

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9308 HOUSE LABOR & COMMERCE



NAADAC

National Association of Alcoholism
and Drug Abuse Counselors

1911 North Fort Myer Drive, Suite 900, Arlington, VA 22209
Phone: 800-548-0497 • 703/741-7686 Fax: 800/377-1136 • 703/741-7698
e-mail: naadac@internetnci.com Internet: <http://www.naadac.org>

APR 24 1997

FACSIMILE TRANSMITTAL MEMO

TO: Rep. Norman Rokeberg Date: 24 Apr
YOUR FAX #: 907 465 2040 FROM: Bill McColl
SUBJECT: Follow up Testimony
PAGES TO FOLLOW: 3

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MESSAGE:

I referenced a letter in my previous fax which I failed to send along as an attachment. The letter is included with this fax and the fax is being sent complete at this time. Again I appreciated the opportunity to testify before the committee.

Sincerely, Bill McColl

SENT BY: Wor

September 1, 1993

Teresa Staley, NCAC II
Chair
Alcohol and Drug Abuse Counselor
Certification Review Board
3605 Arctic Boulevard
Ste. # 695
Anchorage, AK 99503

Dear Ms. Staley:

Thank you for your letter of May 17, 1993 to Dr. Henry of the Professional Testing Company which was referred to the NAADAC Certification Commission and the NAADAC staff for resolution.

We are pleased to inform you that the use of interpreters in the conduct of the National Certification Examination for Addiction Counselors, Level I and Level II, is approved in concept for your use in administering the examination in the State of Alaska.

The principal concern of the Commission and of the testing company is to insure fairness to all examination participants and that the counselor using an interpreter not be afforded special assistance through the interpretation itself, vocal inflection, additional instruction, comments, etc.


Therefore, it will be the responsibility of the Alaska Alcohol and Drug Abuse Counselor Certification Review Board to provide an interpreter deemed linguistically proficient and capable of translating the type of special vocabulary inherent in the overall alcohol and drug abuse counseling profession and found in the examination. Additionally, the examination must be administered at the same time and location as that offered other candidates (although we recognize that a separate room may be appropriate to avoid distraction and that some additional time may be required because of the translation).

We hope that this approach will be of assistance to you and to the Native Alaskan counselors applying for certification.

Sincerely,

William K. Malone
Colonel, U.S. Army retired
Certification Administrator

APR 01 1997



GENESIS
HOUSE INCORPORATED

March 21, 1997

Representative Norman Rokeberg
Alaska State Legislature
House District 11
716 W. 4Th Ave., Suite 200
Anchorage, AK 99501

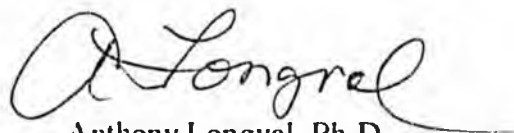
Dear Representative Rokeberg:

I wish to express my appreciation for your taking time out of your busy schedule and allowing me to explain the merits of a state license for chemical dependency counselors.

Your interest in this area was encouraging and I trust when the opportunity presents itself you will be inclined to support legislation for licensure.

If you have any questions, do not hesitate to call me.

Sincerely,



Anthony Longval, Ph.D.
Executive Director, Genesis House

AL:co

HB

1999

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 199

Revision Date: _____
 Title: AK Community Property Act
 Sponsor: Rep. Ryan
 Requestor: House Labor and Commerce Committee

Department: Commerce and Economic Development
 BRU: Banking, Securities & Corporations
 Component: Banking, Securities & Corporations
 COMPONENT SERIAL NO. _____ 1233

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

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

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 General Fund						
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 (FY 97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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)

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2521
 Date: 3-28-97
 Date: 4-1-97

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APR 17 1997

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 199

Revision Date:

Dept. Affected: Alaska Court System

Title: An Act relating to Community Property

BRU: Trial Courts

Component:

Sponsor: Rep. Ryan

Requestor: House Labor & Commerce Committee

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						
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 (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney

Agency: Alaska Court System

Phone: 264-8265

Date: 04/17/97

Approved by: Stephanie J. Cole, Acting Administrative Director

Agency: Alaska Court System

Date: 04/17/97

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HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 18, 1997

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4/18/97

The LABOR AND COMMERCE Committee considered:

HB 199

HOUSE BILL NO. 199

COMMUNITY PROPERTY

"An Act relating to the property, transactions, and obligations of spouses; relating to the augmented estate; amending Rule 301, Alaska Rules of Evidence; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
[] fiscal note(s) _____ [] fiscal note(s) _____

zero fiscal note(s) COURT DECED [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Tom Bice</i>			<input checked="" type="checkbox"/>	
<i>Joe Ryan</i>	<input checked="" type="checkbox"/>			
<i>Bill Hudson</i>	<input checked="" type="checkbox"/>			
<i>John Coedey</i>	<input checked="" type="checkbox"/>			

V162
CHAIR'S SIGNATURE *John Coedey* 4-18-97

04/18/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

15:26:56 PARTICIPANT LIST (TESTIFIERS ONLY) BY:JNU

TCN:70654 SCHEDULED FOR:04/18/97 15:15 TO 17:15 FOR:ALL

PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:ANCHORAGE

✓ HB 199 JONATHAN BLATTMACHR TESTIFY

✓ HB 199 DOUGLAS BLATTMACHR AK TRUST CO TESTIFY

✓ HB 199 BOB MANLEY TESTIFY

HB 116 BARBARA HUFF TUCKNESS / TESTIFY

HB 116 RENEE MURRAY / TESTIFY

HB 116 LINDA HALL / TESTIFY

LOCATION:FAIRBANKS

✓ HB 199 MR. RICH HOMPECH ATTORNEY TESTIFY

04/18/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

15:41:53 PARTICIPANT LIST (ALL PARTICIPANTS) BY:FBX

TCN:70654 SCHEDULED FOR:04/18/97 15:15 TO 17:15 FOR:FBX

PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:FAIRBANKS

HB 199 MR. RICH HOMPECH ATTORNEY TESTIFY

HB 199 MR. LINDA HULBERT TESTIFY

Alaska State Legislature
House of Representatives

MAR 26 1997

2:45 PM

COMMITTEE ASSIGNMENTS:

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Representative Joe Ryan

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JUNEAU, AK 99801-1182
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MEMORANDUM

TO: Representative Norman Rokeberg

FROM: Rep. Joe Ryan *JR*

DATE: March 26, 1997

SUBJECT: HB 199

Please schedule this for hearing at the earliest possible moment. Thank you for your consideration

3/26/97 - Talked with David Price on the letter of requests and they would appreciate a hearing on 4/11/97

Alaska State Legislature

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE
MILITARY & VETERANS AFFAIRS
COMMUNITY & REGIONAL AFFAIRS
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House Bill 199

Sponsor Statement

This Sponsor statement provides a summary of the income tax advantage of community property and a short overview of the Community Property bill. The bill is designed, among other things, to allow married Alaskans to obtain the income tax advantage available to residents of community property states and to produce business in Alaska.

