

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 80 / 2

10292 HOUSE JUDICIARY

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Further analysis revealed that juries seldom made awards for certain kinds of non-economic losses. Jury awards for loss of consortium constituted only about 3% of all non-economic damages (1% of all damage awards). Awards for past loss of enjoyment constituted about 6% of the non-economic damage awards (about 2% of all damage awards). Awards for emotional distress constituted about 2% of non-economic damage awards (less than 1% of all damage awards).

2. *Amounts of Damage Awards.* Many jury verdicts were relatively small. In fact, over half (58%) of all superior court jury verdicts that contained a damage award were less than \$50,000 (the jurisdictional amount for superior court). About a third of the superior court verdicts were less than \$10,000. Overall, about 61% of all jury verdicts awarded damages under \$20,000.

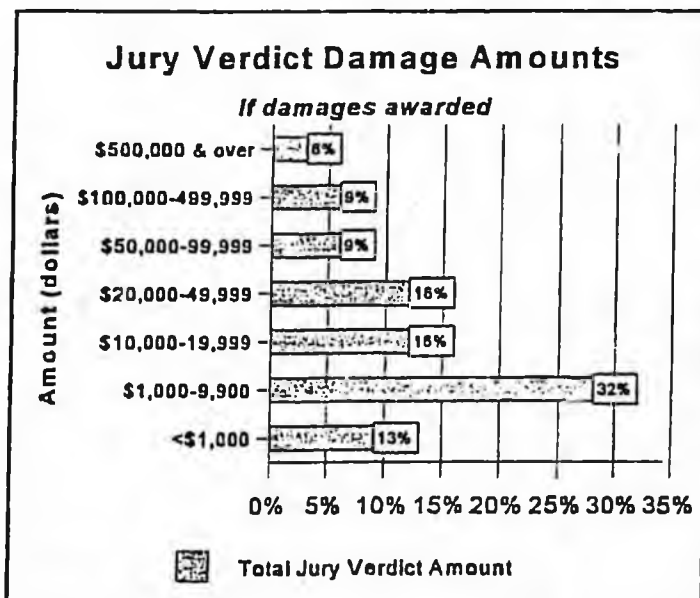


Chart 6
Alaska Judicial Council Jury Verdict Study 1996

A relatively small percentage of damage awards were large. Six percent of all damage awards exceeded \$500,000, and an additional nine percent fell between \$100,000 and \$500,000. Chart 6 summarizes the overall amounts of damage awards for all cases in which damages were awarded.¹³

Some damage amounts varied by location and case type. For example, jury awards in Fairbanks automobile accident cases were somewhat smaller than those in Anchorage auto cases.¹⁴

3. *Punitive Damages.* Plaintiffs requested punitive damages 27% of the time; however, juries awarded them in only about 6% of the cases (17 punitive damage awards were made in 15 cases).¹⁵ Table 1 on the next page shows that while a few punitive damage awards were

¹³ The chart does not show whether plaintiffs or defendants received the awards.

¹⁴ One explanation for the discrepancy is that a higher proportion of Fairbanks automobile cases were filed in district rather than superior court.

¹⁵ In one case, the jury made small awards to both the plaintiff and the defendant. In the other case, the jury gave the plaintiff one punitive damage award on each of two separate claims.

very large, about half were under \$60,000. Four of the cases in which juries made punitive awards involved intentional torts (for example, tortious interference with business contracts). Juries also awarded punitive damages in two employment cases, two non-auto personal injury cases, one property damage case, one insurance bad faith claim and one automobile accident involving a drunken driver. The chart does not show whether the awards were paid, as that information is not available from court records.

Punitive Damage Awards: Anchorage, Bethel, Fairbanks, Juneau, Nome 1985-1995				
Case Type	Jury Compensatory Award (does not include fault allocation)	Jury Punitive Award	Appeal?	Appeal Outcome
Intentional Tort	\$3,025	\$250 and \$100 (one to each)	No	
Property	\$8,338	\$3,000	No	
Intentional Tort	\$4,387	\$5,000	No	
Insurance Bad Faith	\$1,001,087	\$10,000	Yes	Punitive damages reversed
Automobile	\$575	\$20,000	No	
Intentional Tort	\$87,934	\$20,000	No	
Intentional Tort	\$17,000	\$60,000	No	
Employment	\$112,273	\$132,000	Yes	Settled
General Injury	\$692,282	\$150,000	Yes	Settled
Personal Injury	\$738,765	\$150,000	Yes	Settled
Intentional Tort	Pl. won \$17,300 against def. 1. Def. 2 won \$23,500 against pl.	\$250,000	No	
Product Liability	\$3,004,500	\$500,000	No	
Employment/ defamation	\$303,604	\$500,000	No	
Insurance Bad Faith (automobile)	\$18,008	\$1,200,000	Yes	Punitive damages reversed
Intentional Tort (business dispute)	\$9,473,770	\$25,300,000	Yes	Settled

Table 1

Alaska Judicial Council Jury Verdict Study 1996

F. Costs and Fees

The study collected limited information about costs and attorney's fees. Because cases sometimes settled and were dismissed before judgment or before entry of costs and attorney's fees, some cases included in the study lacked cost and fee awards. Normally, judges award costs and attorney's fees to prevailing parties after trial based on guidelines set out in court rules and statutes.

1. *Costs.* The awarding of costs is governed by Alaska Rule of Civil Procedure 79. The party entitled to costs must request them within ten days or forfeit the right to recover them. Items allowed to the prevailing party as costs include the expense of taking depositions and producing exhibits, the expense of service, filing fees, fees for transcripts, computerized research, and other expenses necessarily incurred.

The Council found a cost award in about half (54%) of the cases studied. About 16% of all cost awards were \$1,000 or less. About 42% of cost awards fell between \$1,000 and \$5,000, and another 24% fell between \$10,000 and \$58,000. No cost awards exceeded \$58,000.

2. *Attorney's Fees.* The awarding of attorney's fees is governed by Alaska Rule of Civil Procedure 82 and Alaska Statute § 9.60.010. The statute authorizes the supreme court to determine what attorney's fees, if any, may be awarded to a prevailing party in a civil action. The court rule sets out a schedule for calculating fee awards based on whether the plaintiff or the defendant prevailed. The prevailing party is not entitled to be reimbursed for all its attorney's fees, except in extraordinary circumstances. Thus, the fee award amounts reported below probably represent only a fraction of the amounts spent by parties on their attorneys.¹⁶

The Judicial Council found an attorneys' fee award in about 64% of the cases in this study.¹⁷ The largest group of fee awards fell between \$15,000 and \$50,000 (about 29% of fee awards). About 23% of fee awards fell between \$4,000 and \$10,000. Nineteen percent of the fee awards were under \$4,000, and 11% fell between \$10,000 and \$15,000. A few fee awards were large: 17% fell between \$50,000 and \$166,000, and the largest award exceeded \$166,199.

¹⁶ For more information about attorney's fee awards in state and federal civil cases in Anchorage, see the Judicial Council's report: ALASKA'S ENGLISH RULE: ATTORNEY'S FEE SHIFTING IN CIVIL CASES (October, 1995) at 91-97.

¹⁷ Fee awards were made to both plaintiffs and defendants.

G. Offers of Judgment

Alaska Civil Rule 68 and Alaska Statute § 09.30.065 control offers of judgment. An unaccepted offer of judgment made pursuant to Rule 68 in effect changes the time and conditions under which a party can become the prevailing party for purposes of attorney's fee awards.

The Council found evidence of offers of judgment in 53 cases (32% of the cases studied); however, readers should be cautious when interpreting this finding. First, the 32% figure under reports the number of offers which appeared in the cases reviewed, because this study did not systematically search each file for offers of judgment. Second, the 32% figure under reports the frequency with which offers of judgment were made in jury trial cases, because it includes only those offers that were filed with the court.¹⁸ Of the offers of judgment found in the case files, the smallest was \$1,000 and the largest was \$575,000. About half (53%) of the offers were \$10,000 or less. Ten of the offers (19%) were \$100,000 or more.

H. Appeals

The Judicial Council found evidence of an appeal in only a quarter of all the cases (N=58), although six out of the fifteen cases involving punitive damage awards were appealed. Of the fifty-eight cases in which an appeal was filed, only twenty completed the entire appeal process; the remaining 67% were settled or otherwise dismissed before the supreme court rendered an opinion. Of the twenty supreme court rulings, only four (20%) changed the amount of the jury verdict. Sixteen of the appellate opinions caused no change in the jury verdict. Thus, with the exception of punitive damage cases, only a relatively small portion of cases are appealed, and only a very few jury verdicts are changed as the result of an appeal.

I. Length of Cases

The study examined three variables related to how long it took to resolve cases. The study measured the amount of time that elapsed from the day the case was filed until it was closed,¹⁹ time elapsed between case filing until trial, and time elapsed between trial and case closing.

¹⁸ Rule 68 does not require an offer of judgment to be filed in the court case file.

¹⁹ The court system administratively closes cases after all proceedings are finished; however, we do not know how much time typically elapses between the end of case activity and the official closing date.

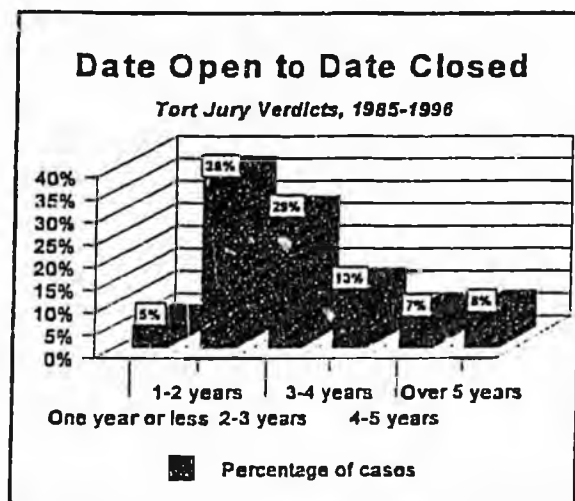


Chart 7
 Alaska Judicial Council Jury Verdict Study 1996

Chart 7 gives the data on total time from filing until closing. The chart shows that although few cases were resolved within a year, many were resolved within two to four years. Thirty-eight percent of the cases were opened and closed within two years, and another 42% of the cases were resolved in two to four years. About 8% of the cases took longer than five years to resolve. Because all of these cases had a jury verdict, they do not represent the typical civil case in Alaska's courts.²⁰

Chart 8 gives the breakdown of the time that elapsed between filing the cases and the trial. About fourteen percent of all the cases went to trial within one year of filing, while another 21% went to trial between one year and eighteen months after filing. Most (85%) of the cases were tried within three years.

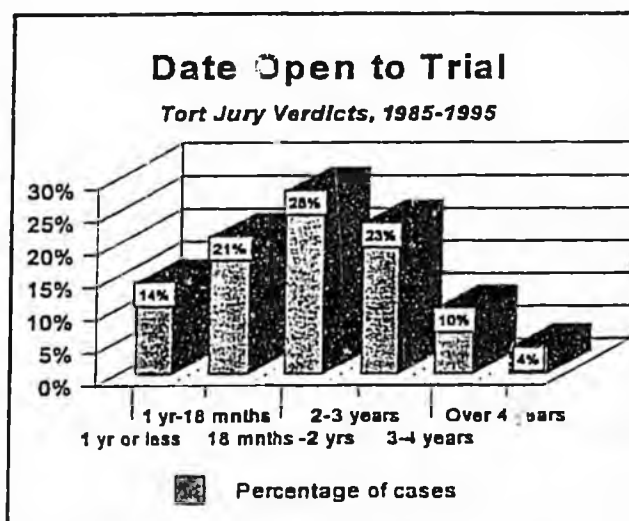


Chart 8
 Alaska Judicial Council Jury Verdict Study 1996

The data showed that many of the cases closed relatively soon after the trial was concluded. Over half (59%) of the cases were closed within four months after trial. Seventy percent were closed by six months after trial, and 83% were closed by a year after the trial. A small percentage of cases (17%) remained open more than a year after trial; these may have been awaiting appellate decisions.

J. Conclusion

This review of 233 jury verdicts in tort cases in Anchorage, Fairbanks, Bethel, Juneau and Nome over the past decade by and large showed that Alaska juries found for plaintiffs and

²⁰ About 4% of tort cases went to trial (including judge-tried cases) in a sample of 1993 Anchorage civil cases. ALASKA JUDICIAL COUNCIL, ALASKA'S ENGLISH RULE, *supra* note 15, at 86.

defendants about equally, although variations existed based on the type of case and the location of the jury. When they made awards, juries tended to give less than the amount requested in the complaint: the bulk of superior court awards were less than \$50,000. In both superior and district court verdicts, damages for economic losses were more common than those for non-economic losses, and awards for future losses of any kind were relatively rare. Juries awarded punitive damages in only 15 of the 233 cases studied, and many of those awards were less than \$60,000.

The study also suggested that parties did not often ask the appellate court to correct mistakes made at trial. Only about a quarter of the jury verdicts were appealed, although six of the fifteen punitive damage cases were appealed. Parties who did appeal seldom waited for the court to render an opinion before settling or otherwise resolving the case. Finally, the data showed that many of these cases were resolved within two to four years of filing.

Alaska Tort Jury Verdicts by Year¹

Trial Date	Total Number of Cases	Number of Cases With Plaintiff Award	Number of Cases With Verdict Over \$1 Million	Average Jury Award in Cases With Plaintiff Award	Average Jury Award Excluding Awards Over \$1 Million in Cases With Plaintiff Award
1988	21	10		\$215,763	\$215,763
1989	26	11		\$61,590	\$61,590
1990	32	12	2	\$272,875	\$68,797
1991	23	14	1	\$2,590,278	\$114,625
1992	22	10	1	\$367,264	\$52,066
1993	33	24	2	\$252,030	\$78,183
1994	39	13		\$186,100	\$186,000
1995	28	14		\$66,738	\$66,738
1996 ²	9	6	1	\$1,177,136	\$32,019
Totals	233	114	7	\$576,642	\$97,309

Alaska Judicial Council 1996

¹ Figures do not reflect any reductions by trial or appellate courts.

