

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 0012

10910 HOUSE LABOR & COMMERCE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SSHB 29
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Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Real Property Transactions/Licensees RDU Occupational Licensing (117)
Component Occupational Licensing
Sponsor Representative Rokeberg
Requester House Labor and Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSHB 29 makes changes to practices conducted by real estate licensees. New funds are not required to implement these changes.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division Occupational Licensing Date/Time 2/2/04 1:42 PM
Approved by: Edgar Blatchford, Commissioner Date 2/2/2004
Agency Department of Community & Economic Development

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Your rights when dealing with a real estate licensee.

Adopted by the (date)

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Alaska Real Estate Commission

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The real estate industry has a significant effect on the economy of Alaska; therefore it is in the best interest of the public to put into law the relationships between real estate licensees and people who wish to use their services.

This brochure describes your legal rights in dealing with a real estate licensee. Please read it carefully before signing it or any document.

First, a definition for specific assistance:

Includes but is not limited to, a) asking questions regarding confidential information for a real estate transaction; b) showing property selected for your specific needs or desires; c) preparing a written offer; d) entering into a personal services contract.

Specific assistance does not include: a) hosting an open house; b) casual conversation regarding real estate; c) receiving calls and electronic inquiries on the licensee's advertisements; d) providing information regarding a piece of real estate; e) setting an initial appointment to show a piece of property; f) receiving unsolicited information from a buyer or lessee before or after disclosure of a real estate relationship.)

Duties owed to you by the licensee in all relationships:

Unless additional duties are agreed to by you and the licensee in a written, signed document, and regardless of the type of licensee relationship, a licensee owes the following duties to each person to whom the licensee provides specific assistance

- 1 The exercise of reasonable skill and care
- 2 Honest and good faith dealing
- 3 The presentation of all written offers and other written communication in a timely manner. This is regardless if the real estate is subject to an existing contract, or if the person is already a party to an existing contract
- 4 Except as provided elsewhere in the law, the disclosure of all material information known by the licensee and not apparent or readily ascertainable to you regarding the physical condition of real estate if the information substantially adversely affects the real estate or your ability to perform your obligations in the real estate transaction or if the information would materially impair or defeat the purpose of the real estate transaction. *This disclosure requirement does not require the licensee to disclose a fact or suspicion that the real estate or neighboring real estate is or was the site of a murder, suicide, or other death, rape or other sexual crime, assault or other violent crime, burglary, illegal drug activity, gang-related activity, political activity, religious activity, anticipated development, alleged supernatural activity, or another act, occurrence, or use that*

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does not adversely affect the physical condition or title to the real estate. These disclosure requirements may not be considered to imply a duty to investigate a matter that the licensee has not agreed to investigate.

- 5 Accounting in a timely manner for all money and other property received from or on your behalf
- 6 Before the licensee provides specific assistance, they must obtain from you a signed document that discloses your relationship with that licensee
- 7 In addition to the above document, the licensee must provide you, when you sign an offer in a real estate transaction, a written statement that states who the licensee represents. That statement must be written in the contract.

Duties owed by the licensee when they are representing you:

Unless you both agree to additional duties in writing, the licensee who represents you, owes you the following duties. And they may not waive these duties to you.

- 1 Not taking action that they know is adverse or detrimental to your interest
- 2 Disclosure of a conflict of interest to you in a timely manner (Note: a conflict of interest is not showing you real estate not owned by you, or listing competing properties, the representation of more than one person by the same licensee or by different licensees working for the same broker; showing a property that you are interested in to others; acting as a neutral licensee; disclosing confidential information to the licensee's broker for the purpose of seeking advice or assistance)
- 3 Advising you to obtain expert advice on a matter that relates to the real estate transaction that is beyond their expertise
- 4 Not disclosing confidential information from or about you without your written consent, except under subpoena or another court order, even after termination of the relationship with you
- 5 If you are the seller or lessor, unless you agree in writing, making good faith and continuous efforts to find a buyer or lessee for the property, except that the licensee is not required to seek additional offers while the property is subject to an existing contract
- 6 If you are a buyer or lessee, unless you otherwise agreed to in writing, making a good faith and continuous effort to find real estate to buy or lease, except that the licensee is not obligated to seek additional property for you while you are a party to an existing contract or are they obligated to show you property for which there is not a written agreement to pay the licensee

I have read and acknowledge the above paragraph: _____ / _____
Date: _____ *Time:* _____

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Duties not owed by the licensee:

Unless otherwise agreed, a real estate licensee does not owe a duty to a person with whom the licensee has establish a license relationship to:

- 1 Conduct an independent inspection of the real estate that is the subject of your relationship
- 2 Conduct and independent investigation of a person's financial condition
- 3 Independently verify the accuracy or completeness of a statement made by a party to a real estate the transaction or by a person reasonably believed by the license to be reliable

*I have read and acknowledge the above paragraph: _____ / _____
Date: _____ Time: _____*

Designated licensee relationship:

A broker may have a different designated licensee working for the seller or lessor, and for the buyer or lessee in the same real estate transaction without creating dual agency or a conflict of interest. Unless the broker is a designated licensee, the relationship established between you and designated licensee does not extend to the broker. The extent of the relationship between the designated licensee must be disclosed to you in the real estate transaction.

Duties of a neutral licensee:

Unless additional duties are agreed to in a written document signed by the neutral licensee and all parties, the duties of a neutral licensee (*when one licensee is working with both sides in the transaction*) are limited to the duties already established for a licensee and the following duties:

- 1 Not to take action that the neutral licensee knows is adverse or detrimental to the parties to the transaction or to whom the neutral licensee provides services
- 2 To disclose a conflict of interest in a timely manner
- 3 To advise all parties to obtain expert advice on a matter relating to the transaction that is beyond their expertise
- 4 Not to disclose without written consent confidential information to another party to whom the licensee is providing specific assistance (except under a subpoena or another court order, even after the relationship terminates)
- 5 Not to disclose without the consent of the person to whom the information relates, that someone is willing to pay more, or sell for less, or accept financing terms other than what is offered. A neutral licensee does not violate their duties if, with written consent, engages in the following conduct in a good faith effort to assist in reaching final agreement in a real estate transaction: a) analyzing, providing information on, or reporting on the merits of the transaction to each party;

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b) discussing the price, terms, or conditions that each party would or should offer or accept; or c) suggesting compromises in the parties respective bargaining positions.]

In a neutral licensee relationship, the knowledge of information of the licensee about one client is not imputed to other clients or to other licensees who work for the same broker.

I have read and acknowledge the above paragraphs: _____ / _____
Date: _____ *Time:* _____

Compensation:

A broker may be compensated by any party to a transaction, by a third party, or by one or more of the parties to the transaction splitting or sharing the commission. Compensation does not establish a relationship between the broker and the party who pays. Licensees must inform all parties to a transaction who is paying within the real estate contract.

Duration of the relationship:

A licensee's relationship with you begins when they provide specific assistance and continues until the earliest of the following events:

- 1 They complete the specific assistance
- 2 The relationship terms that you agreed to terminates
- 3 You and the licensee terminate by mutual agreement
- 4 One party gives notice to the other party terminating the relationship

The termination does not affect other contractual rights of the parties. And, except as otherwise agreed to in writing, after termination the licensee still has the duties for accounting for all money and other property received during the relationship and not disclosing confidential information.

Vicarious liability:

You are not liable for an act, error, or omission of a licensee that arises out of the licensee relationship unless you participated or authorized the act, error or omission and then only to the extent of the participation or authorizations and, except to the extent that you benefited for the act, error, or omission, and the court determines that it is highly probable that the person claiming damages would be unable to enforce a judgment against the licensee.

Imputed knowledge and notice:

Unless otherwise you agree in writing, you are not considered to have knowledge or notice of a fact known by a licensee of the other party, and conversely unless otherwise agreed to in writing, the licensee does not have knowledge or notice of a fact

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that is not actually known by the licensee.

Causes of action:

No one can bring an action against a neutral licensee for making a disclosure that is required or permitted by law. In a civil action for the failure of a licensee to comply with the provisions of these laws, the plaintiff's remedy is limited to the recovery of actual damages. You may still take any other action or pursue any other remedy to which you may be entitled under law.

Policies, guidelines, and requirements:

A broker must have a written policy that identifies and describes the relationships in which the broker and the licensees who work for them, practice. The broker has the policy available to the Real Estate Commission and to the public upon request.

Exemption:

When a licensee proceeds specific assistance to a governmental agency or to a corporation that issues publicly traded securities, the licensee is exempt from obtaining signatures called for within this law.

I hereby acknowledge receiving and reading this pamphlet on the type of relationships I may have with a real estate licensee (including a broker).

I understand and acknowledge that _____
(licensee) of _____ (agency) will
be working with me as a _____, until and
unless the relationship is terminated or the status changes by prior
mutual agreement.

Signature: _____

Signature: _____

Date: _____ Time: _____

THE
L·A·W
OF REAL ESTATE
AGENCY

This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.

THE FOLLOWING IS ONLY A BRIEF SUMMARY OF THE ATTACHED LAW:

SECTION 1. DEFINITIONS. Defines the specific terms used in the law.

SECTION 2. RELATIONSHIPS BETWEEN LICENSEES AND THE PUBLIC. States that a licensee who works with a buyer or tenant represents that buyer or tenant — unless the licensee is the listing agent, a seller's sub-agent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client — unless the parties agree in writing that both licensees are dual agents.

SECTION 3. DUTIES OF A LICENSEE GENERALLY. Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

SECTION 4. DUTIES OF A SELLER'S AGENT. Prescribes the additional duties of a licensee representing the seller or landlord only.

SECTION 5. DUTIES OF A BUYER'S AGENT. Prescribes the additional duties of a licensee representing the buyer or tenant only.

SECTION 6. DUTIES OF A DUAL AGENT. Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

SECTION 7. DURATION OF AGENCY RELATIONSHIP. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

SECTION 8. COMPENSATION. Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more than one party in a transaction with the parties' consent.

SECTION 9. VICARIOUS LIABILITY. Eliminates the common law liability of a party for the conduct of the party's agent or sub-agent, unless the agent or sub-agent is insolvent. Also limits the liability of a broker for the conduct of a sub-agent associated with a different broker.

SECTION 10. IMPUTED KNOWLEDGE AND NOTICE. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

SECTION 11. INTERPRETATION. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

SECTION ONE

18.86.010. DEFINITIONS.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.
- (2) "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.
- (3) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.
- (4) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.
- (5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes sub-agents engaged by a buyer's agent.
- (6) "Confidential information" means information from or concerning a principal of a licensee that:
- Was acquired by the licensee during the course of an agency relationship with the principal;
 - The principal reasonably expects to be kept confidential;
 - The principal has not disclosed or authorized to be disclosed to third parties;
 - Would, if disclosed, operate to the detriment of the principal; and
 - The principal personally would not be obligated to disclose to the other party.
- (7) "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.
- (8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in Chapter 18.85 RCW.
- (9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.
- (10) "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.
- (11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under Chapter 18.85 RCW.
- (12) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

(13) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

(14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes sub-agents engaged by a seller's agent.

(15) "Sub-agent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint sub-agents. ■

SECTION TWO

18.86.020 AGENCY RELATIONSHIP.

(1) A licensee who performs real estate brokerage services for a buyer is a buyer's agent unless the:

- Licensee has entered into a written agency agreement with the seller, in which case the licensee is a seller's agent;
- Licensee has entered into a sub-agency agreement with the seller's agent, in which case the licensee is a seller's agent;
- Licensee has entered into a written agency agreement with both parties, in which case the licensee is a dual agent;
- Licensee is the seller or one of the sellers; or
- Parties agree otherwise in writing after the licensee has complied with RCW 18.86.030(1)(f).

(2) In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under RCW 18.86.060. In such a case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.

(3) A licensee may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that party in a different transaction involving that party, if the licensee complies with this chapter in establishing the relationships for each transaction. ■

SECTION THREE

18.86.030. DUTIES OF A LICENSEE.

(1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:

- To exercise reasonable skill and care;
- To deal honestly and in good faith;
- To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;
- To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;
- To account in a timely manner for all money and property received from or on behalf of either party;
- To provide a pamphlet on the law of real estate agency in the

form prescribed in RCW 18.86.120 to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)(e) or (f) whichever occurs earliest; and

(e) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate written document entitled "Agency Disclosure."

(2) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable. ■

SECTION FOUR

18.86.040. SELLER'S AGENT — DUTIES.

(1) Unless additional duties are agreed to in writing and signed by a seller's agent, the duties of a seller's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;
- (b) To timely disclose to the seller any conflicts of interest;
- (c) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and
- (e) Unless otherwise agreed to in writing after the seller's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

(2)

- (a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a seller's agent does not in and of itself breach the duty of loyalty to the seller or create a conflict of interest.
- (b) The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself breach the duty of loyalty to the sellers or create a conflict of interest. ■

SECTION FIVE

18.86.050. BUYER'S AGENT — DUTIES.

(1) Unless additional duties are agreed to in writing signed by a buyer's agent, the duties of a buyer's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;
- (b) To timely disclose to the buyer any conflicts of interest;
- (c) To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and
- (e) Unless otherwise agreed to in writing after the buyer's agent has complied with RCW 18.86.030(1)(f) of this act, to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.