Income tax advantage of community property

A person who owns assets with his or her spouse as community property in one of the nine community property states (Louisiana, Texas, New Mexico, Arizona, California, Nevada, Washington, Idaho, and Wisconsin) has a major income tax advantage over a married person who owns assets with his or her spouse but that are not community property. This advantage results from the incongruous operation of the step-up in basis rule. This rule is one of the few, if only, income tax advantages that a person's estate receives upon his or her death.

The best way to explain the step-up in basis rule is to start with an example of a single person in Alaska on her death bed who twenty years ago paid \$10,000 for a homestead that is presently worth \$110,000. If the person sold the homestead before she died, she would realize a long-term capital gain of \$100,000. The gain would be subject to a maximum capital gains tax of 28%, or \$28,000. On the other hand, if the person decided not to sell the homestead and died the next day, the \$100,000 profit would be forgiven. This means that her heirs could sell the homestead for \$110,000 and pay no income taxes! This is because the original cost basis of \$10,000 is "stepped-

up" to \$110,000, the fair market value of the homestead at death. If the homestead is sold for \$110,000 with its new basis of \$110,000, there is no gain and no income taxes will be owed.

The step-up in basis rule gets more complicated when a married couple is involved. If we assume that a married couple in Alaska bought the homestead twenty years ago for \$10,000 and held title as husband and wife, then each would own one-half of the homestead. If the husband was on his death bed and the couple sold the homestead before the husband died for its current fair market value of \$110,000, the couple would realize a \$100,000 long-term capital gain just like the single person did. However, if the husband died and the wife inherited his half of the homestead and then sold it, she would only realize only a \$50,000 long-term capital gain. This is because the profit in the husband's half of the homestead would be forgiven by the step-up in basis rule. The husband's half of the homestead would get a "step-up" in basis to \$55,000. When the husband's half was sold for \$55,000 there would be no gain. However, the wife would have a gain on the sale of her half of the homestead. Her half of the homestead would have a basis of \$5,000 (one-half of the original cost basis of \$10,000). When this half was sold for \$55,000, the wife would realize a \$50,000 long-term capital gain and would pay a maximum of \$14,000 of income taxes (28% of \$50,000).

If, on the other hand, the couple lived in a community property state like Washington, the income tax savings would be even greater. If the homestead was community property under Washington law, for example, the wife would get a step-up in basis in both halves of the homestead to \$110,000. After her husband's death when she sold the homestead for \$110,000 she would pay no income taxes! In contrast, in the prior example of the married couple in Alaska who owned the homestead that was not community property, the wife who sold the homestead after her husband died would pay \$14,000 of income taxes. In this way the income tax laws favor spouses in community property states who own assets as community property over spouses in non-community property states like Alaska who as a general rule cannot own assets as community property.

Overview of HB 196

This bill will allow married Alaskans to execute a written agreement to recharacterize their assets as community property. Unlike other

states which have a community property form of ownership for married persons, Alaskans would have their assets treated as community property only to the extent they execute a written agreement and elect into a community property system under Alaska law. In contrast, community property states mandate the married couple's assets to be community property unless the spouses elect out.

The bill not only allows Alaskan couples to enter into an agreement to have some or all of their assets treated as community property, but it also permits married persons who do not reside in Alaska to have their assets treated as community property under Alaska law by executing an Alaskan Community Property Trust. Such a trust must have an Alaskan trustee. It is anticipated that many married persons who reside outside of Alaska will wish to label a portion, or all, of their assets as community property because they believe that it is a more appropriate method of owning their assets and they wish to obtain the income tax advantages which are available to community property upon the death of the first spouse.

Some believe that community property represents a more fair and rational system of sharing the ownership of property during marriage because it essentially treats the marriage like a partnership; as assets are earned during the marriage, they are treated as owned 50/50 by the two partners (the husband and wife). Others believe community property is not a fair or rational system. Regardless of one's beliefs, it seems appropriate to allow Alaskans, and residents of other states, the freedom to choose the arrangement that is most appropriate for them.

It should be emphasized that no asset would be labeled as community property under the bill. Rather, the bill merely authorizes married persons to execute a written agreement or trust in which they expressly elect to treat some or all of their assets as community property under Alaska law.

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Juneau, Alaska 99801-2105

MEMORANDUM

March 25, 1997

SUBJECT: Sectional Summary of HB 199, the "community property" bill (Work Order No. 20-LS0522AE)

TO: Representative Joe Ryan
Attn: David Pree

FROM:  Theresa Bannister
Legislative Counsel

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

Section 1. States that community property under the new chapter (AS 34.75) is not included in the augmented estate. "Augmented estate" is a term used in the state's Uniform Probate Code to refer to the pot of property from which a surviving spouse can elect to take a one-third share; the property in the estate is "augmented" by adding to it certain other property transferred to others by the decedent.

Section 2. Makes an amendment to AS 25.15.010 to show that its provisions are subject to the new community property chapter (AS 34.75).

Section 3. Makes an amendment to AS 25.15.020 to show that the section is subject to the new community property chapter (AS 34.75).

Section 4. Makes an amendment to AS 25.15.050 to show that the provisions of the section are subject to the new community property chapter (AS 34.75).

Section 5. Makes an amendment to AS 25.15.060 to show that the provisions of the section are subject to the new community property chapter (AS 34.75).

Section 6. Adds a subsection to AS 25.24.160 (dealing with court judgments in divorce actions). The new subsection directs the court to distribute the parties' property under AS 34.75 according to their community property agreement or community property trust

Representative Joe Ryan

March 25, 1997

Page 2

under AS 34.75, if they have one. Directs the court to award one-half of the value of the community property to each party, unless the parties have agreed otherwise in the community property agreement or trust.

Section 7. Amends AS 25.24.200(a) (relating to dissolution of marriages) to include community property under AS 34.75.

