AN-95-8805 Cr.) and increase the numbers of people prosecuted for driving while license suspended. This will increase the public defender caseload, but without accurate predictions as to numbers, precise quantification is impossible.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: HB 159

Revision Date: _____ Dept. Affected: Public Safety
 Title: Minor Possession of Tobacco BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Rep. Kott
 Requestor: H. L&C COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	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-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill may increase the number of persons with revoked licenses, however, it is not expected to have any significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650
 Division: Alaska State Troopers Date: 03/17/97
 Approved by Commissioner: Ronald L. Otte *[Signature]* Date: 3/17/97
 Agency: Department of Public Safety

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04/10/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
15:15:52 PARTICIPANT LIST (ALL PARTICIPANTS) BY:KEN
TCN:70610 SCHEDULED FOR:04/10/97 15:15 TO 17:15 FOR:KEN
PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:KENAI LIO
~~HB 159~~ ~~MR.~~ ~~NATHAN~~ ~~BAILY~~ *XX* ~~TOBACCO ALLIANCE~~ ~~TESTIFY~~

04/10/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
15:27:21 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC
TCN:70610 SCHEDULED FOR:04/10/97 15:15 TO 17:15 FOR:ANC
PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:ANCHORAGE
~~HB 159~~ ~~ERIC~~ ~~MYERS~~ *Conceded* T HB 189 AND ~~TESTIFY~~
~~HB 159~~ ~~DIANA~~ ~~KUHNS~~ *SOI & King* T HB 189 AND ~~TESTIFY~~
~~HB 159~~ ~~PATRICIA~~ ~~SENNER~~ *Agreement* T HB 189 AND ~~TESTIFY~~
~~HB 159~~ ~~BOBBY~~ ~~SCOTT~~ ✓ ~~TESTIFY~~
~~HB 159~~ ~~SYLVIA~~ ~~SCOTT~~ ✓ ~~TESTIFY~~

04/10/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
15:27:35 PARTICIPANT LIST (ALL PARTICIPANTS) BY:FBX
TCN:70610 SCHEDULED FOR:04/10/97 15:15 TO 17:15 FOR:FBX
PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:FAIRBANKS
~~HB 159~~ ~~MS.~~ ~~NANCY~~ ✓ ~~KUHN~~ *against 159* ~~HB 159~~ & ~~HB 189~~ ~~TESTIFY~~
~~HB 159~~ ~~MS.~~ ~~JENNY~~ ✓ ~~MURRAY~~ *solid testimony* ~~HB 159~~ & ~~HB 189~~ ~~TESTIFY~~ *for 189*

04/10/97 15:44:49 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120
MESSAGE FROM: LIOCMBB IN KENAI LIO JNU

RE TCN: 70610 SCHEDULED FOR:04/10/97 15:15 TO 17:15
SPONSOR: HOUSE LABOR & COMMERCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: KENAI OFF LINE - MR. BAILY SENT WRITTEN
TESTIMONY - THANKS TO ALL



Alaska State Legislature

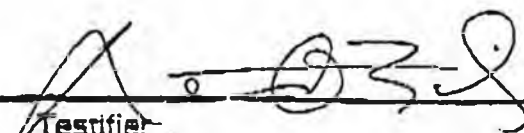
APR 10 1997

Please enter into the record my testimony to the Labor & Commerce
committee name

committee on HB 159 , dated 4-10-97
bill/subject

Chairman Rabeberg:

We wish to register our opposition to the CS for sponsor substitute for HB 159. It is already against the law in Alaska to sell tobacco to anyone under the age of 19 [where does "21" come from?] or for anyone under the age of 19 to purchase or possess tobacco products. These current laws are not being enforced. Until the current tobacco sales & possession laws are taken seriously by community leaders and law enforcement officials, we see no reason to add further legislation to the issue. Thank you

Signed:  Norman O. Bailly
Testifier

The Tobacco Alliance of the Peninsula
Representing (Optional)

P.O. Box 3337 Kenai Ak 99601
Address

(907) 283 3984
Phone No.