(2)

- (a) The showing of property in which a buyer is interested to other prospective buyers by a buyer's agent does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.
- (b) The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself breach the duty of loyalty to the buyers or create a conflict of interest. ■

SECTION SIX

18.86.060. DUAL AGENT — DUTIES.

(1) Notwithstanding any other provisions of this chapter, a licensee may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with RCW 18.86.030 (1) (f), which consent must include a statement of the terms of compensation.

(2) Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:

- (a) To take no action that is adverse or detrimental to either party's interest in a transaction;
- (b) To timely disclose to both parties any conflicts of interest;
- (c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;
- (d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;
- (e) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030 (1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

(f) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030 (1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.

(a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a dual agent does not in and of itself constitute action that is adverse or detrimental to the seller or create a conflict of interest.

(b) The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself constitute action that is adverse or detrimental to the sellers or create a conflict of interest.

(4) (a) The showing of property in which a buyer is interested to other prospective buyers or the presentation of additional offers to purchase property while the property is subject to a transaction by a dual agent does not in and of itself constitute action that is adverse or detrimental to the buyer or create a conflict of interest.

(b) The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself constitute action that is adverse or detrimental to the buyers or create a conflict of interest. ■

SECTION SEVEN

18.86.070. DURATION OF AGENCY RELATIONSHIP.

(1) The agency relationships set forth in this chapter commence at the time that the licensee undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:

- (a) Completion of performance by the licensee;
- (b) Expiration of the term agreed upon by the parties; or
- (c) Termination of the relationship by mutual agreement of the parties; or
- (d) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

(2) Except as otherwise agreed to in writing, a licensee owes no further duty after termination of the agency relationship, other than the duties of:

- (a) Accounting for all moneys and property received during the relationship; and
- (b) Not disclosing confidential information. ■

SECTION EIGHT

18.86.080. COMPENSATION.

(1) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between brokers.

(2) An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee.

(3) A seller may agree that a seller's agent may share with another broker the compensation paid by the seller.

(4) A buyer may agree that a buyer's agent may share with another broker the compensation paid by the buyer.

(5) A broker may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.

(6) A buyer's agent or dual agent may receive compensation based on the purchase price without breaching any duty to the buyer.

(7) Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a licensee to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer. ■

SECTION NINE

18.86.090. VICARIOUS LIABILITY.

(1) A principal is not liable for an act, error, or omission by an agent or sub-agent of the principal arising out of an agency relationship:

- (a) Unless the principal participated in or authorized the act, error, or omission; or
- (b) Except to the extent that: (i) The principal benefited from the act, error, or omission; and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or sub-agent.

(2) A licensee is not liable for an act, error, or omission of a subagent under this chapter, unless the licensee participated in or authorized the act, error, or omission. This subsection does not limit the liability of a real estate broker for an act, error, or omission by an associate real estate broker or real estate salesperson licensed to that broker. ■

SECTION TEN

18.86.100. IMPUTED KNOWLEDGE AND NOTICE.

(1) Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts known by an agent or sub-agent of the principal that are not actually known by the principal.

(2) Unless otherwise agreed to in writing, a licensee does not have knowledge or notice of any facts known by a sub-agent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate broker or real estate salesperson licensed to such broker. ■

SECTION ELEVEN

18.86.110. APPLICATION.

This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly. ■

Subject: Letter of Support HB 29

Date: Mon, 19 Jan 2004 20:17:14 -0900

From: "David Feecken" <dfeecken@alaska.net>

To: "Amanda Wilson" <amanda_wilson@legis.state.ak.us>, "wendy mulder" <wendym@gci.net>

Honorable Representative Norman Rokeberg:

RE: Substitute HB 29

This proposed legislation will modernize and bring the statute in line with current real estate business practices in this state and throughout the nation.

The current statute was put in place in 1990 in response to the public's demand for buyer representation. Prior to 1990, due to common law and common business practice all real estate licensees represented the seller, and the seller was responsible for the actions of all licensees in the transaction. The buyers had no representation in the transaction. The seller knew that the licensee was working on their behalf; but few buyers understood that they were not represented or worse thought the licensee was representing them. The buyers wanted representation, and the seller did not want to be responsible for the actions of the licensee working with the buyer. This practice was called Subagency. Subagency is not allowed in most MLS systems today. The current statute simply informs the seller and the listing agent that the buyers' agent is representing the buyer, and the potential of dual agency when the listing brokerage firm is facilitating the purchase with the buyer.

The industry and the public, through education have grown in the last 13 years. The proposed legislation will standardize the disclosure requirements and provide a relationship disclosure form that will be used statewide by all licensees. The public and licensee will have written in statute, the basic duties and responsibilities of all licensees throughout the state. This will protect the public, giving the consuming public clear expectations and guidelines.

The proposed legislation will also require brokers to have clear office policies in place as guides to all agents within their offices. These policies will spell out the way all representation will be done, and the procedures used to protect the

confidentiality of the transaction. The proposed legislation will require the policy be available for the public to view, in order to make informed decisions when choosing a licensee.

Our goal with this legislation is to make the industry consistent throughout the state, enabling the consuming public to make knowledgeable, informed decisions, and provide a more efficient way for licensees to provide services to the public.

The proposed legislation will standardize the disclosure form that is used statewide by all licensees. The public will see the duties and responsibilities of a licensee or broker before looking at properties or giving confidential information. The proposed legislation defines specific duties of licensees that are not current in statute, therefore giving the consuming public clear expectations and guidelines.

Proposed legislation gives brokers the option of using designated agency to prevent dual agency. When the listing agent is a different person than the buyers' agent within the same firm, the broker can designate an agent representing the seller and a different agent representing the buyer. Neutral Agency (Dual Agency) would only occur when the listing agent is facilitating the transaction with the buyer. Most brokerage firms currently have firewalls in place to control confidential information.

The members of our legislative committee would be happy to meet with you to answer your questions and address any concerns you may have with this legislation.

Sincerely,

Dave Feeken

907-283-5888 O 907-252-0348 Cell

Industry Issues, Chairman

Legislative Committee, Chairman

Alaska Association of REALTORS®



January 19, 2004

The Honorable Norman Rokeberg
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99801

Dear Representative Rokeberg;

House Bill 29 is probably the most important piece of legislation affecting the real estate brokerage industry in over a decade. It is supported almost unanimously by REALTORS®, the Alaska Real Estate Commission and real estate licensees throughout the State. I also support this legislation.

The present statutes regarding real estate licensee disclosure of duties and responsibilities became effective in January of 1991. There has been only minor modification to the laws since then and the way real estate is transacted has changed considerably. Most other states have modified their laws to reflect these changes but Alaska has not.


In June of 2002 the Alaska Association of REALTORS® formed a Task Force, of which I was a member, to address this situation. After over a year of extensive research, review and debate along with the input and consultation of the Alaska Real Estate Commission, a consensus was reached. The result is HB 29 along with some Regulation changes that have been approved and are in the process of being adopted.

This legislation will benefit the public as well as the industry in that it more clearly and concisely defines the duties, responsibilities and disclosures of all the parties to a real estate transaction.

Again, I support HB 29 and would be glad to try to answer any questions you or any of your colleagues may have.

Thank you for your efforts and thank you for serving in the Legislature. I understand and appreciate the sacrifice you have to make.

Sincerely,


Mark Korting, President

RE/MAX of alaska, inc.
2600 cordova street, suite 100
anchorage, alaska 99503
phone: (907) 276-2761

[Fwd: HB 29]

Subject: [Fwd: HB 29]

Date: Fri, 16 Jan 2004 12:47:10 -0900

From: Jim Shine <Jim_Shine@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject: HB 29

Date: Fri, 16 Jan 2004 08:56:21 -0900

From: <newhmdzn@alaska.net>

To: jim_shine@legis.state.ak.us

Dear Jim Shine,

I am Gary A. Gearhart a real estate agent since 1991. I am in favor of HB 29 as it wi
Please vote in favor of this bill.

Gary A. Gearhart
'13115

Subject: [Fwd: HB29]
Date: Fri, 16 Jan 2004 08:25:59 -0900
From: Jim Shine <Jim_Shine@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject: HB29
Date: Fri, 16 Jan 2004 08:33:37 -0800 (PST)
From: Cindy Wilson <eagleriverhomes@yahoo.com>
To: jim_shine@legis.state.ak.us

Please, please support House Bill 29, This bill will give the public more options and will lessen their liability when participating in real estate transactions. I really appreciate your support on this bill. Thank you!

=====

Your Alaska Real Estate Professional,
Cindy Wilson, Realtor
RE/MAX of Eagle River
16600 Centerfield Dr., Suite 201
Eagle River, Alaska
(907)244-1930 email: EagleRiverHomes@yahoo.com
Website: www.EagleRiverHomes.com

Do you Yahoo!?
Yahoo! Hotjobs: Enter the "Signing Bonus" Sweepstakes
<http://hotjobs.sweepstakes.yahoo.com/signingbonus>

Subject: [Fwd: HB 29]

Date: Fri, 16 Jan 2004 08:25:48 -0900

From: Jim Shine <Jim_Shine@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject: HB 29

Date: Thu, 15 Jan 2004 15:50:05 -0900

From: "Les Bailey" <homesell@alaska.net>

To: <jim_shine@legis.state.ak.us>

Jim,

I would greatly appreciate you support of HB 29.

Real Estate is one of the most important businesses in Alaska, and we need passage of this bill to better serve our customers and clients, and eliminate much of the confusion in the law as currently written.

This new law will better protect the interest of Buyer, Sellers, and the Real Estate Industry.

Your support appreciated

Sincerely,

Les Bailey

Les Bailey & Associates Real Estate Team

Prudential Vista Real Estate

16635 Centerfield Dr. Ste 103 Eagle River, AK 99577

Phone: Toll Free 800.334.64351 Direct 907.689.6451

Cell: 907.230.8628

Email: homesell@alaska.net

Web Page: www.RealEstateInAK.com

www.lesbaileysellsrealestate.com

Subject: [Fwd:] HB 29

Date: Thu, 15 Jan 2004 15:58:12 -0900

From: Jim Shine <Jim_Shine@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject:

Date: Thu, 15 Jan 2004 15:30:50 -0900

From: "ronda ryan" <rondaryan@worldnet.att.net>

To: <jim_shine@legis.state.ak.us>

Jim,

Please vote in favor of HB 29. There is too much liability on the part of our customers and agents.

RONDA RYAN

PRUDENTIAL VISTA REAL ESTATE

Subject: [Fwd: HB 29]

Date: Thu, 15 Jan 2004 14:29:30 -0900

From: Jim Shine <Jim_Shine@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Josh Applebee <Josh_Applebee@legis.state.ak.us>,
Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject: HB 29

Date: Fri, 16 Jan 2004 14:31:20 -0900

From: "Lee Realty, LLC." <mdlee@leerealtyllc.com>

To: <jim_shine@legis.state.ak.us>

Jim,

This note is to let you know that I am in favor of HB29, we need it passed for our industry.

Thanks,
Mark

Mark D. Lee, CCIM, Broker
Lee Realty, LLC.
PO Box 877001
Wasilla, AK. 99687
WEBSITE: www.leerealtyllc.com
Office: 907-376-0119
Fax: 907-376-4039
Cell: 907-354-4430
EMAIL: mdlee@leerealtyllc.com

Subject: [Fwd: HB29]
Date: Thu, 15 Jan 2004 15:12:30 -0900
From: Jim Shine <Jim_Shine@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject: HB29
Date: Thu, 15 Jan 2004 15:11:42 -0900
From: "kathleen \"Fitzy\" O'Hare" <fitzy@gci.net>
To: jim_shine@legis.state.ak.us

Dear Jim,

Please tell, on my behalf, the House Labor & Commerce Committee I support HB29. The current way of doing business doesn't benefit the public . This will give the public more options and lessen their liability when purchasing a home . I feel it opens the door to the buying public being more informed when making a real estate purchase, which in most cases is the biggest investment people will make in their life times.

Regards,
Kathleen "Fitzy" O'Hare Re/Max of Wasilla 907-352-9333

Subject: [Fwd: [Fwd: HB 29]]
Date: Thu, 15 Jan 2004 12:17:51 -0900
From: Janet Seitz <Janet_Seitz@legis.state.ak.us>
Organization: Representative Norman Rokeberg, Alaska State House
To: Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject: [Fwd: HB 29]
Date: Thu, 15 Jan 2004 12:16:19 -0900
From: Jim Shine <Jim_Shine@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Janet Seitz <Janet_Seitz@legis.state.ak.us>

Subject: HB 29
Date: Thu, 15 Jan 2004 13:15:55 -0800 (PST)
From: casey steinau <sellalaska@yahoo.com>
To: jim_shine@legis.state.ak.us

Jim, just a quick note to let you know how critical HB 29 is. This bill will benefit the public by giving them more options in dealing with the real estate community as well as lessen their liability in real estate transactions. I believe that this bill helps to clarify an issue that has been murky at best and I strongly support this bill.