Section 8. Amends AS 25.24.310(b) (relating to the payment of attorney fees, costs, and other disbursements in a child custody, support, and visitation matters) to include community property in the property that can be used to pay for a minor's legal representation or for other services.

Section 9. Amends AS 34.15.110 to make its provisions subject to the section in the new community property chapter, AS 34.75, that addresses how spouses can hold property. (The citation should be corrected to read "AS 34.75.110" in both places.)

Section 10. makes an amendment to AS 34.15.130. States that the conclusion that persons are tenants in common if they have an undivided interest in real property is subject to the provisions of the section in the new chapter, AS 34.75, that addresses how spouses can hold property. (The citation should be corrected to read "AS 34.75.110.")

Section 11. Adds a new chapter related to the property of spouses.

AS 34.75.010. Requires spouses to act in good faith towards each other if the matter involves community property. Prohibits changing this obligation in a community property agreement or trust.

AS 34.75.020. Allows a community property agreement or trust to change this chapter's effect, except for certain listed provisions.

AS 34.75.030. Limits the classification of property as community property to what the spouses say in a community property agreement or trust, except where this chapter classifies property otherwise.

Establishes a presumption that the spouses' property acquired during marriage and after the determination date (see AS 34.75.900 for definition) is community property, if the spouses' community property agreement says that all their property acquired during marriage is community property.

Gives a spouse a one-half interest in community property.

States that if the community property agreement states that all property acquired during marriage is community property, the income on the property is community property.

Representative Joe Ryan

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States that even if community property is transferred to a trust, it still remains community property.

States that property is not community property if it is owned by a spouse at the time of the marriage but before the determination date (see AS 34.75.900 for definition). This occurs even if the spouses' community property agreement provides that all property acquired during marriage is community property. However, the community property agreement may expressly provide differently.

States that certain listed property is individual property if it is owned by a spouse at the time of the marriage but before the determination date (see AS 34.75.900 for definition). This occurs even if the spouses' community property agreement provides that all property acquired during marriage is community property. However, the community property agreement may expressly provide differently.

States that appreciation and income of property transferred to a community property trust are community property if the trust says they are.

States that community property held in a trust remains community property when distributed to the spouses.

States that this chapter doesn't change property classification and ownership rights for property acquired before or during marriage, except as otherwise provided in this chapter.

AS 34.75.040. Identifies what property one spouse may manage and control alone.

Requires spouses to act together when managing and controlling community property that is held in both of their names (unless held in the alternative--"or").

States that the trust terms determine the management and control rights of community property transferred to a trust.

States that management and control rights for community property don't determine the classification of the property and don't rebut the presumption in AS 34.75.030(b).

States that management and control rights to community property do not permit gifts, except as provided in AS 34.75.050.

States that management and control rights are not affected by this chapter if the property is acquired before the determination date (see AS 34.75.900 for definition). Makes an exception to the extent provided otherwise in a community property agreement or trust.

Representative Joe Ryan

March 25, 1997

Page 4

Allows a court to appoint a conservator or guardian to handle the management and control rights of a disabled spouse.

AS 34.75.050. Prohibits one spouse acting alone from giving to a third party community property that the spouse manages and that is over \$1,000 (in one calendar year), or is a larger amount unless the amount is reasonable considering the economic conditions of the spouses.

Subjects a gift not allowed under (a) of this section to a court action allowed under (d) unless both spouses act jointly or the gift is ratified by the other spouse.

Considers that the spouses have acted together when one spouse makes a gift, if either of certain U.S. gift tax activities occur.

Allows one spouse to bring a court action against a spouse making a gift that doesn't satisfy (a), or against the recipient of the gift, or both. Requires the action to be begun within a certain time. Characterizes a recovery during marriage as community property. Limits a recovery after dissolution or death of one spouse to one-half of the value of the gift and makes this recovery individual property.

AS 34.75.060. Allows spouses living in this state to classify all or part of their property as community property by using a community property agreement.

Allows spouses, even if not living in this state, to classify all or part of their property as community property by transferring the property to a community property trust that states that the property is community property.

AS 34.75.070. Establishes a presumption that an obligation incurred by a spouse during marriage is incurred in the interest of the marriage or family.

Restricts the satisfaction of a duty of support owed to the other spouse or child of the marriage to community property and the spouses's non-community property.

Restricts the satisfaction of an obligation incurred by a spouse in the interest of the marriage or family to community property and the non-community property of the spouse.

Restricts the satisfaction of certain obligations attributable to obligations, acts, or omissions before marriage to the non-community property of the spouse and certain community property.

Restricts the satisfaction of certain other obligation incurred by a spouse during marriage to the spouse's non-community property and the spouse's interest in community property.

Representative Joe Ryan

March 25, 1997

Page 5

States that this chapter doesn't change the spouses' relationship with their creditors with regard to property or obligations existing before the determination date (see AS 34.75.900 for definition).

Makes binding on a creditor a writing signed by the creditor that reduces the creditor's rights under this section.

States that creditor rights are not affected by a community property agreement or trust, unless the creditor knows about the effect when the obligation to the creditor is incurred. Prohibits changing the effect of this subsection by a community property agreement or trust.

States that this chapter doesn't affect a property exemption available under another law.

Sec. 34.75.080. Protects persons who are bona fide purchasers (in general, good faith purchasers for value without notice of a problem or adverse condition) in their transactions with spouses. States that notice of a community property agreement or trust, a marriage, or a marriage termination doesn't change the purchaser's status as a bona fide purchaser. Provides that certain community property purchased from one spouse by a bona fide purchaser is purchased free of any claim of the other spouse; prohibits changing this provision in a community property agreement or trust.

Sec. 34.75.090. Establishes certain requirements for and features of community property agreements. An agreement must be in writing, be signed, and make some property community property. Consideration (each spouse receiving something, usually money) is not needed for the agreement to be effective.

States that the agreement may not adversely affect a child's right to support.

Identifies various items that the spouses may agree on in the agreement.

Provides for the amendment or revocation of the agreement.

Allows persons who are not yet married to enter into an agreement, but prevents the agreement from becoming effective until they are married.

Establishes when community property agreements are unenforceable.

Provides that a court is the entity that determines whether an agreement is unconscionable (grossly unfair to one spouse).

Sec. 34.75.100. Establishes certain requirements for and features of community property trusts. To be a trust, it must be signed and state that some of the property transferred to the trust is community property, and one trustee must meet the qualifications given under the

Representative Joe Ryan

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Page 6

section. Consideration (each spouse receiving something, usually money) is not needed for the trust to be effective.