² Partial year figures.

Appendix E
1999 Civil Case Data Form

Beginning Aug. 1999!
 Fill out and submit
 this form on the
 Internet at
 www.ajc.state.ak.us

Information About the Resolution of Civil Cases

Send to Judicial Council:
 Not Court

Complete Both Sides
 Confidential

Attorneys/parties must submit the information contained in this form upon the resolution (whether by dismissal, settlement, final judgment, etc.) of most civil cases in Alaska state courts. See AS 09.68.130; Civil Rule 41(a)(3); Appellate Rule 511(e). Complete all the information on both sides of this page. The only excluded civil case types are:

1. divorce and dissolution;
2. adoption, custody, support, visitation, and emancipation of children;
3. children-in-need-of-aid cases under 47.10 or delinquent minors cases under 47.12;
4. domestic violence protective orders under AS 18.66.100-18.66.180;
5. estate, guardianship, and trust cases filed under AS 13;
6. small claims under AS 22.15.040;
7. forcible entry and detainer (FED) cases;
8. administrative appeals; and
9. motor vehicle impound/forfeiture actions under municipal ordinance.

These last three exceptions (7-9) were added in 1999.

The information collected in this form is confidential and will be used only to compile statistics and summaries in a manner that does not allow the identification of particular cases or parties. AS 09.68.130(b).

Trial Court Case Number

Case Name

C I

V.

Case Type (check all applicable)

- | | |
|--|---|
| <input type="radio"/> Medical Malpractice | <input type="radio"/> Property Damage - Auto |
| <input type="radio"/> Legal Malpractice | <input type="radio"/> Property Damage - Other |
| <input type="radio"/> Other Malpractice | <input type="radio"/> Employment |
| <input type="radio"/> Personal Injury - Auto | <input type="radio"/> Debt |
| <input type="radio"/> Personal Injury - Premises | <input type="radio"/> Other Business Dispute |
| <input type="radio"/> Personal Injury - Product | <input type="radio"/> Real Estate |
| <input type="radio"/> Personal Injury - Other | <input type="radio"/> Other Civil |

Date Filed:

____/____/____

Date Disposed:

____/____/____

Total Judgment/Settlement

\$ _____

Relief Sought (check all applicable)

- Compensatory: Actual
- Compensatory: Non-Economic
- Punitive
- Costs/Attorney Fees
- Injunctive Relief

% of Judgment Covered
 by Liability Insurance

_____ %

**Disposition:
 (pick one)**

- Dismissed
- Settlement
- Judgment

**Disposition After?
 (check all applicable)**

- Bench Trial
 - Jury Trial
 - Appeal Filed
- Appeal # _____

Non-Economic Award \$ _____

Punitive Award \$ _____

Declaratory Relief Award? Yes No

Send the completed form to:

Alaska Judicial Council
 1029 West Third Avenue
 Suite 201
 Anchorage, AK 99501

This form may be filled in and submitted on the Council's Internet home page at <http://www.ajc.state.ak.us> beginning in Aug. 1999. Call the Council at (907) 279-2526 for copies of the form. E-mail bill@ajc.state.ak.us with questions.

Each party, including pro se parties, must complete this form. Attorneys submitting the form for more than one party should attach an additional page 2 (this page) with the information about each of the parties' fees and costs.

Party Name/Type (complete for each party filing this form)	The Party's Own Fees and Costs				Attorney Fees/Costs for (payable to) this Party by Another Party; or Against this Party to Another Party		Total money to Client after all Fees/Costs ² Deducted (if any)	
	Fee Type	Percent of Judgment if contingent; hourly rate if hourly ¹	Total (of the party's own) Attorney Fees	Total (of the party's own) Costs	Gross Judgment/ Settlement (for or against this party) including Attorney Fees and Costs	Attorney Fees Awards		Costs Awards
First Name <hr/> Last <input type="radio"/> Plaintiff/Petitioner <input type="radio"/> Defendant/Respondent <input type="radio"/> Other (specify below)	<input type="radio"/> Contingent <input type="radio"/> Hourly <input type="radio"/> Flat Fee <input type="radio"/> State/Local <input type="radio"/> In-house <input type="radio"/> Pro Se <input type="radio"/> Other	_____ % of Judgment Or \$ _____ /hr. If hourly	\$ _____	\$ _____	\$ _____	Not Separable? <input type="radio"/> ³ For \$ _____ Against \$ _____	Not Separable? <input type="radio"/> ³ For \$ _____ Against \$ _____	\$ _____

Did you use Alternative Dispute Resolution?

Mediation
 Arbitration
 Early Neutral Evaluation
 Settlement Conference

Did your case settle as a result of ADR?

Yes No

1 Round all money amounts to the nearest dollar.
 2 "Costs" as used on this form is limited to litigation costs (excluding attorney fees) and does not include such things as medical expenses.
 3 If attorney fees/costs are not separable from the gross judgment (usually the case for settlements), check this box and go to the next item.

Notes

Other Parties	Their Attorney

Signature (of attorney, or party if no attorney)

Printed Name (of attorney, or party if no attorney)

Date Form Submitted

Telephone Number

Appendix F

Revised Civil Case Data Form

You may fill out and submit this form on the Internet at www.aic.state.ak.us or you may call the Council for a copy - (907) 279-2526

Information About the Resolution of Civil Cases

Send to Judicial Council:
1029 West Third Avenue
Suite 201
Anchorage, AK 99501

Please Complete Both Sides

Confidential

E-mail bill@aic.state.ak.us with questions

Attorneys/parties must submit the information contained in this form upon the resolution (whether by dismissal, settlement, final judgment, etc.) of many civil cases in Alaska state courts.¹ See AS 09.68.130; Civil Rule 41(a)(3); Appellate Rule 511(e).

- Each party, including pro se parties, must complete this form.
- If you are the plaintiff, do not submit this form until the case is completely finished for all parties.
- If you are the defendant or other party and you have been dismissed from the case, submit this form within the required time limits
- Complete all the information on both sides of this page.

Thank you for taking the time and effort to complete this form. The Judicial Council has published two reports based on the civil case data collected from these forms. You may download the reports from our web site, www.aic.state.ak.us or call at 279-2526 for a copy.

The information collected in this form is confidential and will be used only to compile statistics and summaries in a manner that does not allow the identification of particular cases or parties. AS 09.68.130(b).

Trial Court Case Number: _____ - _____ - _____ CI

Case Name: _____ v. _____

Case Type (check all applicable)

- | | |
|---|--|
| <input type="checkbox"/> Medical Malpractice | <input type="checkbox"/> Property Damage - Auto |
| <input type="checkbox"/> Legal Malpractice | <input type="checkbox"/> Property Damage - Other |
| <input type="checkbox"/> Other Malpractice | <input type="checkbox"/> Employment |
| <input type="checkbox"/> Personal Injury - Auto | <input type="checkbox"/> Debt |
| <input type="checkbox"/> Personal Injury - Premises | <input type="checkbox"/> Injunctive Relief |
| <input type="checkbox"/> Personal Injury - Product | <input type="checkbox"/> Real Estate |
| <input type="checkbox"/> Personal Injury - Other | <input type="checkbox"/> Other Contract |
| | <input type="checkbox"/> Other Civil |

Relief Sought (check all applicable)

- Compensatory: Actual
 Compensatory: Non-Economic
 Punitive
 Costs/Attorney Fees
 Injunctive Relief

Date Filed: ____/____/____

Date Disposed: ____/____/____

Total Judgment/
Settlement: \$ _____

% of Judgment
Covered by Liability
Insurance _____%

Disposition (pick one):

- Dismissed
 Settlement
 Judgment
 Summary Judgment
 Default Judgment

Disposition After? (check all applicable)

- Bench Trial
 Jury Trial
 Appeal Filed
Appeal # _____

Result of Appeal

- Dismissed
 Affirmed
 Remanded

Non-Economic Award \$ _____

Punitive Award \$ _____

Declaratory Relief Award?
 Yes No

Did you use Alternative Dispute Resolution?

- Mediation
 Arbitration
 Early Neutral Evaluation
 Settlement Conference

How much did you spend on ADR separately from your other attorney fees, costs, etc.

\$ _____

Did your case settle as a result of ADR? Yes No

¹ The only excluded civil case types are: divorce and dissolution; adoption, custody, support, visitation, and emancipation of children; children-in-need-of-aid cases under 47.10 or delinquent minors cases under 47.12; domestic violence protective orders under AS 18.66.100-18.66.180; estate, guardianship, and trust cases filed under AS 13; small claims under AS 22.15.040; forcible entry and detainer (FED) cases; administrative appeals; motor vehicle impound/forfeiture actions under municipal ordinance; taxes; quiet title; and debt.

Your client's name:

Number of plaintiffs/defendants you represent on this form _____

Is your client the:

- Plaintiff/petitioner
- Defendant/respondent
- Other (specify below)

Who prevailed in this case?

- Plaintiff
- Defendant
- Neither
- Both, in part
- Other: _____ (specify)

Is this a structured settlement?

- Yes
- No

Your client's fees and costs (round all money amounts to the nearest dollar):

Fee Type

- Contingent = _____ % of judgment
- Hourly = \$ _____ per hour
- Flat Fee
- State/Local
- In-house
- Pro Se
- Waive Fee
- Other

Total attorney fees
(your client's own)

\$ _____

Total costs
(your client's own)

\$ _____

Amount (subrogated) your client must pay to others

\$ _____

If your client prevailed in whole or part, what total amount of money did the client receive, less fees, costs, and subrogated amounts?

\$ _____

Other Parties	Their Attorneys Name(s)

Notes:

Signature (of attorney, or party if no attorney)

Printed Name (of attorney, or party if no attorney)

Date Form Submitted

Telephone Number

Appendix G
Recommended Court Rules Revisions

AS 09.68.130 requires parties to civil litigation to submit information to the Judicial Council upon resolution of the litigation. The 1997 statutory enactment did not describe a procedure by which the information was to be submitted. Its enabling legislation, however (1997 SLA ch. 26, secs. 41 and 46) did purport to amend Civil Rule 41 and Appellate Rule 511 by adding new sections to those rules (CR 41(a)(3) and AR 511(e)). The new sections required parties involved in voluntarily dismissed actions to submit the required information to the Council, and to certify in the notice, stipulation, or agreement of dismissal, or motion to dismiss, as applicable, that the information had been submitted to the Council.

When the supreme court adopted the new rules (Order no. 1283, eff. 9/2/1997) it did not adopt them verbatim from the legislation. Instead it rewrote the new sections, removed parts of them, and modified existing rules. Thus the requirement that parties certify that they had submitted the information to the Council was removed from new CR 41(a)(3) and was instead placed in existing CR 41(a)(1), and the parallel certification requirement for appellate cases was removed from new AR 511(e), which was created by the legislation, and inserted into new AR 511(c), which was created by court order. The requirements that parties actually submit the information to the Council remained in CR 41(a)(3) and AR 511(e).

The legislation and the rules were silent regarding submission of information to the council for cases resolved by involuntary dismissal, summary judgment, after trial, or otherwise, although AS 09.68.130 applied equally to all civil litigation, however resolved.

Whereas the 1997 legislation and court rules required parties to submit information to the Council before the case could be closed, in 1999 the legislature amended the statute by, among other changes, adding a new subsection (d), which required parties to submit information to the council within 30 days after their case closed.

The 1999 legislation also contained a provision purporting to amend the court rules. In response to the legislation the court amended Civil Rule 41(a)(3) and Appellate Rule 511(e) to track the language regarding the 30 day requirement and the Judicial Council form. However, the court left unchanged the provisions in Civil Rule 41(a)(1) and Appellate Rule 511(c) requiring parties to certify when filing the notice of dismissal that they have already submitted the information to the Judicial Council. This conflict is causing confusion among attorneys who are required to submit information to the Council.

Some attorneys have arrived at a compromise solution, which is to certify to the court on their dismissal notice or stipulation that they will submit the required information to the Council within 30 days of the dismissal. Attorneys signing such certifications have a response rate equal to that of attorneys who sign the certification specified in the court rule. Logically, it would make sense to change Civil Rule 41(a)(1) to require each party to certify that he or she "will timely submit" the information to the Council, rather than that he or she "has submitted" it, and to change Appellate Rule 511(c) to require certification that the information "will be timely submitted," rather than that it "has been submitted." No change is required to Civil Rule 41(a)(3) or Appellate Rule 511(e). These rule changes would allow the courts to continue to motivate parties to submit the required information by requiring certifications, and it would meet the letter (and presumably the intent) of the 1999 legislation.

A related issue involves cases which are resolved by involuntary dismissal, summary judgment, after trial, or otherwise. Parties to these cases are far less likely to submit the information to the Council than are parties whose cases have settled. This could be for lack of a court rule or other court reminder or incentive to the parties. An addition to orders or judgments resulting in final disposition of cases (except for those case types exempted by the statute) could help motivate parties to these cases to submit the information. The supreme court might direct that all dispositive orders or judgments contain a directive that "each party for whom this case is finally resolved by this Order or, if the party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days of the date of this Order and on a form specified by the Alaska Judicial Council." (If the court wanted to add this language to judgments, changes to the civil rules specifying the form of judgments would be needed).

In addition to the confusion caused by the conflict in the rules, the timing scheme is causing an additional area of concern, relating to the type of information parties are required to submit. The statute requires parties to submit information such as "the net amount [of a settlement] actually disbursed to the claimant," and "the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the settlement before distribution to the claimant." The wording of the statute seems to contemplate that any settlement transaction will have been completed before the form is filed with the Council. Logically, the 30 day filing period makes more sense than the pre-dismissal certification (although 30 days may well be too little time to expect amounts agreed to in settlements to actually be finally disbursed). However, according to Council staff, the certification requirement does seem to motivate litigants to submit the information to the Council.