Thanks to both you and Representatvie Anderson for your current and future support.
Casey Steinau

=====
Casey Steinau
Coldwell Banker Fortune
cell 907-841-9830
office 907-373-7653
toll free 866-345-7653

"Let Casey Go to Bat For You!"

Do you Yahoo!?
Yahoo! Hotjobs: Enter the "Signing Bonus" Sweepstakes
<http://hotjobs.sweepstakes.yahoo.com/signingbonus>

Janet Seitz, Rep. Rokeberg's Office <Janet_Seitz@legis.state.ak.us>

[Fwd: [Fwd: HB 29]]

Subject: [Fwd: [Fwd: HB 29]]
Date: Thu, 15 Jan 2004 12:17:39 -0900
From: Janet Seitz <Janet_Seitz@legis.state.ak.us>
Organization: Representative Norman Rokeberg, Alaska State House
To: Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject: [Fwd: HB 29]
Date: Thu, 15 Jan 2004 12:14:16 -0900
From: Jim Shine <Jim_Shine@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Janet Seitz <Janet_Seitz@legis.state.ak.us>

And yet another email...

I received a phone call yesterday from Kibe Lucas (first email) since HB 29 is in L&C. I told him to email his comments and I would forward them to Rep. Rokeberg's office. Sorry.

Thanks,

Jim

Subject: HB 29
Date: Thu, 15 Jan 2004 12:06:05 -0900
From: "Duane Mathes" <dmathes@dynamicproperties.net>
To: <jim_shine@legis.state.ak.us>

As an Alaska Licensed Realtor I am in support of this bill. Please do everything possible to get it passed. Thank you very much for your help!!

Duane Mathes
Dynamic Properties - Wasilla
373-2793

Janet Seitz, Rep. Rokeberg's Office <Janet_Seitz@legis.state.ak.us>

Subject: [Fwd: [Fwd: HB 29]]

Date: Thu, 15 Jan 2004 12:17:27 -0900

From: Janet Seitz <Janet_Seitz@legis.state.ak.us>

Organization: Representative Norman Rokeberg, Alaska State House

To: Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject: [Fwd: HB 29]

Date: Thu, 15 Jan 2004 12:01:10 -0900

From: Jim Shine <Jim_Shine@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Janet Seitz <Janet_Seitz@legis.state.ak.us>

Janet-

Here is another HB 29 email of support.

-Jim

Subject: HB 29

Date: Thu, 15 Jan 2004 11:59:50 -0900

From: "josette willcox" <josi_raye@hotmail.com>

To: jim_shine@legis.state.ak.us

Dear Jim,

I am writing this to support the passage of HB 29. This piece of legislation would enable the public to enjoy more options with less liability, which could only benefit everyone.

Thank you

Josi Willcox
Centurv 21 North Homes Realty

Rethink your business approach for the new year with the helpful tips here.
<http://special.msn.com/bcentral/prep04.armx>

Janet Seitz, Rep. Rokeberg's Office <Janet_Seitz@legis.state.ak.us>

Subject: [Fwd: [Fwd: HB 29]]

Date: Thu, 15 Jan 2004 12:17:14 -0900

From: Janet Seitz <Janet_Seitz@legis.state.ak.us>

Organization: Representative Norman Rokeberg, Alaska State House

To: Amanda Wilson <Amanda_Wilson@legis.state.ak.us>

Subject: [Fwd: HB 29]

Date: Thu, 15 Jan 2004 11:13:28 -0900

From: Jim Shine <Jim_Shine@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Janet Seitz <Janet_Seitz@legis.state.ak.us>

Hi Janet-

I thought you might be the appropriate person to receive this email since your boss is the sponsor of HB 29. If you have any questions, please call me at -2811.

Thanks,

Jim Shine
Staff for Rep. Anderson

Subject: HB 29

Date: Thu, 15 Jan 2004 10:23:51 -0900

From: "kibe@mtaonline.net" <kibe@mtaonline.net>

To: jim_shine@legis.state.ak.us

Dear Jim:

Please pass this email along to Tom Anderson as well as the rest of the members of the House Labor of Commerce Committee. I respectfully request your strong support of HB 29. The changes the bill addresses regarding the agency relationships between buyer, seller and broker are definitely positive. The changes not only lessen the liability the public incurs when entering an agency relationship, but also gives them more choices regarding the type of relationship they are entering into.

Sincerely,

Kibe Lucas
President-Elect Valley Board of Realtors 2004

THANK YOU FOR CONTACTING THE KIBE LUCAS TEAM!

Kibe Lucas

RE/MAX of Wasilla

Real Estate Consultant

Accredited Buyers Representative

MEMORANDUM

Date : 2/2/2004

To : The Honorable Representative Tom Anderson
Chair - Labor and Commerce CommitteeFrom : Linda Garrison
Consumer/Concerned Citizen
Owner/Broker - AAR #1 Buyers Agency

RE : HB 29 - SPONSOR - REPRESENTATIVE ROKEBERG

For L&C
WED. - 2/4/04

ARE YOU AWARE THAT A HAIRDRESSER IS REQUIRED TO HAVE 1650 HOURS OF TRAINING (CLASSROOM AND "HANDS ON" EDUCATION) IN ORDER TO CUT YOUR HAIR? ARE YOU AWARE THAT REAL ESTATE AGENTS ONLY NEED 20 EDUCATION HOURS TO GET THEIR REAL ESTATE LICENSE AND TO WORK WITH CONSUMERS ON WHAT IS PROBABLY THE LARGEST PURCHASE OR SALE OF THEIR LIVES?

HB 29 IS HARMFUL TO THE CONSUMERS AND TO THE BUYING AND SELLING PUBLIC. HB 29 (which is scheduled in Labor and Commerce on Wednesday, 2/4/04) is tainted with protections for real estate practitioners and eliminates common law of agency, which is harmful to the consumers. I respectfully request that you evaluate the points of HB 29 as indicated below prior to the 2/4/04 teleconference and respectfully request that HB 29 not be passed out of committee. I have a suggestion for this committee that has come from talking with the general public. I would hope that you seriously look at their comments and recommendations at the end of this memorandum.

HB 29 abrogates the common law of Agency - to the detriment of the consumer.

HB 29 eliminates fiduciary duties such as loyalty, accountability, obedience, confidentiality, diligence, and other fiduciary duties - to the detriment of the consumer.

HB 29 establishes designated agency (a broker can designate one agent/licensee in the office to represent the seller and another to represent the buyer.) DESIGNATED AGENCY IS NOTHING LESS THAN UNDISCLOSED DUAL AGENCY AND IS A SEMANTIC SMOKE SCREEN TO PROTECT AGENTS - TO THE DETRIMENT OF THE CONSUMER. Designated agency (undisclosed dual agency) also opens up damaging conflicts to the consumer - for example, what if one of the agents so designated is experienced and the other agent designated is a new agent - the consumer (buyer or seller) is negatively affected by having the designated "new" agent. How does a Broker determine "equal agents/licensees?" All information of the buyer and seller would need to be kept under lock and key; no discussing at sales meetings, no discussion around water coolers. Not feasible and definitely - a detriment to the consumer.

HB 29 establishes another type of relationship - the neutral licensee relationship. Establishing a "neutral" licensee regarding the largest purchase or sale of someone's life - is ludicrous - to the detriment of the consumer.

Page 2

RE : HB 29 – SPONSOR – REPRESENTATIVE ROKEBERG

HB 29 calls for creation of a “pamphlet,” by the Real Estate Commission to be used to inform the public of their options – a cost that doesn't need to exist as long as the current Alaska statutes are followed and ENFORCED.

HB 29 does not adequately define actions that create a conflict of interest – to the detriment of the consumer.

HB 29 puts responsibility directly on the agent/licensee to represent/help/aid/advise (designated agent/neutral licensee, whatever) the buyer or seller; HB 29 creates broker responsibility levels without educational requirements that should be demanded and without the fiduciary responsibilities that should be mandated for the public's protection – a detriment to the consumer.

I am sending just the initial pages signed by consumers indicating their concern on HB 29. Additional sheets will be forthcoming.

From those consumers, I have received the following recommendation:

- HB 29 IS NOT NEEDED. DO NOT SUPPORT HB 29 – DO NOT PASS HB 29 OUT OF L&C
- INCREASE EDUCATIONAL HOURS NEEDED TO SECURE A REAL ESTATE LICENSE – A MINIMUM OF 200 HOURS PRIOR TO ISSUANCE OF A LICENSE.
- INCREASE EDUCATION NEEDED FOR RENEWAL OF LICENSE TO A MINIMUM OF 50 HOURS EVERY TWO YEARS.
- DO NOT ALLOW GRANDFATHERING OF EDUCATION HOURS.
- CONTINUE THE COMMON LAW OF AGENCY AND FIDUCIARY RESPONSIBILITIES IN ORDER TO PROTECT THE PUBLIC.

Any bill regarding real estate should strongly involve increased responsibility placed on real estate agents/licensees – not less responsibility, increased educational requirements and increased accountability of real estate practitioners to the public.

I respectfully request that this bill be looked at extremely carefully and what the consequences will be to the Alaska home buying and home selling consumer. Thank you.


POSITION ON HB 29

By signing below, I acknowledge that -

1. I am a resident of the state of Alaska.
2. I have looked at HB29 and do not support its passage.
3. HB29 is not a consumer oriented bill and does nothing to support the public's right for representation and does nothing to support ones right to pursue remedy in the legal system.

BY THE SIGNATURE BELOW, I REQUEST THAT YOU DO NOT SUPPORT HB 29 AND DO NOT PASS IT OUT OF THE HOUSE AND/OR SENATE.

PHONE# / ADDRESS

Jan. 10, 04 Silvia Engeloch / Silvia Engeloch 

1/10/04 Linda L. Garrison / LINDA L. GARRISON 272 8137
401 E. NORTHERN NIGHTS

1/10/04 Richard Au / Richard Au

1/13/04 STEVEN C. KREINBRINK / Steven C. Kreibrink 2200 W 47th Ave 248-4097

1/13/04 Paul Shary / Paul Shary PO Box 220853 248-0414
Anch. AK 99522

1/14/04 IAN CLARK / Ian Clark 929-5216 4081 SAN EDWARDS DR

1/14/04 George Stillwell 3726 Galactic Dr. 243-3391

1/16/04 Patrick Hill 16401 Home Pl #26 Eagle River AK 99571 622-6080

1-16-04 Myron Hill 16401 Home Pl #26 Eagle River, AK 99577 622-6080

1-20-04 Martin Hyatt 303 Fineover Dr. Anch. AK 99508 274-7225

Tyler Hyatt 4320 Checkmate #5 Anchorage AK 99505

1/20/04 Gene Thomas 3801 Resurrection Dr. Anch. AK 99504 #222-1120

Nellie Krings 1412 Kennikinnick St #17 Anch, AK 99508 274-4169

Russell C. Alexie 7520 W. 85th Ave #605 Anch. AK 99502 275-5066

POSITION ON HB 29

By signing below, I acknowledge that -

1. I am a resident of the state of Alaska.
2. I have looked at HB29 and do not support its passage.
3. HB29 is not a consumer oriented bill and does nothing to support the public's right for representation and does nothing to support ones right to pursue remedy in the legal system.

Please sign!

BY THE SIGNATURE BELOW, I REQUEST THAT YOU DO NOT SUPPORT HB 29 AND DO NOT PASS IT OUT OF THE HOUSE AND/OR SENATE.

PRINT NAME / SIGNATURE / ADDRESS / PHONE #

LUCAS LEE *[Signature]* 9001 WOODBURY DR. PALM BEACH FL 561-4252

John Cox *[Signature]* 8051 RABBIT CREEK AVE. ANCHORAGE AK 907-515-1702

Derry M. Kincaid *[Signature]* 7540 OUR OWN LANE, ANCH. AK 99516 345-16

Derrin L. Kincaid *[Signature]* 7540 OUR OWN LANE, ANCH. AK 99516 345-16

Thomas G. Lee *[Signature]* 7500 OUR OWN LANE ANCH AK 345-1602

John L. Mullins *[Signature]* 8101 LOGANBERRY AVE. ANCH AK 99516 943-521

Shawn L. Mullins *[Signature]* 8101 Loganberry #4 Anchorage AK (907) 213-5217 99502

15-04 Thelma & Roderick Butler *[Signature]* Thelma Butler 368-3861 (907) 277-1111

5-04 Gerald R. Clark *[Signature]* Gerald Clark 8885 Eagle Pt. LP ER 79549

7-04 David G. Garcia *[Signature]* 1725 Skillet Circle, Anch 99504 907-884-6314

17-04 *[Signature]* *[Signature]*

22-04 VINIPUT B. NITY *[Signature]* 7410 E 4th Anch 99508 - 333-2893

22-04 Elizabeth A.K. Spangler *[Signature]* Elizabeth A.K. Spangler P.O. Box 753, Gratiot, AK, 99587

22-04 Robert Spangler *[Signature]* same as above 783-8145

27-04 *[Signature]* PO Box 210454 Anchorage, AK 99521

HB

32

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:

**3044 Badger Road, Suite 290
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4721**



Session Contact:

**(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204**

REPRESENTATIVE JOHN COGHILL MAJORITY LEADER

Sponsor Statement

HB 32 – Uniform Prescription Information Card

The intent of HB32 is to have a uniform prescription card implemented to expedite the amount of time a pharmacy technician spends gathering necessary information from the insurance company in order to process the insurance claim. Pharmacists are spending a disproportionate amount of time trying to address reimbursement issues rather than serving the health care needs of their customers. HB 32 would allow for more face-to-face care between pharmacists and patients. It would also minimize confusion, eliminate unnecessary paperwork, decrease administrative burdens, and streamline the dispensation of prescription products paid for by third party payors.