States that the trust may not adversely affect a child's right to support.

Lists various items that the spouses may agree on in the trust.

Provides for the amendment or revocation of the agreement.

Establishes when community property trusts are unenforceable.

Provides that a court is the entity that determines whether a trust is unconscionable (grossly unfair to one spouse).

Requires the trustee to maintain certain records.

Sec. 34.75.110. Establishes how spouses may hold their property. Includes some new methods, e.g. holding separately or together as community property or holding as "survivorship community property" (where surviving spouse receives the other spouse's community property interest automatically). Provides for holding property as individual property.

Sec. 34.75.120. Prevents the issuer of an insurance policy from being liable because it makes payments or takes other actions on the policy, unless the issuer actually knew that the payments or actions were inconsistent with a community property agreement or trust or certain adverse claims.

Establishes some rules for how to classify the ownership of life insurance policies and proceeds.

States that this section does not affect a creditor's interest in a policy (or its proceeds) that is transferred or made payable to the creditor as security for an obligation.

States that this section does not affect the ownership interest or proceeds of a policy unless a spouse is listed as an owner and community property is used to pay a premium on the policy.

Sec. 34.75.130. Provides that other property becomes community property if it is mixed with community property and if it can't be traced (or except as provided in AS 34.75.110).

Provides that under certain conditions the individual property of one spouse is changed to community property if the other spouse contributes effort, skill, activity, etc. to the separate property.

Representative Joe Ryan

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Page 7

Sec. 34.75.140. Gives a spouse a claim against the other spouse for failing to act in good faith, if the failure damages the claimant's community property interest.

Allows a court to order an accounting of the spouses' property and obligations. Allows a court to make certain listed determinations about the spouses' property.

Allows a court to order the addition of a spouse's name to the title of community property held in the name of only one spouse, except for certain listed property.

Requires a spouse to bring a court action against the other spouse under (a) within three years.

Sec. 34.75.150. After the death of a spouse living in this state and under certain circumstances, treats as community property the property that can be traced to certain recoveries of the decedent for a loss of earning capacity.

Sec. 34.75.160. Directs that this chapter is to be applied and construed uniformly with the laws on this same subject in other states and to be applied and construed to achieve its general purpose.

Sec. 34.75.900. Defines the terms in the chapter.

Sec. 34.75.995. Gives the chapter the title "Alaska Community Property Act."

Section 12. Describes how a section in the new chapter changes an Alaska Rule of Evidence.

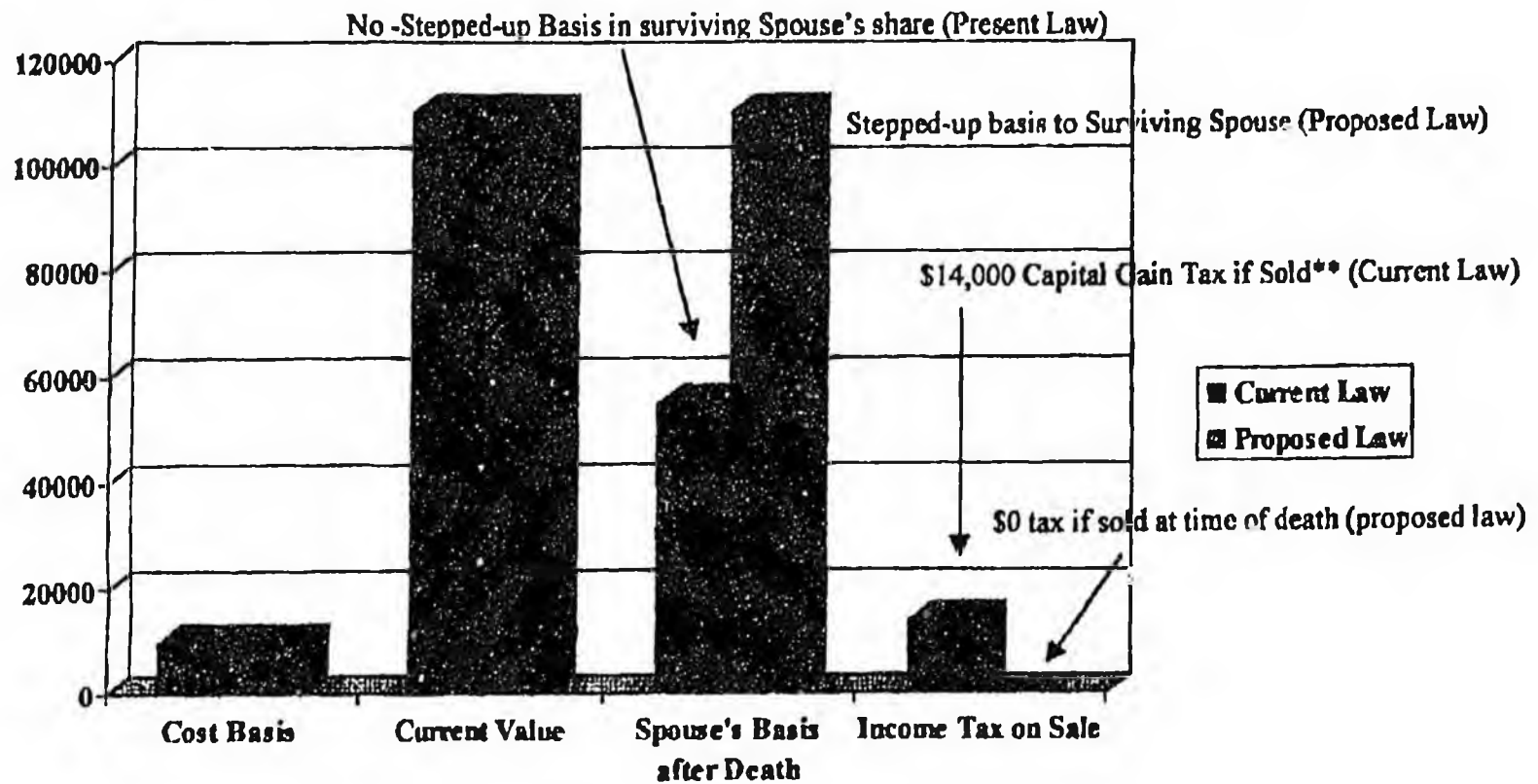
Section 13. States that the provision in this bill that amends court rules only takes effect if the section describing how it amends the rule receives the necessary super-majority vote.