For cases resolved after trial, as well, the 30 day submission requirement may be unrealistic. The legislature has asked, among other information, for "the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the judgment before distribution to the claimant," and "the total costs and attorney fees paid by defending parties." Few judgments will have been fully executed within 30 days of their entry. A common complaint of attorneys is that they are expected to report such information, when "we haven't received any money yet." However, it would seem that resolution of this issue lies with the legislature rather than the court system.

The text of Civil Rule 41(a)(1) and (3), and Appellate Rule 511(c) and (e) follows, with suggested deletions in brackets and suggested insertions underlined.

Civil Rule 41. Dismissal of Actions.

(a) Voluntary Dismissal -- Effect Thereof.

(1) *By Plaintiff -- By Stipulation.* Subject to the provisions of Rule 23(c), of Rule 66 and of any statute of the state, an action may be dismissed by the plaintiff without an order of the court: [a] by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or [b] by filing a stipulation of dismissal signed by all parties who have appeared in the action. A notice of dismissal must include a certification signed by or on behalf of the plaintiff that the plaintiff [HAS SUBMITTED] **will timely submit** the information required under AS 09.68.130 and (a) (3) of this rule to the Alaska Judicial

Council or that the case is exempt from this requirement. A stipulation of dismissal must include a certification signed by or on behalf of all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state, or of any other state, or in any court of the United States, an action based on or including the same claim.

* * *

(3) *Information about the Resolution of Civil Cases.* If an action is voluntarily dismissed under paragraph (a) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

- (A) divorce and dissolution;
- (B) adoption, custody, support, visitation, and emancipation of children;
- (C) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (D) domestic violence protective orders under AS 18.66.100 - 18.66.180;
- (E) estate, guardianship, and trust cases filed under AS 13;
- (F) small claims under AS 22.15.040.
- (G) forcible entry and detainer cases;
- (H) administrative appeals; and
- (I) motor vehicle impound or forfeiture actions under municipal ordinance.

Appellate Rule 511. Dismissal of Causes.

(c) *Certification.* An agreement or motion for dismissal filed under (a) or (b) of this rule must include a certification that the settlement information required under AS 09.68.130 and (e) of this rule [HAS BEEN SUBMITTED] will be timely submitted to the Alaska Judicial Council or that the case is exempt from this requirement.

* * *

(e) *Information about the Resolution of Civil Cases.* If a proceeding is dismissed under paragraph (a) or (b) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days after the proceeding is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;

- (4) domestic violence protective orders under AS 18.66.100 -- 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040;
- (7) forcible entry and detainer cases;
- (8) administrative appeals; and
- (9) motor vehicle impound or forfeiture actions under municipal ordinance.

Appendix H
Recommended Statutory Change

A BILL
FOR AN ACT ENTITLED

"An Act relating to collection of information about civil litigation; amending rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511 (e), Alaska Rules of Appellate Procedure; and providing for an effective date."

***Section 1.** AS 09.68.130 is repealed and reenacted to provide:

(a) The Alaska Judicial Council shall periodically collect and evaluate information relating to the compromise or other resolution of civil litigation. The information collected shall include, but need not be limited to:

(1) general case information such as the characteristics of the case and the parties;

(2) case processing information about the court civil justice process;

(3) information about the relief sought by each party;

(4) information about the settlement or judgment, including attorneys fees and costs awarded to or paid by each party to the case;

(5) information about any insurance coverage and contribution.

(b) A party to a civil case or, if the party is represented by an attorney, the party's attorney shall submit the civil case information required by (a) of this section to the Alaska Judicial Council if requested to do so by the Council. The information must be submitted within 30 days after receipt of a written request from the Council requesting the information, and must be on a form specified by the Alaska Judicial Council.

(c) The information received by the Council under (a) of this section is confidential. This restriction does not prevent the disclosure of summaries and statistics in a manner that does not allow the identification of particular cases or parties.

***Section 2.** The court rules amendments made by ch. 26 §§ 41 & 46 SLA 1997 and ch. 14 § 3 SLA 1999 are repealed.

***Section 3.** This Act takes effect immediately under AS 01.10.070 (c).

HB

385

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 6, 2002

FURTHER REFERRALS:

Date of Committee Action: 4.6.02

The JUDICIARY Committee considered:

HB 385

HOUSE BILL NO. 385

UNFAIR TRADE PRACTICES ATTY FEES/COSTS

"An Act relating to the attorney fees and costs awarded in certain court actions relating to unfair trade practices; and amending Rules 54, 79, and 82, Alaska Rules of Civil Procedure."

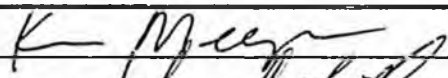
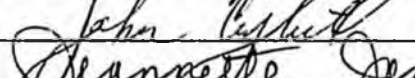
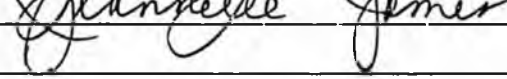
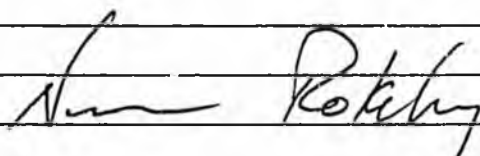

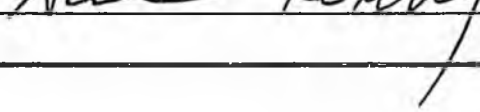
Recommends it be replaced with CS HB 385 (JUD) Same Title New Title
 For Senate Bills with new title: Technical Title New Title: HCR _____

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev. for Depts.:
 ADM
 CED
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 CRT
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 GOV
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 DNR
 DPS
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 UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet/	Zero
LAW			✓	✗

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Meyer ✓			✓	
	Lashley ✓			✓	
	James ✓			✓	
Chair: 	ROKELBY ✓	✓			
Chair: 					

*Adopted
4.5.02*

CS FOR HOUSE BILL NO. 385(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE CROFT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the attorney fees and costs awarded in certain court actions relating**
2 **to unfair trade practices; and amending Rules 54, 79, and 82, Alaska Rules of Civil**
3 **Procedure."**

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

5 *** Section 1.** AS 45.50.537 is amended by adding a new subsection to read:

6 (e) In an action brought by the attorney general under AS 45.50.471 -
7 45.50.561, if the attorney general prevails, the state shall be awarded full attorney fees
8 and costs.

9 *** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **COURT RULE CHANGES.** (a) AS 45.50.537(e), added by sec. 1 of this Act,
12 changes Rule 82, Alaska Rules of Civil Procedure, by establishing a different rule relating to
13 the award of attorney fees in actions that are brought under AS 45.50.471 - 45.50.561.

14 (b) AS 45.50.537(e), added by sec. 1 of this Act, changes Rules 54(d) and 79, Alaska

1 Rules of Civil Procedure, by establishing a different rule relating to the award of costs in
2 actions that are brought under AS 45.50.471 - 45.50.561.

3 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **APPLICABILITY.** AS 45.50.537(e), added by sec. 1 of this Act, applies only to
6 causes of action that accrue on or after the effective date of this Act.

7 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **CONDITIONAL EFFECT.** Section 1 of this Act takes effect only if sec. 2 of this Act
10 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
11 of the State of Alaska.

22-LS1224C
Bannister
3/21/02

*Adopted
3.22.02*

CS FOR HOUSE BILL NO. 385()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE CROFT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the attorney fees and costs awarded in certain court actions relating**
2 **to unfair trade practices; and amending Rules 54, 79, and 82, Alaska Rules of Civil**
3 **Procedure."**

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

5 *** Section 1.** AS 45.50.537(b) is amended to read:

6 (b) Unless the action is found to be frivolous, in an action brought by a private
7 person under AS 45.50.471 - 45.50.561, a prevailing defendant may not [SHALL] be
8 awarded attorney fees and costs [AS PROVIDED BY COURT RULE]. If the action
9 is found to be frivolous, the attorney fees to be awarded to the defendant shall be full
10 reasonable attorney fees at the prevailing reasonable rate.

11 *** Sec. 2.** AS 45.50.537 is amended by adding new subsections to read:

12 (e) In an action brought by the attorney general under AS 45.50.471 -
13 45.50.561, if the attorney general prevails, the state shall be awarded full attorney fees
14 and costs.

1 (f) The fees and costs paid to the state under (e) of this section shall be
2 deposited in a separate account in the state treasury. The legislature may appropriate
3 money from the account to the Department of Law for the handling of consumer
4 protection cases. Nothing in this subsection creates a dedicated fund or dedicates the
5 money in the account for a specific purpose.

6 * Sec. 3. AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

7 (AAA) fees and costs paid to the state under AS 45.50.537(e);

8 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 COURT RULE CHANGES. (a) AS 45.50.537(b), as amended by sec. 1 of this Act,
11 and AS 45.50.537(e), added by sec. 2 of this Act, change Rule 82, Alaska Rules of Civil
12 Procedure, by establishing different rules relating to the award of attorney fees in actions that
13 are brought under AS 45.50.471 - 45.50.561.

14 (b) AS 45.50.537(b), as amended by sec. 1 of this Act, and AS 45.50.537(e), added by
15 sec. 2 of this Act, change Rules 54(d) and 79, Alaska Rules of Civil Procedure, by
16 establishing different rules relating to the award of costs in actions that are brought under
17 AS 45.50.471 - 45.50.561.

18 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 APPLICABILITY. AS 45.50.537(b), as amended by sec. 1 of this Act, and
21 AS 45.50.537(e), added by sec. 2 of this Act, apply only to causes of action that accrue on or
22 after the effective date of this Act.

23 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 CONDITIONAL EFFECT. Sections 1 - 3 of this Act take effect only if sec. 4 of this
26 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
27 Constitution of the State of Alaska.

TITLE 45: TRADE AND COMMERCE

**CHAPTER 50. COMPETITIVE PRACTICES AND REGULATION
OF COMPETITION**

Article 3. UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

Section

- 470. [Repealed.]
- 471. Unlawful acts and practices.
- 472. [Repealed.]
- 473. Disclosure of costs of certain telephone services.
- 474. Required disclosures in promotions on board cruise ships.
- 475. Unlawful, unwanted telephone advertisements and solicitations.
- 477. Use of titles relating to industrial hygiene.
- 480. [Repealed.]
- 481. Exemptions.
- 490. [Repealed.]
- 491. Regulations.
- 495. Investigative power of attorney general.
- 500. [Repealed.]
- 501. Restraining prohibited acts.
- 510. [Repealed.]
- 511. Assurances of voluntary compliance.
- 521. When information and evidence confidential and nonadmissible.
- 531. Private and class actions.
- 535. Private injunctive relief.
- 536. Mediation.
- 537. Attorney fees, costs, and damages.
- 541. Nonnegotiability of consumer paper.
- 542. Provisions not waivable.
- 545. Interpretation.
- 551. Civil penalties.
- 561. Definitions.



Representative Eric Croft

HB 385 Sponsor Statement

HB 385 protects Alaska's citizens from scam artists by adding another legal protection for individual consumer protection lawsuits, and by allowing the State to seek reimbursement of the State's legal fees when it wins a consumer protection lawsuit.

Currently, a person with a consumer complaint, who files a good faith lawsuit but loses, must pay part of the opposing party's attorney's fees. This potentially crippling penalty greatly deters consumers – especially those with small claims – from standing up for their rights. This bill would allow the award of attorney's fees against a consumer only if the consumer files a *frivolous* lawsuit, but not otherwise.

Additionally, the proposed legislation will help the State take consumer cases without hurting a limited state budget. Currently, the State's consumer protection section is understaffed (only two people), which means the State can represent only a fraction of the people who need help. To address this, HB 385 says that if the State prevails in a consumer lawsuit, the State is entitled to be compensated for its full attorney's fees by the defendant(s). This will provide the State with means to address a larger number of consumer needs.

HB 385 helps individual consumers by removing a potential obstacle to their pursuit of their rights, and by providing the State of Alaska with the resources needed to assist people in this pursuit.



Representative Eric Croft

Subject: Sectional Summary of House Bill 385, related to Attorney Fees and Costs Awarded in Certain Court Actions Relating to Unfair Trade Practices (Work Order No. 22-LS1224\A)

This bill addresses the payment of attorney fees and costs in non-frivolous consumer complaint lawsuits.

- Section 1.** Amends AS 45.50.537(b) by limiting the circumstances under which a prevailing defendant may be awarded attorney fees and costs to actions found to be frivolous.
- Section 2.** Amends AS.50.537 by adding language to award full attorney fees and costs to the State for cases in which the attorney general prevails.
- Section 3.** Amends the uncodified law to reflect the amendments in sections 1 and 2.
- Section 4.** Clarifies that the new rule applies only to action brought on or after the effective date of this legislation.
- Section 5.** Refers to vote requirements for section 3 and conditional effect on sections 1 and 2.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 385
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the attorney fees and costs BRU Civil Division
awarded in certain court actions relating to unfair trade . . ." Component Fair Business Practices
 Sponsor Representative Croft
 Requester House Judiciary Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 HB 385 prohibits a prevailing defendant in a consumer protection case brought by a private person from being awarded attorney fees and costs unless the action is found to be frivolous by the court. The bill further allows the state to recover full attorney fees and costs when it prevails in cases that it brings. Under current law, only private counsel can recover full fees and costs.