23-LS0203D
Ford
3/5/03

CS FOR HOUSE BILL NO. 32()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Gruenberg, Whitaker

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to use of a uniform prescription drug information card and forms,
2 standards, and procedures in processing health insurance claims; and providing for an
3 effective date."

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

5 * Section 1. AS 21.06.085(a) is amended to read:

6 Sec. 21.06.085. Uniform data and procedures for health claims. (a) The
7 director shall adopt by regulation uniform claims forms, uniform prescription drug
8 information cards, uniform standards, and uniform procedures for the processing of
9 data relating to billing for and payment of health care services provided to state
10 residents. A health care insurer shall use the uniform claims forms and comply with
11 the uniform standards and procedures established under this section.

12 * Sec. 2. AS 21.06.085(b)(2) is amended to read:

13 (2) "health care services" has the meaning given in AS 21.86.900 and
14 includes prescription drugs.

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

January 28, 2003

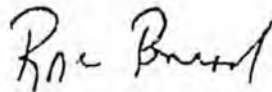
Representative John Coghill
House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Coghill,

I commend you for your introduction of HB 32 concerning Uniform Prescription Information Cards. This legislation will benefit the general public in many ways. The first thing it will accomplish is saving time for the patient when at a pharmacy to get a prescription drug order filled. Having this information in a clear format will allow the pharmacists and technicians of the given pharmacy to enter the insurance information into the computer in a timely manner and will help to avoid calls to the insurance company "help desk". These calls to insurance companies are quite time consuming and you usually have to navigate through a voice message maze to get the answers you need. Secondly, by clarifying this information, it is a time saving factor that allows the pharmacist to spend more time with their patient (customer) to be sure they understand their medications.

As you may know, nineteen states have already enacted this type of legislation. It truly provides a win-win situation for the consumer and the provider. Thank you for your time.

Sincerely,



Roger Penrod, RPh.
Fairbanks Professional Pharmacy
1001 Nobel Street
Fairbanks, AK 99701
907/452-2556

Subject: HB32-Uniform Prescription Drug Card

Date: Wed, 7 May 2003 02:11:59 -0800

From: "Roger Mortemore" <r.mortemore@worldnet.att.net>

To: <Representative_Tom_Anderson@legis.state.ak.us>,
<Representative_Bob_Lynn@legis.state.ak.us>,
<Representative_Nancy_Dahlstrom@legis.state.ak.us>,
<Representatvie_Carl_Gatto@legis.state.ak.us>,
<Representative_Norm_Rokeberg@legis.state.ak.us>,
<Representatvie_Harry_Crawford@legis.state.ak.us>,
<Representative_David_Guttenberg@legis.state.ak.us>

Please vote in favor of HB 32 when it comes to committee.

This bill will help the citizens of Alaska and the Pharmacists of Alaska to better serve the public. It will save time and money by not wasting time making phone calls to the insurance company which will allow the sick patients to return home and work much quicker.

Thank You,

Roger Mortemore, R.Ph.
Member, Board of Directors,
Alaska Pharmacist Association
1550 Holy Cross
Fairbanks, AK 99709
r.mortemore@att.net
Pharmacy Manager/Pharmacist
Safeway Bentley Mall
30 College Road
Fairbanks, AK 99701

Subject: HB 32

Date: Wed, 07 May 2003 06:48:41 -0800

From: Roger Penrod <pharmboy@gci.net>

To: Tom Anderson <Representative_Tom_Anderson@legis.state.ak.us>

Representative Anderson,

Please vote in favor of HB 32 when it comes to your committee.

Roger Penrod R.Ph.
Fairbanks, AK

<p>Roger Penrod <pharmboy@gci.net> Staff Pharmacist Fairbanks Professional Pharmacy</p>

Subject: HB 32-Uniform Prescription Card

Date: Wed, 07 May 2003 10:01:19 +0000

From: aimee.mortemore@att.net

To: Representative_Tom_Anderson@legis.state.ak.us, Representative_Bob_Lynn@legis.sate.ak.us,
Representative_Nancy_Dahlstrom@legis.state.ak.us,
Representative_Carl_Gatto@legis.state.ak.us,
Representative_Norm_Rokeberg@legis.state.ak.us,
Representative_Harry_Crawford@legis.state.ak.us,
Representative_David_Guttenberg@legis.state.ak.us,

Please vote in favor of HB32 when it comes to Committee.

A uniform prescription drug card will greatly benefit the citizens of Alaska. They will be able to obtain their prescription medication with much less hassle.

Thank You,
Aimee Mortemore
330 Old Steese Hwy #344
Fairbanks, AK 99701
aimee.mortemore@att.net
Pharmacist at Fairbanks Memorial Hospital

Subject: HB 32

Date: Wed, 30 Apr 2003 00:52:22 -0800

From: Gerald KW Brown <gkwbrown@alaska.com>

Organization: Brown Family Computer

To: Representative_Tom_Anderson@legis.state.ak.us

Dear Chairperson Anderson,

I am writing you asking you to support HB 32, which is asking for Uniform and standard information to be put on all health care and Prescription Coverage cards issued to to all insured in the State of Alaska. Too many times, we get blank cards (No names or id numbers) cards that lack information as to where to send the information, what company to send it to, what numbers need to be submitted, who the card holder is what control, group or carrier numbers are, who to call if we have questions, this all takes time (some times 15-60 minutes or longer) somes times they are only open 9:00AM - 5:00PM Eastern time so when we get a prescription at 8PM the help desk is closed 4 hours earlier and won't be open til 9AM then next day or Monday, and we have a small child with and ear ache or need pain medication for a burn or broken arm. All we are asking for is to have the needed information issued on the card. simple straight forward. Thank you

Gerald KW Brown, President
Alaska Pharmacists Association
gkwbrown@alaska.com
907-452-1514

Subject: HB 32

Date: Tue, 29 Apr 2003 22:49:45 -0800

From: "Eric and Angie LeBoeuf" <ericleb@alaska.net>

To: <Representative_Tom_Anderson@legis.state.ak.us>

Angie LeBoeuf<?xml:namespace prefix = o ns =
"urn:schemas-microsoft-com:office:office" />

PO Box 110982

Anchorage, AK 99511

April 29, 2003

The Honorable Representative Tom Anderson

State Capitol

Juneau, Alaska

Dear Representative Anderson ,

I would like to ask you to vote in favor of HB 32 when it comes to your committee. This bill will ease the already over tasked pharmacy staff by making the billing process direct and smooth . The end result will be a happier citizen who receives his or her medication in a more timely manner. Currently some insurance cards do not contain all the necessary information needed to process a prescription claim. HB 32 will require that information on the insurance card and prevent unnecessary phone calls to insurance providers. It is a win-win situation for all.

Thank you.

Sincerely,

Angie LeBoeuf

Pharmacist

South Anchorage

Subject: HB 32- Uniform Prescription Drug Card

Date: Tue, 29 Apr 2003 09:32:52 -0800

From: Barry D Christensen <island.pharm@juno.com>

To: Representative_David_Guttenberg@legis.state.ak.us,
Representative_Harry_Crawford@legis.state.ak.us,
Representative_Norm_Rokeberg@legis.state.ak.us,
Representative_Carl_Gatto@legis.state.ak.us,
Representative_Nancy_Dahlstrom@legis.state.ak.us,
Representative_Bob_Lynn@legis.state.ak.us, Representative_Tom_Anderson@legis.state.ak.us

CC: BPGAlaska@aol.com

Dear Members of the House Labor and Commerce Committee,

As a practicing Community Pharmacist in Ketchikan I urge your support for HB 32 when it appears in your committee. The intent of the bill is to provide for consistent information on prescription drug cards so that pharmacist and patients aren't hindered in picking up a prescription simply because of a lack of information or misinformation on a prescription drug card. The bill is simply a win/win/win for pharmacists/patients/insurance companies in terms of simplifying the filling of a prescription involving a prescription drug card.

The bill does not require the insurance industry to reissue cards immediately so it should not have a fiscal impact upon them. The bill only requires that when they do reissue cards that they follow a format that will provide pharmacist with the information they need to bill the patients insurance without have to make multiple phone calls to the insurance company.

Again, I urge your support for HB32. If you have any questions regarding this bill please do not hesitate to contact me.

Sincerely,

Barry Christensen, Pharmacist
Island Pharmacy 3526 Tongass Ave.
Ketchikan, AK 99901
Phone: 907-225-6186 Fax: 907-225-6187
e-mail: island.pharm@juno.com

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 32 (L&C)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: CED
 Title Uniform Prescription Drug Card BRU _____
 Component Division of Insurance
 Sponsor Rep. Coghill
 Requester House Labor & Commerce Component No. _____

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)*

Due to the adoption of a committee substitute by the House Labor & Commerce Committee, this bill will now have a zero fiscal impact.

Prepared by: Representative Tom Anderson Phone _____
 Division Chair, House Labor & Commerce Committee Date/Time 5/8/03 10:20 AM
 Approved by: Representative Tom Anderson Date 5/8/2003
 Agency House Labor & Commerce Committee

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 32
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act relating to a health insurance BRU Insurance (116)
uniform prescription drug information card Component Insurance Operations
 Sponsor Representative Coghill
 Requester House Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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 ()						
-------------------------------	--	--	--	--	--	--

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 (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill requires the Director to specify by regulation information to be contained on a prescription drug information card. The anticipated expenses to draft the regulation and enforce the provision on insurers would be absorbed within existing division resources.

Prepared by: Robert A. Lohr, Director
 Division: Insurance
 Approved by: Edgar Blatchford, Commissioner
 Agency: Department of Community & Economic Development

Phone 907-269-7900
 Date/Time 1/29/03 10:29 AM
 Date 1/29/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 32
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to a health insurance uniform BRU Civil Division
prescription card; . . ." Component Fair Business Practices
 Sponsor Representative Coghill
 Requester House Labor and Commerce Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill would require health care insurers that issue or reissue a card for prescription drug claims processing include uniform prescription drug information on the card. The minimum information to be included on the card is specified in the bill.

 Passage of this legislation is not anticipated to have a significant fiscal impact on the Department of Law. There would be some legal advice provided as the Division of Insurance drafts regulations to implement the statute, and review of the draft regulations would be necessary. However, we believe this limited amount of new legal services could be handled with existing funds.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 1/29/03 1:43 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/29/2003
 Agency Department of Law

HB

36



HOUSE LABOR & COMMERCE COMMITTEE

STATE CAPITOL, ROOM 432
Phone 465-4954

COMMITTEE MEMBERS

Rep. Tom Anderson
Chairman
Room 432
465-4939

Rep. Bob Lynn
Vice-Chair
Room 415
465-4931

Rep. Nancy Dahlstrom
Room 409
465-3783

Rep. Carl Gatto
Room 411
465-3743

Rep. Norman Rokeberg
Room 214
465-4968

Rep. Harry Crawford
Room 426
465-3438

Rep. David Guttenberg
Room 13
465-4457

Labor & Commerce Committee Agenda

1. HB 36 – Electronic Mail (Rep. Gara)
 - Bill Previously Heard/Scheduled
2. CSSB 20 – Board of Marine Pilots
(Sen. Therriault, Dyson)
 - First House committee of referral and hearing
3. HB 111 – Extend Regulatory Commission of Alaska
(Rules by Request)
 - First Committee of Referral
4. Adjournment

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 36
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to electronic mail activities . . . BRU Civil Division
unfair or deceptive acts or practices . . . Component Fair Business Practices
 Sponsor Representative Gara
 Requester House Labor and Commerce Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 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 (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 HB 36 requires people who do business in Alaska and send unsolicited e-mail advertisements as part of their business to set up a toll-free telephone number or a valid e-mail address for recipients of the unsolicited e-mail to notify the business not to send any more, and include a notice of the number or e-mail address as the first text in each unsolicited e-mail advertisement. Each e-mail should also include specified characters in the subject line that identify the e-mail as an advertisement. The bill further prohibits the use of an e-mail service provider's equipment located in Alaska in violation of the providers' policy prohibiting or restricting the use of their equipment for unsolicited e-mail advertisements. Violations of the prohibitions in HB 36 are enforced by the unfair trade practices and consumer protection statutes, AS 45.50.471 - 561.
 The Department of Law's Consumer Protection unit anticipates the increased enforcement workload from passage of this bill could be handled by existing staff.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 2/18/03 3:25 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/18/2003
 Agency: Department of Law

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

Date: February 19, 2003
TO: Representative Tom Anderson
Chair, House Labor and Commerce Committee
FROM: Representative Les Gara
RE: new CS for HB 36

There were two possible amendments to HB 36 discussed today during the Labor & Commerce Committee meeting. They were:

1. Page 4, line 11

Delete – “sends or causes to be sent”

Insert – “initiates the sending of”

2. Page 3, line 12-18

Delete – everything after “sender” on line 12.