Section 14. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:jdr
97-218.jdr

Community Property (Proposed) Tax Effect at Death of Spouse



** Assume sale of property at time of death



HUGHES THORSNESS POWELL
HUDDLESTON & BAUMAN LLC

EST. 1977

Facsimile Cover Sheet

To: Joe Ryan

Company:

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From: Robert L. Manley

Company: Hughes Thorsness Powell

Huddleston & Bauman LLC

Phone: 907/263-8251

Fax: 907/263-8320

Date: April 14, 1997

Re: IRC Sec. 1014 & HB 199

Your Reference No.

Client/Matter: 8-18

**Pages including this
cover page:** 4

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2. *Community Property -- Step-up In Basis for Surviving Spouse's One-half Share of Community Property*

Both the decedent's and the surviving spouse's half interests in community property receive a new basis, if at least half of the community property was includible in the decedent's gross estate.¹⁴²

¹⁴² Section 1014(b)(6); Regs. Section 1.1014-2(a)(5). For special rules applicable to the surviving spouse's interest in community property of a decedent dying after Oct. 21, 1942, and before 1948, see Regs. Section 1.1014-2(c)(2).

Only community property qualifies for this step-up in basis for both halves. Other forms of joint ownership do not qualify¹⁴³ unless, under applicable local law, they are regarded as community property as well.¹⁴⁴ Some courts have recognized that if title to realty is held in joint tenancy or tenancy in common, but the spouses intend to hold the realty as community property, both halves of the property qualify for a new basis.¹⁴⁵

¹⁴³ Rev. Rul. 68-80, 1968-1 C.B. 348 (no new basis step-up on wife's interest in Virginia realty held in co-tenancy, despite community property source of purchase money); *Murphy v. Comr.*, 342 F.2d 356 (9th Cir. 1965) (no basis step-up for surviving spouse's interest in California realty originally held as community property, converted before death to co-tenancy).

¹⁴⁴ See Rev. Rul. 87-98, 1987-2 C.B. 206; WASH. REV. CODE Section 64.28.040 (interests held jointly by husband and wife presumed to be community property).

¹⁴⁵ *McCollum v. U.S.*, 58-2 USTC Para.9957 (N.D. Okla. 1958) (where spouses filed election to come under Oklahoma community property law, then took title to realty in joint tenancy while intending to hold as community property, both halves qualify for basis step-up); *Bordenave v. U.S.*, 150 F. Supp. 820 (N.D. Cal. 1957) (presumption created by joint tenancy or co-tenancy record title in California realty can be overcome by evidence of mutual intention, understanding or agreement that realty was held as community property; court holding presumption of joint tenancy record title not overcome for purpose of basis step-up in both halves). *McCollum and Bordenave* were decided under the predecessor of Section 1014 - 1939 Code Section 113(a)(5). See also *U.S. v. Pierotti*, 154 F.2d 758 (9th Cir. 1946) (although the deed to California realty stated that said property was held in joint tenancy, nevertheless the court held that evidence was admissible to show that the spouses had an agreement that said property was held as community property and that the agreement prevailed over the form of the deed); and Rev. Rul. 87-98, 1987-2 C.B. 206 (where spouses bought property with community funds, took title as joint tenants with right of survivorship, and declared, in joint wills, that the property was community property, each half interest received step-up in basis since property was considered community property under state law).

The step-up in basis produces immediate tax results in the case of oil and gas property owned as community property. In Rev. Rul. 92-37,¹⁴⁶ a surviving spouse filed a joint return with the executor of her late husband covering the short tax year ending with her husband's death and her normal tax year. The Service ruled that she was entitled to use the date-of-death value in calculating her depletion deduction in respect of their oil and gas properties.

¹⁴⁶ 92-1 C.B. 195.

The surviving spouse's interest in U.S. Treasury Bonds, which can be redeemed at par in payment of federal estate tax ("flower bonds"), held as community property receives a new basis equal to the fair market value of the bonds at the date of death or alternate valuation dates, not their par value.¹⁴⁷ Both halves of partnership interests held as community property qualify for the new basis if the Section 754 election has been made.¹⁴⁸

¹⁴⁷ *Neuhoff v. Comr.*, 75 T.C. 36 (1980), aff'd, 669 F.2d 291 (5th Cir. 1982) (Texas); Rev. Rul. 76-68, 1976-1 C.B. 216.

Sec. 1014. Basis Of Property Acquired From A Decedent



(a) In General

Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be--

- (1) the fair market value of the property at the date of the decedent's death, or
- (2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections, or
- (3) in the case of an election under section 2032A, its value determined under such section.

(b) Property Acquired From The Decedent

For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

- (1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;
- (2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;
- (3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust,
- (4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;
- (5) In the case of decedents dying after August 26, 1937, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

→ (6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

(8) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of such interest was required to be included in determining the value of decedent's gross estate under section 811 of the Internal Revenue Code of 1939;

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A) annuities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(10) Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of paragraph (9).

(c) Property Representing Income In Respect Of A Decedent

This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) Special Rule With Respect To DISC Stock

If stock owned by a decedent in a DISC or former DISC (as defined in section 992(a))

465-2040

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Joan M. Clover <i>Yes</i>	Anchorage	Member	1997	8211105
Sharon L. Gleason <i>Yes</i>	Anchorage	Member	1997	8411116
Lynda A. Limon <i>Yes</i>	Anchorage	Member	1997	9311083
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Patrick G. Ross	Anchorage			8606030
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Wm. Grant Stewart	Wasilla			7910141

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Kathleen A. Weeks	Anchorage			8306070
Diane L. Wendlandt	Anchorage			9011121
Vanessa H. White	Anchorage			8811189
Mary-Ellen Zalewski	Anchorage			8706059
David L. Zwink	Palmer			8606072

HB

203

FISCAL NOTE

No. 1
 Bill Version: CSHB 203(L&C)
 (H) Publish Date: 5/6/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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						
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

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 203

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 203

Revision Date: _____
 Title: Actions for unlawful trade practices

 Sponsor: Rep. Dyson
 Requestor: _____

Department: Commerce and Economic Development
 BRU: Banking, Securities & Corporations
 Component: Banking, Securities & Corporations

COMPONENT SERIAL NO. 1233

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

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

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 General Fund						
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 (FY 97) cost: \$ _____

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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)

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2521
 Date: 4-21-97
 Date: 4-21-97

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Official Business

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H. Labor & Commerce

DATE: 4/23/97

SIGN-IN

Subject of meeting:

HB 203-Unlawful Trade Practices

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DO YOU WANT TO TESTIFY?