 Section 1 of the bill affects only cases brought by private persons, and will have no impact on the Department of Law. We are uncertain what impact section 2, concerning actions brought by the attorney general, will have on potential revenues. These cases are usually settled, and while the threat of full fees and costs will certainly be useful in negotiations, we have no experience to estimate how much additional revenue might result.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 3/7/02 4:26 PM
 Approved by: Kathryn Daughhelee for Bruce M. Botelho, Attorney General Date 3/7/2002
 Agency Department of Law

HB

393

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 1, 2002

FURTHER REFERRALS: Finance

Date of Committee Action: 4.5.02

The JUDICIARY Committee considered:

HB 393

HOUSE BILL NO. 393

SALES OF BUSINESS OPPORTUNITIES

"An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

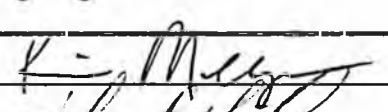
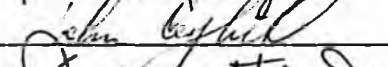
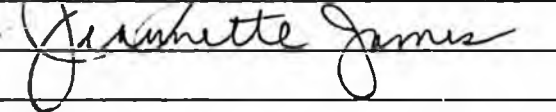
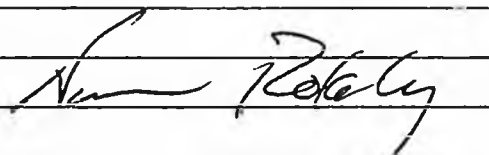
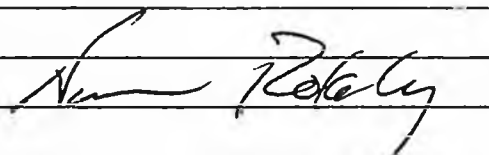
Recommends it be replaced with H CS FOR HB 393 (JUD) [] Same Title [] New Title
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev. for Depts.:
 ADM
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 UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Meyer	✓			
	Coghill			✓	
	JAMES			✓	
Chair: 	Rotalo				✓
Chair: 	Rotalo				✓

*Adopted as Amended
4.5.02*

22-LS1356J
Bannister
4/3/02

CS FOR HOUSE BILL NO. 393(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE STEVENS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to unfair and deceptive trade practices and to the sale of business
2 opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and
3 providing for an effective date."

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

5 * **Section 1.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

6 (AAA) receipts of fees for registration and renewal of
7 registration for the sale of business opportunities under AS 45.66.040.

8 * **Sec. 2.** AS 45.50.471(b) is amended by adding a new paragraph to read:

9 (43) violating AS 45.66 (sale of business opportunities).

10 * **Sec. 3.** AS 45 is amended by adding a new chapter to read:

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

12 **Sec. 45.66.010. Registration required.** A person may not sell or offer to sell
13 a business opportunity unless the person is registered as a seller with the department at
14 least 30 days before the sale or offer to sell begins and has paid the fee required by

1 AS 45.66.040.

2 **Sec. 45.66.020. Registration procedure.** (a) To register under
3 AS 45.66.010, a person shall file with the department

4 (1) the disclosure statement required by AS 45.66.080 and any
5 advertising, pamphlets, brochures, or other materials to be used in the offering or
6 promoting of the business opportunity;

7 (2) the bond required by AS 45.66.060;

8 (3) an irrevocable consent appointing the department as the person's
9 agent for the receipt of service of process in a court action or other proceeding against
10 the person, or the successor in interest of the person, for a violation of this chapter;

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

12 (5) a signed statement that the person has read and will comply with
13 this chapter and the regulations adopted under it;

14 (6) the fee required by AS 45.66.040; and

15 (7) other information requested by the department to evaluate whether
16 the person meets the requirements of this chapter.

17 (b) The department shall establish by regulation, the application forms for
18 registrations under this chapter. The application forms must require the submission of
19 the following information:

20 (1) the nature of the business opportunity and the method by which it
21 will be offered, advertised, or promoted;

22 (2) the identity and business practices of the person who will be the
23 seller, including information on a related person; and

24 (3) a disclosure of criminal convictions, civil judgments, orders,
25 consent decrees, and administrative determinations involving allegations of

26 (A) fraud, theft, embezzlement, fraudulent conversion,
27 misappropriation of property, the use of untrue or misleading representations in
28 an attempt to sell or dispose of real or personal property, violations of this
29 chapter, violations of AS 45.63 (telephonic solicitations), violations of
30 AS 45.68 (charitable solicitations), or unfair or deceptive business practices
31 under AS 45.50.471 - 45.50.561, or a substantially similar law of another

1 jurisdiction, by the person who will be the seller or by a related person; or

2 (B) a violation of securities or investment laws by the person
3 who will be the seller or by a related person.

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

8 (d) In this section, "related person" means an owner, employee, agent, or
9 officer of the business opportunity being sold, or a person affiliated with the person
10 who will be the seller of the business opportunity.

11 **Sec. 45.66.030. Renewal of registration.** If a seller continues to sell or offer
12 to sell a business opportunity for more than one year from the date of the department's
13 acknowledgment of the initial registration under this chapter, the seller shall renew the
14 registration each year that the sale or offer to sell continues by filing, before or on the
15 anniversary date of the department's acknowledgment under AS 45.66.020(c), a
16 renewal application, on a form established by the department by regulation, requiring
17 information that is similar to the information required under AS 45.66.020.

18 **Sec. 45.66.040. Registration and renewal fees.** (a) As part of the
19 registration procedure set out in AS 45.66.020(a), a person shall pay a nonrefundable
20 registration fee to the department. With a renewal application, the seller shall pay a
21 nonrefundable renewal fee. The department shall establish the amount of the
22 registration fee and the renewal fee by regulation.

23 (b) Under AS 37.05.146(b), registration and renewal fees collected under this
24 chapter shall be accounted for separately, and appropriations from the account are not
25 made from the unrestricted general fund.

26 **Sec. 45.66.050. Material changes in registration information.** If there is a
27 material change in the information provided under AS 45.66.020 or 45.66.030, the
28 seller shall, within 10 days after the change, file with the department a statement
29 describing the change on a form established by the department by regulation.

30 **Sec. 45.66.060. Surety bond required.** (a) A person registering as a seller
31 shall obtain a surety bond in the amount of \$75,000 issued by a surety company

1 authorized to do business in the state. The bond must be in favor of the state for the
2 benefit of a buyer and must satisfy the conditions established by the department by
3 regulation.

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

7 **Sec. 45.66.070. Location of offer and sale.** This chapter applies to a sale of,
8 or an offer to sell, a business opportunity if

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

13 (A) appears in a bona fide newspaper or other publication of
14 general circulation that is not published in this state or that is published in this
15 state but more than two-thirds of its circulation was outside this state during
16 the 12 months preceding the offer; or

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

19 (2) the acceptance

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

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

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

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

29 **Sec. 45.66.080. Disclosure requirements.** (a) At least 10 days before a
30 buyer signs the contract required by AS 45.66.090, or at least 10 days before receipt of
31 any consideration by the seller, whichever event occurs first, the seller shall give the

1 buyer the written disclosure statement described in (b) of this section, require the
2 buyer to sign a receipt containing the buyer's name and the date on which the buyer
3 received the disclosure statement, and give the buyer the original receipt with the
4 buyer's original signature. The seller shall retain a copy of the receipt.

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

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

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

12 (3) the business history of the seller and the seller's representatives and
13 the background of the seller and the seller's representatives that relates to business
14 opportunities;

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

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

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

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

23 (8) a history of civil actions, criminal actions, and consumer protection
24 complaints as described in AS 45.66.020(b)(3) brought against the seller or the seller's
25 representatives related to the sale of business opportunities and the resolution of the
26 actions and complaints in this state or another jurisdiction;

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

29 (10) if the seller makes a statement about potential earnings that can be
30 made through a business opportunity, the basis for the statement and the economic
31 risks associated with the business opportunity;

1 (11) the rights and obligations of the seller and buyer regarding
2 termination of the contract, including the rights arising out of the bond required by
3 AS 45.66.060; and

4 (12) any additional information that the department determines by
5 regulation is reasonable and in the public interest for the seller to provide in order to
6 make a complete disclosure concerning the contract.

7 **Sec. 45.66.090. Written contract required.** (a) In addition to the other
8 requirements of this chapter, a person may not contract to sell a business opportunity
9 unless the contract is in writing and the seller gives a copy of the contract to the buyer
10 when the buyer signs the contract.

11 (b) The department shall establish by regulation the content and format of the
12 information that must be contained in the contract. At a minimum, the contract must
13 contain

14 (1) the payment terms, including any escrow account required under
15 AS 45.66.100;

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

19 (3) a statement of the form of the seller's business organization;

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

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

24 (6) if the seller has represented that there is a buy-back agreement for
25 the business opportunity or that payments are protected or secured, a complete
26 description of those provisions;

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

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

31 **Sec. 45.66.100. Restrictions on down payments.** (a) A seller may not

1 require a buyer to pay as a down payment more than 20 percent of the initial payment
2 unless the excess above the 20 percent is placed in an escrow account that meets the
3 requirements of AS 45.66.110.

4 (b) In this section,

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

10 (2) "initial payment" means

11 (A) the total amount that a buyer is obligated to pay under the
12 terms of the contract before or at the time the equipment, supplies, products, or
13 services are delivered or within six months after the buyer commences
14 operation of the business opportunity; or

15 (B) the entire sale price if the contract sets out a specific total
16 sale price for the purchase of the business opportunity and the total price is to
17 be paid partially as a down payment and then in specific monthly payments or
18 a subsequent lump sum payment.

19 **Sec. 45.66.110. Escrow account requirements.** (a) The holder of an escrow
20 account required by AS 45.66.100 must be a person who is independent from the
21 seller, and the escrow account holder may not make direct disbursements from the
22 escrow account except as provided in (c) and (d) of this section.

23 (b) A seller who establishes an escrow account required by AS 45.66.100 shall
24 provide to the escrow account holder a copy of the signed contract between the buyer
25 and the seller. The seller shall promptly report to the department the following
26 information:

27 (1) the name and address of the escrow account holder;

28 (2) the name and address of the financial institution, including the
29 branch, where the escrow account is located; and

30 (3) the escrow account number.

31 (c) Except as provided in (d) of this section or under AS 45.66.120, money

1 placed in an escrow account required by AS 45.66.100 may not be released until 30
2 days have passed since the buyer signed the contract and the buyer notifies the escrow
3 account holder in writing that the products, equipment, supplies, or services required
4 by the contract have been delivered within the time set in the contract between the
5 buyer and seller. The buyer shall notify the escrow account holder of a timely
6 delivery within 10 business days after delivery.

7 (d) Upon notification by the buyer that the contract has been cancelled under
8 AS 45.66.130, the escrow account holder shall release the money held in the escrow
9 account to the buyer.

10 **Sec. 45.66.120. Actions for claims against escrow account.** (a) A buyer
11 who has a claim against an escrow account required by AS 45.66.100 may bring a
12 civil action against the seller or escrow account holder to recover money from the
13 escrow account.

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

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

21 (d) The escrow account holder is not liable for the amount by which claims or
22 damages caused by the seller exceed the amount of the escrow account.

23 **Sec. 45.66.130. Cancellation of contract.** (a) A buyer may cancel a contract
24 for any reason if the buyer gives notice of the cancellation to the seller within 30 days
25 after signing the contract.

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

28 (1) failed to comply with AS 45.66.080 or 45.66.090;

29 (2) used untrue, misleading, incomplete, or deceptive statements in any
30 aspect of advertising, promoting, selling, or offering to sell a business opportunity;

31 (3) fails, within 30 days after the delivery date specified in the

1 contract, to deliver the products, equipment, supplies, or services required under the
2 contract to begin substantial operation of the business to be started under the contract;
3 or

4 (4) fails to provide a location for the business to be started under the
5 contract if the contract requires the seller to provide a location.

6 (c) If provided by mail, the buyer's notice of cancellation is effective when it
7 is deposited in the mail properly addressed to the seller with postage prepaid.

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

11 (e) Within 15 days after the date the buyer gives a notice of cancellation under
12 this section, the seller shall refund to the buyer any payments, including payments for
13 shipping costs, made by the buyer and terminate all financial obligations of the buyer
14 under the contract. Within five days after receiving the refund, the buyer shall make
15 available to the seller, at a reasonable time and place, any products, equipment, or
16 supplies delivered by the seller.

17 **Sec. 45.66.140. Prohibited representations.** (a) A person may not state that
18 the person is registered as a seller under this chapter unless the person has complied
19 with the registration or renewal requirements, as applicable, of this chapter.

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

23 (c) A seller may not make, or cause to be made, a representation that is
24 inconsistent with AS 45.66.160.

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

28 **Sec. 45.66.150. Untrue statements or omissions.** A person may not, in
29 connection with a sale of or an offer to sell a business opportunity subject to
30 registration under this chapter, directly or indirectly make an untrue statement of
31 material fact in the registration information required in or under AS 45.66.020 -

1 45.66.050 or in other written or oral communications, including the disclosure
2 required by AS 45.66.080 and in advertising related to the sale or offer, or omit to
3 state a material fact necessary, in light of the circumstances under which it is made, to
4 avoid a statement being misleading.

5 **Sec. 45.66.160. Unwarranted conclusions.** (a) Acknowledgment of
6 registration by the department under AS 45.66.020(c) does not constitute a finding by
7 the department that a document filed with the department under this chapter is true,
8 complete, or not misleading.

9 (b) Acknowledgment of registration by the department under AS 45.66.020(c)
10 does not mean that the department has evaluated the merits or qualifications of the
11 seller or business opportunity, or that the department recommends or approves a seller
12 or the business opportunity.

13 (c) Availability of an exemption under AS 45.66.220 for a seller does not
14 mean that the department recommends or approves the seller or the business
15 opportunity.

16 **Sec. 45.66.170. Waiver prohibited and void.** A seller may not request or
17 obtain from a buyer a waiver of the rights or defenses of the buyer under this chapter.
18 A waiver of the rights or defenses of the buyer under this chapter is void.

19 **Sec. 45.66.180. Seller's records and files.** (a) A seller shall maintain a
20 complete set of records relating to the advertising and promotion of the seller's
21 business opportunity for five years and allow the department to inspect and copy them
22 during reasonable business hours.

23 (b) A seller shall keep all documents relating to a contract entered into by the
24 seller for five years after the date the contract is entered into.