As agreed, will you please redraft the bill as a new CS, to reflect these changes. I then request that it be scheduled for adoption and hearing in the Labor & Commerce committee at your soonest possible convenience.

23-LS0224V
Bannister
3/10/03

CS FOR HOUSE BILL NO. 36()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GARA, Foster, Heinze, Meyer, Moses, Kookesh, Croft, Crawford, Guttenberg, Stevens, Cissna, McGuire, Kapsner, Gruenberg, Wilson, Lynn, Weyhrauch, Dahlstrom

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to unlawful electronic mail activities and making certain electronic**
2 **mail activities unfair methods of competition or unfair or deceptive acts or practices**
3 **under the state's unfair trade practices and consumer protection laws; and providing for**
4 **an effective date."**

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

6 *** Section 1. AS 45.45 is amended by adding new sections to read:**

7 **Article 10A. Electronic Mail Activities.**

8 **Sec. 45.45.800. Telephone number or address required. A person who**
9 **does business in this state may not send or cause to be sent in the course of the**
10 **person's business an unsolicited electronic mail advertisement unless the business**
11 **person establishes a local or toll-free telephone number for the business person or a**
12 **valid electronic mail return address operated by the business person that the recipient**
13 **of the unsolicited electronic mail advertisement may use to notify the business person**
14 **not to send further unsolicited electronic mail advertisements.**

1 **Sec. 45.45.810. Statement required.** A person who does business in this
2 state may not send or cause to be sent in the course of the person's business an
3 unsolicited electronic mail advertisement unless the advertisement includes a
4 statement informing the recipient of a local or toll-free telephone number for the
5 business person or a valid electronic mail return address operated by the business
6 person that the recipient may use to notify the business person not to send further
7 unsolicited electronic mail advertisements to the electronic mail address specified by
8 the recipient. The statement must appear at or before the end of the advertisement and
9 must be at least the same size as the majority of the text of the advertisement or be
10 fairly readable.

11 **Sec. 45.45.820. Mailing prohibited after notification.** (a) After receiving a
12 request that the business person not send further unsolicited electronic mail
13 advertisements, a person who does business in this state may not send or cause to be
14 sent in the course of the person's business an unsolicited electronic mail advertisement
15 to the requestor, and may not share the requestor's electronic mail address with another
16 person, except to arrange for the removal of the address from an electronic mail
17 address list.

18 (b) The request described in (a) of this section may be made by an employer
19 who is the registered owner of more than one electronic mail address on behalf of the
20 employer's employees who use the addresses.

21 **Sec. 45.45.830. Use of electronic mail service providers.** (a) A registered
22 user of an electronic mail service provider may not use, or cause to be used, the
23 provider's equipment located in this state in violation of the provider's policy
24 prohibiting or restricting the use of the provider's equipment to initiate unsolicited
25 electronic mail advertisements.

26 (b) A person may not use, or cause to be used, to initiate an unsolicited
27 electronic mail advertisement, an electronic mail service provider's equipment located
28 in this state in violation of the provider's policy prohibiting or restricting the use of the
29 provider's equipment for the delivery of unsolicited electronic mail advertisements to
30 the provider's registered users.

31 (c) Notwithstanding (a) and (b) of this section, an electronic mail service

1 provider is not required to establish a policy prohibiting or restricting the use of the
2 provider's equipment to initiate or deliver unsolicited electronic mail advertisements.

3 **Sec. 45.45.840. Limitations on electronic mail.** (a) A person may not
4 initiate the transmission of an unsolicited electronic mail advertisement if the
5 transmission

6 (1) uses a third party's Internet domain name without the permission of
7 the third party;

8 (2) misrepresents or obscures information that identifies the point of
9 origin or the transmission path of the advertisement; or

10 (3) contains false or clearly misleading information in the subject line.

11 (b) An intervening interactive computer service does not violate (a) of this
12 section by handling or retransmitting the message initiated by a sender.

13 (c) In this section,

14 (1) "electronic mail address" means a destination, commonly
15 expressed as a string of characters, to which electronic mail may be sent;

16 (2) "Internet domain name" means a globally unique hierarchical
17 reference

18 (A) to an Internet host or service;

19 (B) that is assigned through a centralized Internet naming
20 authority; and

21 (C) that is made up of a series of character strings separated by
22 periods.

23 **Sec. 45.45.850. Violations.** A violation of AS 45.45.800 - 45.45.890 is an
24 unfair method of competition and an unfair or deceptive act or practice under
25 AS 45.50.471 - 45.50.561. A remedy provided under AS 45.50.471 - 45.50.561 is in
26 addition to other remedies available to a person under law, including common law.

27 **Sec. 45.45.860. Limitation on actions.** Notwithstanding AS 45.50.531 and
28 45.50.535, a person may not bring an action in court under AS 45.50.471 - 45.50.561
29 for a violation of AS 45.45.800 - 45.45.890 unless the person is the state, a recipient of
30 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890,
31 or an electronic mail service provider whose registered user has either received or sent

1 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890.
2 In this section, "recipient" includes a business whose employee receives the
3 advertisement in the course of the employment.

4 **Sec. 45.45.870. Application limits.** (a) AS 45.45.800 - 45.45.890 do not
5 apply unless a person initiates the sending of an unsolicited electronic mail
6 advertisement to a resident of this state by using any of an electronic mail service
7 provider's service or equipment located in this state.

8 (b) AS 45.45.800 - 45.45.890 may not be construed to limit or restrict

9 (1) the rights of an electronic mail service provider under 47 U.S.C.
10 230(c)(1);

11 (2) a decision of an electronic mail service provider to permit or to
12 restrict access to or the use of the provider's system; or

13 (3) an exercise of the editorial function of an electronic mail service
14 provider.

15 (c) AS 45.45.800 - 45.45.890 do not apply to an act of a nonprofit person or to
16 an act that is political rather than commercial in nature. In this subsection, "nonprofit
17 person" means a person who qualifies for an exemption from taxation under 26 U.S.C.
18 501(c).

19 **Sec. 45.45.890. Definitions.** In AS 45.45.800 - 45.45.890,

20 (1) "electronic mail advertisement" means an electronic mail message
21 if the principal purpose of the message is to promote, directly or indirectly, the sale,
22 lease, rental, gift offer, or other disposition of real property, goods, or services,
23 including the extension of credit to the recipient of the message, but does not include
24 an advertisement attached to an electronic mail message by an electronic mail service
25 provider in exchange for free use of an electronic mail account if the sender has agreed
26 to this arrangement;

27 (2) "electronic mail service provider" means a person who

28 (A) does business in this state by providing other persons with
29 the ability to send or receive electronic mail through equipment located in this
30 state; and

31 (B) is an intermediary in sending or receiving electronic mail;

1 (3) "initiate" means to take action as the initial sender of an unsolicited
2 electronic mail advertisement to send the advertisement, but does not include the
3 action of an intervening electronic mail service provider who handles or retransmits
4 the advertisement;

5 (4) "registered user" means a person who maintains an electronic mail
6 address with an electronic mail service provider;

7 (5) "unsolicited electronic mail advertisement" means an electronic
8 mail advertisement that is addressed to a recipient with whom the person who initiates
9 the advertisement does not have an existing business or personal relationship, unless
10 the advertisement is sent at the request of or with the express consent of the recipient.

11 * Sec. 2. AS 45.45.870(a) is repealed and reenacted to read:

12 (a) AS 45.45.800 - 45.45.890 do not apply unless a person initiates the
13 sending of an unsolicited electronic mail advertisement

14 (1) from a computer located in the state; or

15 (2) to an electronic mail address if the person

16 (A) knows the address is held by a recipient in this state; or

17 (B) is aware of a fact that makes fairly apparent that the address

18 is held by a recipient in this state.

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

20 (45) violating AS 45.45.800 - 45.45.890 (electronic mail activities).

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

23 CONTINGENT EFFECT OF SECTION 2. Section 2 of this Act takes effect only if a
24 court of competent jurisdiction whose decisions are binding in this state enters a final
25 judgment that the application of AS 45.45.870(a), as enacted by sec. 1 of this Act, to a person
26 who sends a commercial electronic mail advertisement from outside the state into the state is
27 unconstitutional.

28 * Sec. 5. If, under sec. 4 of this Act, sec. 2 of this Act takes effect, it takes effect on the day
29 after the last day on which the judgment described in sec. 4 of this Act could have been
30 appealed, including appeal by writ of certiorari.

23-LS0224\S
Bannister
2/17/03

CS FOR HOUSE BILL NO. 36()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GARA, Foster, Heinze, Meyer, Moses, Kookesh, Croft, Crawford, Guttenberg, Stevens, Cissna, McGuire, Kapsner, Gruenberg, Wilson, Lynn, Weyhrauch

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to unlawful electronic mail activities and making certain electronic
2 mail activities unfair methods of competition or unfair or deceptive acts or practices
3 under the state's unfair trade practices and consumer protection laws; and providing for
4 an effective date."

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

6 * Section 1. AS 45.45 is amended by adding new sections to read:

7 Article 10A. Electronic Mail Activities.

8 Sec. 45.45.800. Telephone number or address required. A person who
9 does business in this state may not send or cause to be sent in the course of the
10 person's business an unsolicited electronic mail advertisement unless the business
11 person establishes a local or toll-free telephone number for the business person or a
12 valid electronic mail return address operated by the business person that the recipient
13 of the unsolicited electronic mail advertisement may use to notify the business person
14 not to send further unsolicited electronic mail advertisements.

CORRECTION

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



Central Microfilm Services
Department of Education & Early Development
State of Alaska

23-LS0224S
Bannister
2/17/03

CS FOR HOUSE BILL NO. 36()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES GARA, Foster, Heinze, Meyer, Moses, Kookesh, Croft, Crawford, Guttenberg, Stevens, Cissna, McGuire, Kapsner, Gruenberg, Wilson, Lynn, Weyhrauch

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to unlawful electronic mail activities and making certain electronic
2 mail activities unfair methods of competition or unfair or deceptive acts or practices
3 under the state's unfair trade practices and consumer protection laws; and providing for
4 an effective date."

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

6 * **Section 1.** AS 45.45 is amended by adding new sections to read:

7 **Article 10A. Electronic Mail Activities.**

8 **Sec. 45.45.800. Telephone number or address required.** A person who
9 does business in this state may not send or cause to be sent in the course of the
10 person's business an unsolicited electronic mail advertisement unless the business
11 person establishes a local or toll-free telephone number for the business person or a
12 valid electronic mail return address operated by the business person that the recipient
13 of the unsolicited electronic mail advertisement may use to notify the business person
14 not to send further unsolicited electronic mail advertisements.

1 **Sec. 45.45.810. Statement required.** A person who does business in this
2 state may not send or cause to be sent in the course of the person's business an
3 unsolicited electronic mail advertisement unless the advertisement includes a
4 statement informing the recipient of a local or toll-free telephone number for the
5 business person or a valid electronic mail return address operated by the business
6 person that the recipient may use to notify the business person not to send further
7 unsolicited electronic mail advertisements to the electronic mail address specified by
8 the recipient. The statement must appear at or before the end of the advertisement and
9 must be at least the same size as the majority of the text of the advertisement or be
10 fairly readable.

11 **Sec. 45.45.820. Mailing prohibited after notification.** (a) After receiving a
12 request that the business person not send further unsolicited electronic mail
13 advertisements, a person who does business in this state may not send or cause to be
14 sent in the course of the person's business an unsolicited electronic mail advertisement
15 to the requestor, and may not share the requestor's electronic mail address with another
16 person, except to arrange for the removal of the address from an electronic mail
17 address list.

18 (b) The request described in (a) of this section may be made by an employer
19 who is the registered owner of more than one electronic mail address on behalf of the
20 employer's employees who use the addresses.

21 **Sec. 45.45.830. Use of electronic mail service providers.** (a) A registered
22 user of an electronic mail service provider may not use, or cause to be used, the
23 provider's equipment located in this state in violation of the provider's policy
24 prohibiting or restricting the use of the provider's equipment to initiate unsolicited
25 electronic mail advertisements.