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0-LS0553L
Bannister
4/24/97

CS FOR HOUSE BILL NO. 203()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DYSON, Croft

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. AS 45.50.473(c) is amended to read:

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

8 * Sec. 2. AS 45.50.531(a) is amended to read:

9 (a) A person who suffers an ascertainable loss of money or property, or who
10 is otherwise aggrieved, as a result of another person's act or practice declared
11 unlawful by AS 45.50.471 may bring a civil action to recover for each unlawful act
12 or practice three times the actual damages or \$500 [\$200], whichever is greater.
13 [THE COURT MAY, IN CASES OF WILFUL VIOLATION, AWARD UP TO
14 THREE TIMES THE ACTUAL DAMAGES SUSTAINED.] The court may provide
15 other relief it considers necessary and proper. Nothing in this subsection prevents

1 a person who brings an action under this subsection from pursuing other
2 remedies available under other law, including common law.

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

4 (f) A person may not commence an action under this section more than two
5 years after the person discovers or reasonably should have discovered that the cause
6 of action arose [THE LOSS RESULTED] from an act or practice declared unlawful
7 by AS 45.50.471.

8 * Sec. 4. AS 45.50 is amended by adding new sections to read:

9 **Sec. 45.50.535. Private injunctive relief.** (a) Subject to (b) of this section
10 and in addition to any right to bring an action under AS 45.50.531 or other law, any
11 person may bring an action to obtain an injunction prohibiting a seller or lessor from
12 continuing to engage in an act or practice declared unlawful under AS 45.50.471.

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

14 (1) the person first provides written notice to the seller or lessor who
15 engaged in the unlawful act or practice that the person will seek an injunction against
16 the seller or lessor unless the seller or lessor fails to promptly stop the unlawful act
17 or practice; and

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

20 (c) It is not necessary that a person suffer damages or otherwise be injured by
21 the unlawful act or practice in order to bring an action under (a) of this section.

22 **Sec. 45.50.537. Attorney fees, costs, and damages.** (a) Notwithstanding
23 AS 09.60.015 and except as provided otherwise in this section, in an action brought
24 under AS 45.50.471 - 45.50.561, a prevailing plaintiff, whether the state or a private
25 plaintiff, shall be awarded costs as provided by court rule and full reasonable attorney
26 fees at the prevailing reasonable rate, and a private plaintiff, who is not the prevailing
27 party, may not be required to pay attorney fees or costs to the defendant unless the
28 court determines that the cause of action brought by the plaintiff is frivolous.

29 (b) In an action brought under AS 45.50.471 - 45.50.561, the court shall award
30 the defendant costs as provided by court rule and full reasonable attorney fees at the
31 prevailing reasonable rate if the action is found to be frivolous.

1 (c) In an action brought under AS 45.50.471 - 45.50.561, if the court finds that
2 the action was brought by the plaintiff to obtain a competitive business advantage and
3 the plaintiff is not the prevailing party, the court shall award the defendant costs as
4 provided by court rule, full reasonable attorney fees at the prevailing reasonable rate,
5 and any damages suffered by the defendant as a result of the plaintiff's allegations.

6 * Sec. 5. AS 45.50.531(g) is repealed.

AMENDMENT

L. Hudson

05-02-97 A09:06 1

OFFERED IN THE HOUSE

TO: HB 203

- 1 Page 1, lines 9 - 10:
- 2 Delete ". or who is otherwise aggrieved."
- 3 Page 2, lines ~~3~~⁴³ - 7:
- 4 Delete all material.
- 5 Renumber the following bill sections accordingly.

*Hudson
no
no objection*



Alaska State Legislature

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FAX (907) 694-1015

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

Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

HB 203

Sponsor Statement

Consumer Protection from Unlawful Trade Practices

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

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

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

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

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

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

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

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

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

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

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

LEGAL SERVICES

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

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

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

MEMORANDUM

March 25, 1997

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

TO: Representative Fred Dyson
Attn: Pat Harman

FROM: *JB*
Theresa Bannister
Legislative Counsel

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

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

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

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

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

Representative Fred Dyson

March 25, 1997

Page 2

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

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

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

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

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

Section 5. Repeals AS 45.50.531(g). This is the current subsection on attorney fees and costs for private actions under AS 45.50.531.

If I may be of further assistance, please advise.

TLB:jdr
97-219.jdr

APR 18 1997

Alaska State Legislature



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

Representative Eugene Kubina
House Minority Leader

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

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

MEMORANDUM

TO: Representative Norm Rokeberg, Chair
Labor and Commerce Committee

FR: Representative Gene Kubina *Gene*

RE: HB 49/HB 203

DATE: April 8, 1997

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

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



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

Alaska Commission on Aging

April 4, 1997

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

Dear Representative Kubina:

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

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

Sincerely,

A handwritten signature in cursive script that reads "Donald M. Hoover".

Don Hoover
Chair

DH/nl
Attachment

MAR 11 1997

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION
DIVISION OF SENIOR SERVICES

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

Alaska Commission on Aging
Long Term Care Ombudsman

Tony Knowles, Governor

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

March 10, 1997

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

Dear Representative Rokeburg:

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

Sincerely,



Jane Pollard Demmert
Executive Director

JD/nl
Attachment



Alaska Commission on Aging

RESOLUTION 97-5

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

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


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

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

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

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

Adopted this 4th day of March, 1997.