25 **Sec. 45.66.190. Public records.** Except for testimony and records related to
26 an investigation by the department under this chapter, the registration application
27 form, registration renewal form, disclosure statement, bond, contract, and other
28 documents required to be prepared or filed with the department under this chapter,
29 including a document created or obtained by the department under AS 45.66.200, are
30 public records available for public inspection and copying under AS 40.25.110 -
31 40.25.220.

1 **Sec. 45.66.200. Denial, suspension, or revocation of registration.** (a)

2 Subject to the other requirements of this section and after reviewing a response
3 submitted by the person under (b) of this section, the department may issue an order
4 denying, suspending, or revoking a registration or renewal of a registration made by a
5 person under AS 45.66.010 - 45.66.030, or prohibiting a person from selling or
6 offering to sell business opportunities, if the department finds that

7 (1) the person failed to comply with this chapter or the regulations
8 adopted under this chapter;

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

11 (3) the nature of the person's business enterprise or method of
12 business, or the nature or method of the business opportunity, includes activities that
13 are illegal where performed;

14 (4) the person failed to file a document, information, fee, or bond
15 required by AS 45.66.010 - 45.66.060;

16 (5) the literature or advertising of the person, or of another person
17 recommended by the person, is misleading, incorrect, materially incomplete, or
18 deceptive;

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

21 (A) has been convicted of

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

26 (ii) violations under this chapter, violations of AS 45.63
27 (telephonic solicitations), violations of AS 45.68 (charitable
28 solicitations), or an unfair trade practice prohibited by AS 45.50.471 -
29 45.50.561, or a substantially similar law of another jurisdiction; or

30 (iii) a violation of securities or investment laws;

31 (B) is subject to a final order or judgment against the person in

1 a civil or administrative action, including a stipulated order or judgment, if the
2 complaint or petition in the action alleged acts constituting

3 (i) a violation of this chapter or a substantially similar
4 law of another jurisdiction;

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

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

9 (iv) the use of unfair trade practices under
10 AS 45.50.471 - 45.50.561 or a substantially similar law of another
11 jurisdiction;

12 (v) a violation of AS 45.63 or AS 45.68, or a
13 substantially similar law of another jurisdiction; or

14 (vi) a violation of securities or investment laws;

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

18 (b) Before issuing an order to a person under (a) of this section, the
19 department shall send by certified mail to the address set out in the person's
20 registration or renewal of registration a notice of intent to issue the order. In the
21 notice, the department shall provide the facts supporting the denial, suspension, or
22 revocation of the registration or renewal of the registration. The person may respond
23 to the notice by submitting a statement signed under penalty of perjury by the person
24 or by an owner or officer of the person.

25 **Sec. 45.66.210. Criminal penalties.** (a) A seller who recklessly violates
26 AS 45.66.010 - 45.66.060, 45.66.080 - 45.66.110, or 45.66.150 is guilty of a class C
27 felony.

28 (b) A seller who recklessly violates AS 45.66.130(e), 45.66.140, or 45.66.170
29 is guilty of a class A misdemeanor.

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

1 (d) In this section, "recklessly" has the meaning given in AS 11.81.900.

2 **Sec. 45.66.220. Exemptions.** This chapter does not apply to a sale of or an
3 offer to sell

4 (1) a business opportunity if the total amount of the payments to be
5 made by the buyer under the contract is less than \$~~200~~²⁵⁰ *Conceptual*

6 (2) a franchise under 16 C.F.R. 436; *Amendment #1*

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

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

12 (5) sales demonstration equipment, materials, or samples for use in
13 sales demonstrations and not for resale, or product inventory sold to the buyer at a
14 bona fide wholesale price;

15 (6) a business opportunity by an executor, an administrator, a marshal,
16 a receiver, a trustee in bankruptcy, or a guardian or conservator, or under a judicial
17 sale;

18 (7) a security registered under AS 45.55 or a security that is exempted
19 by AS 45.55.900 from registration under AS 45.55;

20 (8) a business opportunity if the sale or offer is made by a person
21 registered with the United States Securities and Exchange Commission when acting
22 within the scope of the person's Securities and Exchange Commission license or by a
23 person registered by the state under AS 45.55 when acting within the scope of
24 registration;

25 (9) a business opportunity by an issuer, or a subsidiary of an issuer, of
26 a class of securities that is

27 (A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of
28 1934); and

29 (B) registered under 15 U.S.C. 78a - 78lll (Securities Exchange
30 Act of 1934) unless exempt from registration under 15 U.S.C. 78l(g)(2)(A) -

31 (C) or (E) - (H);

1 (10) a business opportunity in which the buyer is

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

6 (B) a broker-dealer registered under AS 45.55;

7 (11) a business opportunity that involves a marketing plan made in
8 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051
9 - 1127 (Trademark Act of 1946) if the seller has a minimum net worth of \$1,000,000
10 as determined on the basis of the seller's most recent audited financial statement
11 prepared within 13 months of the first offer to sell in this state; net worth may be
12 determined on a consolidated basis if one person owns at least 80 percent of the seller
13 and that one person expressly guarantees the obligations of the seller that arise under
14 the sale or offer claimed to be exempt under this paragraph; or

15 (12) a business opportunity in which either the seller or the buyer is
16 licensed as a real estate broker, associate real estate broker, or real estate salesperson
17 under AS 08.88 and the sale or offer is regulated by AS 08.88.

18 **Sec. 45.66.230. Coordination with other laws.** (a) The rights and remedies
19 in this chapter are in addition to other legal rights and remedies available to a buyer or
20 the department.

21 (b) To the extent of the conflict, the provisions of this chapter govern if a sale
22 or an offer to sell a business opportunity is regulated by this chapter and by AS 45.63
23 (telephonic solicitations), by AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29
24 (Uniform Commercial Code), or by another law, and it is not possible to comply with
25 or to apply both this chapter and the other law.

26 **Sec. 45.66.240. Regulations.** The department may adopt regulations under
27 AS 44.62 (Administrative Procedure Act) to carry out the purposes of this chapter.

28 **Sec. 45.66.900. Definitions.** In this chapter, unless the context indicates
29 otherwise,

30 (1) "advertising" means a circular, a prospectus, an advertisement, or
31 other material or a communication by radio, television, pictures, or similar means used

1 in connection with a sale of or an offer to sell a business opportunity;

2 (2) "business opportunity" means an arrangement under which the
3 seller or a person recommended by the seller will provide to the buyer products,
4 equipment, supplies, or services enabling the buyer to start a business and under which
5 one or more of the following occurs or is to occur:

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

10 (B) the seller or a person recommended by the seller will
11 provide or assist the buyer in finding outlets or accounts for the buyer's
12 products or services;

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

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

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

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

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

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

- 1 (4) "contract" means an agreement relating to a business opportunity;
- 2 (5) "department" means the Department of Law;
- 3 (6) "equipment" includes machines, electrical devices, video or audio
4 devices, computer devices, molds, display racks, vending machines, coin-operated
5 game machines, machines that dispense products, and display units of all kinds;
- 6 (7) "marketing plan" means advice or training provided to the buyer by
7 the seller or a person recommended by the seller pertaining to the sale of products,
8 equipment, supplies, or services;
- 9 (8) "offer" or "offer to sell" means an attempt to sell a business
10 opportunity;
- 11 (9) "product" includes a tangible chattel, including food or living
12 animals, that the buyer intends to
- 13 (A) sell or lease;
- 14 (B) use to perform a service;
- 15 (C) resell or offer to resell to the seller; or
- 16 (D) provide or offer to provide to the seller, or to another
17 person whom the seller suggests the buyer contact, so that the seller or the
18 other person may assist the buyer, either directly or indirectly, to distribute,
19 sell, lease, or otherwise dispose of a product;
- 20 (10) "sale," regarding the sale of a business opportunity, means a
21 contract to sell, lease, or otherwise dispose of the business opportunity or an interest in
22 the business opportunity for value;
- 23 (11) "securities or investment laws" means AS 45.55 (Alaska
24 Securities Act) or a substantially similar statute of another jurisdiction, 15 U.S.C. 77a -
25 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78lll (Securities Exchange
26 Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of
27 1940/Investment Advisers Act of 1940);
- 28 (12) "sell," regarding the selling of a business opportunity, means to
29 sell, lease, or otherwise dispose of the business opportunity or an interest in the
30 business opportunity for value;
- 31 (13) "seller" means a person, or the person's agent, who sells or offers

1 to sell a business opportunity;

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

5 (15) "supplies" includes materials used to produce, grow, breed,
6 fabricate, modify, develop, or make a product or other item.

7 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 INDIRECT COURT RULE AMENDMENTS. The provisions of AS 45.66.120(b),
10 enacted by sec. 3 of this Act, have the effect of changing

11 (1) Rule 4, Alaska Rules of Civil Procedure, by requiring the clerk of the court
12 to mail a copy of the complaint to the attorney general when an action is filed under
13 AS 45.66.120, enacted by sec. 3 of this Act; and

14 (2) Rule 73, Alaska Rules of Civil Procedure, by requiring the clerk of the
15 court to mail a copy of an order or judgment in an action under AS 45.66.120, enacted by
16 sec. 3 of this Act, to the attorney general.

17 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 TRANSITION: REGISTRATION REGARDING EXISTING ACTIVITIES. (a)
20 Notwithstanding the registration requirements of AS 45.66.010 - 45.66.900, enacted by sec. 3
21 of this Act, a person who, on the day before the effective date of sec. 3 of this Act, is selling
22 or offering to sell a business opportunity may continue to sell or offer to sell a business
23 opportunity until the 45th day after the effective date of sec. 3 of this Act without being
24 registered as a seller under AS 45.66.010, enacted by sec. 3 of this Act. Beginning on the
25 46th day after the effective date of sec. 3 of this Act, a person described in this subsection
26 shall be registered as a seller under AS 45.66.010 in order to continue selling or offering to
27 sell a business opportunity.

28 (b) In this section,

29 (1) "business opportunity" has the meaning given in AS 45.66.900, enacted by
30 sec. 3 of this Act;

31 (2) "offer to sell" has the meaning given in AS 45.66.900, enacted by sec. 3 of

1 this Act;

2 (3) "sell" has the meaning given in AS 45.66.900, enacted by sec. 3 of this
3 Act;

4 (4) "seller" has the meaning given in AS 45.66.900, enacted by sec. 3 of this
5 Act.

6 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 **TRANSITION: REGULATIONS.** The Department of Law may proceed to adopt
9 regulations to implement AS 45.66.010 - 45.66.900, enacted by sec. 3 of this Act. The
10 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
11 effective date of sec. 3 of this Act.

12 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **CONDITIONAL EFFECT.** AS 45.66.120(b), enacted by sec. 3 of this Act, takes
15 effect only if sec. 4 of this Act receives the two-thirds majority vote of each house required by
16 art. IV, sec. 15, Constitution of the State of Alaska.

17 * **Sec. 8.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

18 * **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2002.

All
Amendments
rolled into a CS

AMENDMENT

1

OFFERED IN THE HOUSE

BY _____

TO: HB 393

Page 2, line 24:

Delete "and"

Page 3, line 2, following "person":

Delete "."

Insert "; and"

Page 3, following line 2:

Insert a new paragraph to read:

"(4) disclosures of criminal convictions, civil judgments, orders, consent decrees, and administrative determinations involving allegations of violations of AS 45.55 (securities laws) or a law of another jurisdiction with substantially similar provisions, or violations of 15 U.S.C. 77a - 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of 1940)."

Page 11, line 15, following "property;":

Delete "or"

Page 11, line 19, following "jurisdiction;":

Insert "or"

Page 11, following line 19:

Insert a new sub-subparagraph to read:

"(iii) violations of AS 45.55 (securities laws) or a law of another jurisdiction with substantially similar provisions, or violations of 15 U.S.C. 77a - 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78III (Securities Exchange Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of 1940);"

Page 11, line 23, following "chapter":

Insert "or a law of another jurisdiction with substantially similar provisions"

Page 11, line 29:

Following "45.50.561":

Insert "or a law of another jurisdiction with substantially similar provisions"

Following ";

Delete "or"

Page 11, line 30, following "AS 45.68":

Insert "or laws of another jurisdiction with substantially similar provisions"

Page 11, following line 30:

Insert a new sub-subparagraph to read:

"(vi) violations of AS 45.55 (securities laws) or a law of another jurisdiction with substantially similar provisions, or violations of 15 U.S.C. 77a - 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78III (Securities Exchange Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of 1940); or"

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AMENDMENT # 2

OFFERED IN THE HOUSE BY _____
TO: HB 393

Page 7, line 17:

- Delete "seller may not"
- Insert "escrow account holder may not"

Page 7, line 18, following "(c)":

- Insert "and (d)"

Page 7, line 19, following "shall":

Insert "provide to the escrow account holder a copy of the signed contract between the buyer and the seller. The seller shall"

Page 7, line 25, following "provided":

- Insert "in (d) of this section or"

Page 7, line 26, following "until":

- Insert "30 days have passed since the buyer signed the contract and"

Page 7, line 27, following "escrow":

- Insert "account"

Page 7, line 29, following "escrow":

- Insert "account"

1

2 Page 7, following line 30:

3 Insert a new subsection to read:

4 "(d) Upon notification by the buyer that the contract has been cancelled under
5 AS 45.66.130, the escrow account holder shall release the money held in the escrow
6 account to the buyer."

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8 Page 8, line 11, following "escrow":

9 Insert "account"

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AMENDMENT

3

OFFERED IN THE HOUSE
TO: HB 393

BY _____

Page 13, line 3:

- Delete "regulated"
- Insert "registered"

Page 13, line 4:

- Delete "regulation"
- Insert "registration"

MEMORANDUM

State of Alaska Department of Law

TO: Representative Gary Stevens

DATE: March 7, 2002

THROUGH: 
Chrystal Smith
Special Assistant

FILE NO.:

TEL. NO.: 269-5103

SUBJECT: Amendments to HB 393

FROM: Cynthia C. Drinkwater
Assistant Attorney General
Fair Business Practice Section

This memorandum addresses the three subject areas covered by the proposed amendments to HB 393, disclosures of criminal and civil conduct, escrow accounts, and the exemption for securities.