26 (b) A person may not use, or cause to be used, to initiate an unsolicited
27 electronic mail advertisement, an electronic mail service provider's equipment located
28 in this state in violation of the provider's policy prohibiting or restricting the use of the
29 provider's equipment for the delivery of unsolicited electronic mail advertisements to
30 the provider's registered users.

31 (c) Notwithstanding (a) and (b) of this section, an electronic mail service

1 provider is not required to establish a policy prohibiting or restricting the use of the
2 provider's equipment to initiate or deliver unsolicited electronic mail advertisements.

3 **Sec. 45.45.840. Limitations on electronic mail.** (a) A person may not
4 initiate the transmission of an unsolicited electronic mail advertisement if the
5 transmission

6 (1) uses a third party's Internet domain name without the permission of
7 the third party;

8 (2) misrepresents or obscures information that identifies the point of
9 origin or the transmission path of the advertisement; or

10 (3) contains false or clearly misleading information in the subject line.

11 (b) An intervening interactive computer service does not violate (a) of this
12 section by handling or retransmitting the message initiated by a sender unless the
13 intervening electronic mail service provider assists in the transmission of the
14 unsolicited electronic mail advertisement knowing or consciously avoiding knowing
15 that the initial sender is violating or intends to violate (a) of this section. In this
16 subsection, "assists in the transmission" means to provide substantial assistance or
17 support to enable a person to formulate, compose, send, originate, initiate, or transmit
18 an unsolicited electronic mail advertisement.

19 (c) In this section,

20 (1) "electronic mail address" means a destination, commonly
21 expressed as a string of characters, to which electronic mail may be sent;

22 (2) "Internet domain name" means a globally unique hierarchical
23 reference

24 (A) to an Internet host or service;

25 (B) that is assigned through a centralized Internet naming
26 authority; and

27 (C) that is made up of a series of character strings separated by
28 periods.

29 **Sec. 45.45.850. Violations.** A violation of AS 45.45.800 - 45.45.890 is an
30 unfair method of competition and an unfair or deceptive act or practice under
31 AS 45.50.471 - 45.50.561. A remedy provided under AS 45.50.471 - 45.50.561 is in

1 addition to other remedies available to a person under law, including common law.

2 **Sec. 45.45.860. Limitation on actions.** Notwithstanding AS 45.50.531 and
3 45.50.535, a person may not bring an action in court under AS 45.50.471 - 45.50.561
4 for a violation of AS 45.45.800 - 45.45.890 unless the person is the state, a recipient of
5 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890,
6 or an electronic mail service provider whose registered user has either received or sent
7 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890.
8 In this section, "recipient" includes a business whose employee receives the
9 advertisement in the course of the employment.

10 **Sec. 45.45.870. Application limits.** (a) AS 45.45.800 - 45.45.890 do not
11 apply unless a person sends or causes to be sent an unsolicited electronic mail
12 advertisement to a resident of this state by using any of an electronic mail service
13 provider's service or equipment located in this state.

14 (b) AS 45.45.800 - 45.45.890 may not be construed to limit or restrict

15 (1) the rights of an electronic mail service provider under 47 U.S.C.
16 230(c)(1);

17 (2) a decision of an electronic mail service provider to permit or to
18 restrict access to or the use of the provider's system; or

19 (3) an exercise of the editorial function of an electronic mail service
20 provider.

21 (c) AS 45.45.800 - 45.45.890 do not apply to an act of a nonprofit person or to
22 an act that is political rather than commercial in nature. In this subsection, "nonprofit
23 person" means a person who qualifies for an exemption from taxation under 26 U.S.C.
24 501(c).

25 **Sec. 45.45.890. Definitions.** In AS 45.45.800 - 45.45.890,

26 (1) "electronic mail advertisement" means an electronic mail message
27 if the principal purpose of the message is to promote, directly or indirectly, the sale,
28 lease, rental, gift offer, or other disposition of real property, goods, or services,
29 including the extension of credit to the recipient of the message, but does not include
30 an advertisement attached to an electronic mail message by an electronic mail service
31 provider in exchange for free use of an electronic mail account if the sender has agreed

1 to this arrangement;

2 (2) "electronic mail service provider" means a person who

3 (A) does business in this state by providing other persons with
4 the ability to send or receive electronic mail through equipment located in this
5 state; and

6 (B) is an intermediary in sending or receiving electronic mail;

7 (3) "initiate" means to take action as the initial sender of an unsolicited
8 electronic mail advertisement to send the advertisement, but does not include the
9 action of an intervening electronic mail service provider who handles or retransmits
10 the advertisement;

11 (4) "registered user" means a person who maintains an electronic mail
12 address with an electronic mail service provider;

13 (5) "unsolicited electronic mail advertisement" means an electronic
14 mail advertisement that is addressed to a recipient with whom the person who initiates
15 the advertisement does not have an existing business or personal relationship, unless
16 the advertisement is sent at the request of or with the express consent of the recipient.

17 * Sec. 2. AS 45.45.870(a) is repealed and reenacted to read:

18 (a) AS 45.45.800 - 45.45.890 do not apply unless a person sends or causes to
19 be sent an unsolicited electronic mail advertisement

20 (1) from a computer located in the state; or

21 (2) to an electronic mail address if the person

22 (A) knows the address is held by a recipient in this state; or

23 (B) is aware of a fact that makes fairly apparent that the address
24 is held by a recipient in this state.

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

26 (45) violating AS 45.45.800 - 45.45.890 (electronic mail activities).

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

29 CONTINGENT EFFECT OF SECTION 2. Section 2 of this Act takes effect only if a
30 court of competent jurisdiction whose decisions are binding in this state enters a final
31 judgment that the application of AS 45.45.870(a), as enacted by sec. 1 of this Act, to a person

1 who sends a commercial electronic mail advertisement from outside the state into the state is
2 unconstitutional.

3 * Sec. 5. If, under sec. 4 of this Act, sec. 2 of this Act takes effect, it takes effect on the day
4 after the last day on which the judgment described in sec. 4 of this Act could have been
5 appealed, including appeal by writ of certiorari.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

HB 36: "Limitations on Junk E-mail (SPAM)"

Sponsor Statement

This bill aims to help make the internet a benefit to the public, not a burden. A recent national study estimates that unwanted junk e-mail, "SPAM," costs Americans roughly \$8.9 billion in lost work time alone. (USA Today, January 3, 2003.) In addition, these unwanted bulk e-mails waste our scarce free time at home, and invade our privacy.

Currently 26 States limit SPAM. HB 36 is based in part upon "anti-SPAM" provisions from Washington and California, states whose laws have been upheld. The bill follows the remedy structure that already exists under Alaska's consumer rights and fraud statute.

The bill does the following:

1. It affects only bulk commercial e-mail, and not personal or political messages.
2. It requires that these e-mails provide a recipient with an easy way to have their address removed from the sender's database.
3. It also penalizes the abusive practice of those businesses who, upon receiving an address-removal request, dishonor that request, or even sell the e-mail address for use on more SPAM.
4. It allows citizens or the Attorney General's office to enforce the law.
5. It bans the use of misleading subject headings, which many spammers use. For example, some spammers use headings to make a recipient think an e-mail is a message from a friend, when it is not.

Alaska is a place where the internet is especially important. The State has an obligation to protect the privacy of Alaskans who use the internet. This anti-SPAM bill aims to protect our privacy, and protect us from annoyance.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

Sectional Analysis: HB 36

Limitation of Sending of Junk Commercial E-mail/SPAM

February 3, 2003

This bill helps protect Alaskans from the annoyance of commercial junk e-mail, or "Spam." It grants Alaskans the right to have their e-mail addresses removed from a sender's e-mail address list, and related protections. It applies to commercial e-mail sent by a business with which the recipient has no established business relationship. The bill does not govern e-mails sent by non-profit organizations, by people of businesses that the recipient has a relationship with, or that are political rather than commercial in nature.

The exemption of political speech seeks to avoid any concern that this statute regulates constitutionally protected free speech. Generally, a state can more easily regulate commercial speech than political speech. Additionally, there is no evidence that non-profit organizations are sending out invasive or annoying junk e-mail, and such organizations are therefore not regulated by this statute.

The bill provides as follows, by section:

Section 1 adds AS 45.45.800 – 890.

AS 45.45.800 & .810 provide that a person who sends Spam e-mail must provide the recipient with a free phone number or link allowing the recipient to remove their address from the sender's e-mail list. This provision is modeled after California law.

AS 45.45.820 provides that if a recipient of Spam e-mail requests to be removed from a sender's e-mail list, that request must be honored. This provision seeks to remedy the practice of some companies that reportedly sell or otherwise spread the addresses of recipients who ask to have their names removed from an e-mail list.

AS 45.45.830 requires that a person not violate the privacy protections they agree to when contracting with an internet service provider. This provision is modeled after California law.

AS 45.45.840 prevents the practice by some who send Spam e-mail of using a false return address. It also prevents the practice by some who send Spam e-mail of using a misleading subject heading to make a recipient think the e-mail has come from, for example, a friend when it really comes from a company selling a product. This section is modeled after a parallel Washington provision.

AS 45.45.850 incorporates Alaska's existing remedies under our consumer protection law, the Alaska Unfair Trade Practices Act. These rules will apply to violations of this new law. The purpose was to use Alaska's existing remedy scheme, and not create a new one. This law allows the Attorney General's Office to represent a person on a claim under this statute. Since the Attorney General's Office does not have the staff to take many of these cases, it also allows individual citizens to pursue a case on their own behalf, for triple damages. Since true damages will be minimal, if anything, a citizen can instead request the option a fine of \$500, plus the costs of bringing suit. Unless your computer is somehow damaged from receiving an infected Spam, a court or jury would doubtfully find a person has suffered much in the way of damages, so it is most likely that these cases will result in \$500 fines, and not damages verdicts. The purposes of the fine will be to deter future improper conduct by the defendant.


AS 45.45.860 allows recipients, employers of recipients, to file an action.

AS 45.45.870-890 makes this statute applicable to anyone who sends an e-mail that violates this section into the state, and limits the application to commercial e-mail, as opposed to political e-mail or e-mails from friends, acquaintances and non-profit organizations.

Sections 2, 4 & 5. These sections provide that the bulk of this statute shall remain in effect in the event there is ever a successful constitutional challenge arguing that this state may not regulate non-Alaska e-mail. California does regulate out of state e-mail, and to date their law has been upheld. Section 1 borrows the California approach. Washington regulates out of state e-mail in a narrower fashion. Section 2 borrows the Washington approach, which would only go into effect in the event a court were to say Alaska's broader regulation of out-of-state e-mail is unconstitutional. Sections 4 & 5 relate to Section 2.

Please feel free to contact this office if you have any questions.

Sincerely,


Rep. Les Gara



Honorable Tom Anderson, Chair
House Labor and Commerce Committee
Alaska Capital, Room 432
Juneau, AK 99801-1182

February 14, 2003

RE: HB 36 (Gara)-Support

Dear Chair Anderson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 36, authored by Representative Les Gara and co-sponsored by sixteen of your House colleagues, including your Committee members Vice-Chair Lynn, Crawford and Guttenberg.

As you can imagine, more and more older persons use the Internet each year. They use it for communications, learning, shopping, and entertainment. Retirees use the Internet to stay in touch with grandchildren as well as to communicate with each other. The AARP web site alone gets millions of "hits" each week. Every day AARP members are also victims of unwanted and uninvited "spam" that varies from commercial pitches to pornography. As Representative Gara points out in his Sponsor Statement, HB 36 is intended to protect our privacy and protect us from annoyance.

AARP could not agree more with the intent of this bill. Just as you and your Committee colleagues recently voted out a bill to curb unwanted telemarketing calls, we urge you to also vote "AYE" on HB 36 and give all Alaskans the opportunity to avoid this nuisance on the Internet.

We look forward to your support of HB 36 in the House Labor and Commerce Committee and we sincerely thank you in anticipation of that support.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capitol City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
3009 Northwood Street
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907.245.5259 voice
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cc: Vice-Chair Bob Lynn
Representative Nancy Dahlstrom
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg
Representative Les Gara
Marie Darlin
Patrick Luby



February 5, 2003

Representative Les Gara
Alaska State Legislature
State Capitol, Room 422
Juneau, Alaska 99801-1182

Re: HB 36, Anti-SPAM Legislation

Dear Representative Gara:

GCI, the leading provider of Internet service in Alaska, supports proposed legislation to limit junk e-mail, or "SPAM."

We have reviewed a draft of HB 36. The legislation takes an appropriate approach to SPAM; rather than prohibiting commercial advertising by e-mail, it simply provides a convenient means for e-mail users to "opt-out" from receiving SPAM and levies penalties only when SPAM is sent to users who have opted out.

Some minor modifications to HB 36 may be necessary to clarify certain provisions. We believe those modifications can be adopted as the legislation winds its way through the process and, assuming that to be the case, we support the legislation.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jimmy".