Donald Hoover, Chair



Alaska State Legislature

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FAX (907) 694-1015

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Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

APR 09 1997

MEMORANDUM

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

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

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

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

Please find attached:

- Sponsor Statement
- Sectional Analysis
- Fiscal Note

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

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

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

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

ALASKA STATE LEGISLATURE
House of Representatives

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SESSION:
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PHONE: (907) 465-4954
FAX: (907) 465-2040

Labor and Commerce Committee

MEMORANDUM

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

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

DATE: April 23, 1997

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

HB 203

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 13, 1997

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

Re: Consumer Protection

Dear Representative Croft:

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

Consumer Protection Staffing and Budget Constraints

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

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

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

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

1. Department of Commerce & Economic Development
 - a. Division of Occupational Licensing
 - b. Alaska Public Utilities Commission (APUC)
 - c. Division of Insurance
 - d. Division of Investments
 - e. Division of Banking, Securities & Corporations
 - f. Division of Measurement Standards
 - g. Other agencies within the Department of Commerce & Economic Development.
2. Department of Education
 - a. Professional Teaching Practices Commission
 - b. Commission on Postsecondary Education
3. Department of Labor
 - a. Employment Security Division
4. Department of Natural Resources
 - a. Division of Agriculture / Agricultural Revolving Loan Fund (ARLF)
5. Department of Revenue
 - a. Alaska Housing Finance Corporation (AHFC)
 - b. Alcoholic Beverage Control Board (ABC)

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

How We Stretch Our Enforcement Dollars

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

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

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

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

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

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

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

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

Recent Successful Enforcement Actions

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

The Honorable Eric Croft
Re: Consumer Protection

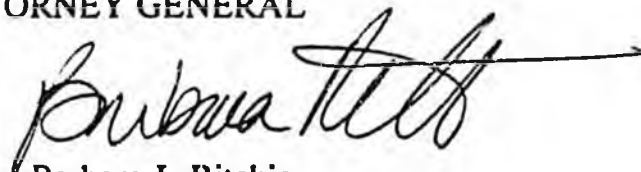
April 13, 1997
Page 8

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

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

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'Barbara J. Ritchie', with a long horizontal flourish extending to the right.

BY: Barbara J. Ritchie
Deputy Attorney General

BJR:css

cc: Daveed Schwartz
Pat Pourchot
Chrystal Smith
Deb Behr

Legislative Research Services

APR 23 1997

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



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Juneau, Alaska 99801-2196
Phone: (907) 465-3991
Fax: (907) 463-3351

April 22, 1997

MEMORANDUM

TO: Representative Eric Croft

FROM: Gina Spartz 
Legislative Analyst

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

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

Better Business Bureaus in Alaska

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

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

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

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

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

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

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
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APR 23 1997

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Division of Legal & Research Services



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April 22, 1997

MEMORANDUM

TO: Representative Eric Croft

FROM: Gina Spartz 
Legislative Analyst

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

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

Better Business Bureaus in Alaska

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

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

Representative Croft
April 22, 1997
Page 2

Schaad said that her office handles roughly 600 consumer complaints per month and that statewide the BBB offices handle over 3,000 consumer complaints per month.

Consumer Protection Services in the Department of Law

The attached chart and table illustrate the history of state funding for consumer protection services from FY86 through FY97. The information for the table and chart was provided by the Department of Law, Division of Administrative Services.

The Consumer Protection Division in the Department of Law was established in 1973 and functioned as its own division through most of the 1970s and early 1980s. In the mid-1980s, the consumer protection functions and funding were shared with the DOL's Antitrust Section. In FY93, the two divisions were combined into the Fair Business Practices Division. In FY97, the Fair Business Practices Division was subsumed under the General Legal Services component of the budget.¹

Daveed Schwartz, one of two full-time attorneys working on consumer fraud within the Fair Business Practices Division, said that his office does not take consumer complaints. Under an information sharing agreement, the BBB refers consumer fraud cases and provides information on scams to the DOL. The department then litigates the most egregious consumer fraud cases. Mr. Schwartz said his office litigates cases involving many consumers involved in a scam.

We have attached a previous research memorandum which contains a number of articles and editorials concerning consumer protection in Alaska.² We hope this information is useful to you. If you have any further questions please don't hesitate to call this office.

Attachment

¹The funding listed on the attached table and chart for FY97 is DOL's estimated budget projection since there was no Fair Business Practices component within the Department of Law's FY97 budget.

²Legislative Research Agency Memorandum 96.045, "Consumer Protection Services in Alaska," is included as Attachment A.

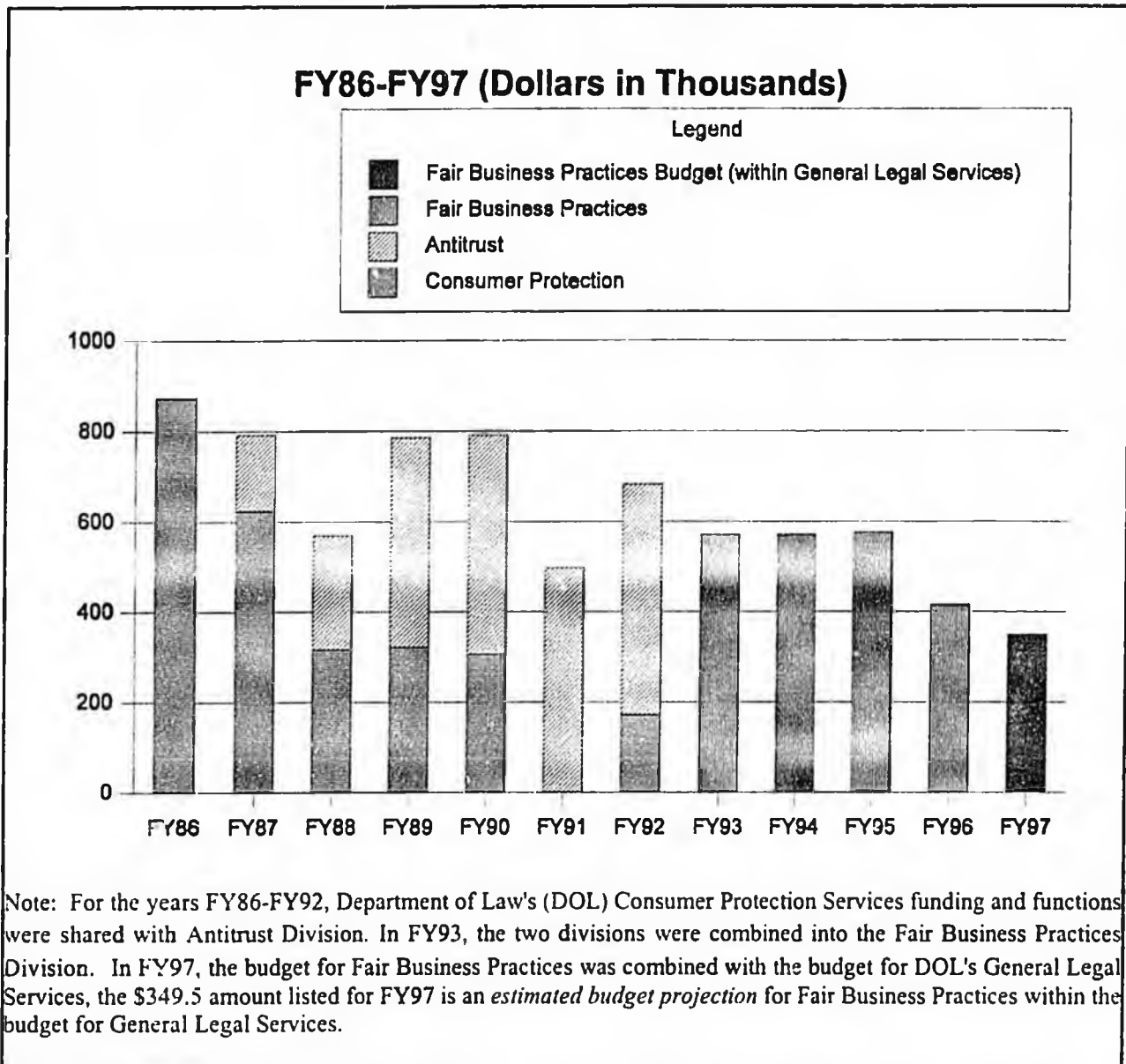
Table 1
Authorized Appropriations for Consumer Protection,
Alaska Department of Law (FY86-FY97)
(dollars in thousands)