Disclosures of criminal violations/civil judgments

We propose amending AS 45.66.020, the registration provision, to expand the requirements for information that sellers must disclose as part of the registration process. Currently, the bill provides that the application form must require the disclosure of criminal convictions, civil judgments and administrative determinations involving fraud, theft, misrepresentation, violations of certain Alaska laws and similar laws of other jurisdictions. The proposed subparagraph AS 45.66.020(b)(4) would require disclosure of convictions, judgments or administrative determinations involving violations of state or federal securities law. It is important to require disclosure of securities violations because it is not unusual for a fraudulent business opportunity seller to engage in scams that involve or are related to the sale of securities or other investments.

Similarly, securities law violations are the primary subject of the amendments proposed for AS 45.66.200 regarding denials, suspensions and revocations of registration. Under the current version, the department can deny, suspend, or revoke a registration, after providing notice and an opportunity for the seller to respond, if the department finds that there is an unreasonable risk to the public interest and the seller is the subject of certain criminal or civil judgments. The amendments would add securities violations to the list of criminal or civil offenses that could subject a seller to registration action. The other amendments to this section clarify that not only violations of certain Alaska laws, but violations of similar laws from other jurisdictions, will be considered in whether to take action on a registration.

Escrow accounts

We propose amending AS 45.66.110 regarding escrow accounts to clarify how money will be disbursed by the escrow account holder and to provide greater protection to a buyer during the 30 days following the signing of the contract. This is the period in which the buyer, under AS 45.66.130, may cancel a contract for any reason. The proposed language on page 7, line 30 would preserve the money held in escrow for the duration of this period so it would be available to the buyer if the buyer exercised the right to cancel within

Representative Gary Stevens
March 7, 2002
Page 2

that time. The language proposed for page 7, line 20 would require the seller to give a copy of the contract to the escrow account holder so that the escrow account holder will be able to determine when the 30-day period has run. The new paragraph (d) on page 7, line 30 allows the escrow account holder to release money to the buyer in the event of cancellation. Without this language, the buyer may have been required to file a claim under AS 45.66.120 in order to recover escrow funds following cancellation.

The securities exemption

We propose clarifying a term used in the exemption under AS 45.66.220(7) for securities registered or exempted from registration under AS 40.55, by replacing "regulated" and "regulation" with "registered" and "registration." This more narrow language makes clear that only securities that are in compliance with securities law are exempted from registration under the business opportunity law.

Enclosures: Proposed Amendments to HB 393
 HB 393 with proposed amendments engrossed

Alaska State Legislature

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Representative Gary Stevens BUSINESS OPPORTUNITIES BILL

Sponsor Statement – HB 393

This bill creates a new, comprehensive statute regulating the sale of business opportunities. Business opportunities, commonly referred to as “biz opps,” are prepackaged small business deals primarily targeted to novice entrepreneurs. Although some business opportunities offer consumers legitimate methods for earning income, the field is fraught with unfair and deceptive practices.

Typical business opportunities range from work-at-home schemes, like medical billing, to the sale of vending machines, ATMs, greeting card display racks and other products, to the sale of “900 numbers.” These deals are initially pitched to consumers through classified ads, over the Internet, and through “infomercials,” and potential buyers are subjected to high-pressure sales tactics. Unwary consumers are enticed by the promise of high earnings, which rarely materialize. According to the Federal Trade Commission, biz opp scams bilk consumers across the country of tens of millions of dollars each year.

With this bill, Alaska will join approximately half of the states in regulating the sale of business opportunities. Persons who want to sell or advertise business opportunities in Alaska would be required to register with the state, to disclose information to buyers, to use escrow accounts to assure delivery of business assets, and to provide a 30-day right of cancellation to the buyer. Violators will be subject to civil and criminal penalties. The bill provides important consumer safeguards for entrepreneurial-minded Alaskans.

BUSINESS OPPORTUNITIES BILL

Sectional Analysis

***Sec. 1.** Amends AS 37.05.146(b)(4) to include receipts of fees for business opportunity registration and renewals as program receipts.

***Sec. 2.** Amends AS 45.50.471(b) to provide that a violation of the business opportunity statute is a violation of the Unfair Trade Practices and Consumer Protection Act.

***Sec. 3.** Amends AS 45 by creating a new chapter regulating the Sale of Business Opportunities.

***Sec. 45.66.010. Registration required.**

Prohibits a person from selling or offering to sell a business opportunity unless the person is registered with the department at least 30 days before selling or offering to sell a business opportunity.

***Sec. 45.66.020. Registration procedure.**

Requires that a person pay a registration fee and file certain documents in order to register with the department. The required documents include a copy of advertising materials, a disclosure statement to potential buyers, a surety bond, and a completed application form. The application form will require the seller to disclose the nature of the business opportunity and the method by which it will be advertised; the identity of the seller and owners or agents affiliated with the seller; and criminal convictions, civil judgments, and administrative determinations involving allegations of fraud, theft, and unfair trade practices.

***Sec. 45.66.030. Renewal of registration.**

Provides that a person must file a renewal application if the person sells or offers to sell a business opportunity for more than a year following the department's acknowledgment of registration.

***Sec. 45.66.040. Registration Fees.**

Requires that a seller pay a non-refundable fee to the department for a first-time application and a renewal fee for a renewal application. The amount of the fee will be established by regulation.

***Sec. 45.66.050. Material changes in registration information.**

Requires the reporting of any material changes to the application within 10 days of the change.

***Sec. 45.66.060. Surety bond required.**

Requires a business opportunity seller to post a surety bond in the amount of \$75,000 in order to do business in the state.

***Sec. 45.66.070. Location of offer and sale.**

Provides that the statute applies to a sale or offer to sell a business opportunity if the seller directs the offer to residents of this state, if the offer originates in this state, or if the buyer will operate the business opportunity in this state.

***Sec. 45.66.080. Disclosure requirements.**

Establishes that at least 10 days before the buyer signs the contract, the seller shall give the buyer a written disclosure statement. The disclosure statement must include information about the seller's business history, the seller's financial condition, the seller's legal history, the seller's history of business opportunity registration, the total price and payment schedule for the business opportunity, and the rights and obligations of the parties. Requires that if the seller makes claims about potential earnings, the seller must provide the basis for the claim and associated economic risks.

***Sec. 45.66.090. Written contract required.**

Requires that a seller use a written contract for selling the business opportunity. Contract provisions must include: payment terms; contact information for the seller, the seller's agent, and suppliers; a description of services that the seller is to provide; delivery dates; a complete description of the buy-back agreement if applicable; and a statement of the buyer's right to cancel.

***Sec. 45.66.100. Restrictions on down payments.**

Precludes a seller from requiring a buyer to pay as a down payment more than 20 percent of the initial payment unless any amount above the 20 percent is placed in an escrow account.

***Sec. 45.66.110. Escrow account requirements.**

Requires that the escrow account be held by a person who is independent from the seller, and requires that a seller who establishes an escrow account provide account information to the department. Also prevents the release of escrow funds until the buyer provides written notification to the escrow holder that the products or services required by the contract have been delivered.

***Sec. 45.66.120. Actions for claims against escrow account.**

Allows a buyer who has a claim against an escrow account to bring a civil action against the seller or escrow account holder to recover money from the escrow account.

***Sec. 45.66.130. Cancellation of contract.**

Allows for a buyer to cancel a contract for any reason if the buyer gives notice of the cancellation to the seller within 30 days after signing the contract. Also permits a buyer to cancel the contract at any time if the seller fails to meet disclosure requirements, makes deceptive statements about the business opportunity, or fails to provide services or products required under the contract. Provides that within 15 days of such notice by the buyer, the seller must tender payment to the buyer and terminate the buyer's financial obligations.

***Sec. 45.66.140. Prohibited representations.**

Prohibits sellers from representing that they are registered with the department unless they have complied with the registration requirements, and prohibits other misleading representations about registration status or compliance with the law.

***Sec. 45.66.150. Untrue statements or omissions.**

Prohibits a seller from making an untrue statement of material fact in registration information, disclosure statements, advertising or other communications.

***Sec. 45.66.160. Unwarranted conclusions.**

Provides that acknowledgment of registration by the department does not constitute a recommendation or approval of a seller or a business opportunity.

***Sec. 45.66.170. Waiver prohibited and void.**

Prohibits a seller from requesting that a buyer waive rights or defenses under this chapter.

***Sec. 45.66.180. Seller's records and files.**

Requires that a seller maintain records of the advertisement or promotion of a business opportunity for five years and that the seller allow access to the records by the department. Also requires that a seller keep all documents relating to a contract for four years.

***Sec. 45.66.190. Public records.**

Provides that documents required under this chapter are public records. However, testimony and records related to an investigation by the department would not be public records.

***Sec. 45.66.200. Denial, suspension, or revocation of registration.**

Allows the department to deny, suspend, or revoke a registration for a number of reasons, such as the seller's failure to comply with registration requirements; for fraud or deceit perpetrated on the buyer; or if a person represents an unreasonable risk to the public interest and has been convicted of a crime involving fraud or theft or has violated consumer protection laws. Establishes that prior to taking action under this provision, the department must provide to the person a notice of intent to deny, suspend, or revoke the

registration, and the person has an opportunity to respond to the notice by submitting a sworn statement.

***Sec. 45.66.210. Criminal penalties.**

Provides that a person who recklessly violates the registration, disclosure, or contract provisions of the chapter is guilty of a Class C felony; other violations are punishable as Class A misdemeanors.

***Sec. 45.66.220. Exemptions.**

Exempts from coverage certain transactions including sales or offers to sell:

- A business opportunity if the payments by a buyer under the contract are less than \$200
- a franchise under 16 CFR 436
- an ongoing business to be sold in its entirety
- equipment, materials, or samples for use in sales demonstrations and not for resale, or product inventory sold to the buyer at a bona fide wholesale price
- securities
- a business opportunity in which the buyer is a bank or financial institution
- a business opportunity involving a marketing plan made in conjunction with the registration of a trademark or service mark and where the seller has a minimum net worth of \$1,000,000
- a business opportunity where either the seller or the buyer is licensed as a real estate broker, associated real estate broker, or real estate sales person under AS 08.88 and the sale or offer is regulated by AS 08.88

***Sec. 45.66.230. Coordination with other laws.**

Provides that this chapter governs if a sale or offer to sell a business opportunity is regulated by this chapter and by other laws and if compliance with both is not possible.

***Sec. 45.66.240. Regulations.**

Allows the department to adopt regulations under the Administrative Procedure Act to implement this chapter.

***Sec. 45.66.900. Definitions.**

Provides definitions, including the definition of "business opportunity" as a contract or agreement for the sale of products, equipment, supplies, or services enabling the buyer to start a business and in which the seller agrees to provide additional services, such as

- Assisting in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices
- Assisting in finding outlets or accounts for the buyer's products or services;
- Purchasing any or all products made, produced, fabricated, grown, bred, or modified by the buyer
- Agreeing to buy back products from the buyer products

-
- Representing that the buyer will derive income from the business that will exceed the price paid to the seller
 - Providing the buyer with a marketing plan

***Sec. 4.** Changes the court rules to require the court clerk, in actions brought against escrow accounts under AS 45.66.120, to mail a copy of the complaint and subsequent orders or judgments to the attorney general.

***Sec. 5.** Provides for a grace period for the registration of sellers of business opportunities who are in business before the effective date of Section 3, allowing them to continue selling or offering to sell for up to 45 days, after which time they must be registered.

***Sec. 6.** Allows the Department of Law to adopt regulations to implement the act.

***Sec. 7** Provides that AS 45.66.120(b) takes effect only if sec. 4 receives the two-thirds majority vote of each house.

***Sec. 8** Provides that Section 6 of the act takes effect immediately under AS 01.10.070(c).

***Sec. 9** Provides that this act, other than Sec. 6, takes effect July 1, 2002.

February 4, 2002

THE BUSINESS OPPORTUNITY BILL

What is a business opportunity?

A business opportunity, or "biz opp", is a pre-packaged small business deal offered primarily to novice entrepreneurs. Unfortunately, these enterprises are often fraudulent. Typical business opportunities range from a variety of work-at-home schemes such as medical billing, to the sale of vending machines, pay telephones, greeting card display racks and other products, to the sale of "900 numbers." They almost always promise high earnings, which rarely materialize. According to the Federal Trade Commission, biz opp scams bilk hundreds of thousands of consumers out of tens of millions of dollars each year.

How are biz opps advertised?

Biz opps are frequently pitched to consumers through classified ads, over the Internet, and through "infomercials," followed up with high-pressure sales pitches. The following are typical biz opp advertisements:

- "Medical Billing. Work from home – Full or Part Time. From \$24K to \$50K+ per year. Home Computer Required. CALL NOW."
- "1000 Envelopes=\$4000. From Home! \$4 per envelope you stuff GUARANTEED!"
- "HERSHEY AND NABISCO VENDING – High weekly income potential. Work 6-8 hrs/wk. Secured and guaranteed locations. \$7000 investment required."
- Small Town Entrepreneur Discovers Amazing Way to Earn Money at Home! FREE Report reveals how you can earn \$\$\$Thousands\$\$\$ each week...sending Fax-Ads to Business Offices in your area.

Who are the likely targets of biz opp scams?

Generally, biz opp fraud targets stay-at-home parents, retirees, people who are out of work, and individuals looking to create their own business. Alaskans may be targeted because of the seasonal nature of many jobs in Alaska, because of the disposable income associated with the PFD, and because of the entrepreneurial spirit of many Alaskans.

What does the bill do?

This bill creates a new, comprehensive statute regulating promoters of business opportunities. It requires persons who sell business opportunities to register with the state, to disclose information to buyers, to use escrow accounts to assure delivery of business assets, and to provide a 30-day right of cancellation to the buyer. With this bill, Alaska would be joining approximately half of the states, which have statutes requiring registration of business opportunities. In addition to providing an enforcement mechanism for the state, the bill will

ensure that potential investors can be fully informed about a business before entering into a sales agreement.