Jimmy Jackson
Regulatory Attorney

Subject: HB 36

Date: Thu, 23 Jan 2003 15:12:21 -0800

From: "Carey Graham, Jessica-ANC" <JGraham@perkinscoie.com>

To: "'Representative_Les_Gara@legis.state.ak.us'" <Representative_Les_Gara@legis.state.ak.us>

Dear Rep. Gara --

I am writing to you in my capacity as the Legislative Chair for the Anchorage Society of Human Resource Management (ASHRM), and as a "management-side" employment lawyer. I saw that your bill, HB 36, relating to e-mail "spam," was referred to the House Labor & Commerce Committee. As a result, I'm not sure if my comments are best directed to you or to the Labor and Commerce Committee Chair (Rep. Tom Anderson). Let me know if I need to re-send to Rep. Anderson.

In any event, I wanted to let you know that I discussed the bill with the ASHRM Board and we fully support your efforts. We think the bill would be improved by adding some additional language that clarifies that businesses have the right to prosecute claims for unwelcome spam. I recall that when we talked about this by phone you said this was your intent; in my opinion it is better to err on the side of clear instruction but I defer to your efforts.

Please let me know if we can do anything to support your work on HB 36. Thank you for taking the lead on this issue.

Sincerely,

Jessica Carey Graham

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LEGISLATIVE RESEARCH REPORT

DECEMBER 26, 2002



REPORT NUMBER 03.048

"ANTI-SPAM" LAWS IN CALIFORNIA AND WASHINGTON

PREPARED BY KATHLEEN L. WAKEFIELD, LEGISLATIVE ANALYST

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You asked for information on "anti-spam" laws in California and Washington. Specifically, you wished to know what information was used in designing these laws.

SUMMARY

As you know, both California and Washington have passed anti-spam laws. Washington lawmakers enacted legislation in March 1998, and amended the law in 1999. The resulting statute, RCW 19.190, prohibits sending commercial e-mail messages that use a third party's domain name without permission; that contain false routing information or no routing information; or that use false or misleading subject lines. The Washington law applies if the message is sent from within the state or is sent to a Washington resident, or if the owner of the domain name confirms that the recipient is a resident.

California lawmakers followed suit with two bills that were signed into law in September 1998. Section 17538.4 of the California Business and Professions Code requires that unsolicited commercial e-mail messages sent to California residents via a California Internet service provider must include "opt-out" instructions and valid contact information, and that such requests must be honored. In addition, e-mails from advertisers must begin the subject line of the e-mail with a label: "ADV" for general advertisements, or "ADV:ADLT" for subject matter that is suitable only for residents aged 18 and over. Section 17538.45 of the code prohibits the unauthorized use of electronic mail networks and provides civil penalties for those who violate the law.

In both states, lawmakers determined that a legislative solution was needed to solve the problem of junk e-mail or "spam," which can impose a significant burden on recipients, slow down or disrupt Internet service by overloading provider systems, and eventually result in increased costs to consumers.¹ California legislators modeled their anti-spam law on the state's existing "junk fax" law, which allows individuals to opt out of receiving unsolicited advertisements by facsimile.

UNSOLICITED COMMERCIAL E-MAIL, OR "SPAM"

Unsolicited commercial e-mail and bulk e-mail advertisements have come to be known in the popular lexicon as "spam." According to the *Intellectual Property & Technology Law Journal*, "spam is not a term of art and is not a defined term in any current legislation. The term 'spam' has come to mean any unwanted email regardless of the source or content."² According to the National Conference of State Legislatures, studies show that recipients of spam "overwhelmingly dislike it—a Gartner Group study found that 83 percent of those surveyed find it time-consuming, an invasion of privacy, or offensive."³ NCSL also found that the two most prevalent types of spam are "get-rich-quick" schemes and pornographic or adult-oriented material, which make up almost two-thirds of all unsolicited commercial e-mails.

Spam is an easy and inexpensive (for the sender) way to reach thousands of consumers. Opponents of spam, however, argue that it has significant costs for Internet service providers (ISPs), businesses, and individuals. For example, ISPs pay for additional bandwidth to accommodate space used by junk e-mail, businesses pay for filtering software, and recipients pay increased costs passed on by ISPs.⁴ NCSL found that, while legitimate businesses use e-mail responsibly to advertise goods and services, an increasing number of "spammers" use dubious marketing practices, such as:

- ◆ Using misleading subject lines;

¹ AB1676 Bill Analysis, California Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development, March 17, 1998; Washington Office of the Attorney General, <http://www.wa.gov/ago> (accessed December 19, 2002).

² Charles L. Philbrick and Matthew Z. Hammoudeh, "Lawmakers Search for Ingredients to Make Spam Less Appetizing," *Intellectual Property & Technology Law Journal*, October 2000.

³ Pam Greenberg, "The Problem of Spam: Unsolicited Commercial E-Mail," *Legisbrief*, National Conference of State Legislatures, October 2002.

⁴ *Legisbrief*, October 2002.

- ◆ Routing e-mail messages through third party computers or forging message headers to prevent identification;
- ◆ Using invalid return addresses or contact information; and
- ◆ Collecting, or "harvesting," masses of e-mail addresses from a variety of on-line sources such as chat rooms and lis:serves.

CALIFORNIA

California lawmakers passed AB1676 in August 1998. The bill, which was signed into law in September 1998, amended Section 17538.4 of the California Business and Professions Code to include prohibitions against unsolicited e-mail.⁵ The law, which originally applied only to unsolicited facsimile advertisements, now requires that unsolicited commercial e-mail messages sent to California residents via a California provider must include "opt-out" instructions and valid contact information, and that opt-out requests must be honored. In addition, e-mails from advertisers must begin the subject line of the e-mail with a label: "ADV" for general advertisements, or "ADV:ADLT" for subject matter that is suitable only for residents aged 18 and over.

The California legislature also passed AB1629 in 1998. This bill added §17538.45 to the law, prohibiting the unauthorized use of electronic mail networks and providing for civil penalties for those who violate these provisions.

Supporters of these bills explained that while California law provided some protections to consumers against unsolicited facsimile advertisements, telemarketing calls, and "junk mail," no protection was provided against unsolicited e-mail advertising or spam.⁶ In addition, federal law had not been updated to include spam, and voluntary standards were not effective in eliminating "spamming" by some Internet advertisers. Supporters concluded that action was needed at the state level to provide some protection until federal laws were revised. Those testifying in support of the anti-spam legislation included the Silicon Valley Software Industry Coalition, the Consumer Federation of California, and CalPIRG.

Opponents of the measures, however, argued that they were an infringement on free speech, and that they would also be in violation of the Commerce Clause of the U.S. Constitution. Opponents claimed that "any government regulation of the Internet may have a dampening effect on Internet commerce."⁷ Critics also questioned the measure's effectiveness against spam originating from outside the state. The California Internet Industry Alliance complained that

[B]ecause the Internet is used by companies and individuals throughout the world it is simply unworkable for the State of California to propose to require a California solution to labeling unsolicited electronic mail. The bill seeks to apply

⁵ We include a copy of this law as Attachment A and California's "Unsolicited Commercial E-Mail Complaint Form" as Attachment B.

⁶ AB1676 Bill Analysis.

⁷ AB1676 Bill Analysis.

to everyone conducting business in California. There is no way for the sender of electronic mail in another state or country to know if the e-mail address is in California. Further, millions of non-English speaking senders and recipients would not understand the acronyms used.⁸

Other opponents of the legislation included the California Adult Webmasters Association and the Adult Entertainment Industry Education Fund.

WASHINGTON

Washington lawmakers passed ESHB2752 in March 1998 and 2SHB1037 in April 1999. The resulting statute, RCW 19.190, prohibits sending commercial e-mail messages that use a third party's domain name without permission; that contain false routing information or contain no routing information at all; or that use false or misleading subject lines.⁹ The Washington law applies if the message is sent from within the state or is sent to a Washington resident, or if the owner of the domain name confirms that the recipient is a resident. The law provides for the greater of \$500 or actual damages to recipients of illegally sent spam; the law also provides for the greater of \$1,000 or actual damages to interactive computer services harmed as a result of a violation of the law. Persons who unknowingly transmit such messages are exempt from liability. Also exempt are advertisements that are attached to messages sent through free electronic mail accounts as a condition of use for those accounts.

This new law, the Unsolicited Commercial Electronic Mail Act, is the nation's first anti-spam law. According to information published on the state Attorney General's website, the law was intended to address the following consumer issues:

First, recipients are the victims of a deceptive consumer practice because they pay for the Internet time and services that deliver the deceptive e-mail. Consumers waste their on-line time downloading deceptive mail, and false subject lines prevent them from making informed decisions on whether to delete messages. Recipients also are unable to determine accurate addresses in order to respond.

Second, persons whose addresses are misappropriated are harmed by receiving floods of responding e-mails nominally directed towards the original sender of the deceptive e-mail. The Legislature heard how a misappropriated e-mail return address shut down a legitimate electronic site due to persons responding by hitting "reply" and "send."

⁸ AB1676 Senate Floor Analysis, Senate Rules Committee, August 28, 1998.

⁹ We include a copy of this law as Attachment C, and Washington's "Junk E-Mail Complaint Form" as Attachment D.

Finally, the consumer's Internet Service Provider (ISP) is harmed because mass e-mailings clog systems and cause overloads, down time, and costs associated with filtering deceptive e-mails.¹⁰

Opponents of the Washington law raised many of the same concerns expressed by those opposing the California law: that such laws interfere with free speech and unrestrained commerce on the Internet; that small businesses would not be able to compete under such legislation; and that the bills would not be effective against out-of-state advertisers. Representatives of the American Electronic Association, the Direct Marketers Association, and the American Civil Liberties Union of Washington were among those who testified against the anti-spam law.

Proponents of the legislation, however, argued that junk e-mail is becoming ever more invasive, that the cost of junk e-mail is born by ISPs and consumers, and that some reasonable restrictions on such advertising are needed. As noted on the Consumer Protection Division page of the Washington Attorney General website, such advertisements are "most often used for multi-level marketing schemes, get-rich-quick schemes, work-at-home schemes or for questionable products or pornography."¹¹ The Attorney General's Office received more protests against spam than any other type of consumer complaint.

In addition to the Attorney General's Office, representatives of the Washington Association of Internet Service Providers and the Washington State Internet Lobby testified in favor of the anti-spam measures.

OTHER STATES

As of August 2002, 26 states have enacted "anti-spam" laws for electronic mail.¹² These laws tend to fall into two major categories:

- ◆ Laws using general language to prohibit misleading information in the message header, such as questionable subject lines (as in the Washington statute); or
- ◆ Laws that prohibit the use of fake sender addresses, and that also require the sender to use a label such as "ADV:" or "ADV:ADLT" (for adult material)

¹⁰ "Background Paper on Washington Supreme Court Case: Challenging Washington's Anti-Spam Law," Washington State Attorney General's Office, http://www.wa.gov/ago/releases/rel_spam_060701.html (accessed December 23, 2002).

¹¹ Washington Consumer Protection Division, Office of the Attorney General, <http://www.wa.gov/ago/clearinghouse/consumer/junkemail/home.html>.

¹² The following states have enacted anti-spam laws: Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Missouri, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin. We have included a copy of "State Laws relating to Unsolicited Commercial or Bulk E-Mail (SPAM)" from the National Conference of State Legislatures as Attachment E.

to clearly mark the message as an advertisement (such as the California law).¹³

Most state anti-spam laws also require marketers to provide a valid and easy way for recipients to opt out of receiving their e-mails, and to honor those requests. Many of the laws also strengthen ISP user agreements that prohibit or limit the use of their networks to send bulk or commercial e-mail. In addition, the governor of California recently signed a bill adding a section to the state statutes prohibiting marketers from sending spam to cellular phones or pagers using text messaging capabilities (California Business and Professions Code, Section 17538.41).

Among those who favor anti-spam laws, at both the state and the national level, are the Internet Alliance (an industry trade association), the Coalition Against Unsolicited Commercial Email (CAUCE), and Junkbusters. Opponents of anti-spam laws include the Direct Marketing Association and the Cato Institute, a libertarian policy institute and "think tank."

Congress has also attempted to address the issue of junk e-mail, although at this time no measures have passed or been enacted into law. According to the National Conference of State Legislatures, lawmakers introduced at least eight bills targeting junk e-mail in the 107th Congress.¹⁴ Among those were bills similar to state laws prohibiting false headers, deceptive subject lines, and invalid opt-out information, and requiring labeling of bulk e-mail advertisements. At this time, we know of no anti-spam bills that have been pre-filed for the 108th Congress.