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

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

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

Figure 1
Authorized Appropriations for Consumer Protection,
Alaska Department of Law



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

APR-23-97 WED 11:08
4-23-1997 12:07PM

KENAI LIO
FROM

FAX NO. 2833075

P.01
P.1

APR 22 1997
12:10 p.m.

FAX COVER SHEET

2 Pages (includes cover sheet)

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

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

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

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

DATE: April 23, 1997

WRITTEN TESTIMONY HB 203

APR 22 1997
12:10pm

TO: The House Labor & Commerce Committee
FROM: Thomas and Patricia Vincent
P.O. Box 1485
Kenai, Alaska 996111
(907) 283-3378
DATE: April 22, 1997

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

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

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

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

Patricia A. Vincent
4/23/97



AKPIRG

ALASKA PUBLIC INTEREST RESEARCH GROUP

Post Office Box 101093 / Anchorage, Alaska 99510-1093

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

Support HB 203

To members of House Labor and Commerce Committee

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

Anchorage, Alaska 99501

APR 22 1997

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



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SECTION 1: Purpose of Act

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

SECTION 2: Short Title

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

SECTION 3; Definitions:

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

- (1) "Consumer and/or Purchaser" means a person who is, or may be required to pay for goods or services offered by a telemarketer through telemarketing.
- (2) "Goods or Services" means any real property or any tangible or intangible personal property or services of any kind provided or offered to a person.
- (3) "Investment Opportunity" means anything tangible or intangible, that is offered, for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit or appreciation.
- (4) "Material Aspect or Element" means any factor likely to affect a person's choice of, or conduct regarding, goods or services, and includes currency values and comparative expressions of value including, but not limited to, percentages or multiples.
- (5) "Prize" means anything offered or purportedly offered and given or purportedly given to a person by chance.
- (6) "Prize Promotion" means a sweepstakes or other game of chance or an oral or written, express or implied representation that a person has won, has been selected to receive or is eligible to receive a prize or purported prize.
- (7) "Seller" means any person, who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.
- (8) "Solicitation" - means a written or oral notification or advertisement that meets any one of the following terms:



Peggy Mulligan
Capital City Task Force Member

West Region Office
9750 Third Avenue N.E.,
Suite 400
Seattle, WA 98115
(206) 526-7918
(206) 523-8138 Fax

Box 240335
Douglas, AK 99824-0335
(907) 364-3144

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

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

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

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

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

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

20
21 **SECTION 4: Registration of Telemarketers**

22
23 (1) General Rule: No person shall act as a seller or telemarketer without first
24 having registered with the {Attorney General or Department of Commerce}.

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

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

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

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

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

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

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

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

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

7 (a) failure to register;

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

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

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

12 (e) misrepresenting that a seller is registered.

13
14 **SECTION 5; Record Keeping Requirements**

15
16 (1) Any telemarketer shall keep for a period of 24 months from the date the
17 record is produced, records of all financial transactions, written notices,
18 disclosures and acknowledgments, in the form, manner, format or place as
19 they keep such records in the ordinary course of business, including but not
20 limited to:

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

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

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

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

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

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

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

3

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

5

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

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

11

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

13

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

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

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

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

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

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

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

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

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

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

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

35 (i) a description of the prize;

36 (ii) its market value;

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

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

1 (v) the odds of being able to receive the prize and, if the odds are not
2 calculable in advance, the factors and methods used in calculating the odds;
3 (vi) that no purchase or payment of any kind is required to win a
4 prize or to participate in a prize promotion; and

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

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

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

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

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

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

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

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

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

12

13 ***SECTION 8: Prohibited Acts and Practices:***

14

- 15 (1) It is a prohibited telemarketing act or practice and a violation of this Act
-
- 16 for any seller or telemarketer to engage in the following conduct:

17 (a) Advertise or represent that registration as a telemarketer equals an
18 endorsement or approval by any government or governmental agency of the
19 state;20 (b) Assist, support, or provide substantial assistance to any telemarketer
21 when the seller knew or should have known that the telemarketer was
22 engaged in any act or practice under this section or Section 7;23 (c) Request a fee in advance to remove derogatory information from or
24 improve a person's credit history or credit record;25 (d) Request or receive payment in advance from a person, to recover or
26 otherwise aid in the return of money or any other item lost by the consumer in
27 a prior telemarketing transaction;28 (e) Obtain or submit for payment a check, draft or other form of negotiable
29 paper drawn on a person's checking, savings or bankcard account without the
30 consumer's express written authorization; or31 (f) Procure the services of any professional delivery, courier or other pick-
32 up service to obtain immediate receipt and/or possession of a consumer's
33 payment, unless the goods are delivered with the opportunity to inspect
34 before any payment is collected.

- 35 (2) A violation of the provisions of subsection 3 shall constitute a {class 1
-
- 36 misdemeanor.}

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

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

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

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

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

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

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

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

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

19

20 **SECTION 10: Civil Remedies;**

21

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

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

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

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

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

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38

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April 23, 1997

House Labor and Commerce Committee

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

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

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

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

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

There are no civil penalties under Alaska law.

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

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

I appreciate your listening to my comments..

Thank you.