The bill provides for civil and criminal penalties for violators. A person who recklessly violates the registration requirements is guilty of a Class C felony. A person who recklessly violates the contract or cancellation provisions is guilty of a Class A misdemeanor. The bill also makes clear that a violation of the biz opp statute is also a violation of the Unfair Trade Practices and Consumer Protection Act.

Are there exemptions?

The bill does not apply to a number of transactions, including those transactions in which the total payment from the buyer to the seller is less than \$200. It also does not apply to the sale of a franchise (as defined under federal law), an ongoing business sold in its entirety, securities, and real estate transactions regulated by AS 08.88.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 393
 (H) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; . . ." BRU Criminal Division; Civil Division
 Sponsor Representative Stevens Component Criminal Appeals/Special Litigation
 Requester House Labor and Commerce Committee Component No. 2279; 2206
 Fair Business Practices

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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

CHANGE IN REVENUES ()	*****	*****	*****	*****	*****	*****
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 Statutory Designated Prog Rcpts	*****	*****	*****	*****	*****	*****
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 393 would provide for the registration and regulation of sellers of business opportunities, which are prepackaged small business deals offered mainly to novice entrepreneurs over the Internet and through newspaper and radio advertisements, television "infomercials," and seminars. Typically, a business opportunity is an arrangement by which the seller provides products, equipment, supplies, or services to the buyer; assists the buyer in finding outlets or accounts for the buyer's products or services; purchases the products made, produced, or modified by the buyer; or provides the buyer with a marketing plan.

The bill would require that sellers of business opportunities register with the state, disclose specific information regarding the business to the buyer before sale, use an escrow account to assure delivery of business assets, and provide a 30-day right of cancellation for the buyer.

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by: Kathryn Daughnetee for Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: (907) 465-5370
 Date/Time: 2/21/02 2:42 PM
 Date: 2/21/2002

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. HB 393 - FN#1

ANALYSIS CONTINUATION

A seller who recklessly violates the registration requirements would be guilty of a class C felony. A seller who recklessly violates the contract or cancellation provisions would be guilty of a class A misdemeanor. The bill would also amend AS 45.50.471(b) to specify that a violation of the sale of business opportunities statute constitutes an unfair or deceptive act or practice in the conduct of trade or commerce.

The Department of Law does not anticipate significant revenues or costs from passage of this legislation. However, because there is no regulatory scheme now in effect, we cannot say with certainty how much additional staff time will be required to implement this bill.

Given our experience with implementing the Telephone Solicitation Act, we would guess that no more than ten or twelve sellers of business opportunities will register in the first year. Assuming an initial registration fee of \$150, the revenue in the first year would be approximately \$1,500 to \$1,800. With an annual renewal fee of \$50, the revenue from these same sellers would be \$500 to \$600 in the second year, plus any new initial registrations.

Costs will be generated both by the time spent processing the registration applications, and by time spent on any enforcement actions against unscrupulous sellers of business opportunities, who are generally located out of state and who make exaggerated earnings claims to induce buyer participation, and who would be unlikely to register with the state. We expect that processing ten to twelve applications per year, while perhaps more time consuming than other registrations due to the relative complexity of the business opportunity registration requirements, can be handled within existing funding levels. We have no way of anticipating how many enforcement actions may be required. The Consumer Protection unit is aware of dozens of business opportunity scams around the country, and they know Alaskans are being targeted, but not to what extent. However, the department does not believe the cost of pursuing limited enforcement actions against a few sellers will entail significant amounts of staff time. If our assumptions prove to be inaccurate, the department may need to seek additional funding in the future.

So you want to work at home?

You're conflicted. You need extra income, but you want to be around for your kids. So you're tantalized by the idea of staying home and earning cash. Clever marketers know they have you. They promise a whole world of work-at-home possibilities that sound perfect: "Stuff envelopes on your own time." "Doctors need you to do their medical billing from home." "Like crafts? Great pay for assembly work." They try to lure you with enticing salaries: "Earn hundreds: The faster you work, the more you make."

The problem is, you rarely end up making the money you're promised. In fact, few people make any at all, and most *lose* money. An investigation of 112 work-at-home companies conducted in 2000 by Operation Job Fraud, a task force made up of several Better Business Bureaus and the U.S. Postal Inspection Service, turned up nothing but scams. When the task force investigated ads on the Internet, on posted flyers, and in magazines and newspapers, they "found no evidence of making the money promised," says Katy Conklin of the Better Business Bureau in Chattanooga, Tennessee. "We tried them ourselves. We spent our own money on the kits and materials, and we never made back our investment."

The Federal Trade Commission estimates that tens of millions of dollars a year are lost on these phony offers. Although most people are cheated out of anywhere from \$20 to a couple of hundred, some lose more.

Targeting potential victims is easy. Conklin recalls it happening in her own family. "Two years ago my daughter gave

Read this before you fall for some of the most common rip-offs. **BY JANICE LIEBERMAN**



BEEN CONNED?

Complain! Consumer agencies can go after bogus companies only if they know about them. File a complaint with the regional Better Business Bureau where the company is located, and call the Federal Trade Commission at 877-FTC-HELP or log on to ftc.gov.

birth to a baby boy, and in the hospital she was bombarded with magazines for new moms, with work-at-home offers in the back," she recalls. "The ads preyed on the vulnerable, using guilt tactics such as 'Why would you leave your kids at home to work?' The scamsters stop at nothing!" Conklin says that working moms, the disabled, the elderly, students, and non-English-speaking immigrants most often fall victim to these scams.

So why aren't these fraudulent companies tracked down—and shut down? For one thing, many change their names

or addresses and go out of business within a year or two, making it daunting for investigators to track them. Second, such scams often go unreported: Many victims are too embarrassed to complain or don't want to spend time filing a claim.

All of which means it's up to you to protect yourself. As an assistant director of the Bureau of Consumer Protection at the Federal Trade Commission, Mona Spivack works to put these shady companies out of business. We asked her to describe three of the most common fraudulent schemes:

RIP-OFF #1: MEDICAL BILLING FROM HOME

This scam robs you of big bucks up front: According to Spivack, you're typically asked to shell out several hundred dollars for medical-billing software and a list of doctors who need your services. You're told that the doctors will give you lists of patients to bill and forms to input into your computer. You're supposed to submit the computerized forms to a clearinghouse that will forward them to Medicare for reimbursement. "They tell you it can be done on your own time and that you can make \$1,500 a week," says Spivack.

Sounds great, right? But here's the reality: You get the software, and it's hard to use. And when you send out letters to doctors offering them your help, they've never heard of you and aren't interested in your services. In fact, Tom Collier of the Better Business Bureau in Tucson, along with the Pima County Medical Society, surveyed 2,100 doctors to find out whether they'd even consider

having an outsider do their medical billing. Only 15 doctors said yes. "That's 0.6 percent of the market," says Collier.

Carolyn Agustin-Acosta learned about this scam the hard way. She saw an ad in a local paper for medical billing that promised earnings of \$20 to \$40 an hour. The Northridge, California, nurse was working 53 hours a week and needed to supplement her income but didn't want to spend any more time away from her 3-year-old son. After paying \$339 for the software, she received a list of doctors who she then realized didn't exist. "I was in tears," she says. "I lost all that money. I was looking forward to spending more time with my son and having more children, but I can't do it like this."

And once you've been scammed, good luck getting your money back. According to Stephen Gurwitz, a senior trial attorney with the FTC, "You call the customer service department [of the medical-billing company] to tell them the software is useless, and they say, 'Once you open the software, it can't be returned.'" To try to get a refund, he says, you can write letters of complaint to the company, the Better Business Bureau, the FTC, and the consumer protection agency in the state where the business is located.

A variation on the medical-billing scheme is one in which you're encouraged to help out Uncle Sam. The company provides you with a list of people who are due a government refund for some reason, say they overpaid on their taxes. Allegedly you'll get a cut of that refund as a commission. The list runs you about \$80, but as in the medical billing scam, the phone numbers and addresses

you're furnished with are fake (or if they're real, you have to talk strangers into giving you their money)—and you're still responsible for the cost of the phone calls and the postage.

RIP-OFF #2: HOME ASSEMBLY

Feeling crafty? Think you might try your hand at assembling picture frames or sewing—all on your own time? This offer, usually found in the classifieds, promises you up to several hundred dollars a week, depending on how fast you can assemble the products. You're asked to send in \$40 to \$100 for the supplies, which you receive in the mail with an instruction booklet. But you're sent only enough supplies for one sample item, and then your handiwork must be seen and "approved" by management. That part, of course, is rarely mentioned over the phone when you call the number posted in the ad.

Investigators say that these operators make it impossible for you to earn money. These wheeler-dealers send you craft kits with parts missing or pieces that don't fit. Or they ask you to sew something relatively easy but reject the result. "I've had professional seamstresses call me up crying, saying their sewing on something simple was sent back," Spivack says.

RIP-OFF #3: ENVELOPE STUFFING

It *sounds* so simple—which is why this scam has been around for years. How it works: You respond to an ad and are promised about \$5 per stuffed envelope. You pay \$25 to \$50 for envelopes, stamps, flyers, and a mailing list. What you get in return is a flyer to photocopy

4 clues that you're being scammed

CLUE 1: "Act now" pitches. Some con artists try to pressure you by saying that most of the positions are filled, so you had better act now. A legitimate employer will give you time to think about signing on.

CLUE 2: Evasive answers. Always ask for a detailed description of what you're expected to do to earn money, and of how, when, and how much you'll be paid. Get it in writing, and read the fine print.

CLUE 3: The claim that "anyone can do it." A real employer usually wants a résumé and references.

CLUE 4: Claims that you can make more at home than in a similar office job. To check out a work-at-home job, research the going rate for doing that same job in an office. For instance, data entry may pay \$7 to \$10 an hour. That's \$1,600 a month if you work full-time. An ad that promises you \$2,000 a week for doing the same job at home is probably bogus.

and send to people whom you're supposed to solicit by placing a newspaper ad conning them to "make money stuffing envelopes." So you've essentially passed along a chain letter duping others.

"It happened to us twice. I'm almost embarrassed to say it," one scammed woman confided to *Redbook*. The first incident happened a year ago, when she was pregnant and wanted to supplement her husband's income. What could be easier than stuffing envelopes in the comfort of her own home? Plus, she had worked in an office and knew how to get the job done quickly. She was so excited that she paid extra to have the kit sent to her faster. After spending \$40 she received a packet. Realizing it was a chain-letter scam, she did nothing with it; she didn't want to cheat other people.

The next time she answered an ad for stuffing envelopes, it read "This is not a scam." She sent \$80 and received nothing. "I actually called directory assistance to find the name of the person whose testimonial was in the original ad," she says. "Of course there was no listing for that person. I was so angry." She has since decided to make money babysitting. □

Where the **real** jobs are

Here's the good news about working from home: Legitimate opportunities do exist. Some require special skills, such as typing and bookkeeping, and most will want you to have your own work space. Below are job-list websites recommended by Rosalind Mays, author of *The Real Deal on Telecommuting*, who has a work-at-home site of her own (see below). Before you sign on with any company, check it out with the Better Business Bureau in the region where the business is located.

www.wahm.com/jobs.html This site—the Work at Home Moms job listing—links to job postings at monster.com, hotjobs.com, and other sites.

www.tjobs.com Search here by category for listings of creative and technical jobs (such as writing and programming), among others.

www.workaholics4hire.com This site provides links to other sites' job postings, but also includes its own listings of telecommuting positions in various fields.

www.sohojobs.org The Small Office-Home Office Jobs website profiles and evaluates other job sites, including their weekly job postings.

www.telecommuting.cjb.net Rosalind Mays's site lists jobs from newspapers, websites, and other sources, as well as links to other job-list sites.

—Lisa Pilnik

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March 13, 2002

NU SKIN

MAR 13 2002

The Honorable Norman Rokeberg, Chair
Alaska House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

Dear Representative Rokeberg:

I am writing on behalf of the Nu Skin Enterprises (NSE) concerning House Bill 393, a proposal to regulate the sale of business opportunities in Alaska. Nu Skin has 655 distributors who direct sell their products and/or services to customers in Alaska. Direct selling is a well-established method for marketing products to consumers in Alaska.

NSE and its independent distributors are concerned that the definition of a business opportunity under the proposed bill is not clear and would cause confusion. Alaska's consumers need this proposal that regulates business opportunities to be clear on what constitutes a business opportunity. **Our primary concern is the exemption threshold of \$200 contained in the bill and its placement in the proposal.** The \$200 threshold contained in House Bill 393 is atypical of the thresholds in the other state business opportunity laws. The lower threshold could potentially subject many of our distributors to burdensome registration and bonding requirements, which would hurt virtually eliminate their ability to pursue their legitimate, small businesses.

A majority of the other twenty-three states that regulate business opportunities and the Federal Trade Commission use a \$500 threshold stated in the definitions section of their statutes and regulations. Twenty-seven states choose not to regulate the sale of business opportunities. If the state chooses to regulate the sale of business opportunities, Alaska should follow the trend and enact a bill with a \$500 threshold stated in the definition of a business opportunity. This higher threshold would balance limited government resources required to enforce the statute against the potential for more significant monetary harm to consumers of opportunities. It would exempt the majority of legitimate direct sellers from undue burdens. These individuals are also protected by generous one-year refund policies on all items purchased under the NSE marketing plan.

For these reasons, we oppose the bill in its current form and suggest the adoption of an amendment to the bill, replacing the \$200 threshold with a \$500 threshold. We suggest you modify the definition of business opportunity as follows:

Add the underlined text to Sec. 45.66.900, Definitions:

...(2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer products, equipment, supplies, or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money in excess of \$500 to the seller and under which one or more of the following occurs or is to occur...