COURT CHALLENGES

Both the California and the Washington anti-spam laws have faced court challenges. In October 1998, the Washington Attorney General's Office filed suit against an Oregon company and its owner/operator, alleging that the company used misleading subject lines and an invalid return e-mail address in unsolicited commercial e-mails sent to millions of Internet users (*State v. Heckel (Jason) d/b/a Natural Instincts*). In March 2000, King County Superior Court Judge Palmer Robinson dismissed the suit, stating that Washington's anti-spam law violated the Commerce Clause of the U.S. Constitution by placing an undue burden on interstate commerce.¹⁵

The Attorney General's Office appealed the ruling directly to the Washington State Supreme Court, which, in June 2001, unanimously upheld the constitutionality of the anti-spam law. In reversing the lower court's decision, the Supreme Court concluded that "...the Act's local benefits outweigh any conceivable burdens the act places on those sending commercial e-mail messages."¹⁶ The court stated that "...the only burden the Act places on spammers is the requirement of truthfulness, a requirement that does not burden commerce at all but actually

¹³ Douglas J. Wood, "The Impact of State Anti-Spam Laws," *GigaLaw.com*, available at <http://www.gigalaw.com/articles/2002-all/wood-2002-03-all.html> (accessed December 18, 2002).

¹⁴ *Legisbrief*, October 2002.

¹⁵ "State Supreme Court Upholds Washington's Anti-Spam Law," Washington State Attorney General's Office, http://www.wa.gov/agc/releases/rel_spam_060701.html (accessed December 23, 2002).

¹⁶ Pam Greenberg, "State Supreme Court Upholds Washington Anti-Spam Law," *News From the States*, National Conference of State Legislatures, Summer 2001, <http://www.ncsl.org/programs/lis/CIP/CIPCOMM/news0801.htm> (accessed December 18, 2002).

facilitates it by limiting fraud and deception."¹⁷ The defendant subsequently appealed this decision to the U.S. Supreme Court, which, in October of this year, declined to hear the appeal.¹⁸

Last year, the California Attorney General's Office filed an *amicus* brief in a case brought against spammers by private individuals. In that case (*Ferguson v. Friendfinders, Inc.*), the First District Court of Appeals in San Francisco upheld the state's anti-spam law. In a unanimous decision, the court found that the law did not violate the Commerce Clause of the U.S. Constitution, because "it does not directly regulate commerce occurring wholly outside the state."¹⁹ The defendants appealed the decision to the California Supreme Court, but the court declined to hear the appeal.²⁰

However, these decisions do not set precedent for other jurisdictions, and experts anticipate further challenges in other states based on similar concerns about violations of the Commerce Clause of the U.S. Constitution and violations of free speech rights.²¹

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

¹⁷ "State Supreme Court Upholds Washington's Anti-Spam Law," Washington State Attorney General's Office, http://www.wa.gov/ago/releases/rel_spam_060701.html (accessed December 23, 2002).

¹⁸ Pam Greenberg, "Court Decisions Favor State Anti-Spam Laws," *News From the States*, National Conference of State Legislatures, Winter 2002, <http://www.ncsl.org/programs/lis/CIP/CIPC/COMM/news0202.htm> (accessed December 18, 2002).

¹⁹ Pam Greenberg, "Court Decisions Favor State Anti-Spam Laws."

²⁰ In September 2002, the California Attorney General filed suit against a California company, PW Marketing LLC, and its two owners/operators, alleging that they sent millions of unsolicited commercial e-mails promoting their products, using false addresses and failing to disclose required information (such as valid contact numbers or e-mail addresses that recipients can contact to opt out of future e-mails). This is the first lawsuit the state has brought against violators of the anti-spam law. "Attorney General Files State's First 'spam' Lawsuit," Office of the Attorney General, State of California, <http://caag.state.ca.us/newsalerts/2002/02-111.htm> (accessed December 23, 2002).

²¹ As a point of interest, the *New York Times* recently reported that the Bush administration, as part of its homeland security strategy, is planning to require Internet service providers' help in building a centralized system that would enable broad monitoring of the Internet, and would potentially allow surveillance of Internet users, by a government-led monitoring center. According to the report, some officials of Internet companies worry that such a system may "cross the indistinct border between broad monitoring and wiretap," and "could be used to violate privacy." John Markoff and John Schwartz, "Bush Administration to Propose System for Monitoring Internet," *The New York Times*, web posted December 20, 2002.

Attachment A

California Business & Professions Code §§ 17538.4 to .45

California Business + Professions Code

~~(d) To any telecommunications goods and services sold by a telecommunications company, except those telecommunications goods and services purchased for use primarily for personal, family, or household purposes.~~

~~(e) To financial services offered in the ordinary course of business by a supervised bank, national banking association, bank holding company, a state or federal savings and loan association, a state or federal credit union, or a subsidiary or affiliate thereof, or an authorized industrial loan company, a licensed personal property broker, a licensed consumer finance lender, a licensed commercial finance lender, or a person licensed pursuant to Division 4 (commencing with Section 10000).~~

~~(f) To any delay in delivery of goods or services caused by the United States Post Office, an act of God, or a labor strike by the vendor's employees.~~

* 17538.4.

(a) No person or entity conducting business in this state shall facsimile (fax) or cause to be faxed, or electronically mail (e-mail) or cause to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless:

(1) In the case of a fax, that person or entity establishes a toll-free telephone number that a recipient of the unsolicited faxed documents may call to notify the sender not to fax the recipient any further unsolicited documents.

(2) In the case of e-mail, that person or entity establishes a toll-free telephone number or valid sender operated return e-mail address that the recipient of the unsolicited documents may call or e-mail to notify the sender not to e-mail any further unsolicited documents.

(b) All unsolicited faxed or e-mailed documents subject to this section shall include a statement informing the recipient of the toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or e-mail, as the case may be, notifying the sender not to fax or e-mail the recipient any further unsolicited documents to the fax number, or numbers, or e-mail address, or addresses, specified by the recipient.

In the case of faxed material, the statement shall be in at least nine-point type. In the case of e-mail, the statement shall be the first text in the body of the message and shall be of the same size as the majority of the text of the message.

(c) Upon notification by a recipient of his or her request not to receive any further unsolicited faxed or e-mailed documents, no person or entity conducting business in this state shall fax or cause to be faxed or e-mail or cause to be e-mailed any unsolicited documents to that recipient.

(d) In the case of e-mail, this section shall apply when the unsolicited e-mailed documents are delivered to a California resident via an electronic mail service provider's service or equipment located in this state. For these purposes "electronic mail service provider" means any business or organization qualified to do business in this state that provides individuals, corporations, or other entities the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(e) As used in this section, "unsolicited e-mailed documents"

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means any e-mailed document or documents consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit that meet both of the following requirements:

(1) The documents are addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(2) The documents are not sent at the request of, or with the express consent of, the recipient.

(f) As used in this section, "fax" or "cause to be faxed" or "e-mail" or "cause to be e-mailed" does not include or refer to the transmission of any documents by a telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(g) In the case of e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, the subject line of each and every message shall include "ADV:" as the first four characters. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that may only be viewed, purchased, rented, leased, or held in possession by an individual 18 years of age and older, the subject line of each and every message shall include "ADV:ADLT" as the first eight characters.

(h) An employer who is the registered owner of more than one e-mail address may notify the person or entity conducting business in this state e-mailing or causing to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit of the desire to cease e-mailing on behalf of all of the employees who may use employer-provided and employer-controlled e-mail addresses.

(i) This section, or any part of this section, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail).

* 17538.45. (a) For purposes of this section, the following words have the following meanings:

(1) "Electronic mail advertisement" means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.

(2) "Unsolicited electronic mail advertisement" means any electronic mail advertisement that meets both of the following requirements:

(A) It is addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(B) It is not sent at the request of or with the express consent of the recipient.

(3) "Electronic mail service provider" means any business or organization qualified to do business in California that provides registered users the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(4) "Initiation" of an unsolicited electronic mail advertisement

refers to the action by the initial sender of the electronic mail advertisement. It does not refer to the actions of any intervening electronic mail service provider that may handle or retransmit the electronic message.

(5) "Registered user" means any individual, corporation, or other entity that maintains an electronic mail address with an electronic mail service provider.

(b) No registered user of an electronic mail service provider shall use or cause to be used that electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its service or equipment for the initiation of unsolicited electronic mail advertisements.

(c) No individual, corporation, or other entity shall use or cause to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users.

(d) An electronic mail service provider shall not be required to create a policy prohibiting or restricting the use of its equipment for the initiation or delivery of unsolicited electronic mail advertisements.

(e) Nothing in this section shall be construed to limit or restrict the rights of an electronic mail service provider under Section 230(c)(1) of Title 47 of the United States Code, or any decision of an electronic mail service provider to permit or to restrict access to or use of its system, or any exercise of its editorial function.

(f) (1) In addition to any other action available under law, any electronic mail service provider whose policy on unsolicited electronic mail advertisements is violated as provided in this section may bring a civil action to recover the actual monetary loss suffered by that provider by reason of that violation, or liquidated damages of fifty dollars (\$50) for each electronic mail message initiated or delivered in violation of this section, up to a maximum of twenty-five thousand dollars (\$25,000) per day, whichever amount is greater.

(2) In any action brought pursuant to paragraph (1), the court may award reasonable attorney's fees to a prevailing party.

(3) (A) In any action brought pursuant to paragraph (1), the electronic mail service provider shall be required to establish as an element of its cause of action that prior to the alleged violation, the defendant had actual notice of both of the following:

(i) The electronic mail service provider's policy on unsolicited electronic mail advertising.

(ii) The fact that the defendant's unsolicited electronic mail advertisements would use or cause to be used the electronic mail service provider's equipment located in this state.

(B) In this regard, the Legislature finds that with rapid advances in Internet technology, and electronic mail technology in particular, Internet service providers are already experimenting with embedding policy statements directly into the software running on the computers used to provide electronic mail services in a manner that displays the policy statements every time an electronic mail delivery is requested. While the state of the technology does not support such a finding at present, the Legislature believes that, in a given case at some future date, a showing that notice was supplied

via electronic means between the sending and receiving computers could be held to constitute actual notice to the sender for purposes of this paragraph.

(4) A violation of this section shall not be subject to Section 17534.

17538.5. (a) It is unlawful in the sale or offering for sale of consumer goods or services for any person conducting, any business in this state which utilizes a post office box address, a private mailbox receiving service, or a street address representing a site used for the receipt or delivery of mail or as a telephone answering service, to fail to disclose the legal name under which business is done and, except as provided in paragraph (2) of subdivision (b), the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(b) (1) This section shall not apply to a person who sells the preponderance of goods and services at retail from trade premises which are open to the public regularly during normal business hours where the post office box or telephone answering service is supportive of and ancillary to the sales made or to any person who provides services pursuant to a license issued pursuant to this code or any other provision of law by a state board or agency or, except for a person conducting a mail order or catalog business, by a city or county or city and county in this state, which has the person's current business street address or home address on record and which is authorized to reveal that address to inquiring persons.

(2) If a person conducts a business described in subdivision (a) from that person's residence, the person is not required to disclose the residence address if both of the following conditions are satisfied:

(A) The person's current business street address or home address is contained in a United States Postal Service (USPS) Form 1583 that is filed with the USPS.

(B) The person has signed an acknowledgement form substantially in accordance with the provisions set forth in subdivision (f) which, among other things, authorizes the commercial mail receiving agency to act as that person's agent for service of process.

(c) A commercial mail receiving agency (CMRA) shall not provide private mailbox receiving service to any customer until it obtains from that customer at least two pieces of identification regarding that customer and provides to that customer an acknowledgment, as set forth in subdivision (f), which (1) acknowledges the obligation to advise the CMRA of any change in address, (2) authorizes the CMRA to act as an agent for service of process, and (3) acknowledges the requirements of Sections 17200 and 17500, which prohibit unfair competition and false advertising. The commercial mail receiving agency shall thereafter maintain a copy of any United States Postal Service Form 1583 for each mailbox service customer, along with a copy of each of the two pieces of identification used by the customer, for a period of two years after the termination of service to that customer. Upon the request of the Department of Consumer Affairs or any law enforcement agency conducting an investigation, the commercial mail receiving agency shall make available to the Department of Consumer Affairs or that law enforcement agency, for

**Chapter 19.190 RCW
COMMERCIAL ELECTRONIC MAIL**

SECTIONS

19.190.010 Definitions.

19.190.020 Unpermitted or misleading electronic mail -- Prohibition.

19.190.030 Unpermitted or misleading electronic mail -- Violation of consumer protection act.

19.190.040 Violations -- Damages.

19.190.050 Blocking of commercial electronic mail by interactive computer service -- Immunity from liability.

RCW 19.190.010**Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Assist the transmission" means actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any practice that violates the consumer protection act.
- (2) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting real property, goods, or services for sale or lease. It does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the sender has agreed to such an arrangement.
- (3) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.
- (4) "Initiate the transmission" refers to the action by the original sender of an electronic mail message, not to the action by any intervening interactive computer service that may handle or retransmit the message, unless such intervening interactive computer service assists in the transmission of an electronic mail message when it knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates the consumer protection act.
- (5) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.
- (6) "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.
- (7) "Person" means a person, corporation, partnership, or association.

[1999 c 289 § 1; 1998 c 149 § 2.]