NU SKIN ENTERPRISES, INC. / LEGAL DEPARTMENT

ONE NU SKIN PLAZA • 75 WEST CENTER • PROVO, UTAH 84601 • 801-345-3800 • FAX 801-345-3899

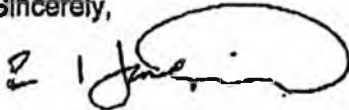
House Bill 393
Page 2

Strike Sec 45.66.220. exemptions, to conform as follows:

~~This chapter does not apply to a sale of or an offer to sell (1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$200...~~

These changes make it clear that those individuals in Alaska who pursue this as a small but legitimate income-earning opportunity do not fall under this law.

Sincerely,



Richard M. Hartvigsen
Vice President, Regulatory Affairs

RMH/ml

**DIRECT SELLING ASSOCIATION**

1275 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20004-2411
202/347-8866 • Fax 202/347-0055

MAR 13 2002

March 12, 2002

The Honorable Norman Rokeberg
Alaska House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

Re: DSA Opposition to House Bill 393 - a Proposal to Regulate the Sale of Business Opportunities

Dear Chairman Rokeberg:

I am writing on behalf of the Direct Selling Association (DSA) concerning House Bill 393, a proposal to regulate the sale of business opportunities in Alaska. DSA and its members have been involved in the effort to curb fraud in the sales of business opportunities at the federal and state levels since the late 1970's. Business opportunity fraud undermines vital public confidence in industries like direct selling, which utilize and depend upon individual entrepreneurship. Clear distinctions can be drawn between direct selling and business opportunities because the investment required to participate in a direct selling opportunity is comparatively low. Unfortunately, we are concerned that the definition of a business opportunity under your review is not clear and would cause confusion among Alaska's consumers.

We support the purpose of legislation like House Bill 393, which is to protect Alaska's citizens from risking large amounts of money for what might be an unproven or unprofitable business venture. Twenty-three states have enacted similar laws in response to deceptive and unfair practices in connection with the sale of business opportunities and the Federal Trade Commission has adopted a Trade Regulation Rule (Trade Rule) in this area. Unfortunately, we oppose House Bill 393 in its current form.

The Direct Selling Association, established in 1910, is the trade association representing the more than 150 companies that market their products and/or services to customers via independent salespeople, primarily through home parties or person-to-person sales. Our association members include some of the nation's most well known commercial names, such as Amway, Avon, Mary Kay, and Shaklee. This global industry generates more than \$83 billion in worldwide sales each year, \$25.57 billion in the U.S. and has a salesforce of more than 11 million people in the U.S. We have on average over 30,000 direct salespeople per Congressional district and thus there are approximately 30,000 direct sellers living and working in Alaska.

The Honorable Norman Rokeberg
DSA Opposition to House Bill 393
Page 2

Profile of the Typical Direct Seller: Part-Time Sales Activity to Supplement Family Income

Direct selling is a well-established method for marketing products to consumers directly, primarily in their homes. Companies within the industry market a broad range of consumer products and services, including household cleaning products, cosmetics and other personal care products, jewelry, cookware and other house wares, educational materials, household decorative products such as baskets, home improvement products, food, and vitamins. Most direct selling companies within our industry are small businesses. Over 99.5 percent of the direct salespeople that market these companies' products are independent contractors. Each of these independent contractors in effect is a micro-small business. Simply stated, direct selling is an ideal way for people with an entrepreneurial spirit to earn extra money without experience, without capital, and without having to make a full-time commitment to an employer.

As the result of this ease of access and flexibility in work arrangements, direct selling has wide appeal among women who have significant family responsibilities, as well as attracting substantial numbers of minorities, the elderly, and handicapped persons. Of our more than 11 million independent contractor salespeople across the United States, about 73 percent are women.

DSA's Opposition to House Bill 393

Alaska's consumers need this proposal to regulate business opportunities to be crystal clear on what exactly constitutes a business opportunity. **Our one concern is the exemption threshold of \$200 contained in the bill and its placement in the proposal.** The \$200 threshold contained in House Bill 393 is atypical of the thresholds in the other state business opportunity laws. In fact only three states, Connecticut, New Hampshire and North Carolina, contain a similar threshold. These thresholds exist:

- To require a strict compliance mode on those business opportunities where people invest a large amount of money up-front;
- To focus limited, valuable state resources on situations where people can be seriously harmed; and
- To reassure people involved in small income-earning programs that they will be protected from inadvertent coverage.

The lower threshold would subject many small income-earning opportunities to onerous registration and bonding requirements, which would hurt many of these very small businesses. It would also take the necessary focus of enforcement off the large business opportunities, where people can be seriously harmed, and spread limited state resources over a much wider field.

In 1980, the Iowa Attorney General's Office showed that the average business opportunity fraud victim lost on average \$5,400. In 1995, the Wall Street Journal ran a story entitled "Undercover Blitz Targets Business Opportunity Scams". This story noted that the victims were defrauded of

The Honorable Norman Rokeberg
DSA Opposition to House Bill 393
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between \$1,500 and \$6,000. We believe that Alaska should target the business opportunities that pose the most harm.

The clear trend in the regulation of business opportunities is toward higher dollar thresholds stated in the definitions section of the law. A majority of the other twenty-three states that regulate business opportunities and the Federal Trade Commission use a \$500 threshold stated in the definitions section of their statutes and regulations. Twenty-seven states choose not to regulate the sale of business opportunities. If the state chooses to regulate the sale of business opportunities, Alaska should follow the trend and enact a bill with a \$500 threshold stated in the definition of a business opportunity.

For all of these reasons, we oppose the bill in its current form and suggest the adoption of an amendment to the bill, replacing the \$200 threshold with a \$500 threshold. We suggest that you modify the definition of business opportunity to fulfill our request as follows:

Add the underlined text to Sec. 45.66.900, Definitions;

... (2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer products, equipment, supplies, or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money in excess of \$500 to the seller and under which one or more of the following occurs or is to occur . . . ; and

Strike Sec. 45.66.220. Exemptions, to conform as follows:

This chapter does not apply to a sale of or an offer to sell ~~(1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$200.~~

This change and movement makes it clear to all - consumers and regulators alike - that the type of small income-earning opportunity represented by the DSA membership does not fall under this law.

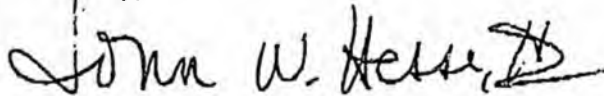
For your information, in 1984 the North American Securities Administrators Association developed a model Business Opportunity Sales Act (NASAA Model), which contains a \$500 threshold. In addition, the National Conference of Commissioners on Uniform State Laws has a Model Franchise and Business Opportunity Act. This Act has a \$500 threshold as well.

The Honorable Norman Rokoberg
DSA Opposition to House Bill 393
Page 4

In summary, DSA opposes House Bill 393 in its current form. We would support an amendment to raise the threshold amount from \$200 to \$500, placing the threshold in the definitions section of the bill. This request is based upon the practices of the vast majority of states regulating the sales of business opportunities as well as the Federal Trade Commission. In addition, the two most widely referenced model acts in this area contain a \$500 threshold. Alaska's resources should be directed at fighting the fraud posed by large business opportunity scams. Any law in this area should not confuse Alaska's consumers with a convoluted definition of a business opportunity.

Thank you for your time and attention to DSA's concerns. Please do not hesitate to contact me directly with questions or concerns. I can be reached by telephone at (202) 220-9420 or by email to jhesse@dsa.org. Thank you for your time and attention to this request.

Sincerely,



John W. Hesse, II
Senior Attorney & Director, Government Relations

MAR 11 2002

March 4, 2002

The Honorable Norman Rokeberg
Chairman, Alaska House Judiciary Committee
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: House Bill 393, A Proposal to Regulate the Sales of Business Opportunities

Dear Representative Rokeberg:

On behalf of Mary Kay Independent Beauty Consultants and Sales Directors in Alaska, let me express opposition to House Bill 393 in its current form. The bill has been referred to the House Judiciary Committee.

Mary Kay Inc. is a direct selling company and an active member of the Direct Selling Association (DSA). Mary Kay Beauty Consultants and Sales Directors buy directly from the Company and sell quality skin care and color cosmetics directly to loyal customers..

Each of these independent contractors is in effect a micro-small business. A Mary Kay career is an ideal way for women with an entrepreneurial spirit to earn extra money without experience, without capital, and without having to make a full-time commitment to an employer. One of the attractions of the career is the low start-up cost and lack of red tape. She can work as much or as little as dictated by her personal circumstances.

Clear distinctions can be drawn between direct selling and business opportunities because the investment required to participate in a direct selling opportunity is comparatively low. We support the purpose of House Bill 393, which is to protect Alaska's citizens from risking large amounts of money for what might be an unproven or unprofitable business venture.

The \$200.00 threshold contained in House Bill 393 is atypical of the thresholds in the other state business opportunity laws. The vast majority of states that regulate the sale of business opportunities use a \$500 threshold, as does the Federal Trade Commission Rule. We believe that such a low threshold would pose a burden to business and government alike and would reduce the effectiveness of the legislation. Consequently, we urge the adoption of an amendment to the bill, replacing the \$200 threshold with a \$500 threshold. The amendment is included on the attached page. Without such amendment, we respectfully oppose the bill.

Representative Norman Rokeberg
Page Two
March 5, 2002

For your information, in 1984 the North American Securities Administrators Association developed a model Business Opportunity Sales Act (NASAA Model), which contains a \$500 threshold. In addition, the National Conference of Commissioners on Uniform State Laws has a Model Franchise and Business Opportunity Act. This Act has a \$500 threshold as well.

Thank you for your time.

Sincerely,



Anne Crews
Vice President, Corporate Affairs

Attachment

cc: John Hesse
Direct Selling Association

SUGGESTED AMENDMENT

We suggest that you modify the definition of business opportunity to fulfill our request as follows:

Categorizing ventures as business opportunities usually requires registration with the State, payment of a fee, posting a bond, disclosing information, etc. If the threshold is low, direct selling could be covered and cost of the regulation could easily exceed cost of entering the career.

Add the underlined text to Sec. 45.66.900, Definitions;

. . .(2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer products, equipment, supplies, or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money in excess of \$500 to the seller and under which one or more of the following occurs or is to occur . . . and;

Change Sec. 45.66.220. Exemptions, to conform as follows:

This chapter does not apply to a sale of or an offer to sell (1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$500. . .

KIRBY

March 14, 2002

Norman Rokeberg, Chairman
Legislative Session Contact:
State Capitol, Room 118
Juneau, AK 99801-1182
907-465-4968
fax: (907) 465-2040

Re: The Kirby Company Opposition to House Bill 393 - a Proposal to Regulate the Sale of Business Opportunities

Dear Norman Rokeberg:

I am writing on behalf of The Kirby Company (Kirby) concerning House Bill 393, a proposal to regulate the sale of business opportunities in Alaska. Business opportunity fraud undermines vital public confidence in direct selling businesses like Kirby, which utilize and depend upon individual entrepreneurship. Clear distinctions can be drawn between direct selling and business opportunities because the investment required to participate in direct selling opportunity is comparatively low. Although the cost of the Kirby opportunity is nothing but hard work, we are concerned that the definition of a business opportunity under your review is not clear and would cause confusion among Alaska's consumers.

We support the purpose of legislation like House Bill 393, which is to protect Alaska's citizens from risking large amounts of money for what might be an unproven or unprofitable business venture. Twenty-three states have enacted similar laws in response to deceptive and unfair practices in connection with the sale of business opportunities and the Federal Trade Commission has adopted a Trade Regulation Rule (Trade Rule) in this area. Unfortunately, we oppose House Bill 393 in its current form.

Since 1917, The Kirby Company has manufactured premium home cleaning systems and has sold those systems to independent distributors who market them to customers exclusively through person-to-person in home sales. There are approximately fifty (50) people affiliated with the Kirby opportunity living and working in Alaska.

Kirby's Opposition to House Bill 393

Alaska's consumers need this proposal to regulate business opportunities to be crystal clear on what exactly constitutes a business opportunity. Our one concern is the exemption threshold of \$200 contained in the bill and its placement in the proposal. The \$200 threshold contained in House Bill 393 is atypical of the thresholds in the other

1920 West 114th Street • Cleveland, Ohio 44102
Phone 216-228-2400 • FAX 216-221-3162

A Scott Fetzer Company

state business opportunity laws. In fact only three states, Connecticut, New Hampshire and North Carolina, contain a similar threshold. These thresholds exist:

- To require a strict compliance mode on those business opportunities where people invest a large amount of money up-front;
- To focus limited, valuable state resources on situations where people can be seriously harmed; and
- To reassure people involved in small income-earning programs that they will be protected from inadvertent coverage.

The lower threshold would subject many small income-earning opportunities to onerous registration and bonding requirements, which would hurt many of these very small businesses. It would also take the necessary focus of enforcement off the large business opportunities, where people can be seriously harmed, and spread limited state resources over a much wider field.

The clear trend in the regulation of business opportunities is toward higher dollar thresholds stated in the definitions section of the law. A majority of the other twenty-three states that regulate business opportunities and the Federal Trade Commission use a \$500 threshold stated in the definitions section of their statutes and regulations. Twenty-seven states choose not to regulate the sale of business opportunities. If the state chooses to regulate the sale of business opportunities, Alaska should follow the trend and enact a bill with a \$500 threshold stated in the definition of a business opportunity.

For all of these reasons, we oppose the bill in its current form and suggest the adoption of an amendment to the bill, replacing the \$200 threshold with a \$500 threshold. We suggest that you modify the definition of business opportunity to fulfill our request as follows:

Add the underlined text to Sec. 45.66.900, Definitions;

. . . (2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer products, equipment, supplies, or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money in excess of \$500 to the seller and under which one or more of the following occurs or is to occur . . . ; and

Strike Sec. 45.66.220. Exemptions, to conform as follows:

This chapter does not apply to a sale of or an offer to sell ~~(+) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$200 . . .~~